



CITY OF CONCORD

New Hampshire's Main Street™
Zoning Board of Adjustment

May 1, 2024
MEETING MINUTES

Attendees: Chair Carley, Nick Wallner-(arrived at 6:13 pm), Andrew Winters, James Monahan, Brenda Perkins, Mark Davie

Absent: 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

REQUEST FOR REHEARING

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.

Chair Carley explained that with a request for a rehearing the Board does not usually hear new testimony, rather they rely on the written submission. The criteria for granting a new hearing are that the Board made an error in the law, an error in procedure, or that new information had risen that was not available at the time of the hearing and was germane to their original decision.

Chair Carley queried the Board to ensure they had reviewed the submission and asked if there was anything that the Board saw that showed an error in the decision or did they see significant new information.

Mr. Davie stated that he did not see an error in the decision.

Mr. Monahan stated that he did not see any errors or new information. There was a reference that the Notice of Decision and written Findings of Fact had not been made available within 5 days, however, he did not see information providing a timeline and he does not find that to be a procedural error.

Mr. Winters stated that the applicant stated that they did not need a variance, however, this was considered in detail and the Board did find that they needed the variance. As far as the substance, the Board's ultimate conclusion was that it was not in the character of the neighborhood. The submission seemed to infer that because the Board approved two prior variances, that this should have been approved. Mr. Winters did not feel that the Board made any errors and there was nothing new raised in the submission.

Ms. Perkins stated that she did not see any errors in the Board's decision.

Chair Carley agreed.

A **motion** to deny the Rehearing Request was made by Mr. Monahan, seconded by Mr. Davie; with a vote of 5-0, passing unanimously. Mr. Winters questioned an area of the submission that talked about the Notice of Decision with the Finding of Facts being made available within five business days as far as timeliness and did not feel that an error was made.

Code: Mr. Hall stated that the City does meet those targets with the five days.

TABLED ITEMS

0149-2024 Highland Street (6522/Z 38/ /); *RN – Neighborhood Residential District*, MDR Rehab & Development LLC, Owners:

Applicant seeks a variance pursuant to Article 28-4-5(d)(1): *Minimum Tract Requirements*, to allow the development of a Duplex on a lot having 10,788 sq. ft. where 15,000 sq. ft. is required.

Withdrawn.

PUBLIC HEARINGS

0161-2024 10 Ferry Street; *OCP – Opportunity Corridor Performance District*, Flatley Concord Center LLC, Owners:

The applicant wishes to install a 220 square foot sign with a 22-foot horizontal dimension. Variances would be required from:

1. Article 28-6-9(a), *Table of Maximum Sign Dimensions in Non-residential Districts*, to allow 200 square feet of signage where 100 square feet is allowed, and
2. Article 28-6-9(c), *Permitted Freestanding Signs*, to allow a 22-foot wide sign where 16-feet is allowed.

Kevin Walker, John Flatley Company, testified.

Code: Mr. Hall mentioned that in April of 2022, the applicant was approved for the very variances that they are currently requesting at this time. They could not place the sign where they had originally indicated because it landed in an easement and on top of a sewer cover.

Chair Carley asked where they would like to put the sign.

Mr. Walker stated that they looked at a few options for the placement of the sign, and ultimately decided to move the sign out of the easement. The Sewer Department would rather that the sign did not encroach the easement.

Chair Carley asked if he could point out where the sign was originally proposed, and the location of the current proposal.

Mr. Walker pointed out the locations on the map. The setback is about eight and a half feet off the property line, which is still within the setbacks.

Mr. Winters recalled that there was a compromise with the Kimball Jenkins Estate during the first variance request and asked if the John Flatley Company had any contact from them this time around.

Mr. Walker stated that they have not had any contact.

Mr. Monahan recalled that at the time of the original variance, the Executive Director of Kimball's Jenkins Estate had come in and eventually agreed with the sign variance.

In favor: None.

In Opposition: None.

Code: None.

DECISION:

Ms. Perkins stated that she did not see an issue with the variance, as they are trying to comply.

Mr. Winters stated that his recollection was that the primary basis for the original decision was based on the unusual shape of the property, being very long, along with the height of the sign. Mr. Winters felt the same reasoning should apply.

Mr. Monahan agreed.

Mr. Davie agreed.

Chair Carley agreed.

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

Mr. Wallner arrived at 6:13 pm and took his place on the Board. Ms. Perkins stepped down from voting for the next case and Mr. Davie continued to be a voting member.

0167-2024

2 Home Avenue; *OCP – Opportunity Corridor Performance District*,
WB4 LLC, Owners:

The owners would like to construct a wall sign that would exceed the quantity and dimensions allowed on the site. Variances would be required from:

1. Article 28-6-9 5 signs where 3 are allowed, and
2. 210 square feet

Josh Messenger, from Advantage Signs, testified along with Erin Lambert of Wilcox and Barton. Mr. Messenger stated that they are requesting to put channel letters on the Hall Street side of the building. At this time there are no identifying signs on that side of the building and it would be difficult to locate Wilcox and Barton without it. They are also looking for a variance for one of the window clings, as the other one is already permitted.

Chair Carley mentioned that they do not have a picture of the window sign.

Mr. Messenger passed along a picture of the window.

Code: Mr. Hall mentioned that the signs would go on each end of the building. The ordinance allows three signs on their frontage. They are asking to put a fourth sign on the front which will put them over the square footage, which is why they need the variances.

Ms. Lambert stated that the property is unique because it has frontage on two properties, but it has visibility from the highway as well. It is consistent in this corridor that most businesses have pedestal signs, as well as way finding signs. They need two signs so that when customers turn onto Home Avenue they will be able to locate the door. It is important to have a pedestal sign to draw clients, but then they need a sign on the door, as well as way finding signs at the end of the building.

Chair Carley asked if one faces Hall Street and one faces the highway.

Ms. Lambert agreed. She stated that three quarters of the building houses 2 Home Fitness and one quarter houses Wilcox and Barton Civil Engineering. She stated that there are two permitted signs that face Rt. 93 and then 2 Home Ave is prominently over the door. They would like to have a sign on the Hall Street side of the building for Wilcox and Barton.

Mr. Winters questioned if the fifth sign is the actual street number.

Ms. Lambert explained that there are two signs on the building that are permitted that face the highway (one for 2 Home Fitness and one for Wilcox and Barton). Then there is a sign over the door for 2 Home Ave with is for 2 Home Fitness, but not Wilcox and Barton. The address of the building is 2 Home Street.

Mr. Davie asked for clarification that they have two signs on the door.

Ms. Lambert stated they did not know that they needed two permits for the window cling signs.

Mr. Winters asked if part of the problem is wayfinding, and the other part is a lack of clarity that Wilcox and Barton resides in that building and that the fitness club dominates the signage.

Ms. Lambert mentioned that there is no signage for Wilcox and Barton on either Hall Street or Home Ave.

Ms. Perkins asked what the allowable square footage is compared to what they are asking for.

Code: Mr. Hall stated that they are asking for 60 sq. ft. over.

Mr. Winters asked if 2 Home could take away one of their signs realistically to comply.

Ms. Lambert mentioned that it is consistent with the neighborhood to have signage on the highway side, and it is important to have the sign on the door.

In Favor: None.

In Opposition: None.

Code: None.

DECISION:

Mr. Wallner stated that he feels that the unusual characteristic is that they have two frontages on two streets, and he is persuaded on the hardship aspect as they have one of the narrowest lots, and thereby it doesn't have the same advantage of visibility of the passing public and would likely approve the request.

Mr. Davie agreed.

Mr. Monahan agreed given the fact that they have a shared entrance.

Mr. Winters stated that he is somewhat reluctant because they created their own issue, however, he does see the unique character of the property and it would be unfair to punish a new occupant for signage that is already permitted. He would ultimately agree to approve.

Ms. Perkins stated that she feels it won't impede the traffic, and it is mostly a parking lot. She would approve the variances.

Chair Carley stated that he is inclined to grant the variances, in that there are characteristics of the site that create a hardship, including the fact that one of the views of the building is from an interstate highway.

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

Mr. Davie stepped down for the next case, and Ms. Perkins stepped in as a voting member.

0172-2024 7 N State Street; *CVP – Civic Performance District*, Baystate Recovery Services, LLC, Owners:

The owners would like to construct a freestanding sign that would exceed setback limitations for corner lots in Article 28-6-7(e).

Josh Messenger testified, stating that the unique aspect of this property is that it's on a corner lot and thirty feet from the intersection, therefore the sign needs a variance. He stated that there would be no line of sight if a driver was traveling down Blake Street which is a one-way street, making the property unique. The ordinance was created for two-way traffic.

Chair Carley asked if there was a sign previously in the same location.

Mr. Messenger stated that there was.

Mr. Winters asked how much the sign will go into the setback limitations.

Mr. Messenger stated that he did not know exactly by how much. It is on an elevated, landscaped area.

Ms. Perkins asked which sign they would be putting in as they were given two renderings.

Mr. Messenger stated that it was the sign with the white background.

Chair Carley asked which way Blake Street goes.

Mr. Messenger stated that it is going west.

Mr. Winters stated that usually a setback variance is for a structure, and this variance is for the sign. He asked for clarification on exactly where the sign will be located.

Mr. Messenger mentioned that it would probably be 3-5 feet from the property line.

Ms. Perkins asked where the setback starts.

Code: Mr. Hall stated that the sidewalk face of the brick wall is the property line. The building was built before the ordinance and probably sits within the setback.

Ms. Perkins stated that the sign seemed to face State/ N. State Street and would not go sideways, as there would be less impediment.

Mr. Monahan asked if the size of the sign is conforming.

Mr. Messenger stated that it was.

Mr. Winters asked Code if they are comfortable with the request.

Code: Mr. Hall stated that the Board could request that it be a minimum of three feet away from the property line.

In Favor: None.

In Opposition: None.

Code: None.

DECISION:

Ms. Perkins stated that she would support the variance because in order to have a sign they need it.

Mr. Winters agreed, stating that the location of the building itself is justification for the position of the sign and that the Board should add a condition that the sign not be more than three feet into the setback.

Mr. Monahan, Mr. Wallner and Chair Carley agreed.

A **motion** to grant the variance, with the condition that the sign is not more than three feet from the property line, was made by Mr. Winters, seconded by Ms. Perkins; passing unanimously.

Ms. Perkins stepped down for the next case and Mr. Davie stepped in as a voting member.

0174-2024 10 Foster Street; *UT – Urban Transitional District*, Joseph Williams, Owner:

The owner wishes to reconstruct a single-family residential structure. Variances would be required from:

1. Article 28-4-1(h), *Table of Dimensional Regulations*, to allow maintaining a 5-foot 2-inch property line setback with a replacement single-family dwelling, and
2. Article 28-7-7(g)(2), *Setbacks from lot lines*, to allow parking within 5-feet of a property line.

Joseph Williams testified, along with his daughter Jacqueline Williams. Jacqueline stated that the original house was built in the 1880's and that her father lost his house to a substantial fire. They are trying to rebuild and would like to place a manufactured home on the site. The new home is larger than the original foundation and they need a variance to accommodate the size difference. They would like to keep the existing driveway and move the structure over slightly, which would match the driveway.

Code: Mr. Hall clarified that it was a modular home.

Mr. Winters asked if they are using the existing foundation.

Ms. Williams stated that they would be digging the foundation out and moving it to allow the additional sq. footage for the modular home. Unfortunately, when reviewing the options, demolishing and rebuilding takes a lot longer than a modular home. It has been a hardship to be away from his home this long and this would be the fastest option.

Mr. Williams stated that if they constructed the home on site it would take a long time, where a modular home takes considerably less time to build and there would be less inconvenience to the neighborhood, as it is less disruptive.

Ms. Williams stated that they are hoping to maintain their driveway as the street is very narrow.

Mr. Williams stated that the bulkhead was not shown on the diagram and will be on the back of the house.

Mr. Winters asked if they would be improving the extent of the non-conformance, stating that he would be going from two sides of setback encroachments down to only one side.

Mr. Williams stated that the only setback that they are asking for is on the right-hand side of the house because the basement needs to be moved back.

Mr. Winters asked that prior to the fire they encroached the setback.

Mr. Williams stated that it did.

Mr. Winters asked about the parking variance.

Mr. Williams stated that the driveway was non-conforming prior to the fire. He feels that this new house will enhance the looks of the neighborhood and it would improve the values of the neighborhood properties. The original house was built in 1880 and this new house will be up to today's standards.

In Favor:

Betty Seeler, direct abutter, testified, stating that she wanted to applaud Mr. Williams for improving his property. She asked if the Board could designate a spot for snow removal.

In Opposition:

Code: Mr. Hall stated that because he lost the home to a fire he is allowed to rebuild with all of the existing non-conformities, however, since he is moving the home to accommodate the modular home, he needed to apply for the variances.

Ms. Perkins stated that it is a faster process to use the modular home with less noise and environmental impact.

DECISION:

Mr. Davie stated that Mr. Williams mentioned that the neighborhood has a set of odd lots and that Mr. Williams is making a concerted effort to bring the lot more into conformity. He would be inclined to approve.

Mr. Wallner had nothing to add.

Mr. Monahan agreed as well, noting that since the bulkhead would be moved to the back that would free up space for snow storage, even though it would not be typical of the Board to make conditions for snow storage.

Mr. Winters stated that historically the Board is inclined to approve non-conformities when a home is lost to a fire. Given where the driveway is, there is no place to put the house. The request is reasonable.

Chair Carley stated that he agrees with his colleagues and the variances are justified.

A motion to approve the variances was made by Mr. Davie, seconded by Mr. Monahan; passing unanimously.

Mark Davie stepped down and Ms. Perkins stepped in as a voting member for the next case.

0175-2024

6 N State Street; *CBP – Central Business Performance District*,
Riverbend Community Mental Health Inc, Owners:

The owners wish to construct a 28-unit multifamily residential structure. Variances would be required from:

1. Article 28-4-5(e)(5), *Locational Restrictions*. to allow residential accessory uses, and

2. Article 28-4-5(e)(3), *Maximum Floor Area Ratio*, to allow a floor area ratio of 4.7 where 3.0 is the maximum.

Attorney Philip Hastings testified on behalf of Catch Neighborhood Housing. Tom Furtado of Catch, Morgan Dunson of the Nobis Group, and Jonathan Halle from Warren Street Architects were also in attendance and testified. Attorney Hastings passed out an additional packet to the Board. He pointed out the location on the screen, stating that the lot is relatively small and has long been vacant. There was a building on the lot at some point in the 1960s, and in modern times the lot has been used for parking. Riverbend is selling the lot. Historically, there were some parking leases, but currently the lot is underutilized, and because of the size it is not economically viable as a parking lot on its own.

It is a downtown neighborhood with both multi-family housing and commercial businesses, which are large buildings on relatively smaller lots. They were here last month looking for approval for a rooming home across the street. This is an ideal area for residential use. They submitted a preliminary site plan, proposing an eight-story apartment building with four one-bedroom apartments on each of the top seven floors. The floor level would be a mix of office space, along with a lobby, community room, laundry, and mechanical room as well as an elevator. The first floor has about 3,600 sq. ft. and the upper floors have about 3,853 sq. ft. for a total of about 30,574 total sq. ft., of which 26,971 sq. ft. would be for the residential portion.

The property is in the Central Business Performance District and the provisions are quite broad; there are no parking requirements, there are many permitted uses, and flexible with dimensional requirements. Multi-family uses are permitted as a right, with no minimum yard requirement, no minimum lot coverage requirement, and no minimum lot size requirement. The lot satisfies the frontage requirements, and the proposed building will be within the maximum height for the district at 80 feet. They will need a conditional use permit from the Planning Board as part of the Site plan review process. They have done an analysis that it will not obscure the views of the State House Dome. They have discussed the plans with the City of Concord Planning and Code staff.

They need a variance for the first floor to be used for non-commercial use. In this instance, it will probably be a mix of uses, but not a typical first floor retail or office use. The second variance is more significant, as the ordinance requires a max floor ratio for residential buildings of no more than three, which is the floor area divided by the size of the lot. They need a variance to use the 26,971 sq. ft. of floor area, divided by the lot, which is a floor area of 4.13, which exceeds the maximum of three.

Tom Furtado, President of Catch testified. They develop and maintain affordable and market rate housing. They have approximately 400 residential units in the Merrimack county with the majority of those in Concord. They are excited about this project. This is in walking distances to many services, public transportation, government agencies, etc. The most important variance is for the floor ratio. Many of the existing multi-family units in the area already exceed the floor ratio. If they were to build an office building they would not need a variance at all. There will be 28, one-bedroom units, which is very consistent in the general area. Catch uses a low-income house tax credit to develop low-income properties and typically it is designed for between 30-50 residential units. It is difficult to do more than 50, and 30 is much more accommodating. The 28 residential units is far more likely to be approved by NH Housing and HUD.

Chair Carley stated that he is perplexed by the FAR requirement. There is no limit to how close one can build to the lot line; the height and, in effect, the number of stories is controlled by 80-foot limit; and there is no requirement for a specific lot area. He asked Code why there is a FAR (floor area ratio) requirement for an apartment house but not for any other allowed use.

Code: Mr. Hall stated that Planning would need to answer that question. He stated that the concern with the FAR was the constructability of the lot, which does not require a variance, and would be the builders concern. He stated that he does not know the logic of the FAR.

Attorney Hastings stated that he does not believe the variances would be against the public interest, or spirit of the ordinance, or be contrary to the public interests. As to the spirit of the ordinance, the CVP was meant to be flexible, with an assortment of uses and building types. Housing of this scale will not be contrary to the character of the neighborhood, or threaten the public's health, safety or welfare. He mentioned that in the handout given tonight, it gives a interesting bird's eye view of the building in the setting. There are several neighboring properties that have similar floor ratios which predated the ordinance, many that seem to be a ratio over 3, 4, or 5.

Mr. Winters asked if it is calculated on just the residential piece.

Attorney Hastings stated that he believed it is based on the residential use, but that you could look at it both ways. For this application their calculation is for the residential use.

Mr. Winters read in the handout that the residential ratio is 4.1 and the entire usage is a ratio of 4.7.

Attorney Hastings stated that to get to the 3.0 requirement, they would have to remove three floors, a total of 12 units being taken away, which might negate the HUD funding. As far as the first-floor use, there are multiple properties in the neighborhood that have residential uses on the first floor, including 4 N. State Street. The Board has approved many variances in the CVP to permit first floor residential uses.

Mr. Furtado reiterated that they do not intend to put any residential units on the first floor. They intend to put ancillary space, including a satellite office for their property management firm in the front of that location.

Mr. Winters asked if they need that for the variance or is it up in the air.

Attorney Hastings stated that they put it in to be safe, however, architecturally speaking they plan to design the first-floor space to match a more commercial street scape.

Ms. Perkins asked Code for clarification around the commercial aspect.

Code: Mr. Hall stated that the CVP requires commercial/retail use. They can put residential units on the upper floors, and put their office on the first floor which may help to get approval, but the CVP's intention was for commercial uses, so they require the variances.

Mr. Winters stated that they could put an office for people to walk into.

Code: Mr. Hall agreed, further stating that if they were to put a law office that people can use, that would be more in line with the requirement, compared to an internal office.

Mr. Furtado stated that customers that would be coming to their office.

Mr. Winters clarified with Code that the lounge area for the residents would not count.

Code: Mr. Hall agreed.

Ms. Perkins stated that it will look compliant from the street, but it needs the approval.

Attorney Hastings continued that as far as the substantial justice prong, stating there is no gain to the public by denying the variance, rather there is harm by not allowing this underutilized vacant lot to be put to an allowed use. There is no nuisance, and there would be no harm to the public, or any safety or health concerns. The variances would not result in a diminution of surrounding neighboring property values. Bill Norton, of Norton Asset Management, is a well-respected commercial broker and advisor in Concord and knows the area very well. Mr. Norton concluded that the variances requested would not have a negative effect on neighboring property values based on the fact that housing projects would add vitality and energy to the street scape and give a sense of progress in the City. He also noted that the new building will be an aesthetic improvement of a vacant lot. He noted that a building of this size may impact the abutting properties, but that is not a result of the specific variances being requested, as a commercial building of the same size would be allowed by right. The variances will increase the residential density of what is allowed, but any diminution in value to the abutting properties would occur not because of the variances, but perhaps for the size of the building. No abutter has a reasonable expectation that the lot would remain vacant or have a less impactful building on it.

Lastly, the literal enforcement would result in an unnecessary hardship as there are special characteristics of the property, notably that it is a small vacant lot, and it is well suited for a high-density residential use because of its location. It is one of the few in-fill lots in the downtown area, and could not reasonably be used for much else. It is not economically feasible as a parking lot alone. There is a limited utility for a retail development because of the size, and the demand for that type of use or office use has seen a reduction in the downtown Concord area and elsewhere since Covid, with more remote opportunities. The economic viability of a residential project is questionable, and even though economics is not typically a factor in hardship, but in conjunction with the location of this property it could be. As a downtown location, the value of the property is inflated compared to other properties, and it is also challenging for construction, so the costs will be driven up which in turn requires a minimum number of units. It is hard to see how less than 28 units on this site would work financially.

Chair Carley stated that one of the prongs of hardship refers to the unique setting of the site. He asked if Attorney Hastings felt that the location in this district, close by to other buildings in a densely built up location with a certain kind of economic fabric was the unique setting for this site contributing to a hardship.

Attorney Hastings agreed.

Ms. Perkins mentioned that she appreciated the handout presented tonight as it gave her a better perspective of what an eight-floor building would look like relative to the surrounding area.

Mr. Winters asked why they wouldn't make it seven floors and reduce the total number of residential units, which would help reduce the FAR.

Jonathan Halle testified, stating that with the financing for a NH Housing Authority approved property, ancillary spaces are required for NEFA programming. It needs a community room and an office on site.

Mr. Winters asked what the rationale was.

Mr. Halle stated that it is what it is, and it is a written rule.

Mr. Furtado stated that when they do a residential development they try to create a sense of community, by building playgrounds or community rooms where residents can have gatherings. There are minimum size requirements for these types of spaces dictated by HUD, so they try to maximize the size for functions for the residents. The size of the elevator takes up a lot of square footage as well.

Mr. Winters asked where they expect the residents to park.

Mr. Furtado stated that the City has a parking lot within 401 feet of this site, even though in this zone there are no parking requirements. Residential units in this type of zone typically have a lower demand for parking, as there would be the opportunity to do a lot of walking or use public transportation. If the site was in Penacook, it would be a different set of circumstances compared to being at this location.

Mr. Monahan asked if each unit had one bedroom and asked what the square footage of each unit would be.

Mr. Halle stated they would be around 700 sq. ft., taking into consideration stairwells and the elevator.

Mr. Winters stated the plans say 762 and 650.

Mr. Monahan asked what the total cost of the construction was, and he asked how the tax credit works.

Mr. Furtado stated that they have not finalized the numbers just yet. He stated that there is a competitive round with an application and a point system for certain aspects. NH Housing allocates the HUD provided low income tax credits. If they were granted \$6,000,000 in tax credits, then they need to syndicate the tax credits and sell them for around \$0.85 - \$0.90 on the dollar which becomes the cash equity for the project. Without the low-income housing tax credits that are turned into equitable money, there is no way to build low income affordable housing. The rest of the project would be funded through grant money and conventional financing.

Mr. Monahan asked if they have gone through that process.

Mr. Furtado stated that they are looking for the variances first in order to go for the approval. NH has a relatively small allocation of tax credits compared to other larger states.

Mr. Winters mentioned that they could ultimately go through the entire process and be denied the tax credits anyways.

Mr. Furtado stated that it is the business that they are in. The number of credits is based on the population.

Mr. Monahan asked when they would know.

Mr. Furtado stated that they would not know until December.

Mr. Halle reiterated that it is a very competitive process, and having Zoning approval and building permits in order helps their application.

Mr. Monahan asked who covers the costs incurred at this point.

Mr. Furtado stated that is on them and ultimately if they don't get approval or the tax credits, it is the cost of doing business.

Ms. Perkins stated that she has sat on a few housing forums recently, mentioning that NH is around 20,000 units short.

Mr. Furtado stated that the residents, who qualify under the tax credit, rent is based on a percentage of their income.

In Favor: None.

In Opposition: Norman Lee, 4 N. State Street, being a direct abutter testified. He stated that he respects the applicants, and he is not here opposed to the project, but he is here as an abutter and has concerns around the impact of the project to his property. He stated that his property does not lend itself to commercial use on the first floor because of the stairs leading into it. He stated he is before the Board because this project has a real-life impact, with 5600 sq. ft. available for the project. The impact is that his building has 16 units, and two of the units in the lower rear are almost completely avoid of natural light, and operate at 20% discount because of the lack of light. He stated that the new building would be about 10 feet from his building, so the impact is the discount that his units will experience because there will be no actual natural light. He would lose half of his audience. Values of properties is due to what rent is brought in, and for every dollar that he loses in rent, there is \$6- \$8 dollar loss in value. Concerned that the 10 foot setback will affect his property. This is a major impact to his portfolio, with a slowing of rent. He understands that there needs to be development, but concerned about the negative impacts. He stated that he operates on the same demographic and this will set him back.

Chair Carley asked what he would suggest.

Mr. Lee stated that if they could configure the building to allow more air space between the buildings in order to allow as much natural light. He is not opposed to the number of units.

Ms. Perkins asked how many units will face that building and what the market rate is. She asked when he purchased the building.

Mr. Lee stated that there are eight units, bringing in between \$1600 – \$1800. He bought the building in July of 2018.

Ms. Perkins mentioned that he purchased the property prior to the market spike. She asked if he has refinanced since then.

Mr. Lee mentioned that you can't look at just the market rate because everything else has spiked.

Ms. Perkins stated that she does not see the impact, as this is what she does professionally.

Mr. Winters stated that he is arguing a diminution of value.

Chair Carley asked if 10 feet is not enough, how much is enough.

Mr. Lee stated that he would like to talk with Mr. Furtado and Mr. Hastings, so that he could get more natural light for his tenants. He stated this will become like NY.

Mr. Winters stated that in NY, some pay \$6,000 without the light.

Mr. Monahan asked how much space is between his building and the other building next to him.

Mr. Lee stated it was about 12-15 feet.

Mr. Monahan asked if the alleyway would be about the same size.

Ronald Raymer testified, stating that he was a former State employee. He wished the ZBA format included a third option of questions and then allow the decision. He had questions around the facade of the building to ensure that it fits into the historic area. He mentioned that the applicant is right that the CVP in the downtown area does not require parking, however, it is incomprehensible that the City does not have at least one parking space per unit. This could be a burden on the City and contrary to public interest, focusing on parking which will have a negative impact. The lot alone is not suitable for parking, but the absence of parking accommodations is an imposition. He agreed they need affordable parking. He would be interested to know how that will help the tax base. If the Board can't figure that out tonight, could they defer. If not, could they impose a fee for the parking.

Mr. Monahan asked if he lives in the downtown.

Mr. Raymer stated that he does.

Ms. Perkins stated that they can only address the variances in front of the Board, and unfortunately, some of his concerns have nothing to do with the variances in question.

Mr. Hastings stated that there is no minimum parking in this district. The architectural design is very thoughtful in what they are proposing, going through the site plan process and Architectural Design review. As far as the setback issue, just to clarify, they are proposing a building setback of about 11 feet for almost the entire length of the southerly side of the building. Mr. Lee's property is virtually on the property line already. They are trying to respect the neighbors, even though there are no minimum setback requirements. They are here for the floor area ratio. There is a misconception that Catch Housing does not pay taxes to the City, however, they do pay taxes, even though they are non-profit.

Code: They are also required to pay impact fees.

Mr. Winters mentioned that he struggles on the diminution standard with a case like this. The rent could impose an impact on other units in the area, however, the lot was always susceptible to being developed.

Attorney Hastings mentioned that he commiserates with Mr. Lee, understanding that there is the potential that Mr. Lee's rents could go down. However, Mr. Norton was very clear that there is no support for that in the marketplace, speaking to real world vs. potential. The Zoning Board sets expectations for property owners and there may be an impact by an abutter, but that is factored into reasonable expectations, just as Mr. Lee could tear his building down and build a similar six or seven story building.

Mr. Furtado stated that the 28 units may create competition to Mr. Lee's units, but with the need for so many units, there should not be real competition. They have a specific market. This proposal is for an apartment building that will be facing Mr. Lee's building, so those units will face the same loss of light.

Ms. Perkins stated that if it were a commercial building, they could build right up to the property line, and not have the 11 foot buffer.

Attorney Hastings stated that there is no minimum setback so they could build even closer. They are designing the building recognizing that there needs to be some light and air space between the buildings.

Mr. Halle stated that if they were to build right up to the property line that the wall would need to be fire rated. They are trying to balance that out with both neighboring properties. To the point of Mr. Lee's property, they are trying to set back the windows. If they change the position then they would have the same issue on the other side of the building. He could sit with Mr. Lee to possibly put a reflective surface on the windows, which is a design element that may be helpful, but it is a double-edged sword in that the reflective nature may not be what they want. More than willing to sit with Mr. Lee.

DECISION:

Mr. Wallner stated that in terms of the floor to area ratio maximum, the Board heard that it is not uncommon to find units that exceed the ratio, which leads him to support that variance. As far as the commercial use aspect, again the Board has seen other occasions where that has been allowed.

Mr. Monahan stated that hardship is the hardest aspect for him, pointing out that the economics of the project could be the hardship, and they would have to construct a smaller building to comply and cut down the number of floors. He also mentioned that it could be hard to find other uses for the lot. He stated that he is struggling to get to yes, but willing to listen to his colleagues.

Mr. Winters stated that a couple of months ago, the Board was educated on case law that the economics of a project could be a factor in hardship. To what extent is for the Board to figure out. In the end, the ratio is not that much of an increase, and he finds it incredible that they could not do the project otherwise. It does no use to have the lot sit undeveloped. He mentioned that parking is an issue downtown, but available housing is an even bigger issue. He is inclined to approve, however, he wanted to address the diminution of value aspects. He referenced other cases that have come before the Board where it has been argued that a project could have a negative impact on the value of surrounding properties, however, it could improve Mr. Lee's property, so it is speculative. He stated that he did not think it was the sort of diminution that would disqualify it.

Ms. Perkins stated that she wanted to follow Mr. Winters notions, in that more realistically the other potential uses of the lot would not be viable as far as profitability. The lot is almost unprofitable with an office or retail space because there are already spaces open and available that are not being utilized in the City. She stated that in her opinion, the hardship is more the viability of the lot. She stated that she can respect the neighbor's situation, however, she does not see a diminution in value because since the purchase of his building a few years back he has seen an increase in rental profits post Covid. The City of Concord is at a 0.01% of available rentals. It will be a long time before they find a loss of rent. She does not see that as a reason to deny the variances.

Mr. Monahan stated that the economic claims of hardship could not be the only claim of the applicant, that they needed some evidence or supporting record.

Chair Carley stated that the case law states that the Board can rely on their own knowledge and understanding of local conditions, and that the Board can ask for technical backup from experts but is not required to. The Board can make a decision without getting a pro-forma if they understand the question. He continued that is not a 100% consistent with what the City Attorney said, but the Board is entitled to rely on what it knows, which includes property values.

Ms. Perkins stated that if they do not get the tax credits, the project doesn't move forward anyways.

Mr. Monahan stated he understood, but did not want to make it contingent on that for approval.

Mr. Winters stated that the City Counsel said that the Board can consider economic viability, but stated that the Board shouldn't just take the applicant's word alone, without critically analyzing what they are saying.

Ms. Perkins stated that was more of a situation when someone was claiming a diminution of value compared to proving a diminution in value. In this case they have a clear statement that they need all of these things in order to be approved for these credits.

Mr. Monahan stated it was the applicant's statement that without this variance they do not have a project without it.

Mr. Winters stated that it is not like he is a lay person or homeowner claiming economic hardship, in this situation the applicant is someone in the profession who is credible with the details, and Mr. Halle's an expert in his profession as far as the financing issue, so it seems to be credible.

Chair Carley stated that he agreed with most of what the Board has stated. He continued that on the subject of diminution of value, if someone can do something within the confines of the ordinance and that results in the diminution of value to the property next door, that is not something that the Board has any control over. In this case, they could build a commercial building that could diminish the value even more, but the Board is looking at something that is less of a burden than could be imposed without a variance but for the FAR requirement. He does not think it is irrelevant, that the ordinance would allow them to build what they propose by right for another allowed use. The FAR requirement appears, in this case, to be an anomaly in the ordinance inconsistent with all of the other requirements for the district.

Mr. Monahan stated that without the variance they could not build it.

Chair Carley stated that they could not build it as high, but they could build, and if it were an office building they could build it as high.

Mr. Monahan stated that they are not asking to build an office building, they are asking to build something that is seven stories high, where if they built it to the ordinance ratios it would not be as high.

Chair Carley stated he agreed. That is why he made the reference to the office building.

Ms. Perkins reiterated that they are within the 80 feet.

Code: Mr. Hall stated that was correct and that if it was all office, they would not need a variance.

Chair Carley stated that the ordinance is an anomaly, and in his opinion, the ordinance was not intended to prohibit building out to the property line and up to 80 feet. It is just because they want to use it as an apartment house. There is nothing about an apartment house that is any more injurious to the interest of the neighbors than would an office building.

Mr. Monahan stated that Chair Carley did ask the question of why the ratios are what they are. Chair Carley stated that it seems no one knows the answer to that and in his opinion, he feels it is an anomaly in the ordinance. He also stated that when the Board finds a true anomaly in the ordinance, that is a place where the Board should consider granting the variance.

Mr. Monahan stated that the ordinance was looking for shorter residential facilities.

Mr. Winters added that it could be that they wanted more office use rather than residential use.

Chair Carley stated that it could be, but that there are no prohibitions to apartment uses in the downtown.

Mr. Winters stated that even Mr. Hastings was unsure of the ratios because he calculated it as the total, but in his footnote, he noted it might be lower.

Code: Mr. Hall added that if he excluded the first floor, since it is not residential, it could be lower.

Mr. Winters stated that Mr. Hastings calculated the first floor, but then noted that maybe it is lower if they calculated only the residential floors.

Ms. Perkins reiterated what Chair Carley said in that it could be an anomaly either way.

Code: Mr. Hall stated that the FAR could come more into play with a larger acre development, such as a 14-acre lot.

Chair Carley stated that is a not a place where you would have a zero-lot line situation. He does not feel that a literal enforcement of the ordinance is justified in this situation. He does not feel it is an easy question to parse out intellectually.

Mr. Winters stated that even the neighbor mentioned that it was not the as much about the height as his concerns are more about the setbacks.

Ms. Perkins stated that Mr. Lee has had the benefit of an empty lot next door. She stated that she feels it does not takeaway from what this property has the benefit to become.

Chair Carley stated that if you take the FAR on its own, the hardship is that they can't do anything that the ordinance allows without a variance. He felt that the Board heard testimony that the location, both economic and physical, creates the peculiar characteristic of the lot. Clearly the ordinance does encourage the construction of residential uses in the downtown. He is inclined to approve the variances.

A motion to approve the variances was made by Ms. Perkins, seconded by Mr. Winters. Mr. Monahan reminded the Board that there was expert written testimony finding no diminution of value from an expert in the field. The motion passed unanimously.

0176-2024

64 Regional Drive; *IN- Industrial District*, Consolidated
Communications of Northern New England, LLC, Owners:

Applicant is asking for an Equitable Waiver for a storage building/shed that was constructed around 1990.

Ian Morin with Morin Contracting testified on behalf of the applicant. Mr. Morin stated that the applicants are looking to expand their parking lot and during that process the City found that the storage shed that was constructed 35 years ago is encroaching the side yard setbacks. The proper permitting was done and they believe this was just an error. They are seeking a waiver. The abutting land has a steep drop-off in that area, so most likely there would not be any development in that area. It does not appear to be affecting the neighbors, as it is in a wooded area.

Mr. Monahan asked how much it would be to move it in order to be conforming.

Chair Carley stated that it would have to be demolished and rebuilt.

Mr. Morin stated that it is about 5 feet over. The structure is about 10 feet wide.

In Favor: None.

In Opposition: None.

Code: Mr. Hall stated it was discovered during a site plan review, and they are asking for an equitable waiver which makes sense in this case.

DECISION:

Chair Carley stated that the situation meets the criteria, and that this was an honest error at the time that it happened, and the difficulty is in moving the building.

A **motion** to approve the equitable waiver was made by Mr. Wallner, seconded by Mr. Winters; passing unanimously.

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

A **motion** was made to approve the April 3, 2024 Finding of Facts by Mr. Wallner, seconded by Mr. Monahan; passing unanimously.

A **motion** was made to adjourn the meeting at 8:21 pm by Mr. Wallner, seconded by Mr. Winters; passing unanimously.

Respectfully Submitted by
Deborah Tuite