



CITY OF CONCORD

New Hampshire's Main Street™
Zoning Board of Adjustment

April 3, 2024
MEETING MINUTES

Attendees: Chair Carley, Nick Wallner, Andrew Winters, Brenda Perkins, Mark Davie

Absent: James Monahan, Laura Spector-Morgan, Tedd Evans

Staff: David Hall, Code 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

TABLED 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 requested to adjourn the case until May. The memo from Attorney Pollack also asked if they could give a refresher of the case at that time. Chair Carley stated that the testimony had closed at the original meeting and that typically they do not hear additional testimony after a case has been closed. However, given the long hiatus between originally hearing the case, Chair Carley felt it would be beneficial. He questioned Code if the fact that the public testimony would reopen, could it be made publicly available since that was not announced when the case was recessed.

Code: Mr. Hall stated that they would ensure that the information would be available on the website and posted as a rehearing and that public testimony would be reopened.

Chair Carley stated that it would be fair to assume that anyone that was there that night might assume there would be no further testimony.

Code: Mr. Hall mentioned that abutters and interested parties should be watching the posted agendas accordingly.

A **motion** was made to adjourn the case until May by Mr. Wallner, seconded by Ms. Perkins; passing by a unanimous vote.

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 adjourn the case until May by Mr. Wallner, seconded by Ms. Perkins; passing by a unanimous vote.

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.

Chair Carley questioned the Board if there was a motion to review the tabled case.

A **motion** was made to review the tabled case by Mr. Wallner, seconded by Mr. Winters; passing by a unanimous vote.

Chair Carley reviewed the case.

Attorney John Arnold, owner Laurie Rauseo, and Dan Radman, Chipotle representative, testified. Attorney Arnold gave a brief description of the property, pointing out its location in the Industrial District, being across the street from the Merchant's Way development, which is in the Gateway Performance District. In 2022, the Rauseo's came in front of the Zoning Board where they were granted three variances to build a car wash and a Starbucks, including a drive-through. The Starbucks is currently under construction; however, the carwash fell through. The proposal before the Board is for a Chipotle, which the applicants feel will be a better fit for the parcel. He stated that they are requesting a variance for the restaurant use in the Industrial District, pointing out that the Board had previously approved this type of use in the district a few years ago. He stated that when the Board granted the variances previously they noted that the property was not ideal for an industrial application due to the wetlands and steep slopes of the property. He mentioned that of the five acres a very small portion is developable. The proposed restaurant would be an appropriate and much better use of the property. He then discussed the setbacks, stating that the setback for a restaurant would be different from the setback for industrial use. The Industrial District has a setback of 50 feet which would be a significant setback for a restaurant, and with the property topography there is not enough room to push it back that far. He pointed out that across the street in the GWP District the front setback is only 25 feet. As far as parking spaces, the engineers have increased the count to 29 spaces versus the 31 required, which is minor discrepancy of two spaces. Attorney Arnold mentioned that there would be enough parking spaces between the Starbucks and the Chipotle combined. He then discussed the stacking requirements of the drive-through, inviting Mr. Radman to testify.

Dan Radman, Design Principle for Chipotle, testified, explaining how the Chipotle pick up window operates compared to a traditional drive-through restaurant, in that no actual ordering or paying occurs at the window. It is simply a pick-up window as the customer has already ordered and paid through an app. This design was innovated in 2019, and post-covid it would become the model of the future of drive-throughs. He stated it is roughly a contactless pick up window. He discussed the length of time that a vehicle would be on site, with typically only two or three cars in a cue line at a time, and further stating that there are roughly four cars or less on site for 98% of the time during the day. For this reason, Chipotle usually asks for at least five stacking spots for the pick-up window and the transaction is typically less than 20 seconds.

Mr. Winters asked what the protocol is if the food is not ready when a customer arrives.

Mr. Radman explained that they would ask the customer to pull ahead, with two designated spots for digital orders, to not clog the system. The orders are usually ready five minutes prior to the designated time, by design. One or two people are typically running the window and getting the orders ready. He further pointed out that their app won't stack too many people at the same time. They have been able to achieve a seamless traffic flow with little impact to neighbors and street traffic.

Mr. Wallner asked if customers could also go inside to pick up their orders.

Mr. Radman explained that they could do either, and the same applies for any of the delivery services. Patrons have the option in the app to use the pick-up line or to enter the restaurant. They have a partnership with the delivery services which keeps the same flow as a regular customer, with no priority.

Mr. Wallner asked if the Loudon Road Chipotle has the same setup.

Mr. Radman stated that the Loudon Road site has no pick-up window.

Attorney Arnold stated the 11 stacked spaces is for a traditional drive-through and with this type of operation they do not need that many spaces. This site would not have enough room for 11 spaces.

Mr. Radman further stated that what Chipotle has learned in their research and practices is that they look for at least 24 parking spots, and this scenario has more than 24 spots available.

Attorney Arnold mentioned that Dominoes has a similar type of window, and they had come before the Board a few years ago seeking a variance on Fisherville Road, which was approved. He stated that he was only mentioning that because there is recognition that this is fundamentally a different type of operation. He also stated that if there was a change in the operation that they would need to come back in front of the Board. He mentioned that they would be agreeable to a condition that would limit the variance to an operation that Mr. Radman described, being a pick-up window only. He also pointed out that there is typically a curb or median in most drive-throughs that prevents cars from leaving the line, and that is not the case with the Chipotle model and cars would be able to leave the line very easily.

Mr. Winters asked if the Starbucks has a drive-through and is it a similar setup.

Attorney Arnold stated that Starbucks does have a drive-through, however, it is compliant with the ordinance with 11 stacked spaces.

Mr. Winters asked if Starbucks had the traditional model of ordering and paying versus the Chipotle pick-up model.

Attorney Arnold confirmed that to be the case.

In Favor: None. Attorney Arnold stated that there was a letter in support, and Chair Carley briefly reviewed the letter from Eric Foster, an abutter to the site, who was in favor.

In Opposition: None.

Code: No comments.

DECISION:

Chair Carley reviewed the requested variances.

Mr. Wallner stated that he would be in support of all four variances stating that they already have approved restaurant use in that zone. The hardship is the size of the lot and that most of it is undevelopable due to the wetlands, which impacts the front setbacks. There are 29 parking spaces which is just two shy of the requirements, and Chipotle typically requires 24 spaces. Lastly, he is persuaded on the stacking variance as there are options if the stacking became backed up.

Mr. Davie stated that he would need convincing for the restaurant use as far as the hardship, however, he would support the other variances. He mentioned the use of impervious surfaces next to the environmentally sensitive areas, noting the effort that was made to protect those areas. He further stated that he would also support the condition that it would remain this specific type of drive-through.

Mr. Winters pointed out that previously the Board approved a use variance because the parcel is not well suited for industrial use. A large portion of the lot is not functional, and the property would be idle, otherwise wasted land per se, in a newly sought-after area. The layout of the lot makes sense for a restaurant use, and the only reason for the larger setback in that zone would be for industrial uses. He felt the parking was a minimal change, and mentioned that a lot of these restaurants have less patrons eating inside. The typical drive-through process is comprised of ordering and paying, and he can see that this model would be faster.

Ms. Perkins stated that she agreed with Mr. Winters, but that she would agree with the pre-order condition, as the stacking number is more than 50% less space than the typical requirement.

Chair Carley stated he is inclined to support the variances, as the hardship is the configuration and topography of the lot, further pointing out that the lot is not really an appropriate space for industrial use. As far as the stacking, he was persuaded as their management of stacking is different than what was anticipated when the ordinance was written. One of the original reasons for the stacking ordinance was to limit cars from extending out into the street and he noted that is not likely to happen in this scenario.

Mr. Davie stated that he was persuaded as far as the restaurant use.

A motion to approve all four variances was made by Mr. Wallner, with the condition that the drive-through be for online orders only, with no ordering or payments done at the pick-up window, seconded by Ms. Perkins; passing unanimously.

PUBLIC HEARINGS

0155-2024

7 Lyndon Street; *RN – Neighborhood Residential District*, 7 Lyndon Street
LLC, Owners:

Applicant wishes to convert a single-family dwelling into a duplex and requests variances from:

1. Section 28-5-2 to allow 3,920 square feet of lot area where 15,000 are required;
2. Section 28-5-2 to allow 47.6 feet of lot frontage where 160 feet are required; and
3. Section 28-7-2(e) *Table of off-Street Parking Requirements*, to allow for one space where four are required.

John Hanna testified. Mr. Hanna explained that they would like to convert a large single-family home into a duplex. They have rented the house out to law students for around 20 years, and stated that it is very hard to rent a four-bedroom house in that neighborhood as it can be cost prohibitive for some. He stated that the law school has created a demand for rentals and the Concord area has a lack of rental properties. There would be no changes to the outside. He mentioned that they could choose student renters that do not have cars to help mitigate the parking issue. The west side of Lyndon Street has on street parking which will provide more parking. Their goals are to have two tenants, stating that it is a benefit to them, because otherwise there is a hardship to find renters willing to pay for a large house. There are duplexes or multi-families in the area and it would be very consistent with the neighborhood and it would not diminish the value of surround properties.

Mr. Winters asked if there is a kitchen in each potential unit.

Mr. Hanna stated that they would have to build a second kitchen and second full bathroom.

Mr. Winters asked if they leased to two students, was it one lease or two separate leases.

Mr. Hanna stated that they do separate leases, so students are not bound to another's lease.

Mr. Davie asked where they would be taking away a bedroom for the renovation.

Mr. Hanna stated that they would be taking away a bedroom on the first floor where they would create a kitchen and bathroom to go along with a bedroom on the second floor.

Ms. Perkins stated that she is struggling to see the hardship.

Mr. Winters asked if there was any room to add a parking space.

Mr. Hanna stated that they could stack two cars but it would block a car in. He reminded the Board that they can lease to someone without a car, but that two cars would fit.

Mr. Winters asked if renters could leave their cars in the school's parking lot.

Mr. Hanna stated that they could.

Mr. Wallner asked if there was a fence in the back of the driveway.

Mr. Hanna stated that there was a fence and that they could push that back if needed. He mentioned that that house needs a lot of work.

Ms. Perkins asked if they could change the variances to allow for two parking spaces compared to four.

Chair Carley stated that it would be a different variance because the spaces would not be wide enough. The Board can only vote on what was applied for.

Mr. Winters pointed out that the picture shows that they could park two cars but they would not be two qualifying spots, in the case of a storm, etc.

Mr. Davie asked if they could condition the variance to rent only to law school students.

Chair Carley stated that they could not.

In Favor: None.

In Opposition: Joyce Perreault, 5 Lyndon Street abutter, testified. She stated that there is a right-of-way that goes between the properties. The fence that is around their yard is falling apart. She mentioned that where they park is next to an area where a fence used to be. The right-of-way is located right next to their driveway and is paved, which provides access to the houses behind. She is concerned that if they parked that way in the winter and pushed the snow, it would block the right-of-way, which is used by the residents, delivery companies, etc.

Mr. Winters asked if her primary concern is the additional parking. He asked if the total size of the house, being four bedrooms, was converted to two unites of one or two bedrooms, would that change the amount of parking being used.

Ms. Perrault stated that there has been a lot of headaches with parking. She mentioned that there is no parking on the street at night at times. She has a tenant upstairs and she has a double wide parking lot.

Katharin Sawal, 7 Lyndon Street abutter, testified. She has a home that sits right behind the house in question. She stated that the parking space is not a double wide space, but wider than a single space. In the picture it shows that the car is right on the line. She is concerned that it would impede the walkway.

She stated that she does not object to having a two-family home, and that she is only concerned about the parking. She also mentioned that most college students have cars, and that there are many right-of-ways in the neighborhood.

Mr. Schweiker testified that he agreed with Ms. Perkins that he does not see a hardship in this situation. He is opposed to granting these parking waivers. He is concerned about the parking and he is worried about the stress to the streets. He feels that granting something where they know they will be parking on the street is not a good idea.

Mr. Winters mentioned that the house size will not change. He asked how much of a difference will it be compared to the situation now.

Mr. Schweiker mentioned that in this scenario they must negotiate with their neighboring renters by going outside to knock on their door compared to knocking on a bedroom door. He asked if there is a rule that they need two entrances.

Chair Carley stated that it is not within the Board's purview.

Mr. Schweiker stated that this is the smallest house in the neighborhood and feels that there is not enough room to add more parking. He stated that he does not see a hardship as he could continue to rent as he does now.

Chair Carley mentioned that the Board received a letter from Richard and Tracy Boisvert, who are concerned about the parking, as well as the pending restaurant around the corner. They mentioned that there is limited on-street parking. They are concerned if others submit similar requests. They understand the need for additional housing.

Code: None.

Mr. Hanna stated that they could remove the bushes next to the house, which comes out to about six additional feet to make more room for parking. If they rent the four bedrooms, as they have done, they could still have four renters with cars. This way they could rent out two apartments with two renters.

DECISION:

Ms. Perkins stated that she loves the idea of adding rentable units. She mentioned that there is no difference between renting to a larger family with teenagers, renting out four bedrooms, or creating a two family, as far as how many spaces could be utilized. However, she is concerned as the lot size is less than a third, the lot frontage is less than a third for the area, and the parking space is less than a third for the area. She stated that she is concerned and that she does not see a hardship.

Mr. Winters stated that for policy considerations, there are more demands for units in total but fewer people per unit, so there is a mismatch. He stated that restructuring the layout for the most utility makes sense. He would be inclined to approve the lot size and the frontage. He is inclined against the variance for the reduction in the parking spaces. They would need at least two legitimate qualifying spaces as the parking is extremely tight.

Mr. Davie stated that he does see a hardship since the applicant has had difficulty with renting a four-bedroom unit. He also agreed that two smaller units might be less hassle in the end. There is an argument that renting to law students in walking distance to the school reduces the traffic in the neighborhood. He noted that one of the abutters was not opposed to the two-family concept. He could be inclined to support the variances.

Mr. Wallner stated that as far as lot frontage, 47.5 feet is similar to two abutters at 49 feet, in which a hardship arises for reasonable use of the property. The duplex could reduce the impact on the neighborhood as the number of cars needed would most likely be reduced. He would be inclined to support all the variances.

Chair Carley stated that traditionally the Board would support variances for houses built on small lots created before the ordinance was in effect because the lot's size and configuration created the hardship. In this case, he could be persuaded that a hardship exists in terms of both the frontage and area. The arrangement of the house seems to be conducive to dividing it in half. The parking is a struggle, because by granting the variance, someone in the future could come in with any number of cars and the Board has heard testimony that parking is a problem. The neighborhood is densely used and from previous cases in this area, the Board knows that there are parking issues. He would be inclined to approve the first two variances, but not the third.

Mr. Wallner mentioned that there is parking available at the school parking lot.

Chair Carley stated that there are situations where people can park in other places, but typically there is a formal arrangement.

Ms. Perkins asked if they were to approve variances one and two, but not three, how would that change anything if they can't provide the four parking spaces.

Chair Carley stated that they could come back and ask for a different arrangement.

Mr. Davie asked if the landlords can state that they would only rent to college students, but the City cannot mandate that through a variance.

Chair Carley stated that the Board cannot govern who would live there.

Mr. Winters asked if they could remove green space to meet the parking requirements.

Code: Mr. Hall stated that they would have to prove that they would meet the standards.

A **motion** was made to approve the variances for the lot area and lot frontage by Mr. Wallner, seconded by Mr. Davie; passing unanimously.

A **motion** was made to deny the variance for off street parking by Ms. Perkins, seconded by Mr. Winters, reiterating that a variance is appropriate but that one space is too few, passing with a vote of 4-1, with Mr. Wallner in the minority.

0156-2024

14 Loudon Road; *GWP – Gateway Performance District*, DSM MB II LLC,
Owners:

The applicant wishes to display 36.2 square feet of wall signage where 25 square feet is allowed; a variance is required from 28-6-9(b) *Permitted Building Signs*.

Jason Gagnon from Sousa Signs testified, on behalf of Salon Centrics. He explained that the property has TJ Maxx, the Post Office, a hardware store, the old Bed Bath & Beyond, and a few smaller units etc. Salon Centrics can have a 25 sq. ft. sign. They are requesting a slightly larger sign, since the unit is 200 feet from the road for visibility issues. It will be an internally illuminated sign.

Mr. Davie asked if there is a penalty assessed to the owner from the corporate office for a specialty sized sign.

Mr. Gagnon stated that with the corporate sign design, there are set standards.

Mr. Winters asked if there is another directory sign for the tenants on site.

Mr. Gagnon stated there is a sign that is set back with many trees in front of it.

In Favor: None.

In Opposition: None.

Code: None.

Mr. Wallner asked Code if the other signs in the complex meet the ordinance.

Code: Mr. Hall stated the he did not have that information available.

Mr. Winters mentioned that there was a variance for the office building nearby a few years ago.

Code: Mr. Hall mentioned that when they receive a permit request that the Sign Enforcement Officer will typically approach the business and he would typically review the other signs as well.

DECISION:

Mr. Davie mentioned that the applicant's report states that this would have a positive impact on the property for the landlord as well as other tenants in the future. He wondered if that would set a threshold for other businesses, or was that to this size specifically. He did not have any further comment.

Mr. Wallner stated that it would not be out of character with all the other signs in the complex and seems reasonable.

Mr. Winters stated that he is inclined to support the variance due to the large setback for a commercial area, as well as the incline that reduces visibility as you approach. There are also a lot of interchanges in the area and a larger sign makes sense.

Ms. Perkins agreed, especially since the other sign if not very visible due to the trees.

Chair Carley agreed with his colleagues.

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

0157-2024

230 N Main Street; *CU – Urban Commercial District*, Kite Properties LLC,
Owners:

The applicant wishes to display a fourth sign which contains 16 square feet of wall signage (96 square feet total) where three signs with 80 square feet total are allowed. A variance is required from 28-6-9 *Signs Permitted in Nonresidential Districts*.

Kendra Price, from Signarama, testified. She mentioned that the space has three units and two of the units have a sign on either end of the building. This tenant has no sign at the moment. They are proposing a sign that is 2 feet x 8 feet.

The Board discussed the area and the sign allotment. Mr. Winters mentioned that the application states that they need a fourth sign.

Chair Carley noted that there was a possibly error in the application.

Ms. Price stated that they are not asking for more than three signs, they are asking for an increase in square footage.

Ms. Perkins asked how many feet over the requirement are they asking for.

Mr. Wallner mentioned 96 sq. ft. vs 80 sq. ft, which is 16 feet over.

Mr. Winters asked if they could have a smaller sign.

Ms. Price stated that there is a hardship as the building is set back a bit and there is the ability of other cars to block the sign. Additionally, if the font was any smaller it would not be legible.

Mr. Winters asked her to clarify the size of the sign, which they agreed was 16 sq. ft. larger than the ordinance allows. He asked if the two current signs are using the full 80 sq. ft. He mentioned that this sign would be much smaller than the other signs.

Ms. Price stated that was the case.

Mr. Winters then stated that this would mean that there are four current signs, and this would be the fifth sign. He questioned Code if this sign would count towards the total number of signs and square footage.

Code: Mr. Hall did not have the specific information at hand.

Mr. Winters clarified that it seems that the signs are on the ends for traffic to see when approaching or turning.

Code: Mr. Hall asked if they would be removing the window sign.

Ms. Price stated that was correct.

Mr. Winters asked why the request wasn't for a sign on the end of the building like the others.

Ms. Price stated that would result in being over the square footage by a larger amount than this request, and there were concerns on how it would look aesthetically.

The Board asked for clarification on the location of the signs and the number of signs.

Ms. Perkins reiterated that that there are two signs on each end of the building for a total of four signs, with nothing on the front. This tenant would be the only one to have a sign on the front of the building.

Ms. Price agreed.

Code: Mr. Hall stated that the building is allowed 80 sq. ft. total signage.

Chair Carley stated that there is a limitation on the number of signs in Ordinance Article 28:6:9.

Code: Mr. Hall stated that he would advise the Board to grant the variance as written. If it needs to be changed, then they would have the applicant come back.

Mr. Winters asked if the applicant would have to apply for a new variance.

Code: Mr. Hall stated that she would have to apply for a new variance anyways.

In Favor: None.

In Opposition: None.

Code: None.

DECISION:

Chair Carley stated that the request is for 16 additional sq. ft. and a fourth sign.

Ms. Perkins stated that she is inclined to approve the 16 sq. ft., and let Code figure out the number of signs.

Mr. Winters stated that the variance is written as one request. They need to have a sign. Ultimately, he is concerned about the number of signs.

Mr. Davies had no further comment.

Mr. Wallner had no further comment.

Chair Carley agreed with his colleagues, as the request was reasonable. He further stated that the configuration of the building created a hardship.

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

0159-2024

3 N State Street; *CBP – Central business Performance District*, Riverbend Community Mental Health Inc., Owners:

The applicant would like to convert a non-residential building to allow a 12 individual Rooming House (use A-15). Variances would be required from:

1. Section 28-2-4(j), *Table of Principal Uses*; and
2. Section 28-5-6, *Rooming House*, to permit 12 individuals where 10 individuals are allowed.

Attorney Philip Hastings and Michael Dennehy testified. Attorney Hastings explained that the building was the former Concord Monitor building and that currently Riverbend owns the building, most recently being used for office space. He stated that it is a unique building, noting that the Board has recognizing that sometimes a building itself could be a hardship. It has a historic significance with a brick façade and the interior is designed particularly well for the intended use. The location is well suitable for the proposed use and the CBP is very flexible, as there are many types of mixed residential and commercial uses in a downtown location. The proposal is to convert the building in to apartments for intellectually disabled adults. There would be one apartment per floor, each with a kitchen, living area, bathroom, and four bedrooms for a total of 12 individuals.

Mr. Dennehy testified. He stated that across NH people with disabilities are facing a housing crisis. Many are at risk of living in nursing homes or becoming homeless due to the lack of accessible housing. Approximately one in eight residents living in NH (166,000 people) experience some type of disability. Public advocacy groups work very hard for this population, however, none of them focus on housing. In 1991, the State of NH closed the Laconia State School and a new movement began to support people with disabilities to live at home. With the development of early intervention strategies, the students can get their brains and bodies moving more than what was possible 30 years ago, with schools, teachers, and therapists who are dedicated to this effort. Mr. Dennehy stated that his own son received phenomenal services from the City of Concord schools. He stated that no one could foresee this large segment of the disability population who desperately want to live independently, but who may need some life coaching.

He further stated that group homes are few and far between in NH, with long wait lists. Young adults and older adults are forced to live in their homes with an aging population of care givers, and this creates the risk that these individuals may end up in an undesirable location, like a county nursing home or becoming homeless. Their goal is to provide housing for this middle group of individuals.

Mr. Hastings mentioned that there has been an issue with how to classify this type of use. Ordinarily, this would be an apartment use, which is allowed by right in the district, and would only need zoning relief to permit residential use on the first floor, which the Board has approved variances of this type before. However, since these units would have four bedrooms and they will be occupied by unrelated individuals, the Zoning determination was that this would be considered a rooming house, which is not the correct determination in his opinion. He stated that they would need zoning relief either way.

Chair Carley asked why Mr. Hastings disagreed with the rooming house classification.

Mr. Hastings stated that the definition of a rooming house in the City of Concord is a detached dwelling unit that has sleeping accommodations for individuals other than members of the resident family, with a common kitchen and dining facilities. It is unclear if a dwelling unit can be occupied by unrelated people, as there are many situations now where people cohabitate. This is a group of people living in an apartment unit, and there is no reason that this could not be considered a family of people with disabilities.

Chair Carley stated that the Board does have the obligation to consider if a variance is even needed.

Mr. Hastings stated that if the Board found it was not a rooming house and instead a multifamily house, they would request the Board to approve a variance to permit the first floor to be used for a non-commercial use.

Ms. Perkins asked if there was a difference between a rooming house versus a boarding house. She mentioned that you are not allowed to rent out rooms separately without being classified as a rooming house.

Code: Mr. Hall stated that following the definition of a rooming house, it falls more into the category of a rooming house.

Chair Carley asked if it is because the people are unrelated.

Code: Mr. Hall agreed.

Mr. Hastings stated that rooming houses are not allowed in the City, however, under special exception they would be allowed in some zones, but there is a limitation of 10 rooms and they are looking for a variance for 12 rooms.

Mr. Winters asked if they are approved by special exception.

Chair Carley stated that they should find fact.

Mr. Winters stated that it seems that it most immediately fits into a rooming house.

A **motion** was made to find the proposal to be consistent with a rooming house by Mr. Winters, seconded by Ms. Perkins; passing unanimously.

Mr. Hastings stated that he feels that they meet the criteria, as the use is reasonable, and the building is ideally situation to be converted into three apartments units, one on each floor. There would be very little changes needed to make the conversion. The use itself, for individuals with disabilities, is well situated next to Riverbend, closely located to other amenities, jobs, eating establishments, and grocery stores, without the need for a vehicle. He pointed out that most rooming houses are in urban areas. There is a large apartment right across the street, and it would not be significantly different in the characteristics of the

area. This will increase the number of units in the downtown area, especially for this underserved population. They do not see any detriments to the public or surrounding properties. Granting the variance will help preserve a historic building. The size is not well suited for a retail use or an office use. He mentioned that multifamily dwellings are allowed by right, so this would be making a distinction on the character of the occupants, which would not seem to align with fairness and justice. If they limited the use to the elderly, such as a congregate care facility, it is permitted by right in the district, and by not granting the usage, it would be discriminating against the users and not the property.

Chair Carley asked why 12 units instead of 10 units.

Jonathan Halle, Warren Street Architect, testified. The building's floors are a mirror of each other with four rooms on each corner, which lends themselves well to bedrooms. There would be a common bathroom, kitchen and dining room, and living space on each floor. The building lends itself perfectly for the intended use. If they didn't do 12 units they would have two extra rooms with no use for.

Mr. Winters asked if there are any special considerations by law to provide for disabled applicants.

Mr. Hastings stated he is not aware, but that would not be his area of expertise.

Chair Carley asked for clarification around the hardship. He stated that Mr. Halle mentioned that the configuration of the building diminishes utility if they put in 10 units instead of 12 units. Is there anything else about the configuration of the building or the suitability for other uses, or the lack thereof.

Mr. Hastings stated that the hardship is the size of the building, pointing out that on the one hand there is a limitation on the use for certain types of uses, and yet a particular good use for this application, as well as the general location of the property which is ideal.

Ms. Perkins asked if they approved the variance for the 12 units, could they state that it was an exception that it is allowed because it is for this purpose, so that if someone came in afterwards and wanted to turn it into a rooming house for the public, it would not be allowed.

Code: Mr. Hall mentioned that if the building was sold they would need a variance if they changed the use.

Ms. Perkins stated that they are trying to help a protected class, so she was not sure how the Board would approach the approval.

Mr. Hastings stated that there is a provision in RSA 674:33 that discusses limiting a hardship requirement when an applicant is seeking a variance to permit handicap accessibility. The statute would allow you to find a variance for a hardship, but once the individual with the handicap leaves the residence, it would go back to the ordinance rules. Importantly, the applicant has formed a non-profit entity whose charitable purpose is to help this population.

Mr. Haley mentioned that there was a property near St. Paul's and there was a similar statute. That facility was for brain injured patients.

Code: Mr. Hall stated that you could have a facility, but not a rooming house.

Mr. Haley stated that both facilities have similar setups with supported care. The statute read that there cannot be any discrimination for that type use in any zoning.

Code: Mr. Hall stated that he would have to read the statute.

Mr. Davie asked if there will be support staff.

Mr. Dennehy stated that there will be staff available to support individuals, but they would not live there.

Mr. Hastings said he envisioned it as a home health aide to check in on the residents, like a life coach.

Mr. Winters asked why they did not need the variance on the first floor.

Mr. Hastings stated that would only apply for a multifamily.

In Favor: Mr. Schweiker testified, stating that he would call this a hardship as it is a necessary facility that is not allowed anywhere by zoning. He pointed out the difference between rooming houses and room and board houses. He stated that there was a boarding house that sold on South Street, and he surmised that it was probably more of a rooming house. He stated that this project is a reasonable use, that is an ideally suited location for the building. Lastly, he mentioned that if they needed two staff on site, those would not be considered a bedroom.

In Opposition: Ross Ketchum, Blake Street, testified. He mentioned that he came completely opposed and has had a change of heart. He stated that Blake street is a very small street with a finite amount of parking spaces. He is for the concept, but concerned if it was sold down the road and it was turned into an apartment complex.

Code: Mr. Hall mentioned that if it sold, they could continue to use it as a rooming house, but they would have to come back for a variance for a change of use, say to a multifamily. He also mentioned that it is in the CBP District and there are no parking requirements.

Chair Carley stated that they would not have to come back as far as parking. He mentioned it was outside of their scope.

Mr. Winters pointed out that Mr. Ketchum was in a different zone.

Code: Mr. Hall mentioned that the lot was being subdivided, using the back-parking lot for another use. He also stated that the project was received well by City staff.

DECISION:

Mr. Wallner stated that he felt it met all five criteria of the variance, as it is not contrary to the public interest, it will not alter the essential character of the neighborhood, it will not diminish the surround property values, and the hardship is to the community in that there is a desperate need for this type of housing for this population, and it justifies the two extra rooms above the prescribed 10 rooms.

Mr. Davie agreed.

Mr. Winter agreed. The layout is not well suited for office space. The proposal is a great project and he would be inclined to approve even if it was a for-profit company.

Ms. Perkins would be thrilled to approve it and felt that she could not see it ever leaving from that purpose because the need is too great and important.

Chair Carley agreed.

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

0160-2024

59 Hobart Street; *RS – Single-family Residential District*, William Young Properties LLC, Owners:

The applicant would like to construct a single-family dwelling on a non-conforming lot and a variance would be required from Section 28-4-1(b) *Minimum Lot Size*, to allow a lot with 10,000 square feet of area where 12,500 square feet is required.

Attorney John Arnold testified on behalf of William Young Properties, LLC. He explained that the subject lot was one of the few lots that was never developed in this neighborhood, being short by 2,500 sq. ft of the required dimensions. He stated that there are many undersized lots in the neighborhood, and this lot is in a row of five equally sized lots with similar dimensions. He discussed the criteria, stating that the construction of the home would not alter the essential character of the neighborhood, it won't threaten public safety, or affect property values. The hardship is that the property is unusable without the variance because it does not meet the size requirement.

Chair Carley asked why the City does not consider it a grandfathered lot.

Attorney Arnold mentioned that he is happy that they will consider whether a variance is needed during future ZBA meetings. He stated that Code's position is that it needs a variance as is not grandfathered. The zoning ordinance says that it is not grandfathered when an adjacent lot is in common ownership, however, like last month's meeting, it is not in common ownership any longer and has not been for quite some time.

Chair Carley asked when was the last time it was in common ownership.

Attorney Arnold stated he believed it was sometime in the early 2000's, suggesting 2004 or 2005. He believed that the City had taxed the property as a buildable lot. Then the City took the property by tax deed as the owner was not paying their taxes. Code made the determination that it was not a buildable lot, which he takes deference on. He stated that he was not overly concerned with Code's position, given the fact that the Board has voted to approve similar variances on other lots in the City.

Mr. Winters asked if this was the lot that a previous applicant stated a variance was not needed.

Chair Carley stated it was not this lot.

Attorney Arnold stated in Dr. Hutton's absence, that he felt that Dr. Hutton's justification might be because it was in common ownership in the early 2000's and that she was concerned that owners could either buy and sell their way out of the adjacent lot issue, thereby making it buildable.

Mr. Winters mentioned that there was a State statue on the issue of adjacent lots and that a City cannot merge the lot when it is in common ownership.

Attorney Arnold stated that the City cannot merge it, but the City can limit how it can be developed. The fact that it can't be merged doesn't mean it is a buildable lot.

Chair Carley stated that this part of the ordinance is not an artifact of the merger requirement.

Mr. Winters questioned if Attorney Arnold's position was on the preexisting use, that the lot was developed originally to be buildable before the code.

Attorney Arnold agreed, and stated that he did not agree with Dr. Hutton's position that the lot is not buildable, and further stated that he felt they had compelling criteria for the variance regardless as the property is unusable without it.

Chair Carley questioned the Board if they would like to continue the case as a variance or take up the issue of whether a variance is needed.

Mr. Winters stated that he would like to continue the case as a variance, because he was not prepared to make an informed opinion as he would need to do more research.

The Board agreed.

Ms. Perkins asked if the plans would fit with all other ordinance requirements.

Attorney Arnold stated that it would, mentioning that they provided a conceptual plan in their packet.

In Favor: None.

In Opposition: Ryan McLaren of 55 Hobart Street testified. He stated that the lot is not buildable and never has been buildable, mentioning that the lot is small. He is a direct abutter.

The Board asked to see the zoning map for the dimensions of the surrounding lots, pointing out that the lots seem to be of similar size.

Mr. McLaren stated that his house was built in 1963. He was concerned that if they approved this sized lot, then they would have to approve other similar sized lots throughout the City.

Chair Carley stated that they would have to look at each variance separately.

Ms. Perkins asked if the lots were owned separately previously to the owner who had owned the two lots.

Code: Mr. Hall did not have that specific information available.

Steve and Caitlin Porter, 46 Abbott Road, testified. Mr. Porter stated that they have lived in their home since 2008, and they are a direct abutter in the back. He mentioned that across the street from their lot is City property as well as power lines for Unitil. On either side their property there are garages that isolate their property and then this vacant lot which affords them a lot of privacy in a large neighborhood, which was one of the reasons they bought the property. They are concerned that they would lose their privacy, stating that the hardship is then transferred to them in that their property would not be as desirable, which would result in a loss of value. They mentioned that the builder knew that the house did not meet the ordinances but bought the land anyways.

Vicki Desjarlais, 63 Hobart Street testified. She stated that she bought her home one year ago, and at that time she researched the abutting lot learning that it was not the right size to build. She looked into purchasing the lot. The auction sign went up without any notice to her. She was told to do the work on this lot for the auction and went to Summit title for information. She was advised to be aware that it was not a buildable lot. She stated that she did not have the funds to purchase the lot at the price it was sold for. The owner took down all the trees without speaking to her. They broke the basketball hoop and have not replaced it.

Chair Carley clarified that the lot is the same size as hers.

Ms. Desjarlais agreed, however she is concerned that the house will be too close to her lot.

Chair Carley stated that the application puts the house at a location that is permitted. He asked her to clarify if she felt that the house would be an imposition to her.

Ms. Desjarlais stated that it would.

Chair Carley asked if she felt that her own house was an imposition on the neighbors.

Ms. Desjarlais stated that it was not.

Chair Carley asked her what the difference was.

Ms. Desjarlais stated that there was more space around her house.

Chair Carley asked if she had added on would it then be an imposition on her neighbors.

Ms. Desjarlais said it could possibly be an imposition.

Code: None.

DECISION:

Mr. Winters stated that the three neighbors who testified were all direct abutters and that he could understand that they would prefer to keep the lot vacant and that they were under the impression that it was not a buildable lot. However, there is always a chance for an owner to request a variance. The builder took a chance buying the property with no guarantee that a variance would be approved. He stated that the Board can only apply the criteria as presented, and that the law dictates that when there is a lot that there is no other use for otherwise, it creates a hardship. If the property was an extremely narrow lot with the respect to the neighbors, he would understand, but by the criteria of the law they should approve the variance.

Ms. Perkins stated that she agrees with respect to the neighbors, however, there would be no reason to deny the variance.

Mr. Davie mentioned that he wanted to note that the google map from August 2019 shows a camper on the lot, as well as the satellite image.

Mr. Wallner agreed with Mr. Winters and Ms. Perkins.

Chair Carley agreed that the criteria for the variance are met in this case.

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

A **motion** was made to approve the Minutes from March 6, 2024, by Mr. Wallner, seconded by Mr. Winters; passing unanimously.

A **motion** was made to approve the Findings of Fact from March 6, 2024, by Mr. Wallner, seconded by Mr. Winters; passing unanimously.

A **motion** to adjourn the meeting at 8:43 pm was made by Mr. Wallner, seconded by Mr. Davie; passing unanimously.

*Respectfully Submitted by
Deborah Tuite*