



# CITY OF CONCORD

New Hampshire's Main Street™  
**Zoning Board of Adjustment**

March 6, 2024  
MEETING MINUTES

Attendees: Chair Carley, Nick Wallner, James Monahan, Laura Spector-Morgan, Andrew Winters, Brenda Perkins, Mark Davie

Absent: Tedd Evans

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

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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

## *REHEARING REQUESTS*

0123-2023                    54 N Main Street; *CBP – Central Business Performance District*, Ciborowski Associates LLC Owners:

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

Mr. Monahan recused himself, and Ms. Perkins stepped in as a voting member.

Chair Carley mentioned that the Board had heard this case previously and had denied the variances. There was a request to rehear the case in February at which time the Board decided to recess the case to seek advice from counsel. The Board went ahead and solicited the advice from counsel and was prepared to move forward.

A motion to reopen the case was made by Mr. Wallner, seconded by Ms. Spector-Morgan, passing unanimously.

Chair Carley discussed that the Acting City Solicitor advised that the Board could indeed consider certain elements of financial hardship in their decision, which could have been a potential legal error if they had not. The Board had also asked if they were obligated to offer the applicant a five-member board to vote on a rehearing request. It was determined that the Board Rules on specify that requirement for public hearings.

Mr. Winters stated that he carefully reviewed the submission from the applicant, with the strongest argument having to do with the claim that the Board had mentioned that it would be inappropriate to consider financial hardship, and that case law states that it is appropriate. Mr. Winters then stated that at the time it was not a decisive factor. He was disinclined to rehear the case.

Ms. Spector-Morgan stated that she felt that the Board made the correct decision, and that she did not hear anything that made her feel differently and would not be inclined to rehear the case.

Mr. Wallner stated that he was not persuaded that there was any new information, and did not feel that there were any errors, therefore he would not be inclined to rehear the case.

Ms. Perkins stated that she did not sit on the original vote, and was inclined to follow along with the recommendations of the group. She reviewed the material presented and commented that in the past the Board has not considered that aspect before and not sure if that would have changed any decisions.

Chair Carley stated that he would be in favor of rehearing the case and he felt that they did not give due consideration to the developer's assertions that the project was not feasible without the variances. Acknowledged then that it was a close call. He would be in favor of rehearing on the basis that they might not have correctly applied the law.

A motion was made to deny the request for a rehearing by Mr. Winters, seconded by Ms. Spector-Morgan: passing by a 4-1 vote, with Chair Carley in the minority.

0134-2023                      50 S State Street; CU – Urban Commercial District, 50 South State LLC,  
Owners:

The applicant seeks variances from Article 28-6-9(a), *Table of Maximum Sign dimensions for Non-residential Districts* and Article 28-6-7(d) *Signs Prohibited under this Ordinance*, to allow a sign that is 87.5 square feet where 25 square feet is allowed and for the sign to be painted directly on the front of the building.

Mr. Winters recused himself, and Ms. Perkins stepped in as a voting member.

Chair Carley stated that the appellant requested a rehearing on the sign dimensions, and the counsel for the applicant contends that the Board made a legal error around the size of the sign.

Mr. Wallner asked Dr. Hutton for clarifications around the size of painted signs.

Code: Dr. Hutton explained that painted signs on buildings are prohibited, so there is no ordinance on the size. A variance was approved for the painted sign, and now they are requesting to have it exceed the size in the district.

Mr. Wallner asked if they allowed the painting through a variance, wouldn't that be grounds to rehear the case for the size of the sign. He stated that he would be in favor of rehearing the case.

Chair Carley disagreed that the previously approved variance for the painted sign was grounds to approve a rehearing on the size.

Mr. Monahan asked Dr. Hutton again for clarification.

Code: Dr. Hutten explained that the Board previously approved a variance for a painted sign, which are prohibited, and now the request for a rehearing is for the size limitations of the sign.

Mr. Monahan mentioned that at the last ZBA meeting, the Board was very uncomfortable on the size of the sign, and therefore denied that portion of the original variance request.

Ms. Spector-Morgan stated that she does not see a basis for rehearing and that it clearly applies.

Ms. Perkins stated that the painting was done prior to approval, so no basis for rehearing.

Chair Carley stated that he does not see a reason for a rehearing, in that a painted sign does not mean it can exceed the size requirements. He did not feel the Board made an error.

A motion was made to deny the rehearing request by Ms. Spector-Morgan, seconded by Mr. Monahan; passing by a vote of 4-1, with Mr. Wallner in the minority.

### *PUBLIC HEARINGS*

0144-2024                      134 Borough Road; *RM – Medium Density Residential District*, Adam and Alicia Chelmo, Owners:

Applicant seeks a variance pursuant to Article 28-2-4(h), *Multiple Principal Uses on a Single Lot*, to allow for a second single family dwelling on a lot.

Adam and Alicia Chelmo testified. Mrs. Chelmo stated that they applied for a variance to add a second dwelling unit on their property for elderly family members with a housing crisis. They would like to add a second dwelling on the lot so that their family can maintain some independence. The applicant feels that such construction would add value to the property. The applicant passed around photos of the property. The applicant had a survey was completed in November to look at the property lines, water lines, and utility lines.

Chair Carley asked about the expectations of the square footage.

Mr. Chelmo mentioned that the unit would be a separate manufactured (modular) home around 23-foot wide x 42-foot long, and about 950 square feet. They chose a location on their lot that was not being utilized, considering property lines and water lines.

Chair Carley asked the appellants to point to anything that was peculiar about the lot that creates a hardship. Chair Carley explained that one of the criteria for the variance is that something about the lot creates a hardship that creates a problem to comply with the ordinance.

Ms. Chelmo mentioned she was not certain of any aspect of the property that is unique as far as a hardship. There were just dead and downed trees in that area and it would not interfere with their neighbors. They were configuring the unit to look like it was a next-door neighbor on Washington Street.

Mr. Monahan asked if they are on a septic and well. Ms. Chelmo stated that they are on city sewer and water. The survey outlined where the water and sewer lines are and they would build closer to the city

water lines for ease of connection. They did consider an Accessory Dwelling Unit (ADU), however, the 750 square feet was not sufficient for potential wheel chair accessibility, and that their in-laws wanted to have their own space for independence.

Mr. Monahan asked if there is anything unique or different about the property that would prevent them from doing an addition.

Ms. Chelmo stated she was not aware of anything unique about the property. The decision for a separate unit was for their own independence and privacy. Mr. Chelmo stated it was their understanding that you could not file for a variance for the 750 sq. ft. limitation on an ADU.

Chair Carley stated that an ADU would be a special exception rather than a variance.

Mr. Monahan mentioned that the Board has approved ADU's which are bigger and which are detached. Mr. Winters asked for clarification if the Board has approved them in the past with conditions that one unit would be owner occupied.

Code: Dr. Hutton explained that the Board has approved the secondary dwelling units and being like an ADU, approving with conditions that are like a special exception.

Ms. Spector-Morgan commented that they had approved some of those requests in situations where something about the property prevented them from building an ADU that was attached.

Ms. Perkins asked if the property could be subdivided.

Code: Dr. Hutton explained that the location of the home would be problematic with subdividing due to setbacks. They worked diligently with the Engineering Division so that the location did not interfere with the water line, as their original location did interfere. They had to move everything around because of the additional curb cut on Washington Street.

Ms. Perkins asked if that could aspect along with the two water lines have created a hardship. Dr. Hutton explained that they needed to push it to the rear because of the two water lines.

Mr. Monahan questioned if the property was unique in that the location of the house and the water lines would make it unsuitable for a subdivision.

Code: Dr. Hutton agreed and that a subdivision would also need relief.

Mr. Winters stated that their current plan does not require setback relief.

Code: Dr. Hutton agreed.

Mr. Winters asked if their lot was the largest in the area. Mr. Chelmo replied that she did not know.

Ms. Spector-Morgan asked if there are any other properties with second units in their neighborhood.

Mrs. Chelmo stated that there are two other homes on Washington Street that have similar designs.

In Favor: None.

Opposition: None.

Code: None.

Decision:

Chair Carley stated that there is a request to place a modular home on a permanent foundation, and that the lot is large enough to subdivide, however, they would need relief.

Mr. Wallner stated that the solution would be to subdivide, where they can't, so that creates the hardship. It would not devalue the surrounding properties, it would not alter the character of the neighborhood, and the spirit of the ordinance would be observed.

Mr. Monahan agreed with Mr. Wallner, however, that a condition be placed that one of the units would need to be owner occupied.

Ms. Spector-Morgan stated that she does not see a hardship. The applicants did not see a hardship and that an attached unit would be more consistent with the spirit of the ordinance.

Mr. Winters stated that he would agree with Ms. Spector-Morgan. The subdivision reason could apply to nearly any lot in the area. He further stated that if they had explored the ability to attach an ADU and that couldn't be done, that could be a good reason. He is not inclined to approve.

Chair Carley stated that he was inclined to agree with Ms. Spector-Morgan and Mr. Winters, as he did not hear a hardship in this situation, and based on the evidence he could not see how they could grant a variance.

A **motion** to approve, recognizing the uniqueness to where the waterline is to the house making it unable to be subdivided, with the condition that one unit be owner occupied, was made by Mr. Monahan, seconded by Mr. Wallner; failing by a vote of 2-3.

A **motion** to deny the requested variance, on the basis that there are no special circumstances of the property that distinguish it from other properties in the area to justify it, was made by Ms. Spector-Morgan, seconded by Mr. Winters: passing with a vote of 3-2, with Mr. Monahan and Mr. Wallner in the minority.

0146-2024

41-43 Concord Street; *RD – Downtown Residential District*, Elinor E Yeaton Revocable Trust, Owner:

Applicant seeks variances to allow for the division of the parcel into individual lots for the two primary structures on the lot. Such a division does not meet the dimensional standards of the Ordinance and variances would be required as follows:

1. 28-4-1(b) *Minimum Lot Size*;
2. 28-4-1(c) *Minimum Lot Frontage*;
3. 28-4-1(d) *Minimum Yard Requirements*, being no less than 3-feet;
4. 28-4-1(e) *Maximum Lot Coverage*; and
5. 28-7-2(e) *Table of Off-street Parking Requirements*.

Elinor Yeaton testified. Ms. Yeaton explained that she has owned and occupied the property since 2003 and that she has always rented 41 Concord Street. The appearance from the street wouldn't change. She would like to sell the 41 Concord Street building so she does not need to maintain the upkeep. She would continue to live in 43 Concord with a shared driveway.

Chris Carley asked if the fact that there are two houses on one lot presents a hardship.

Ms. Yeaton agreed.

Ms. Spector-Morgan asked if Ms. Yeaton would be making any physical changes to the property. Ms. Yeaton replied that there would be no exterior changes. She is currently rehabbing the interior of 41 Concord Street so that it is code compliant and refreshed.

Chair Carley questioned if she is proposing to run the property line right down the driveway and off to a corner, and asked what inspired that decision.

Ms. Yeaton explained that it is somewhat up in the air, and that she does not care how the backyard is used or divided. Would just like at least three feet if she needed to use a ladder.

Mr. Monahan asked when the property was bought and whether both buildings were acquired at the time. Ms. Yeaton confirmed that both houses existed when she bought the property, and that they were grandfathered on a single lot.

Mr. Winters asked if the line was the final division. If the survey has not been completed he wondered if it is provisional line. Ms. Yeaton explained that she chose the middle because there are cars that park on each side and this would maintain enough room separately for each property.

In Favor: None.

Opposition: None.

Code; Dr. Hutton stated that in reference to where the line is, that the application is a little unorthodox. Staff are conflicted because some like to see a survey first, and some do not want to encumber the owner with additional costs of a survey and have the variance be denied. Explaining that the graphical depiction as it is represented, could be enough of a representation of what she wants to do given the distance from the pinch point; at that point the line would need to be in the middle.

Mr. Winters questioned if it could change a little bit.

Chair Carley mentioned that a letter was received from Seth Hipple, an abutter, stating that he supports the proposed subdivision.

Decision:

Mr. Winters stated that the two buildings are long preexisting, which creates a unique element to the property. It is reasonable to be able to convey the properties separately. He commented that it is a little unorthodox and without the survey the Board doesn't know the exact dimensions, and if the City is comfortable with that, he would be as well.

Chair Carley pointed out that often the Board works off the GIS map.

Ms. Spector-Morgan stated that there is a hardship and that it won't alter the characteristics of the neighborhood. The division won't diminish the values of the neighboring properties and that there would be no justice in denying the variances.

Mr. Monahan stated he had nothing to add.

Mr. Wallner agreed.

Chair Carley also agreed.

A **motion** to approve the variances was made by Ms. Spector-Morgan, seconded by Mr. Wallner; passing unanimously.

0147-2024

41 Auburn Street; *RS – Single Family Residential District*, Christina Kirkpatrick and James David, Owners:

Applicant seeks a variance pursuant to Article 28-4-1(d), *Minimum Yard Requirements*, to allow for a 20-foot by 20-foot carport to be 10-feet from the property line where 15-feet is required.

Susanne Smith Meyer testified, representing the owners. The house was built in 1900. The house is now 10 feet from the property line, where there is a 15-foot setback. The neighbor has a garage that is right on the property line. The property is a corner lot which compounds the setback issue. The owners would be doing a lot of landscaping and are considering building a garage. Currently, there is a garage under the house, however, it is not large enough for current cars. The owner would like to build a carport., 20-foot x 20-foot, which would be the minimum to fit two cars, and it would almost be in line with the existing driveway. They will be able to turn around on their property.

Ms. Spector-Morgan asked if they moved it five feet out of the setback, would it result in backing out into the road. Ms. Smith Meyer stated it would not, however there wouldn't be the agility that there would be with this plan.

Mr. Winters asked about the reference to the neighbor's garage. Ms. Smith Meyer stated that the neighbor's garage is right on the property line. The five feet allows them a decent turnaround space. The structure is almost like a gazebo rather than a traditional carport.

In Favor: None

Opposition: None

Code: Dr. Hutton mentioned that it is a corner lot, so bringing it forward could be an issue with road setbacks on both sides.

DECISION:

Mr. Winters stated that the explanation as to why it needed to be in that location is understandable for access, and having a carport is a reasonable use of the property. He is inclined to approve.

Ms. Spector-Morgan stated that it is a narrow lot, and she is concerned with bringing it forward because it would present a problem with backing onto the road. The carport would not alter the essential character of the neighborhood and it would not diminish surrounding property values. There is no justice done in denying the variance.

Mr. Monahan agreed.

Mr. Wallner agreed, stating that they are not encroaching on the other setbacks. There is already a 10-foot setback with the porch. Bringing it forward to meet the 15-foot setback would create a problem with maneuvering vehicles, and it is a very small garage that cannot accommodate most vehicles. He stated he was inclined to support.

Chair Carley agreed with his colleagues.

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

0148-2024

30 River Road; *RO – Open Space Residential District, SP – Shoreland Protection Overlay, and FH – Flood Hazard District*, 30 River Road Properties LLC, Owners:

Applicant seeks a variance pursuant to Article 28-8-4(a)(1) *Nonconforming Uses of Land*, to allow vertical expansion of a non-conforming single-family dwelling.

Attorney John Cronin testified on behalf of the owners. He stated that the building has been in existence for a long time, certainly prior to the floodplain ordinance. The property was acquired by a builder who attempted to renovate it and had not applied for a permit. The building inspector was aware at the time of what was going on. The contractor failed at completing the property and Mr. Grenier and another person came in to try to complete it. They pulled another building permit which then triggered a closer review for the floodplain ordinance. They came in and requested a variance and during that case an abutter raised some questions about some modifications and additions.

There were two dormers that were added creating the bumped-out areas in the photos provided. Looking to the left you see a boxed-in dormer, which is a walk-in closet, and behind that is a bump out with a dormer facing the other direction which comes out over the family room on the first level. That was an enlargement to the existing the master bedroom to give it a little more space and light. They were hopeful to complete the construction, but were called come back to discuss the additions. In the application, he raised the Bartlett Analysis issue. The ordinance says what it says, however, when it comes to the expansion of non-conforming uses, or work beyond the original footprint, there is a statute that applies. He then referenced NH RSA 674-19. The zoning ordinance adopted under NH RSA 674-16 shall not apply to existing structures and to the existing uses of any building. He stated that the ordinance only applies to an alteration of a building for use or a purpose that is substantially different from the use to which it was put before the alteration.

The contention is that long before the ordinance existed this was a single-family home. These modifications were for the same exact use as it has always been. He stated that they are not taking a house and making it into a restaurant, etc. Therefore, in their position, a variance would not be required. He also feels they meet the criteria for the variance. If you look at the public interest and spirit of the ordinance standards, pointing out the analysis of the court in *Farrar vs. City of Keene*, that there would be no substantial change of character to the neighborhood. The only property impacted is the property owner, because it faces away from the abutting property. Secondly, this additional area is well above the floodplain for which this section of the floodplain ordinance was intended. You are not looking at base level elevation, so there really is no impact to the water way. There are other cases that meet those two standards for the spirit of the ordinance and public interest. This addition isn't causing a substantial change to the neighborhood. As far as the valuation prong, the appraiser's letter stated that there would be no diminishment of value of the surrounding properties.

The harm to the applicant at this stage to have to tear the house apart would cause a hardship. It would also cause a hardship to those who chose to live there taking away a space from the bedroom that provided more space and light and the ability to fit modern furniture would be unfair. As far as the impact to the public, allowing the expansion would increase the taxes. Attorney Cronin questioned if there is any fair and substantial relationship to the ordinance in the application of this property; stating that there would not be because the addition is well above the flood hazard line and there would be no increased impact because of water levels. These were minor modifications, and the use is reasonable.

Ms. Spector-Morgan asked if it was both a non-conforming use and a non-conforming structure.

Attorney Cronin agreed.

Mr. Winters asked about the Bartlett Analysis. He asked if he is stating that they don't need a variance at all, which is typically phrased to the Board as an Appeal of the Zoning Administrator's Decision. He then asked for clarification if they are saying they could appeal the decision but they could also argue it at any

time.

Attorney Cronin agreed. The Supreme Court decision is kind of technical, and that you could raise it at the ZBA, as they are the arbiters of the zoning ordinance, and if they determine that a variance is not necessary that is their prerogative without the applicant filing an administrative appeal. This is a technical legal analysis, which does not come up every day.

Ms. Spector-Morgan asked for a clarification on the hardship.

Attorney Cronin stated that there are special conditions of the property because you are situated in a lot that you can't change, which by its nature is close to a water body. After this house was built, the legislative body decided to regulate the floodplain. That's the unique fact about this property and the owner can't do anything about. The house has been there, and there is that special condition where it is subject to a regulation that wouldn't otherwise have been an issue at the time it was built, and is not applicable to any other Concord residents that are off the water in that district.

Mr. Monahan asked about the application's mention of a vertical enlargement.

Attorney Cronin stated that it relates to the second floor as opposed to being on the first floor, above the base flood elevation.

Mr. Monahan asked if there was an expansion to the footprint.

Attorney Cronin stated not in this case, as it was dealt with in the prior applications. The lower part was already approved, and the footprint was not expanded at all.

Chair Carley asked Dr. Hutton about the Bartlett Analysis and what her rationale was in terms of requiring a variance.

Code: Dr. Hutton explained that it is an expansion of a non-conforming use. So, by adding area to the structure, even though it is adding area up, is still an expansion of a non-conforming use. Single dwelling units are not allowed in the floodplain/floodway.

Chair Carley asked, for instance, if he had a house that was in violation of the setbacks and he wanted to add a second floor, he would need to get a variance.

Code: Dr. Hutton answered yes, and that the Board has issued these variances repeatedly.

Mr. Monahan questioned the understanding in this case of previous permits and expectations that those permits would still apply after conveyance of the property. Attorney Cronin responded that there was a relationship between the three people, however, it was the initial guy who started to remodel but couldn't finish it. Mr. Grenier came in and wanted to finish it because it wasn't done. He wanted to finish it under the existing permit, but because he was a new person so he had to reapply.

In Favor: none

Opposition: David Belser and Rosanne Beaulivage testified. Ms. Beaulivage stated that in the application presented, there are several things that she objected to. She mentioned that the story keeps changing, and is concerned that Mr. Cronin is now casually mentioning a future homeowner or buyer, when in the past they have repeatedly stated that the owner was going to occupy the home. She lacks confidence that the project is what is presented. She is also concerned about the issue of flooding. In addition, many of the neighbors would like to expand and improve their assets and those that do get permits and abide by the local standards in the area. As far as public harm and spirit of the ordinance, 30 River Road is visible from the road and the river. Neighbors who would like to build out and up are listening carefully for the results of this matter. Will this be a future loophole to future contractors and investors?

The property was bought in 2020, in 2022, the house was listed for as much as \$799,000 unfinished. During the time of the rebuild and demolition, she noticed signs of expansion, and she also noticed violations. As far as the impact to the abutters, it is now a much larger house. The immediate abutter looks right out on the whole lot. He owns a one bedroom, one-bathroom house. The original house was barely a two-bedroom/ one bath house; it is now a three-bedroom/ three-bath house. It is not the camp it used to be. The on-going shell game of who owns the home has been confusing. Every property owner must go through the proper process. No work has been done in at least four months and the site looks abandoned. She feels it is an investment property and it's all about the money.

Mr. Winters asked where they stand at this point. It seems they had shifted their viewpoint. Ms. Beaulivage stated that she wants to be a good neighbor but is concerned that the contractor will not be the owner. The attorney tonight mentioned that the property might be sold.

Mr. Winters questioned if they are concerned about the variance on the agenda tonight or are their concerns that the prior variances were based on misrepresentations. Mr. Belser stated that there have been a lot of misrepresentations. The work described tonight, does not depict what was truly done. The size of the house has been increased by about 150%.

The porch was turned into living space, which required a permit and on the backside of the house, the mudroom used to be merely an open stoop. The revised structure also includes another three feet on the second floor. This has really been a major addition to the backside of the house. The presentation tonight does not represent the actual improvements. Attorney Cronin discussed Mr. Grenier's involvement from the past owner to the now. This sets a bad precedent. Under code, properties cannot be substantially improved. They are concerned about their property values.

Code: Dr. Hutton discussed property values within a flood plain community, and that you must look at repetitive losses. There is evidence from the abutters that this area has flooded before. The house would be increasing its value, which increases the maintained coverage, which increases losses. This affects everyone in the community because it will affect their insurance rates. As far as previous permitting, it is unclear if any of this was permitted as there is no evidence that it was. The City must report to FEMA any variances permitted, and the variance needs to be the minimum expansion necessary.

Mr. Winters asked Dr. Hutton to refresh the Board's memory on each of the previous variances.

Code: Dr. Hutten stated that the first variance was because it was below flood plain elevation. The second variance was for an increase in a non-conforming structure for the increase in the back, and now because of the increase on the flood way side it would be an increase in the non-conforming use and size of the structure. The use is the primary issue.

Attorney Cronin took a general exception to some of the comments about misrepresentations. He stands by his statements as being correct. There heard some angst to the status of the site; he has plead to allow the project to be finished and had asked to be allowed to move forward and take remedial action after the fact. This property has been sitting idle for a long time and they want to finish it; to that end they have asked for a conditional building permit to reissue with conditions, but that was not allowed. They have been waiting on the variance and in the meantime the property has been sitting idle at no fault of the applicant. As soon as they can get going they would like to.

Mr. Winters asked if one of the initial arguments was that a lot of this had to do with the previous owner.

Attorney Cronin asked the City for the property file, but they have not received it. A permit was issued previously. Mr. Grenier lent money to the prior owner, but they did not finish it. Mr. Grenier bought it back and inherited the unfinished project. He is not in business with these people other than lending them the money.

Mr. Winters asked for clarification on the statement that they came into this with a halfway,

uncompleted project, and that they needed to finish it or it would just sit. He also asked if there is some type of relationship between the current and last owners.

Attorney Cronin agreed with the first statement. He then asked Mr. Grenier to come up to testify to the second part of the question. He explained that Mr. Grenier had lent money to the initial owner, to complete his renovations, with the expectation that he would pay off the mortgage when the project was complete. He did not finish the project, and Mr. Grenier came in with a new contractor that inherited the mess. Mr. Grenier is an independent guy who is not in business with these people other than lending them money.

Peter Grenier testified. He stated that he was the original owner, and he sold the property to Mr. Wroblewski, who pulled the permits and started the project. Mr. Wroblewski ran out of money and didn't finish the project. Mr. Grenier owned the mortgage on the property, but had nothing to do with the building, framing, remodeling, etc. Mr. Wroblewski didn't finish the project and Mr. Grenier called the mortgage back in, and Mr. Wroblewski couldn't pay him. Subsequently, Mr. Wroblewski sold the house to the new owner who is also a contractor and is going to move into the house. He stated that he has no relationship, other than a working relationship with the previous owner, and no relationship with the current owner. Mr. Grenier has only helped to facilitate the sale of the home between the current owner and Mr. Wroblewski.

Mr. Winters asked who the current owner is. Mr. Grenier replied that Chris Fabricio is the owner/contractor who will be finishing the house and moving in. He also stated that he no longer owns the mortgage and he only came to testify.

#### DECISION:

Chair Carley discussed with the Board the aspect of the Bartlett analysis, stating that it is not on the agenda as a Bartlett analysis, or a request to overturn code enforcement, so he is not sure if the Board is obliged to take it on that way.

Ms. Spector-Morgan stated that the Supreme Court has stated that the Board needs to determine if the variance is necessary in every application.

Chair Carley stated that they needed to figure out if a variance is even needed even though they do not always do it formally.

Mr. Winters agreed.

Ms. Spector-Morgan stated that she feels that they need a variance because it is both a non-conforming structure and a non-conforming use.

Mr. Monahan agreed.

Mr. Wallner agreed.

Mr. Winters agreed, and was inclined to give deference to the decision of the City.

A **motion** was made to find that a variance is required, by Ms. Spector-Morgan, seconded by Mr. Winters; passing unanimously.

#### DECISION:

Mr. Wallner stated that he wanted to defer until he heard from the others.

Mr. Monahan stated that there are a lot of complexities. As a general matter, the observation has typically been if it is off the footprint than it is usually a good test that it's not much bigger. However,

there is a lot going on in this project.

MS. Spector-Morgan stated that she feels the variance should be denied. The hardship is that it's a non-conforming use and a non-conforming structure. However, that's not a hardship. There is nothing about the land or property that necessitates the increase in square footage on the second floor. Under special criteria, we do need to find that the variance is the minimum necessary considering the flood hazard to afford relief. The Board already granted a lot of relief for this property. The Board did hear evidence from the abutters that they believe this would affect their property value and there was no evidence provided by the applicant that it would not. She would vote to deny the variance.

Mr. Winters agreed, stating that it does not really matter who will live there. The reason for the need of the variance needs to be benefit to the whole area. Most likely many of the properties need improvements and would like to expand. The structure continues to grow making it out of character with the neighborhood and it affects the surrounding property values.

Chair Carley stated that he hears what his colleagues are saying about potential effects on other properties. It is also true that the minimum variance may be exceeded in this case because you don't need to have a larger second floor to make it usable, and most likely many other houses in the neighborhood don't have that. The argument that it affects other people's insurance rates is hard to buy. He is concerned that it has been a very sloppy project in a sensitive area. Because of this it is hard to know the true intentions of the owners. He is not sure if it is up to the Board, given the reservations about the requirements, to be enabling that sort of thing. He can see an argument for agreeing to finish it, however, strictly speaking, he would agree with his colleagues in voting against it.

A **motion** was made by Ms. Spector-Morgan to deny the requested variances, as there is no hardship, there is nothing about the land or property that necessitates the increase. She continued that the Board must keep in mind the minimum necessary standard for the flood hazard district; there has been a cumulative detrimental impact to the character and surrounding property values; seconded by Mr. Winters; passing unanimously.

0149-2024

Highland Street (6522/Z 38/ /); *RN – Neighborhood Residential District*,  
MDR Rehab & Development LLC, Owners:

Applicant seeks variances pursuant to Article 28-4-5 *Development of Attached and Multifamily Dwellings*, to allow the development of a four-unit Attached Dwelling. variances would be required as follows:

1. Article 28-4-5(d)(1): *Minimum Tract Requirements*, lot having 10,788 sq. ft. where 25,000 sq. ft. is required;
2. Article 28-4-5(d)(2): *Maximum Lot Coverage and Density*, having 16 units/acre where 4 units/acre are allowed;
3. Article 28-4-5(d)(5): *Perimeter Buffer Required*, 10-feet where 75' is required; and
4. Article S28-7-8(a): *Restrictions on Backing Into a Street*, cars will back onto Highland Avenue.

Robert Degan and Ray McMann testified. Mr. Degan asked for clarification on the units per acres sited in the agenda.

Code: Dr. Hutton agreed that there was a clerical error.

Ms. Spector-Morgan clarified that it would be 16 units/acre where 10 units/acre or are allowed.

Chair Carley asked if the applicants agreed with Ms. Spector-Morgan's assessment.

Mr. Degan agreed.

Mr. Degan stated that currently the property is vacant and they are looking to develop a townhouse style condominium of four units. There is a very similar development across the street of four units, which are slightly larger. He discussed the size of the lot required to build townhouse style units. They think, at this point, there may only be two stories above grade which would require a 50' buffer. They have not supplied an architectural design yet as they are waiting to see if a variance would even be allowed. They are proposing two driveways, each serving two units. They would need to back into the street due to the topography, because the backside of the lot is very steep, causing the building to be pushed forward. Highland street is a quiet street, and it is straight.

Chair Carley asked why they did not want to build two units instead of four to allow for more room, and so that they wouldn't have to back out onto the street. Mr. McCann answered that they would like to develop it as much as possible.

Mr. Monahan asked if there has ever been anything on the lot. Mr. McCann said there wasn't as far as he was aware.

Mr. Degan stated that a neighbor had owned the lot previously. The lot slopes up in the back.

Mr. Winters asked how many bedrooms each unit would have; Mr. McCann stated that they would be two-bedroom units.

Ms. Spector-Morgan asked what the hardship was that justified the increased density. Mr. Degan responded that there is a similar development across the street, so it would be an unfair denial to allow 4 units there and not on this property.

Ms. Spector-Morgan stated that the hardship must arise from this property. Mr. McCann mentioned that there is a need for multifamily units in the Concord area. The building right across the street is very similar to what they would like to build.

In Favor:

Opposition:

Jackie Teague testified, stating that she is a neighbor. She explained that the other condo property across the street was the redevelopment of the former girls and boys club property. Neighbors bought the property and it was turned into dwelling units with existing parking lot in the back from the girls and boys club. They have tandem parking underground, and accessed from the back. This is a very different lot than the lot in question. She mentioned the lot is 2.5 times too small for the proposed structure. It is 7.5 times too small for the buffer. The street on which the property is located is a narrow street with parking on one side. She is concerned that four units would be too many and she agreed that two would work much better. Most neighbors already back into their driveways and there is concern about how many cars would fit in these spaces. Many apartment units now have at least two people with two cars. Concerned where all the cars would fit. Not sure how many stories this building would be.

Joyce Cotnoir testified. She lives across the street in a condo. There are a lot of pedestrians on this street and she is concerned about cars backing out onto the street. She is also concerned about the closeness of the condos to the existing homes. Cannot not see how the property could accommodate four condos as it is a very steep hill in the back. Stated that there are already issues for the firetrucks and ambulances because of how narrow the street is.

Mr. Wallner asked if it is a one-way street. Ms. Cotnoir stated it is not, however you can only park on one side of the street.

Mr. Monahan asked if there are any sidewalks. Ms. Cotnoir stated that there are sidewalks on one side of

the street only.

Savannah Morgan and Jeri Campbell-Smith testified. Ms. Campbell-Smith stated that her property is a direct abutter of the property, and that she backs out of her driveway, at a point in the street where it is becomes very steep. she is concerned about her property values and how close it would be to her property line. Ms. Morgan stated that at times she has not been able to get in or out of her own driveway as parking is not enforced by the City. She is also concerned that her property values will go down. She does not see a hardship that necessitates for four units.

Roy Schweiker testified, stating that he has parking concerns. The size is a lot where there is nothing currently on it, and it will reduce parking for current residents. If they reduced it to a reasonable number of units, then the parking would not be as much of an issue.

Mr. Degan clarified that there would be garages built under to provide two spaces per unit. It is not fair to block a development because you want to park on the street. At that time, Mr. Degan requested the application be tabled to refine their proposal. It will still require variances, but possibly not be as contentious.

Code: Dr. Hutton stated that if they change the design it would need a new variance.

A **motion** was made to recess the case to May 1st by Ms. Spector-Morgan, seconded by Mr. Wallner; passing unanimously.

0150-2024

143 Hopkinton Rd; *RO – Open Space Residential District*, Steven and Kimberly Arndt, Owners:

Applicant seeks variances to build an addition and to re-establish a two-family use of the property were such use is prohibited. Variances would be required as follows:

1. Article 28-4-1(d), *Minimum Yard Requirements*, to allow for an 8-foot addition to be 32-feet from the property line where 40-feet is required.
2. Article 28-2-4(j), *Table of Principal Uses*, to permit use A2 (*Duplex or two-family dwelling*) in a RO District.

Chair Carley recused himself. Mr. Wallner stepped in as Acting Chair and Mr. Davie was appointed to act as a voting member.

Steven and Kimberly Arndt testified. They stated that the building was built in the 1950s. There are two separate dwelling units each with their own heating and septic systems. They are looking to reestablish the unit on the east side, as well as a setback variance for an airlock entry mudroom/porch on the side of the building.

Mr. Winters asked what the current use was if it is a single family.

Mrs. Arndt stated that it is a two-dwelling unit. One half is occupied by a renter. The other side had been used as a commercial unit, and they would like to turn it back into a rental unit which it has been in the past.

Mr. Winters questioned the layout and if it would make more sense to be one continuous owner-occupied unit. Mr. Arndt stated that they were constructed as two separate units and you would need to leave one unit and walk to the other unit to gain entry

Ms. Spector-Morgan questioned if it didn't qualify as an ADU because it was too large.

Code: Dr. Hutton explained that they didn't request an ADU, they requested a duplex.

Mr. Winters asked if the applicants would be comfortable with a condition for one unit to be owner occupied, and the other rented out.

Mr. Arndt stated that they would like to rent them both out. One is currently rented.

Ms. Spector-Morgan asked if duplexes are permitted uses in the district.

Code: Dr. Hutton stated that they are not.

Mr. Winters asked what an airlock entry is.

Mrs. Arndt stated that with an airlock entry, owners come in, close the door, and then enter the home to reduce heating or cooling loss.

Ms. Spector-Morgan asked if there were any other changes to the property.

Mr. Arndt responded that there is not.

Mr. Monahan asked if the wrap around driveway is still currently there, and if the rear abutter is St. Paul's School. Dr. Hutton displayed the aerial photograph for the Board.

Mr. and Mr. Arndt stated that St. Paul's is a rear abutter.

Mr. Monahan asked if there are other multifamily houses in the neighborhood.

Mrs. Arndt stated that there is a house with a unit above the garage, but more of an in-law situation.

Mr. Monahan asked if St. Paul's still owns faculty property in the neighborhood. Mrs. Arndt responded that they do not and most likely you would have to go beyond the cemetery.

In Favor:

Opposition:

Code:

DECISION:

Mr. Davie stated that he would be in favor of the duplex, but concerned about the setback.

Mr. Winters stated that due to the preexisting design of the property, it would be a hardship to be used as a single-family home. It would be better as an ADU; however, he is comfortable with two rentals as that is how it was laid out. The impact to the surrounding neighborhood would be very minimal. He is inclined to approve the airlock addition, because it is a pretty modest change and makes the unit more functional.

Ms. Spector-Morgan stated that she is inclined to grant both. The hardship is that the structure exists as it is. There would be no diminishment in surrounding values, and no change to the character of the neighborhood. There is no justice in denying the variance. She was also inclined to grant the setback variance, as an entryway is a reasonable use and given the location of the house on the property, there is no other place to put it.

Mr. Monahan agreed with Ms. Spector-Morgan, stating that the setback issues are very minimal.

Mr. Wallner agreed.

A **motion** to approve both variances was made by Mr. Winters, seconded by Ms. Spector-Morgan; passing unanimously.

Chair Carley stepped back into the meeting.

**0151-2024**                      **8 Gale Street; *RM – Medium Density Residential District*, William Young Properties LLC, Owners:**

Applicant seeks variances to allow the development of a single-family dwelling. Variances would be required as follows:

1. Article 28-4-1(b) to permit a single-family home on a lot with approximately 8,579 square feet, where 12,500 square feet is otherwise required; and
2. Article 28-4-1(c) to permit a single-family home on a lot with approximately 66' of frontage, where 100' is otherwise required.

Attorney John Arnold testified. The lot was created in 1894, with 66 feet of frontage. In the early 2000's, the city involuntarily merged the two properties. The legislature has since enacted a statute that prohibits the involuntary merging of lots. The City Council, at the request of the owner, restored the two lots in the fall of last year. There was an existing home on 20 Redington that was torn down. They are looking to build a house on each parcel which meet the setbacks and lot coverage requirements. The only difference in the two applications is that 20 Redington has enough street frontage; both are lacking in lot area. As far as the criteria for a variance, the public interest and the spirit of the ordinance are observed. The variances will not alter the essential character of the neighborhood, or threaten public safety or welfare. He pointed out that there are similar properties with the same dimensions, some slightly bigger, some slightly smaller. The subdivision of the area was built in the late 1800's. The proposed homes would be in character with the neighborhood. The substantial justice is that there won't be any harm to the general public, and finally, without the variances the lots could not be developed. Property values would not be diminished and the homes would be consistent with the homes in the area. On the hardship criteria, the lot is over 100 years old, the frontage and size is what it is.

Mr. Winters asked if the lots could be merged.

Attorney Arnold stated that if the two lots were merged, you would meet the requirements, however, that would require a merger. The State statute allows the lots to be separate and requiring that would essentially undo that right.

Mr. Winters asked if they were not originally merged, would they be grandfathered in.

Attorney Arnold stated that the City of Concord does not treat the lots as non-conforming buildable lots if they are owned in common with the adjacent lot, therefore they would be considered unbillable non-conforming lots and still need the variances.

In Favor:

Opposition:

Code: Dr. Hutton stated that the previous home that was demolished was a nonconforming structure.

DECISION:

Mr. Wallner stated that it was a reasonable use, and denying the variance would be a hardship.

Mr. Monahan stated that he is comfortable with the variances.

Ms. Spector-Morgan stated that the lots predate the zoning and are in single ownership. There would be no diminishment in value in the construction of two homes. The proposal would not alter the characteristics of the neighborhood, and there is no justice in denying the variances.

Mr. Wallner stated that the whole background about the merger background does not give the owner carte blanche to violate the ordinances, in this case, they are making every effort to mitigate the requirements and he finds them reasonable.

Chair Carley stated that he agreed with his colleagues.

A **motion** was made to approve both variances by Mr. Wallner, seconded by Ms. Spector-Morgan; passing unanimously.

**0152-2024**                      **20 Redington Road; RM – Medium Density Residential District, William Young Properties LLC, Owners:**

Applicant seeks a variance pursuant to Article 28-4-1(b) to permit a single-family home on a lot with approximately 8,579 square feet, where 12,500 square feet is otherwise required

A **motion** was made to approve the variance by Mr. Wallner, with same arguments as presented by Ms. Spector-Morgan in case 0151-2024, seconded by Ms. Spector-Morgan; passing unanimously.

**0153-2024**                      **10 Whitney Road; IN – Industrial District, Morrill Mill Pond LLC, Owners:**

Applicant seeks variances to build a drive-through restaurant where such use is prohibited. Variances would be required as follows:

1. Article 28-2-4(j), *Table of Accessory Uses*, to permit use I3 (*Restaurant with drive-through service*) in an IN District;
2. Article 28-4-1(h), *Table of Dimensional Regulations*, to allow a 38-foot front yard where 50-feet is required;
3. Article 28-7-2(e), *Table of Off-Street Parking Requirements*, to provide 27 spaces where 31 are required; and
4. Article 28-7-4, *Requirements for Stacking Spaces for Drive-Through Facilities*, to provide 5 stacking spaces where 11 are required.

Owner requested a postponement until April 3, 2024.

A **motion** was made to recess the case until April 3, 2024, by Mr. Wallner, seconded by Ms. Spector-Morgan; passing unanimously.

**0154-2024**                      **211 Loudon Road U-E; CG – General Commercial District, Hodges Development Corp, Owners:**

Applicant seeks a variance pursuant to Article 28-2-4(j), *Table of Principal Uses*, to permit use B5 (*Adult day care facility*) in a district where it is prohibited.

Suraj Budathoki, Rajesh Chauwad, and Scott Walker testified. Mr. Budathoki stated that he is a co-owner of a trusted home health care agency. He asserted that there is a critical need for an adult day care facility in Concord. This center would offer a secure and engaging environment for seniors to participate in activities and exercises. There is no other adult day care facility in the city. This use aligns seamlessly

with the character of the neighborhood, poses no threats to public safety, health, or welfare. They have carefully designed the center without alterations to the existing space. The property owner is in support of the use. There is a pressing need for spaces where seniors can thrive.

Chair Carley mentioned that the property had been used for the same purpose previously.

Mr. Budathoki stated that was true, but a long time ago.

Code: Dr. Hutton stated that it looked like it was in a different unit, but same parcel.

Mr. Scott Walker testified, representing the building owner. He stated that this is a commercial condominium. It was previously an adult day care from 2003 – 2018. The applicants are buying the space from Lucas Holdings. There was a spa that was built in January of 2020. Then, because of Covid, they lost their business. This property has sat there for three years. The adult day care will operate primarily indoors, except occasionally they may go for a walk. There is a gazebo. It would be a hardship to the City of Concord not to have facilities such as this.

Code: Dr. Hutton stated that the previous day care did have a variance, with two different units.

Ms. Spector-Morgan asked why an adult day care couldn't be used in the district. Asking what the hardship was.

Mr. Walker stated that the uses that can be permitted are many, but you cannot have an adult day care. The hardship is that they are reestablishing a use that operated previously for 15 years.

Mr. Walker asked Dr. Hutton where an adult day care would be allowed.

Code: Dr. Hutton explained that it was allowed in institutional type districts.

Mr. Winters asked what other uses are in the building. Mr. Walker explained that there are service uses, a salon, an Army recruiting center, a candy store, a CBD store, and an Edward Jones office.

Mr. Winters asked if there is something about the layout of the building that makes it easy to reopen it.

Mr. Walker explained that the space in question is an open area.

Mr. Winters clarified that it would be easier to monitor many people at the same time.

In Favor

Opposition

DECISION:

Mr. Wallner stated that he is persuaded to support the variance because there was a long history of a similar use, although it was discontinued for four or five years.

Mr. Monahan stated that maybe they should put less emphasis on the hardship, and more on the reasonable use of the space, as it falls in the middle ground of institutional versus retail activity. That type of use works in this space. Given the fact that for a long-time portions of this property were used for adult day care use. He stated he is inclined to support the variance.

Ms. Spector-Morgan stated that she does not see the hardship.

Mr. Winters stated that it reminds him of the similar cases recently heard. If this condo has already been laid out for this purpose, it does create a hardship to compel a change.

Chair Carley can see the logic for not finding a hardship, but with all of the other criteria, such as reasonable use, not interfering with the zoning, and the pedigree of being there before, he would be inclined to support the request.

A **motion** was made to approve the variance by Mr. Winters, seconded by Mr. Monahan; passing by a vote of 4-1, with Ms. Spector-Morgan in the minority.

### *TABLED HEARINGS/DELIBERATIONS*

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.”

A **motion** was made to recess the case until April 3rd by Ms. Spector-Morgan, seconded by Mr. Monahan; 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-foot 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.

A **motion** was made to recess the case until April 3rd by Ms. Spector-Morgan, seconded by Mr. Monahan; passing unanimously.

A **motion** to approve the minutes from February 7, 2024, was made by Mr. Wallner, seconded by Ms. Spector-Morgan; passing unanimously.

A **motion** to approve the Findings of Fact from February 7, 2024, was made by Mr. Wallner, seconded by Mr. Monahan; passing unanimously.

The meeting was adjourned at 8:50 pm.

-Deborah Tuite, Clerk  
Zoning Board of Adjustment