CITY OF CONCORD

New Hampshire's Main Street™

Zoning Board of Adjustment

May 8, 2024
MEETING MINUTES

Attendees: Chair Carley, Nick Wallner, Andrew Winters, Laura Spector-Morgan, Mark Davie

Absent: Tedd Evans, Brenda Perkins, James Monahan,

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

The Board heard case 0170-2024 out of order of the agenda.

PUBLIC HEARINGS

0170-2024 **Shaker Road (411/Z 49/ /); *RM – Medium Density Residential District*, Aaron Leclerc and Cara Scala, Owners:**

Applicant is requesting to construct a single-family home (allowed use) as well as a "manufacturing, fabrication, and assembly industries" on a lot within the Medium Density Residential District (RM) at property located at Shaker Road (Map 411Z, Lot 49)." Applicant requests a variance from Article 28-2-4(j)(L)(1) of the Table of Principal Uses to allow 2 principal uses on a lot.

Attorney Ari Pollack testified, stating that the owners, Aaron Leclerc and Cara Scala of Concord, intend to relocate to Shaker Road to build their primary residence on 17 acres of unimproved property. They are seeking permission to construct a 4,000 sq. ft. detached accessory structure, to support Aaron's boat kit design and fabrication business. Attorney Pollack pointed out the location on the map, along with the revised site concept plans. He explained that Aaron sells prefabricated pontoon kits that are for self-assembly by the purchasers, and most of the fabrication involves drilling holes patterns and other assembly assistant features. The subject property is in the MDR District, where almost all commercial uses are prohibited. Major home occupations, businesses out of your house, are allowed, and they are allowed by special exception by the Board. They had applied originally for a Special Exception. A Special Exception can be approved if the criteria of Article 28-5-30 c are met. One criteria restricts the size of a detached building to 250 sq. ft., which is very small. They are seeking permission to construct a 4,000 sq. ft. detached structure.

Originally, they filed for a Special Exception and City staff contacted Attorney Pollack advising that a variance from the accessory building limit was not available, and that a straight variance for a different use was needed. They repackaged the application to seek a variance from the land use table to pursue a manufacturing, fabrication, and assembly industries use in the MDR district, looking for a home occupation with a bigger building. The Supreme Court reviewed a case from New Ipswich in 2011, where almost the same occurrence was presented. The variance was granted from an exception criteria, and then the exception was considered and granted. The comparison is very similar. They are hoping to rely on that to bypass the Planning Board to have a home occupation approved and to then pursue a building permit accordingly. Procedurally, they are left with applying for a variance for manufacturing, non-residential use of the property, and then going to the Planning Board with a non-residential element of a site plan. It will still have a house, which will be their primary residence, and there will still be very little development on 17 acres.

Relative to the business that Aaron operates, in that it is not a retail business, there will be no customers who will come to the property. Finished parts are either delivered or shipped elsewhere. The variance would allow for a single 4,000 sq. ft. commercial building, that includes the ability to keep doors and windows closed, keeping all fabrication noise contained, along with an area to store product. Aaron is the landowner, and proprietor and sole employee. The subject lot is oversized by all standards for the MDR district, and the placement of the outbuilding would comply with setbacks and coverage requirements. The products are shipped so there are no traffic issues or parking requirements beyond his residential use. He would need a site plan review from the Planning Board and items of technical compliance would be reviewed there as well. Signage would be for the purpose for wayfinding for deliveries.

Attorney Pollack articulated the arguments in favor of a use variance from the land use table. The hardship is that property is in the MDR district and the minimum lot size is 40,000 sq. ft., if you don't have municipal sewer, and 12,500 sq. ft. if you do have a municipal connection. Given smaller lot sizes, multiple principal uses would probably present interferences with surrounding abutters, however, in this case even without the sewer, you are 17 times the minimum size and almost 60 times the minimum size if municipal sewer is available. The presence of the wetlands really reduces the availability to subdivide and develop the property for the principal residential development uses. The hardship is that they are looking for a major home occupation and couldn't ask for a special exception, but they really line up well with the variance criteria except for one building, which is far less development than what could be asked for residentially on the lot. The reasonableness of the use is that the variance for a commercial use is reasonable in that it amounts to a major home occupation that would have been allowable by Special Exception. The public interest is served because a commercial non-residential building will not irritate those that surround it with permitted uses, and it fits with the trend of working from home. Spirit and intent of the ordinance is met as home occupations are allowed. This lot is significantly larger than the minimum. The business, residence, and the neighbors could co-exist. There is no evidence that the surrounding properties would suffer any devaluation as a result. A building on a large lot would not impair anything around it.

Ms. Spector-Morgan asked what is going on around the property, with large lots of empty land.

Attorney Pollack explained that there are residential properties and some unimproved lots.

Mr. Winters asked for clarification on the requested variances regarding use.

Attorney Pollack stated that because they cannot request a Special Exception for the home occupation business they need a variance for two principal uses, one that is residential (which is allowed) and one that is non- residential (and not allowed and needs a variance).

Ms. Spector-Morgan clarified it was because they could not request a Special Exception criteria.

Attorney Pollack concurred.

Mr. Winters sought clarification that it is phrased as two principal uses, but one of those uses it not allowed.

Attorney Pollack agreed, one is residential and is allowed, and one is non-residential and is not allowed without a variance.

Code: Mr. Hall stated that the ordinance allows only one principal use of the property.
Mr. Winters asked why they don't need two variances, one for the two principal uses, and one for the unallowed use.

Code: Mr. Hall explained that they need a variance for the business use, and thereby that authorizes two principal uses.

Attorney Pollack suggested that if it were phrased to approve a variance for a non-residential use which results in two principal uses, it may cover it adequately.

Chair Carley asked for clarification that all the frontage for the lot is on Shaker Road.

Aaron Leclerc testified, stating that to be the case.

Chair Carley pointed out that the lot has wetlands, and asked if it were reasonable to surmise that subdividing and developing this lot would be extremely difficult

Attorney Pollack stated it would have its challenges.

Mr. Winters asked if all the surrounding lots are unimproved or lightly improved.

Attorney Pollack pointed out on the map the lots that are improved, which are mostly residential lots on their frontage.

In-Favor: Ralph Wilson, abutter to the north at 68 Shaker Road, testified. He stated that Mr. Leclerc has been very forthcoming with letting them know what is going on. He explained that this proposal is a lot better for them instead of a residential development. The Board allowed a variance for a dog-kennel next door, after they had operated it for over 30 years. He cannot see why he should not be allowed.

Joe Richard, abutter, 74 Shaker Road, testified. He stated the he welcomes a small business more than a development.

Donald Cadorette, abutter at 65 Shaker Road, testified, stating that Mr. Leclerc came and explained what he plans and is in favor of the project.

Sarah Morrison, 59 Shaker Road, testified, stating that she has no issue with the proposal. The only concern is the water and drainage that she will present to the Planning Board.

In Opposition: None.

Code: Mr. Hall asked for the condition that they meet the requirements for a Major Home Occupation because it protects the neighborhood, except for 28:5-30 C (2), which restricts it to 250 sq. ft. Lastly, he mentioned that as far as the size of the building for a major occupation, if he wanted a wood shed of that size, he would not be denied.

Mr. Winters asked what the key elements of a Major Home Occupation were.

Code: Mr. Hall explained that the use is supported by a single family detached dwelling, primarily a non-retail use, not more than 25% of the habitable floor area of the dwelling unit, (but that is only for an occupation within the dwelling). Additionally, the owner is the occupant of the property, and not more than four persons may be employed at the business, the lot shall conform to the minimal dimensional standards, retail sales shall be limited to incidental sales of goods, the use will not create excessive traffic,

noise or fumes, parking shall be available according to the dimensional standards, a single on-premise sign is allowed, and he mentioned that Attorney Pollack stated that wayfinding signs will be used.

DECISION:

Mr. Wallner stated that he does not have any issues with the project. He mentioned the Board had heard something similar a while back regarding a motorcycle business in Penacook, with minimal public access to the operation, as it was primarily internal. He mentioned that he is leaning to support the variance.

Mr. Davie asked for clarification that the variance is for two uses, and the commercial use on the lot. He stated that he does not have an issue, and would support Mr. Hall's conditions.

Mr. Winters mentioned that at first, he was a little suspicious with the idea of putting a manufacturing business in, but given the explanation along with the size of the lot, and with the conditions that the homeowner will be the only employee, and it is only the prefabrication of parts that will ship out, he would be ok with the variance.

Ms. Spector-Morgan commented that typically she cannot find a hardship for a use variance, however in this case, given that the use would be permitted for a home occupation, but for the size of the building, she would be willing to grant the variance with the condition that it comply with all of the other special exception criteria.

Chair Carley agreed.

A **motion** was made to approve the variance, with the condition that the applicant meet the criteria of a Major Home Occupation, except for 29-5-30 (c) (2), by Ms. Spector Morgan, seconded by Mr. Wallner: passing unanimously.

Chair Carley stated that the Board would hear the remaining cases together.

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.

0133-2023 **270 Loudon Road; *GWP – Gateway Performance District,* Onyx Steeplegate Concord LLC, owners:**

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

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

Attorney Ari Pollack, testified. He asked if he could present both cases in succession, with a reopening and refresher of the prior application. In attendance for Onyx Partner's Limited, is Doug Richardson, Vice President of Development, Joe Morrill of Jones & Beach Engineers, as well as, Mark Marchisano, Costco's Director of Development. In January, they had gone through a presentation with the Zoning Board, explaining that Onyx is proposing a complete redevelopment of the Steeplegate Mall property along with Regal Cinema property. The mixed-use proposal includes three multi-family residential apartment buildings, six new or existing retail buildings, the preservation of an existing fitness use, and the preservation of an existing commercial indoor recreation facility (trampoline park). All the variances they are requesting relate to lot 40 of the former Steeplegate Mall property. The applicant's concept proposes redevelopment with a re-subdivision that would place the existing Appleby's and the existing bank on separate lots with separate ownership. These two properties are not participating in the redevelopment but they are part of the existing condominium. If the owners of those two lots agree, the condo would be disolved and those lots would stay as they are now and continue to operate.

He continued, mentioning that the redevelopment would be bisected by two proposed streets. The streets are proposed to be public, with connecting driveways and isle ways for the interior development and uses of the site. Onyx is presently an applicant for a Comprehensive Development Plan for a subdivision in the Gateway Performance District. It was presented to the Planning Board last fall and tabled for zoning relief. They are here for the following pieces of relief: height relief to allow 5-story residential buildings on two of the multi-family residential buildings; for a tire center to be allowed within the Costco footprint as an accessory use; minimum lot frontage for the bank property to be calculated around a corner instead of a linear strip; maximum lot coverage to be increased from 85% to 91%, as current coverage exceeds that at 94%; for a slightly wider driveway isle of 30' where 28' is allowed; taller, therefore fewer lampposts in the Costco and JC Penny parking lots; narrower spaces in the loading dock; exception to the screening of refuse contains, that otherwise would be required, proposing a compactor and not an open dumpster.

He explained that the first variance for maximum height relates to three of the multi-family residential buildings: Building RI, proposed to be 5 stories with a height of 58 feet; Building R2, is proposed to be a four and five-story mixed use building with some non-residential commercial space, and a height at 59' 8"; The third would be a four story building, 48' height, which needs a slight variance. The maximum height in the GWP district is 45'. They are seeking variances to get to a total height of 59'.8", with different proposed heights for each building."

He articulated the hardship aspects of the property, in that the subject property is a semblance of tracts comprising a redevelopment with a common theme, and a Comprehensive Redevelopment Plan has been proposed to the Planning Board. The proposed multi-family residential buildings are not near other residential uses, and can be placed well within lot setback and other buffering concerns. The unit count allows for placement of a walkable village and an atmosphere of open spaces and amenities. If they had to spread the residential footprint to achieve smaller shorter buildings, they would end up with placing the residential uses much closer to the boxed uses, and would lose the ability to preserve open space and space for other proposed amenities. Their focus would shift from a focus on the community environment to a maximized density environment. Simply, they cannot fit it all, so they need relief on height to allow them to go up instead of out and to the sides. This creates walkability, with public amenities, and a waterfront area. They have talked with the Conservation Commission about a recreation area, which could include a sitting area and possibly a dock.

He discussed reasonable use, as the building's heights are reasonable, in that the district allows multifamily use. A four-story building is allowable, so a fifth story doesn't' change much when you consider other uses around it, which are antiquated relative to the commercial uses in the district. Zoning relief would not have interference with the redevelopment of the boxed stores, with sensible separation for the necessary larger truck traffic and not intertwined, which allows a more spread out residential area.

The public interest in redeveloping underperforming properties, outweighs any concerns over allowing another floor of building height. There is substantial community interest in developing modern, safe, affordable rental housing, especially in a location that has proximity to all the commercial services along the Loudon corridor. Public transportation exists, as well as arterial public roadways operated by the City and the State. As to the spirit and intent, the requested height variance is consistent with encouraging redevelopment sites in the GWP District. This type of redevelopment project needs the flexibility of variances to fit a successful program. Constrained by the ordinance, might result in unfavorable or undesirable projects. He continued, noting as far as surrounding property values that nothing would suggest that a fifth story would have any more impact compared to a four story. The redevelopment of a tough property would only enhance surrounding properties.

The variance relating to the table of principal and accessory uses is relative to the Costco Center. The plan is to have their prototypical retail facility, which includes accessory uses such as gasoline sales, pharmacy, optometry, and garden centers, all of which are permitted uses. A tire center is proposed and is not an allowed principal or accessory use, therefore they are looking for an accessory tire center. He showed a photo of what the Costco Tire Center would look like, which is entirely contained in the footprint. It is self-contained, and no different than other self-contained uses in the structure. It is also noise contained. Sears had a bustling tire center at the Steeplegate Mall. This is an integral part of the Costco model. The retail nature of the whole facility is a permitted use. It is reasonable because it is consistent with other accessory uses that are allowed in the district and they have existed in other big box retailers in Concord. Sears was not the only one, as Sam's Club has a tire center as well. This is typical to see with these one-stop-shop experiences.

He continued, mentioning that public interest is served by redeveloping an underperforming property that makes sense to consumers. To the spirt and intent of the ordinance, a self-contained center will not run afoul in that the uses are not allowed. If it was entirely a tire center, with outdoor storage, that would be understandable. There are garage doors that go up and down and there is enough space for safety, and intended to shield what is going on indoors. There is no evidence to suggest the any of the surrounding

properties would suffer any material devaluation if a tire center that faces the Costco parking lot, and that it is largely indecipherable, was permitted.

He spoke about the minimum lot frontage request, which relates to their desire to propose to the bank parcel that they could and would benefit by being an independent lot, and dissolving the condominium association. The lot is 6/10th of an acre, and is currently owned a as condominium land unit. There is a proposal to be separate if they accept it. They are not asking to reduce the amount of road frontage required, rather they are asking if they could measure around the corner. They are not asking for a deviation from the dimensions. The hardship is that it is a corner lot and the unique circumstance that it is a public road. It is reasonable, because both roads would be public streets, and they would accept a condition that the road needs to be built and maintained by the City so that it would be counted as public road frontage. Public interest would be served by allowing them to pursue redevelopment, and the spirit and intent of the ordinance was to have enough frontage so that you were not constraining neighbors or abutters, and can accomplish in the same manner as it is now.

He mentioned that he does not feel the surrounding values would be impaired as there is no physical change to the layout of the frontage. It would facilitate a much larger project that would have significant beneficial impact from an aesthetic perspective.

As far as maximum lot coverage, he stated that that the existing lot coverage stands at 94%. They are asking for a variance up to 91%, as they might be able to do a little better. They will need to work with City staff on a classification of the road, width of the road, and setbacks to be able to determine that. The hardship is that the lot is intended to accommodate both a new use, Costco, and an existing use, JC Penney. JCPenney has a long-term lease and would like to stay. That requires flexibility for parking coverage. The lot is currently non-conforming in the 94% coverage, and they are looking to improve on that. He feels that it is reasonable to allow a permitted use to remain, JCPenney, and allows better conformity.

Public interest in the redevelopment of an underperforming property really outweighs a modest exceedance of lot coverage. If you take all the properties together, they can get it down under 85%. In that specific spot they cannot. As to spirit and intent and public interest, they are doing the best they can as far as the non-conforming existing condition. In speaking to surrounding properties values, he mentioned that no one would object to less coverage, but room for improvement which benefits those around the project.

He then spoke about the driveway width variance, explaining that the applicant on the Costco property is proposing 30-foot-wide isles, which is part of the Costco program. This amounts to two additional feet, which serves larger shopping carts and prioritizing safety for the consumers and trucks. He then discussed how the driveway would be used.

Mark Marchisano, Director of Development for Costco, testified. He explained how Costco operates, stating that the isles need to be 30 feet for safety and access for the trucks and customers. So, for operational purposes, they require two feet more.

Attorney Pollack continued, stating that public interest is to redevelop underperforming properties, and two feet seems very small. The spirit and intent of the ordinance encourages the flexibility of design, and is intended to encourage redevelopment. He spoke to the value of surrounding properties, and stated that no abutter would appreciate the difference between 28' and 30' of width, and less congestion would be beneficial.

He then showed a picture of a Costco in East Lyme, Connecticut, explaining that the lighting is very well designed, with no spillover onto adjacent properties, and all achieved with 36'-6" lamp posts. He mentioned that the density in the compliant 25' diagram is significantly denser than the 36' diagram, which results with 40 poles instead of 89 poles. This height helps significantly with obstacles, and the costs of materials and construction, as well as power and maintenance, which is the hardship. It is significant gain

for little burden. Costco maintains these sites without spillover and fewer obstructions and the ordinance says you cannot do it. It is quite reasonable to have fewer, yet taller, fixtures with the cutoff features. A lighting plan and analysis would be part of the Site Plan through the Planning Board. He mentioned the substantial justice and spirit of the ordinance, where they are in the performance district where the key is to allow for flexibility. As to the value of surrounding properties, he mentioned he would be concerned if the fellow next door was illuminated, however the light is so well contained. The existing light posts at the mall are 40 plus feet.

The ordinance stated that the design standards for loading spaces be 14', but Costco only requires 12'. He then showed a graphic, where a width of 12' works. He discussed that the loading bay aprons get you to a fully compliant width, but if you were to measure each stall, they would be less. He then discussed hardship, stating that Costco knows itself best and the ordinance is creating a hardship that may make sense in other situations, but when applied here, it does not. It is just requiring more than what is necessary. The variance has the total loading dock width, and that they are just slicing each bay more narrowly. Costco operates hundreds of these sites and they know their trucks and capabilities. As far as public interest, and spirit of intent, the district allows for flexibility for a serious redevelopment of the property. He did not feel any abutter would appreciate the difference of the bays.

He then spoke to the screening of the refuse containers. Costco uses a self-contained trash compactor that is picked up and hauled away, and a new compacter replaces it. There is no dumpster with open flaps. It is not unsightly, it does not have an odor, and there are no papers flying all over the place. The request is not to have screening on two sides, and to leave it exposed. The hardship is that they are being asked to do something they do not need. They have a unique disposal system and they do not use dumpsters, which is a different situation, and different than what the ordinance is intending. There is reasonable use as it is self-contained, and the type of flexibility the district is allowing. He does not feel that anyone would challenge that the property values issue, as no one would prefer a dumpster over a compactor.

Attorney Pollack then discussed the repackaged parking variances, which was previously withdrawn to allow a clearer presentation of their request. He passed out a packet to the Board. There are two reliefs being requested, one of which are straight parking variances. Secondly, there is a section of the ordinance that allows the Planning Board to consider alternative parking arrangements, and specifically the building of fewer parking spaces for the program of uses of what is being proposed. It comes with a catch, in that the Planning Board can approve less parking spaces, but you must show the area that you could build those spaces if it proved to be an issue. Additionally, later down the road the Zoning Administrator gets to decide when and if you may need more. He stated that they would have to save space for future parking spaces that they don't need, and a situation where it puts the controls in the hand of a third party who is not the applicant, the lender, or the developer. He reiterated that they are asking the Board for two forms of relief, first which are variances for parking. Alternatively, if the Board doesn't feel those variances will work for all of what they are asking, the Board could relieve them of having to show that the extra parking that the Planning Board finds that they do not need to build, as it is unnecessary and does not need to be shown, so they don't have this hanging over in case the Zoning administrator requires the construction down the road.

Chair Carley asked if the Board were to grant a request for fewer parking spaces, would there be no need to address parking variance #2.

Attorney Pollack agreed, as these were alternative forms of relief.

Chair Carley stated that the request in variance #2 strikes him as a potential legal problem.

Attorney Pollack explained that he spoke with Zoning staff and did work on this concept. They did land on this as an alternative form of relief as an option. He continued, stating that consequently, they are asking for variances to the table of off-street parking requirements. The map shows parcel 40/40-1, which is the JC Penney lot that is paired with Costco. They are asking for a variance to allow 1020 parking spaces,

where the ordinance would require 1124 spaces. Parcel 40-2, the multi-use lot, will have two multi-family buildings, with R2 having some retail spaces, retail outbuildings, the existing trampoline park and the health club. They are asking for a variance to allow 1019 spaces, where 2055 are required. The Appleby's lot will stand alone, and has 56 spaces where 68 are required (existing now).

The Board asked for clarification as the number of parking spaces has changed since the previous application.

Attorney Pollack and Doug Richardson both stated that they have increased the parking.

Attorney Pollack continued, stating that the rest of the parking complies. The cinema lot complies. The waterfront lot complies. The developer, since the last meeting, made the determination to place underbuilding parking under all three residential units. That is why the variances are seeking a smaller number of spaces. That comes at a great expense with other challenges, but they are working hard to ask for the minimum relief necessary.

Attorney Pollack stated that there will not be enough underground parking for every unit, but there is a significant number: R1 would have 176 underground spaces; R2 would have 82 underground spaces; R3 would have 100 underground spaces, which represents a significant amount of understory parking.

He then spoke about hardship, and what the district was speaking about as far the encouragement of mixed use and the compatibility of the uses that they are proposing. He described a situation where someone that lives in one of the building may visit many of the onsite amenities, and probably would not have moved their car once. This is a large shared parking benefit and exactly what the ordinance had in mind when talking conceptually about alternative forms of parking analysis when building parking spaces. The applicant sought a parking analysis from Vanasse & Associates, which was prepared with reliance on the ULI Institute's parking manual, which is the gold standard. That memo concludes that all peak and non-peak demand from the development would be satisfied with the proposed parking.

Ms. Spector-Morgan asked if the parking study looks at it as a trampoline park, and what if it becomes something else.

Attorney Pollack stated that it does, and further stated that the proposed lot 40-2, mixed use lot, the calculation and classification for the trampoline park was as a commercial indoor recreational facility, which could be anything including an indoor stadium. There are several uses that could fit in that category that impart far more than an indoor trampoline park. That area is 35,000 sq. ft., and the ordinance requires one space per 50 sq. ft. The math comes out to 703 parking spaces that the ordinance would require for the trampoline park. He explained that he attended a birthday party, on the coldest day of the year on January 20, 2024, at that trampoline park. He took a photo of the parking lot and showed the number of cars in the lot, stating that anecdotally, there were nowhere near 703 cars parked there. They have allocated 81 spaces for the trampoline use. The user of the site, Altitude Trampoline Park, stated that they only needed 50 spaces. The Planning Board would say that you could build fewer than the 700, but then he would need to show where he would have space for the other 650 spaces.

Mr. Winters stated that they are probably looking at it as a stadium and it's closer to a gym.

Code. Mr. Hall stated that City staff is aware that the ordinances need to be amended, and if Concord Next had gone forward, this would have been approved.

Attorney Pollack explained that there is a similar issue with the fitness center, Concord's standard is one space for 120 sq. ft., which would require 292 spaces, which is wildly over what would be expected at peak times. This does not capture from those who live there, those who might use public transportation, where you would end up with a far lighter load. They have allocated 88 spaces, where 292 is required by the ordinance. With the AVI analysis using the ULI parking standards, they determined that the peak periods

were December-weekday evenings for the residential demands, and for the retail and commercial demands, it was December weekend afternoons. The variance is reasonable, because requiring them to overpark dramatically is a direct attack on the development program. Overparking requirements would be inefficient, wasteful, and inconsistent to redevelop properties in a performance district where it is intended. Speaking to the spirit and intent of the ordinance, and the justice, they are building fewer spaces, and right sizing the parking. The spirit was intended to have enough and not to have too much, and it would make no sense to have a project overdo it. As far as surrounding values, if it can fit, then there is no impact on surrounding properties.

Lastly, Attorney Pollack spoke about the alternative parking arraignment, explaining the largest issue is how to show the 700 parking spaces, then to say to a City Administrator, you figure out if you need it someday. How could a developer ever plan for that. To his knowledge, he has not seen this done, except for a few smaller parking situations. The kind of parking numbers here would be unmanageable, unfinanceable, and no lender would say no problem, and allow a developer to build 1,000 more spaces into the performa. He stated that it would not happen. The hardship is that the ordinance is asking for something that doesn't make sense, and why would you build it if it was deemed unnecessary, and you could satisfy the Planning Board that you don't need it all. Why would you build it or stand to build it if it is unnecessary. Is it reasonable to be excused, he believes. The variance would allow the type of redevelopment with an appropriate number of parking spaces, but not what the ordinance thought was an appropriate number years or decades in the past, where times have changed, and without the benefit of a shared parking analyses, and without the concept of Concord Next, which may be off the rails permanently. That draft says that the Planning Board can find the appropriate number of parking to sufficiently accommodate the parking needs of the principal use, and it does not say to show the extra number of spaces.

Mr. Winters asked for clarification about 40-2, where it says they are providing 1019 spaces, but then in the parking study shows providing 1277 spaces.

Doug Richardson explained that the study includes the northern third building, which on its own is fully compliant, and the report analyzed the whole eastern portion of the site. They are providing 30% more than peak, not just meeting it, they are providing more for the eastern section.

Mr. Winters asked if there would be crosswalks.

Both Mr. Richardson and Attorney Pollack agreed that there would be crosswalks.

Attorney Pollack finally stated that they are asking for typical parking variances, but also asking separately for the alternative form of relief if the Board didn't like the proposal for traditional parking spaces. They wanted to cover both avenues and still have a package that would be accepted by the Planning Board.

Code: Mr. Hall pointed out for clarification that the road by the bank lot would not be built by the City. The City may accept the street, but it would be built by the Developer. Also, the City Planner did say that the ULI is the standard.

In Favor: Mr. Schweiker testified. He stated that the problem for him is with the hardship. They bought the lot for $18,000,000. They are only paying $360,000 an acre. His lot with no snowplowing, is paying an assessed value of $818,000, which is 2.5 times as much. He continued, stating that their problem is that they are stuffing too much on the lot, and would not need the variances if they built what the lot could support. He agrees with the tire center, as it is not unreasonable. He remembers Sears had a tire center. The wider driveways and loading dock widths are reasonable. As far as the compactor, he mentioned that they could create a condition that they would need to come back if they changed their solution. You can still get a smell from a trash compactor, but it is better than a dumpster. If the lighting is in the ordinance, they should have to prove to the ZBA why they need less, why wait for the Planning Board. As far as lot coverage, it sounds good, however, permeable pavement drainage is supposed to go directly into the

ground. He suggested that maybe the Board should think about a general rule, and anything that is over 85% would be permeable. As far as the height, they are stuffing too much on the lot. As far as the parking, he questioned the request to reopen public testimony, but thought they originally didn't hear any.

Chair Carley stated that originally it was all one case, and then the appellant withdrew the parking portions. Then they came back with a newly noticed case that was just parking. It is a separate case.

Mr. Schweiker stated that they never had a hearing, so it is not a reopening. It is new testimony. It is supposed to be a legal process and the City should get it right.

Mr. Winters stated that just for the record, they are accepting testimony tonight.

Mr. Schweiker lastly stated that the problem he has with Costco, is that they build huge mounds of snow, so there would be less space for parking in NH than in Florida. As far as the health club and the trampoline park, what if the trampoline park goes out of business, and a casino goes in and they need more parking. The Board should tell them they need to provide the space so someone else does not come in and say they are grandfathered in and that they don't need to change for a more extensive use.

Allan Herschlag testified. He stated that he lives in Concord, and brought up several concerns with the testimony and the variances. He stated that it was noted by Mr. Pollack that it was being proposed as a complete redevelopment of the Steeplegate property and he objected to that characterization. Phase II of the Concord Next proposed zoning is an example of a complete redevelopment project. This project removes parking spaces and adds building. Tuscan Village in Salem is an example of redevelopment. In section 8, page 4, number 8, they discussed the reducing of parking spaces, and mentioned Concord Next. If you look at Phase II, from Aug of 2022, they had a very specific proposal for how the mall would be redeveloped. However, the City has abandoned the form-based code or Concord Next Plan after spending $200,000. He would hope it would not be a consideration in granting the variances. When looking for relief for non-performing districts, it should not overshadow other ordinances that protects the public. As far as the spirit of the ordinances, providing the screening of a trash compactor is to enhance, and hoped they would not grant the relief. Recently, he was in Portsmouth at the Brick Market on Penthouse Street, and on the side area they have tables, and some utilities which are blocked by an oversized 1950's hood from a car, and the other utilities were blocked by a sculpture. It should not interfere with the removal and replacement of the compactor. As far as the lighting, he would rather see much shorter light poles, however, if they granted the variance, wondered if it would lock in the Planning Board. He was concerned about light pollution.

Gail Page testified, stating that she noted that in her observations around Concord that the commercial areas have an excess of parking and spoke towards reducing the numbers. However, she is concerned about global warming and interested in reducing the asphalt/coverage, which would be advantageous to everyone. In this instance, they are swapping parking for buildings.

Kellen Brien testified, stating that he is in favor of the development, and felt that the relief is related to codes/ordinances that he may not quite understand. Mixed use makes a lot of sense, and the biggest reason he is in favor for granting relief, is because he wouldn't notice a difference between a 45-foot building versus a 65-foot, or the reduction in parking. However, in totality, if he compared the eyesore of the Steeplegate Mall, it would be very noticeable. He is concerned that if the Board is not willing to work with developers and businesses, and follow arbitrary codes, it would be a hindrance. It makes sense to have flexibility, especially since Concord needs more housing.

In Opposition:

Laura Gandia, Attorney of Devine Millimet, on behalf of Silva Holdings, LLC, (unit 3/TD Bank), testified. She handed out a packet to the Board. She stated that the condominium association has three units consisting of: the Steeplegate mall (unit 2); TD Bank (unit 3); and Appleby's (unit 1). She stated that the

condominium documents require for termination a unanimous consent, which has not been given, and they do not allow for certain uses, including residential uses.

Attorney Gandia stated, that as far as the frontage variance, her client did not sign the variance application to go forward, and they do not consent for this application to move forward. The owners have not signed, so she stated that she did not believe that the ZBA Board had jurisdiction to hear the application, as the application is not complete. She asked the Board not to entertain the application, and specifically not to deny it in case her client ever came back for a variance request.

Attorney Gandia went through a list of points she wanted the Board to consider. She asked that the variances not be viewed in isolation of the overall development scheme of the project. She discussed how variance requests affect the design and appearance of projects, which she felt in this case was significant. She then discussed the GWP District zoning ordinances, and discussed aspects specifically related to this case. She mentioned the City of Concord's planning documents, including 2020 Vision for Concord, NH, City Villages Master Plan, and summarized some of those details. She also talked about the Master Plan for 2030, as well as the Pedestrian Plan of 2017.

Attorney Gandia then commented on the request for parking, pointing out Attorney Pollack's description of the alternative way to look at the parking request, where she did not agree with his assessment. She discussed the performance standards of the ordinance's parking requirements, 28-7-12, which states that the parking requirements of 28-7-2 d must be met for all uses. She also mentioned 28-7-11 for alternative parking arraignments. She was concerned that testimony mentioned that some of the ordinances are old or outdated, and felt that was a dangerous analysis for the Board to consider granting variances that they don't like, as it says they must meet the parking requirements, and that there is a proper mechanism for changing ordinances.

Mr. Winters asked if when she referenced must, that it was her view that they don't have the authority to grant a variance.

Attorney Gandia stated that her position was that the Board could not because the language says must, and it defaults to the conditional use criteria for the Planning Board. She discussed section 28-7-2 (e), which talks to the different relief option. She discussed their request for a reduction of 1236 spaces, which she felt was significant, and then went through each area of the variance criteria contending that she felt none of the criteria were met. She stated that there was a concern around congestion, traffic, and public safety with a reduction of spaces. She stated that there was no evidence presented by a real estate lawyer or developer that it would not impact the surrounding properties, and that her client is concerned that it is going to affect their property value.

Chair Carley asked if she had anything to back up their claim that it would affect their property value.

Attorney Gandia stated that she does not feel that she requires backup documentation. The reasoning is that as far as parking, it is a 58-acre space for all three units, and there is overflow parking that the bank utilizes. If you take her lot out, then they do not have that parking.

Mr. Winters asked if a project such as this would improve the bank with more potential customers, thereby improving the bank's property value. As it stands now, the mall is basically shut down and he mentioned that doesn't help and more than likely hurts the bank.

Attorney Gandia stated that if there was a properly designed project, not one asking for 10 variances. This project is looking for significant reductions in traffic, lighting, and aesthetics. She stated that her clients view is that as a customer it can be a nightmare to get in and out of there, and with limited parking, they may not want to go to TD Bank.

Chair Carley asked if her client has enough parking on her parcel to satisfy the ordinance.

Attorney Gandia said that according to Attorney Pollacks calculations, that they do.

Chair Carley asked if they have a contractual right to park anywhere else.

Attorney Gandia stated that as far as the common area space, they do.

Chair Carley asked if that was stated in the condominium documents.

Attorney Gandia stated that it was. She then spoke about the unnecessary hardship is the uniqueness of the property. She stated that she did not hear a lot of evidence of what makes the property unique, as it was more about the project or the costs. The uniqueness of the property is supposed to be the focus. If the Board were to view the property as unique, then that uniqueness gives credence to the fair and substantial relationship between the general purposes of the ordinance that apply to this specific property. He wants to reduce the parking, but there is nothing unique about the property. You may want this, or want that, but the uniqueness of the property does not give way to saying there is a not fair and substantial relationship, and if anything, says the opposite, given the size of the property to meet the parking demands. She stated that they may not want to provide enough parking to develop the site in a certain way.

She spoke about the second parking request, regarding the conditional use permit, whereby the applicant wants to be excused for showing the reserved land area on the site plan for the number of spaces required. She then went through the five prongs of the conditional use criteria, stating that there is not enough land allocated for future parking, and concerned about the safety aspect in the future if it was needed. She referred to how the ordinance reads, pointing to 28-7-11 B, and 28-7-12 B. She summarized the discussion, stating that the applicant is asking for a double whammy, a reduction in parking and not having to show enough space for future allocations.

Mr. Winters asked about their claim that a large percentage of the spaces is due to the odd calculations about the trampoline park.

Attorney Gandia stated that she is not going to comment whether that is a good ordinance or not. She stated that if the Board doesn't like it they can't just award it, speaking again to the idea that there is a proper mechanism to address those concerns by change the ordinance zoning. Where is the consistency in planning. She is concerned for her client that the reductions in parking will have a significant impact on her property, and reiterated that they did not agree nor consent. The condominium association is still in effect.

Chair Carley asked if her client was the owner of the property, not the bank.

Attorney Gandia stated that her client is the owner and has a lease with TD Bank. She then reviewed the variance on maximum height, and was concerned whether it would be aesthetically pleasing and out of scale, appearing massive next to the other properties. She was concerned that the buildings would be a monstrosity, stating that it was not what is supposed to be happening in this district. She was concerned that it will affect the character of the neighborhood, and that the development should be built to higher standards. She stated that her client would be directly affected.

She discussed the variance request for the table of principal and accessory uses, regarding the tire center, where it is prohibited. Again, she spoke about the five prongs of the criteria, stating that it is a balancing act, and a loss to the public far outweighs the gains to the applicant. She stated that her client has a concern over the whole design. She reiterated that there is no evidence that it won't have negative effects on surrounding property values.

She spoke about the variance for minimum lot frontage, and reiterated front and forward that they did not sign the application, therefore it is not a complete application. She stated that the Board has no authority to act upon it.

Ms. Spector-Morgan asked a clarifying question, as the application shows Thomas E. Graham, Irrevocable Trust, and Eleanor C. Graham Irrevocable Trust as the owners.

Attorney Gandia stated that her client bought it a few years ago and not sure why that was the case. She continued, stating that in addition to the proposed request, they are now saying they will give road frontage on two public streets, however there is no curb to get onto Sheep Davis Road, and no curb cut on the new proposed street, with no discussion for proposed easements allowing them access. Again, they did not consent to that.

Attorney Gandia spoke about the remaining requests for the height of the light posts, loading spaces, and the screening for the refuse containers, stating that her client will suffer negative impacts from each of those variances, going over each of the criteria prongs. They are concerned about sky glow from the lights and light pollution, safety around the loading areas, and their concerns over the unsightly containers, and the loss of value to the surrounding property owners.

Lastly, Attorney Gandia suggested that public interest was on redevelopment, but that this may not be the correct analysis for the intent. The public wants to see them done in the proper way that meet the spirit and intend and are not visual eyesores. The relief sought should be the minimum necessary to result in reasonable use in the property. There are a lot of reasonable uses for a 58-acre property. This is definitely not the minimum necessary.

Code: None at this time.

Attorney Pollack reminded the Board that the application started in January, with a lot of delays in the process. He stated that he has tremendous respect for Attorney Gandia and her colleagues. He expressed that the impasse is regrettable and unfortunate, however it is all for a reason. He had not wanted to spell it out any more clearly, but why would the operator of a bank or facility that has operated there for years, with the same tall light posts as the mall, which has seen what the property has become over the years, why would they take exception to a redevelopment of a unique 50-acre parcel. Why would they want it to stay the way it is. The answer is because their interests are different than the community. Only with those different interests would they oppose a tire center within the interior of a retail box store, the width of a loading dock, the drive width of isles which are not near their pad. The only reason to take issue is that they made a strategic decision to take issue with everything. Attorney Pollack stated that they tried to present options for the independence of the property. They clearly need to provide access and maneuverability and to some degree common infrastructure, or if they don't there won't be agreement amongst the condominium owners to dissolve the condominium form of ownership. They had tried to add the flexibility that would offer something that is advantageous to all sides of the fence. There was a description for 10 variances which must mean it is a project that is not well defined. When there are eight kinds of variances, and six of them for Costco alone, where they exist very successfully in many places. They take the risk, and they may not here. He further contended that there is no shared parking in the condominium, the reason being is that the bank has sufficient parking according to the ordinance. He banks at that bank and has never had an issue with parking.

Chair Carley asked if he felt that Attorney Gandia was mistaken, that there was a provision in the condominium documents that permitted her client to park off property.

Attorney Pollack stated that he believes there is a provision to share the infrastructure of the condominium, consisting of the private roads, driveways, that are within this land area. He stated that he is not familiar with any sort of easement that lets you park anywhere you want.

Ms. Spector-Morgan asked if her clients owns the condominium unit.

Attorney Pollack stated that he believes so.

Ms. Spector–Morgan asked if they have to sign the application.

Attorney Pollack stated that he was unsure if they had to sign the application, because it is a condominium form of ownership, and his client owns 98% of the square footage of the condominium. He stated that it is a governance question. He does not want to make a misrepresentation. He can concur that a redevelopment of the entirety of the mall would require unanimous consent, and that they are trying to gather the tools to present an attractive option. One of the reasons that they took the long time out, was because they tried to work these issues out so that the Board would not have to bear witness to those issues.

Mr. Winters asked for clarification on the frontage variance request, as it is phrased to allow the frontage to be calculated based on the combination of the corner lot, rather than along one street. The Board does not have the ability to redefine how the calculation is made, but the ability to grant a variance on frontage.

Attorney Pollack stated that they are not asking the Board to change the dimension of the 300' of frontage required, but recognize that in this circumstance that frontage can be amassed by turning the corner. A portion on Sheep Davis and a portion when you turn the corner on the proposed public road. The roadways would qualify as frontage, but only if the Board agreed to go around the corner.

Chair Carley clarified that the Board could instead agree on a variance for less frontage.

Attorney Pollack agreed that is another option, but thought the corner description might be a lighter lift, and seemed more attractive to the abutting condominium unit owner because it would essentially be saying that they are not changing anything about the bank. It is a bank today and a bank tomorrow, but ultimately, they are not happy. The entirety is one parcel under the City GIS, but within that parcel it is divided into units. Appleby's is one, the bank is one, and one is the mall proper. three condo owners, and three taxed parcels/units.

Mr. Winters asked if the Board has any precedents on who can bring an application for a condominium unit.

Ms. Spector-Morgan was inclined to table that specific variance in order to talk to the City Solicitor.

Mr. Winters stated that if Attorney Gandia is right, then the Board would have to table it.

Attorney Pollack stated that they are not asking the Zoning Board to opine on how to dissolve the condominium or what is required to do that. They are looking for a tool that they could use to make something attractive offer to a unit abutter, not a lot abutter. The design was described as a monstrosity. What is there now is a monstrosity. They are looking to demolish what is there now ahead of redevelopment, as it has become an attractive nuisance, source of vandalism and violence, which is draining on the City. Anything that goes forward to the Planning Board would require Architectural Design Review, which would result in something tasteful. They have gone through the slide deck in the past and there are some renderings (asking Code to pull up the renderings on the projector). These are the concepts and many have been worked on by the same architectural group that they are using. He showed streetscapes, which he stated are better than a boarded mall. He pointed to what they have in mind for the public gather space by the water body. He summarized that these structures will not be monstrosities.

DECISION:

Chair Carley suggested to the Board that they first need to discuss if they have a proper application. He also mentioned that there was a point that Attorney Gandia made that he wanted to dispense with. Contrary to her assertion otherwise, the Board has the authority to grant a variance to any provision in the ordinance, no matter what the language says, provided that it finds that the criteria are met. He continued, stating that any argument based on the Board's lack of authority to grant was unconvincing, and should be aside. He expressed that he was ambivalent about the technical question of who did or did not sign off and wanted to hear from his fellow Board members.

Ms. Spector-Morgan articulated that the only variance she is concerned with would be the lot frontage request, and that she is not concerned that they did not sign off on the larger application. She did express that she would like to hear what the City Solicitor had to say regarding the frontage request.

Mr. Winters asked Ms. Spector-Morgan what her view was on whether the application required all condo unit owners to sign off, or can any condo unit make a request. The issue is the frontage because it affects the other condo abutters.

Ms. Spector-Morgan stated that her experience with condominiums, which is limited, is that the board of directors can make decisions on what to do with the condominium. She further contended that in this situation, where Onyx has 98%, that they probably control the board of directors, and she was certain that they have the authority. Where this directly affects this unit and only this unit was her concern.

Mr. Winters agreed that Ms. Spector-Morgan is probably right and assumed that Onyx controls the board of directors, but that the ZBA does do not know for sure because they do not know what the condo contract says.

Ms. Spector-Morgan stated that is not the job of the ZBA.

Chair Carley commented that the condominium documents were not submitted.

Mr. Winters concurred, further stating that he wondered if the ZBA would need a statement from the board of directors of the condo.

Ms. Spector-Morgan stated that if the condominium documents were clear, and that all the condo units needed to sign off, they would have been presented.

Mr. Davie stated that because he is newer to the ZBA, he was not equipped to answer. He asked about a recent case regarding an adult day-care that was in a condominium unit.

Ms. Spector-Morgan agreed in that it was just that condominium unit that applied.

Mr. Winters further stated that it is at their risk. It would be a basic appeal otherwise.

Ms. Spector-Morgan agreed, mentioning that there was nothing that the ZBA could do that would give them that authority.

Mr. Winters stated that he is comfortable moving forward with the substance of the other variances, pointing out that the ZBA does not have a lot of precedents on this issue.

Mr. Wallner concurred with Mr. Winters and Ms. Spector-Morgan's perspective.

Mr. Davie asked if they would table the frontage request.

Chair Carley stated that he would be comfortable tabling the frontage request. He further stated that he is not too concerned with treading on forbidden ground by considering the rest of the package, partly because for the whole project to go forward, they will need to resolve the condo issue. He stated that he has no knowledge as to why the bank property owner would oppose the other elements. He is not certain he has the whole story.

Mr. Winters concurred, mentioning that if they can't get approval from the bank lot owner on the frontage, they could come back for a variance with a different theory.

A **motion** was made by Ms. Spector- Morgan to table the variance from Article 29-4-1 (c), table of dimensional regulations on minimum lot frontage, and to refer the question to the City Solicitor as to whether the condominium unit owner is required to sign the application in order for the ZBA to consider it, seconded by Mr. Davie; passing unanimously.

Chair Carley polled the Board on how to move forward with the character of each of the requests.

Ms. Spector-Morgan stated that she could group them all as one, except for the lot coverage.

The Board discussed a strategy and decided to vote on each variance separately.

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.

Mr. Wallner stated that he was ok with the request, given the size of the lot, which is a huge lot with multiple uses, and that it would fit in with the character of the area.

Ms. Spector-Morgan stated the her overarching feeling about the variances is that she knows that the site needs to be redeveloped, and that this is a perfectly fine way to do it. People are excited. Except for the parking variance, most of these are "no big deal variances." She stated that she is not sure why some of these items are zoning items, but stated that it is not her job to know. She explained it is her job to say if the variance criteria are met. She explained that for the height variances, and in fact all the variances, that there would be no diminution of surrounding property values, they would not alter the essential character of the neighborhood, they will not create health, safety, or welfare problem, and she feels that substantial justice will be done. She then stated that she does not see the hardship from the property, for the vast majority of them, including the height variance. She felt the need for the height variance arose out of the desire to get a particular number of units, and you simply can't fit them all on the lot. She does not feel it is a basis for a variance.

Mr. Winters articulated that he is guided by the location in the City, and that the lot is unique in its size, with an existing structure that has been deemed blighted and unpopular, which makes development challenging. It is reasonable to consider the strong housing need in the City, and the City certainly needs the number of proposed units. The Board hears a lot of cases where neighbors may complain that it doesn't belong or is difficult, but this is the one location in the City, with no disrespect to the Bank owner, the one spot you can put this many units with minimal impact on the general character of the neighborhood. He continued, commenting that policy in general should guide them. He mentioned a few cases in point, the Market Basket property, the Congregational Church, where without some variances they will not be able to do anything with the property.

Mr. Davie stated he agreed with Mr. Winters, reiterating that any type of development with this property will require variances. He also stated that he does not see anyone clamoring to put a single-family home on the lot, leaning towards the infill argument, as far as the height and parking.

Chair Carley stated that he is inclined to agree that the peculiar characteristics of this particular lot does create a hardship, which has to do with the scale of the property itself, and the challenges in redeveloping it. In his mind, he wondered if the property can be used in a reasonable way without a variance. He further stated that there was nothing in the requested variances that makes him think that hardship doesn't apply. As far as the height of the buildings in the ordinance, the scale of buildings next to other buildings, and their impacts to a neighborhood, he mentioned that, as Mr. Winters pointed out, these buildings are all by themselves on a very large piece of property. It was his guess that the increase in height would have little visual impact. As to the lot coverage, it is an improvement over the existing arrangement, and with making it better, the use is reasonable.

For the following variance requests:

2. Article 28-2-4(j), *Table of Principal and Accessory Uses*, to allow a Tire Center (J-8) where prohibited in a GWP.
5. Article 28-7-7(f), *Driveway Widths*, to allow a 30' driveway width where 28-feet is the maximum.
6. Article 28-7-7(j), *Illumination of Parking Areas*, to allow light posts at 36-feet and 6-inches in height where 25-feet is the maximum,
7. Article 28-7-13(c), *Design Standards for Loading Spaces*, to allow 12-feet wide loading spaces where 14-feet is the minimum.
8. Article 28-7-14(e), *Screening of Refuse Containers*, to not screen trash compactors where screening around three sides is required.

Mr. Davie commented that he does not see the hardship for the Tire Center. Whole foods or Market Basket would not ask for that, so he does not see the hardship. As for the lighting, he is not convinced one way or the other, and added that the photo of the Connecticut Costco location did not give him any value. As to the driveway width, he does not understand, because there is an access next to the dumpster, so he is confused as to why the trucks would need to go down the parking isles. He felt that leaving it at the smaller width is a safer idea, and that a wider isle width would encourage speeding by shoppers. As to the loading area, he mentioned that he would be curious what Concords history is as to the specific number. Lastly, on the screening, he stated that he can understand the argument for keeping it clean, but maybe keep a condition that the screening could be taken away, only if it is the compactor-type refuse container.

Mr. Winters stated that he is inclined to approve the Costco variances. He does not fully understand the safety issues, for the driveway or loading, but traditionally when looking at large, unique projects, they are willing to grant fairly modest dimensional requests. They provided technical experts and he did not feel it would impact the character of the neighborhood, or the neighbors, and he has no reason to feel it would be less safe or less attractive. As far as the tire center, he stated that it is a smaller piece of a much larger operation. They are trying to get a good anchor tenant, which is not a simple thing to do, and if Costco historically offers tires, and Sears did it before without a problem, and so tucked away, he does not see any disturbances. He would be inclined to grant all the Costco variances.

Ms. Spector-Morgan stated that she didn't disagree with anything that Mr. Winters said, but the requests for these variances is based on a Costco business model, which is not a great situation for a variance.

Mr. Wallner agreed with Mr. Winters, stating that as to the tire center, there was one there years ago, and would not be visible other than the signage above the door. As to the 30-foot width, it is only a two-foot difference which is minimal, and would increase safety. Regarding the lighting, they would be reducing the heights from 40' to 36'6", and they heard testimony in order to meet the requirement that they would have to double the amount of lights. Lastly, as far as the screening, he liked Mr. Davie's suggestion that if it is a self-contained/compactor, that the screening would not be required, unless they converted to a different trash removal method.

Chair Carley stated that he agreed with Mr. Wallner, and further suggested that Ms. Spector-Morgan makes a compelling argument. However, at the risk of being a little too subtle, the characteristics of the lot and the peculiar nature of the property and its history, suggests that a reasonable use is a use that will work there. With this application, the applicant believes this will work and there is no reason to believe that it won't. The fact that their business model requires some variances fits in with the difficulties of redeveloping a parcel such as this one, which is what creates the hardship for this lot. He stated that is how he justifies his concurrence with his colleagues about hardship. On driveway widths, he felt that Costco's' direct experience is more persuasive then his own opinion of what it ought to be, and he would defer to them for safety, for the same rationale as previously stated. About illumination, he stated that the variance is partly to due to the age and status of the zoning ordinances. The light poles height requirement had to do with light spillover, which the appellant dealt with, further stating that it is true that any project reviewed by the Planning Board will review photometric diagrams. He stated that he is confident that the issue of light spillover will be dealt with, so he would not order them to add more light poles, as the Planning Board is more than capable of assessing the matter. He saw no compelling interest in insisting that the loading spaces be wider than proposed, and that no one is likely to be inconvenienced or imposed upon but the appellant if the arrangement doesn't work. Lastly, he agreed that as long as the refuse containers are in the form that was presented, there would be no need to screen.

For the following variance request:

4. Article 28-4-1(h), *Table of Dimensional Regulations, Maximum Lot Coverage*, to allow 91% coverage where 85% is allowed.

Chair Carley stated that he previously spoke about this issue.

Ms. Spector-Morgan agreed with Chair Carley.

Mr. Winters stated that the lot coverage was described as being less than the current coverage, which is reasonable, because they have an existing lot with a lot of coverage and they are reducing it.

Mr. Davie agreed.

Mr. Wallner had nothing to add.

A **motion** was made to allow the variance for 91% coverage by Mr. Winters, seconded by Ms. Spector-Morgan; passing unanimously.

A **motion** to approve the variances for: building height; light pole height; driveway width; screening with compactor condition; loading spaces width; and the tire center, was made by Mr. Wallner, seconded by Mr. Winters, passing with a vote of 4-1, with Ms. Spector-Morgan in the minority.

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Chair Carley stated that they would take up item number 1.

Mr. Davie stated that he is fine with the parking variance, and even though it is not in the Board's purview, Concord needs 600 or more rental units by 2030. They are putting in a good faith effort to get Concord closer, using an infill space to relieve the burden in the City.

Mr. Winters stated that as far as 1A, they are close percentage wise. According to their parking study, he did read that they are hitting the maximum amount. As far as 1B, a large percentage is based on the stadium calculation, which theoretically a casino or concert hall could move in, but seems unlikely. He questioned

Code that based on the current use, if they changed the use to a casino, he is concerned if the variance would work.

Code: Mr. Hall stated that it all depends on what it is used as, and would be dependent on the classification.
Mr. Winters stated that there was a risk of a change of use, but saw that as improbable, a low risk.

Mr. Davie asked if something of that caliber would require other variances.

Mr. Winters continued that he is not a fan of trying to change the Planning Board rule. He would be inclined to approve the first request.

Ms. Spector-Morgan stated that she would vote in favor of the first requested variance. The hardship is that the number of spots cannot physically fit on the property, and given the exorbitant number of spaces that are required, there is no fair or substantial relationship between the general purposes of the ordinance and the application for the property, and that the proposed number of spaces is reasonable.

Mr. Wallner stated that he is ok with 1A and 1C. He has a problem with 1B, because it is such a broad definition on recreation use. While it is ok now with current usage, he is concerned for the public interests if the use changed. He understands that they cannot condition it.

Chair Carley stated that he found the VAI report to be quite compelling. The Board has come across excessive parking requirements repeatedly in the past, however, in this case the applicant had provided thorough research on what is needed. In the report, they had assumed it was an indoor recreation park, and not specifically a trampoline park, so he is comfortable with that. Finally, he stated that the parking requirement is excessive, and creates a hardship.

Mr. Wallner voiced his concern if another place came in that required more parking they could go elsewhere.

Mr. Winters stated that no one is going to park at Sam's club.

Mr. Wallner was concerned that they could park in the residential area.

For the following variance request:

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.

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

2. A variance from Article 28-7-11(b), *Alternative Parking Arrangements, Construction of Fewer Parking Spaces*, to allow the Planning Board to authorize the construction of fewer parking spaces on Lot 40 and 40-1 (Costco/JC Penney), without "showing that a sufficient land area is allocated and shown on a site plan for the full number of spaces required."

A **motion** was made to find #2 moot by Mr. Wallner, seconded by Ms. Spector-Morgan; passing unanimously.

A **motion** to adjourn the meeting was made at 9:36 pm by Mr. Winters, seconded by Ms. Spector-Morgan; passing unanimously.

Respectfully Submitted by
Deborah Tuite