



David Hall
Code Administrator

CITY OF CONCORD

New Hampshire's Main Street™

Zoning Board of Adjustment

July 10, 2024
MEETING MINUTES

Attendees: Acting Chair Nicholas Wallner, James Monahan, Laura Spector-Morgan, Andrew Winters , Mark Davie

Alternates: Tedd Evans,

Absent: Chairman Christopher Carley, Brenda Perkins,

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

PUBLIC MEETING

ZBA 004-2022 10 Ferry St: OCP - *Opportunity Corridor Performance District*,
John Flatley Company, Owners:

Owner is requesting that the variances approved in April 2022 be continued for 1 year. Request was submitted in March 2024, but due to the confusion of whether an additional variance was required to move the sign, the extension was not added to the agenda.

The Board briefly discussed the case.

Code: Mr. Hall explained this was delayed due to a noticing error.

A **motion** was made to extend the case for one year by Mr. Winters, seconded by Ms. Spector-Morgan; passing unanimously.

ZBA 0208-2024 10 Ferry St: OCP - *Opportunity Corridor Performance District*,
John Flatley Company, Owners:

Applicant is requesting a variance from Article 28-6-9 (f) to allow a 3rd free standing sign to be installed 5' from the property line where 25' is required.

John Walker, John Flatley Company, testified. He mentioned that the original variance request was heard in the Spring of 2024, where they requested to move the sign from the approved location due to a sewer line/easement issue. He stated that there were other signs on the property with a reduced set-back, which prompted this new request.

Code: Mr. Hall explained that the first sign on a property can be five feet from the property line, however, any additional signage must be 25 feet from the property line. There was a mistake in the noticing of the original variance, as well as the variance requirements due to the 25-foot requirement.

Mr. Walker stated that the biggest hardship is due to the location of the City sewer easement as it encompasses around 25-30 feet including the dumpster area. This was where the original sign was going to be placed. They are requesting that the sign be closer to the roadway because of visibility and the fact that the sewer line is in the way. He mentioned that nothing has moved or changed, and that he is here as the City realized there was a 3rd sign.

Mr. Winters asked how much of a setback was there for the original variance.

Mr. Walker stated that they would have come in two years ago if they had known that there was an easement. They would have left the sign where it was originally intended to be, had it not been for the sewer line. If the sign could be in the location that they originally requested, they would not need a variance. It was due to the sewer line/easement.

Ms. Spector-Morgan asked why the sign could not be placed behind the dumpsters.

Mr. Walker stated that the sewer easement is behind the sign. The sign was supposed to be in front of the dumpster, closer to the roadway. It was in the parking lot itself.

Ms. Spector-Morgan asked why the sign can't be in the parking lot now.

Mr. Walker stated that pulling it back would give it less visibility and make it more difficult to see.

Mr. Winters asked what will be on the sign.

Mr. Walker stated that it would most likely be tenants. He stated it would be 200 sq. ft.

Code: Mr. Hall explained that the signage would be for tenants only. The Architectural Design Review Committee would need to approve the sign. It has already been through the Planning Department.

Ms. Spector-Morgan asked if they moved it out of the easement, how much farther would it have to be.

Mr. Walker stated that it would be another 40 feet off, if they split it to the front of where the dumpsters are, it would only be about 15 feet.

Mr. Monahan asked if they moved it closer to the dumpsters, would it be a problem to get to the dumpsters.

Mr. Walker stated that there would be an issue, because the sign would be between the dumpsters. Mr. Winters asked if by moving the sign closer, would it make the sign appear larger, and therefore could the sign be reduced in size.

Mr. Walker stated that he agreed in general, however, it is still a good distance from the property line and the roadway, around 30 feet away from the highway. The height of the sign follows the incline of the property so that the sign will be the same height as it would have been if they had not had to move it.

In Favor: None.

In Opposition: None.

Code: None.

DECISION:

Mr. Winters stated that he recalled that the Board had discussed the original case in length because it is in a prominent location, however, the Board had approved the original variance, and it has not materially changed. He would be inclined to approve.

Ms. Spector-Morgan stated that she was not wild about the variance originally, and feels the same for this variance. However, due to the location of the sewer easement as well as the dumpsters, there is enough of a uniqueness to the property to justify the variance. There was nothing that will alter essential character of the neighborhood, or reduce surrounding property values. She would be in favor.

Mr. Monahan agreed, stating that even though it is a large sign it is far away from the entrance to the building. The sewer easement creates the hardship. He would be inclined to approve the variance.

Mr. Davie stated he had no issue with the variance, and he is inclined to approve.

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

REHEARING REQUEST

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' 8" 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 28-7-2(e), *Table of Off-Street Parking Requirements*, to allow 1833 parking spaces where 3298 are required.
6. Article 28-7-7(f), *Driveway Widths*, to allow a 30' driveway width where 28' is the maximum.
7. Article 28-7-7(j), *Illumination of Parking Areas*, to allow light posts at 36' 6" in height where 25' is the maximum,
8. Article 28-7-13(c), *Design Standards for Loading Spaces*, to allow 12' wide loading spaces where 14' is the minimum.
9. Article 28-7-14(e), *Screening of Refuse Containers*, to not screen trash compactors where screening around 3 sides is required.

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."

The Board reviewed the rehearing request as it pertains to the two cases above.

Ms. Spector-Morgan stated that she originally voted against the variances and still feels that the variances should not have been granted, however, she does not feel that they should grant a rehearing. There was nothing presented that justified a rehearing, and she does not feel it would change the opinion of the Board. She felt the rehearing should be denied.

Mr. Winters agreed stating that it was very well litigated. He does not feel that there is anything new. He asked if 0133-2023, #3 was tabled. He agreed that the rehearing should be denied.

Code: Mr. Hall stated #3 was withdrawn by the applicant.

Mr. Monahan agreed with his colleagues, stating that there were no new facts or errors on the ZBA to justify a rehearing.

Mr. Davie agreed.

Mr. Wallner agreed.

A **motion** to deny the rehearing request for both cases was made by Ms. Spector-Morgan, seconded by Mr. Monahan; passing unanimously.

PUBLIC HEARING

ZBA-0185-2024 Highland St: RN - Neighborhood Residential District

Owner: MDR REHAB & DEVELOPMENT LLC

Applicant seeks a variance pursuant to Article 28-4-1 (h) Table of Dimensional Regulations for the construction of a duplex on a vacant lot. Variances would be required as follows:

Article 28-5-2: Duplex or Two-Family Dwelling, minimum frontage and minimum lot size where 120' of frontage and 15,000 sq ft are required where applicant has 107' of frontage and 10,788 sq ft lot.

Robert Degan and Ray McMahon testified. Mr. Degan mentioned that they were before the Board in April of 2024. At that time, they withdrew the application after taking some feedback from the Board and the abutters. They have changed their proposal to a duplex. The proposed building has not changed much in size, there would be two units, instead of the original four, which requires a variance for frontage and lot size. The plan is proposed for one garage space and one parking space in front of the garage for each unit.

Mr. Wallner asked about the character of the neighborhood as far as lot sizes, and the presence of multi-family dwellings.

Mr. Degan stated that there are many lots in the neighborhood with duplexes, and many of those lots are smaller than this lot. They feel it is a reasonable use in the neighborhood, and fits with the character of the neighborhood. There is a multi-family unit right across the street.

Ms. Spector-Morgan asked which other property has duplexes.

Mr. Degan was not sure, as he would need to view the map.

Mr. Winters asked why the original four-unit proposal did not have a frontage requirement.

Code: Mr. Hall stated that multifamily units have different standards than a duplex.

In Favor: None.

In Opposition: Joyce Cotnoir, testified, abutter across the street. She stated that she feels it is a stretch, as far as the road frontage. From the beginning of the pavement to the hill in the back it is 70 feet. They are going to put a two-unit condo of the same size as a four-unit condo. She understands that there are different criteria, however, it is the same size. She is worried about more traffic as there is only one-sided street parking.

Mr. Wallner stated that the plan does meet the setbacks.

Code: Mr. Hall mentioned that the driveway will be permitted through Engineering.

DECISION:

Mr. Davie felt that the new proposal solves the parking issues from the prior proposal, and that it fits within the character of the neighborhood.

Mr. Monahan agreed, stating that the way they designed the shared driveway helps to deal with the frontage issues.

Ms. Spector-Morgan stated that it appears to be the only undeveloped lot in the neighborhood, and it appears to be larger than other lots. She further stated that while it does not meet the lot size and frontage requirements, she does not think that putting a duplex on the lot will alter the essential character of the neighborhood, or diminish the values of surrounding properties. There would be no justice in denying the variance, and given the relatively large size of the lot, there is some hardship in denying the variance.

Mr. Winters agreed, mentioning that in his memory there are a lot of duplexes, and that it is a reasonable use, and the size does not need a variance.

Mr. Wallner agreed.

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

ZBA-0193-2024 23 Montgomery Ave: CVP - Civic Performance District
Owner: TROMBLY CAROLYN E REVOCABLE TRUST 2018

Applicant is requesting to build a 2-car carport and re-pave and expand the driveway and is requesting variances for the following:

Article 28-4-1(h) Table of Dimensional Regulations to allow a side setback of 11' where 25' is required and a front setback of 11' where 15' is required. Article 28-7-7 (f) to allow a driveway width of 31' where a max of 28' is required.

Carolyn Trombly testified, stating she is looking to build a two-car carport, which would require a slight increase to the size of the driveway. She mentioned that in the handouts it shows where the existing driveway is, as well as the extension she is seeking.

Mr. Monahan asked where she parks her cars now.

Ms. Trombly stated that they park three cars in the driveway side by side. The house was built in 1832.

Ms. Spector-Morgan asked why she needs to extend the driveway on the left.

Ms. Trombly stated that she needs to fit the 3rd car, in order to not have to park on the street.

Ms. Spector-Morgan asked if it was a single-family house.

Ms. Trombly stated that it has two dwelling units.

Ms. Spector-Morgan asked Code if they would need three spaces.

Code: Mr. Hall stated that technically they would need four spaces.

Mr. Winters asked if one side was owner-occupied.

Ms. Trombly stated that was the case. She mentioned that she would like to preserve the green space and allow for three vehicles.

In Favor: None.

Mr. Wallner stated that there was an email from Mike Summers, an abutter in favor.

In Opposition: None.

Code: Mr. Hall stated as with the previous case, Engineering will be involved regarding the driveway.

DECISION:

Mr. Monahan stated that it was a reasonable request, with a long history of the Board approving garages and car covers for improving parking. He is comfortable with the asphalt for the third car.

Mr. Davie stated that he sees the hardship and does not have an issue with the variance.

Mr. Winter stated he does not have an issue with the variance, as it is a reasonable use to have a covered area, and they are only parking three cars for two units.

Ms. Spector-Morgan stated that she is in favor of the extension of the asphalt area. There is a hardship, as they should have at least four spaces and they don't have the space for four, however, they only want to park three cars. It won't diminish the surrounding property values, it won't alter the essential character of the neighborhood because it is surrounded by parking lots, there would be no justice in denying the variance, and given the age of the house and the configuration of the lot it creates a hardship. As far as the carport, she does not have an issue with the setback as this is typically where carports are located, and by pushing it back it would impinge on the greenspace and she feels that there is a hardship there was well.

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

ZBA-0194-2024 3 Yale St: RS - Single-Family Residential District

Owner: RUSSO BENJAMIN P & JOSCLYN L

Applicant is looking to install a 50' x 30' basketball court in his yard and is requesting a variance from Article 28-4-1 (h) Table of Dimensional Regulations to allow an accessory structure in the front yard, and setback from front property line of 12' where 25' is required, and front yard setback of 12' where 25' is required.

Mr. Winters recused himself from this case, and Mr. Evans stepped in.

Mr. Russo testified, stating that he would like to put in a 30' x 50' basketball court that would be completely fenced in. It would be 12' high on both Yale and Clinton Streets. The fence on the Yale Street side would be 10 feet from the street, which is where a previous fence was located. The hoop would be on the Yale Street side and not on the Clinton Street side. He stated that it would not be against public interest because it is a one-way street. He feels the fence would not impede drivers as it is on the Yale Street side. He stated that he has five children and this would allow him a safe place for his kids to place. He would not be able to utilize his driveway, or use the other side of the house if he were to try to place it in a different area. He is willing to put a net up on the Yale Street side, which would prevent any balls from going over.

Ms. Spector-Morgan asked why it cannot go in the back-corner area.

Mr. Russo stated that he did not feel it would fit, and it is not fenced in. They also keep a horse trailer in that area.

Ms. Spector-Morgan asked Code what the setbacks are.

Code: Mr. Hall stated that they are on a corner lot, so there is no back yard. Setback is 25 feet.

Ms. Spector-Morgan confirmed with Code that he would need a variance no matter where he would like to put it, and Code agreed.

Mr. Evans asked if he has a fence currently.

Mr. Russo stated that he removed it as it was only 6 feet high.

Mr. Evans asked if there are height restrictions, and if a variance is required for the height or the net.

Code: Mr. Hall stated the net would not increase the height. He mentioned that the front yard fence requirement is four feet, but because he is 10 feet off, he is exempt.

Mr. Russo stated that the fence was only 6' high. He stated that it would not work if it was only 4 feet tall, as many balls would go over the fence.

In Favor: None.

In Opposition: None.

Code: No comments.

DECISION:

Mr. Evans stated that he is not clear as far as the hardship. He sees some rationale as to why it is not on the other side. He is not sure of the effect on the neighborhood, as well as having a fence on Clinton Street.

Ms. Spector-Morgan stated that she is also struggling with the hardship, however, the fact that it has two front setbacks seems like a hardship, since the side setbacks are also 25.' She stated that there is no practical impact and an accessory structure is a reasonable use. No evidence of whether it would diminish property values. It does not look like it would be consistent with the surrounding

properties, however, there are many swimming pools in the area. She was not sure there would be justice in denying the variances. She is not enthused, but may be in favor.

Mr. Monahan stated that the hardship is having two front yards. He drew the same analogy as far as swimming pools. The property owner discussed why other locations were troublesome. They are not asking for relief with fencing, and he does not feel that there needs to be a condition about further netting. He would be in favor.

Mr. Davie stated that he is inclined to support.

Mr. Wallner stated that he would be inclined to support, given the 25' setbacks on both sides.

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

ZBA-0195-2024 2 Kellom St: RM - Medium Density Residential District

Owner: EWING MICHELLE J

Applicant is looking to construct a deck and screened in porch in the back of the house and requesting variances from Article 28-4-1(h) Table of Dimensional Regulations to allow the deck to be no closer than 10' to the side property line and no closer than 14' to the front property line where a front setback of 25' and side setback of 25' are required.

Mr. Evans stepped down for this case, and Mr. Winters stepped back in.

Michelle Ewing testified, stating that she is looking to add a deck and screened-in porch. The deck will not exceed the length of the back of her house. She stated that there is no other place to put the deck on her property.

Code: Mr. Hall stated that there are two front and two side yards, as it is a corner lot.

Mr. Winters asked if she had a sunroom.

Ms. Ewing stated that area is part of the kitchen and part of the back-entry porch.

Ms. Spector-Morgan asked if she placed in on the other side, would she need a variance.

Ms. Ewing stated that it wasn't feasible to put it there because of the electrical meter etc.

Mr. Winters asked what the square footage of the porch is.

Ms. Ewing stated the entire structure would be 10' x 30', and the porch will be 10' x 16' and the deck will be the rest.

Ms. Spector-Morgan asked if her neighbors have decks.

Ms. Ewing stated that it is tight in the back end, many neighbors have decks and porches. Her porch will match her home and will add value.

In Favor: None.

In Opposition: None.

Code: None.

DECISION:

Mr. Winters stated that she could probably make it compliant by making it smaller, but it is a reasonable use at that size. The Board has tended to approve these types of variances in this type of circumstance. It is a reasonable sized porch and deck. He would be inclined to approve.

Ms. Spector-Morgan stated that she felt it was a hardship having the 25' setbacks all around. It is a reasonable use of the property, it would not alter the essential character of the neighborhood, it would not diminish surrounding property values, and there would be no substantial justice in denying the variance. She would be inclined to grant the variance.

Mr. Davie stated that he did not see anywhere else it would go.

Mr. Monahan stated that he agreed with Ms. Spector-Morgan.

Mr. Wallner agreed.

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

ZBA-0197-2024 91 N State St: CVP - Civic Performance District

Owner: EWT 54 LLC

Applicant is looking to install a free standing sign and requests a variance from Article 28-6-9 (a) to allow for 42.5 sq ft of signage where 12 sq ft is allowed.

Mr. Winters stepped down from this case, and Mr. Evans stepped in.

Mr. Crawford testified, stating that they are looking to install a sign in front of an office building complex on N. State Street. They have eight office spaces, and one driveway. It is difficult to cram all the offices on one sign to make it legible, given the sign requirements. There is no front door on the street, as it is located in the back of the building. It is difficult to locate these offices and it can be confusing, as it is a tight, narrow area. There are two signs, and they would like to allow one larger sign to accommodate all the businesses at that location, for the safety of the clients and contractors, and to make it clear. They do not want to put a large sign on the side of the building as that would be tacky for the neighborhood. There is a lot of frontage and it is far enough away from the driveway and the next driveway up, so cars should not have an issue when they are pulling out onto the street.

Ms. Spector-Morgan asked Code how the allowable signage size is calculated.

Code; Mr. Hall stated it has to do with the frontage of the building, and because it is a free-standing sign it can only be 12 sq. ft.

Mr. Wallner asked if it was for two properties.

Mr. Crawford stated that both properties have four offices, for a total of eight offices.

Mr. Wallner asked if having eight businesses on one sign would be harder to see for oncoming traffic. Would two signs be better.

Ms. Spector-Morgan stated that the driveway is after and there is only one parking lot.

Mr. Crawford stated that it is very confusing because they get past 93 and see 91 and they are confused as to where to go. There is no parking on that side of the street.

In Favor: None.

Mr. Wallner stated the Board had a letter from a Hess Gehris Solutions, who is a tenant in support of the request.

In Opposition: None.

Code: None.

DECISION:

Mr. Evans stated that there is a consistent issue with the ordinance. He does not agree that people are going 30 mph looking for an office building. As a solution the Board should agree on a larger sign.

Mr. Davie stated that he does not have an issue with the variance.

Mr. Monahan stated the building is unique in that the front entrance is in the back of the building. He felt that the applicant stated that they were going to remove the other sign, and that should be conditioned in the motion.

Ms. Spector-Morgan stated that she would move to approve, as it would be consistent with the other signs in the neighborhood, it would not alter the essential character of the neighborhood, it would not diminish the surrounding property values, there would be no justice in denying the variance. There is a hardship given the number of tenants in the building, and the way it is situated on the lot, and that the parking lot is behind it, and you only see it once you are past the building.

A **motion** was made to approve the variance, with the condition that the other sign be removed, by Ms. Spector-Morgan, seconded by Mr. Evans; passing unanimously.

ZBA-0198-2024 10 Loudon Rd: GWP - Gateway Performance District

Owner: DSM MB II LLC

Applicant is requesting a variance from Article 28-6-9 (a) and Article 28-6-9 (b) 1 A, to allow a maximum of 3 signs with a total of 292 sq ft where a max of three signs with a total of 120 sq ft is allowed.

Mr. Evans stepped down for this case, and Mr. Winters stepped back in.

Anthony Lafo testified, representing the TJ Maxx Corporation. The client is taking the right side of the building where the old Bed Bath and Beyond was located, next to TJ Maxx. They are seeking a variance for signage, stating that it is proportional to the property. He mentioned that there would be a great spot for visibility on the front right side of the building.

Ms. Spector-Morgan asked if they were looking for three signs.

Mr. Lafo stated that the third sign is a tiny 2.5 sq. ft. under canopy sign. He also stated that the prior signage for Bed Bath and Beyond was much larger.

Mr. Winters questioned Code that there are more than three tenants, and the ordinance only allows for three signs.

CODE: Mr. Hall stated that the building cannot exceed three signs. The additional signs have variances.

Mr. Lafo mentioned that the TJ Maxx next store has a similar size sign, and the size of the sign is very consistent for the area. It is difficult to see the building and the pylon signage due to the trees.

In Favor: None.

In Opposition: None.

Code: None.

DECISION:

Mr. Monahan stated that it is consistent in the plaza and what the Board has done previously, and it would be less non-conforming than what was previously approved.

Mr. Davie agreed.

Mr. Winters also agreed.

Ms. Spector-Morgan stated that it would not alter the essential character of the neighborhood, it is consistent with the signage that has been there and exists there currently, it would not diminish the surrounding property values, there would be no substantial justice in denying the variance, and the unnecessary hardship is the unreasonableness of the ordinance and the very limited amount of signage allowed.

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

ZBA-0200-2024 II Summit St: RN - Neighborhood Residential District

Owner: GFROERER MICHAEL G & EILEEN M

Applicant is seeking a lot line adjustment between 11 Summit and 12 Tahanto and is requesting a variance from Article 28-4-1 (h) Table of Dimensional Regulations to allow for a rear setback of 6' where 25' is required and a minimum lot size of 7531 sq ft where 10,000 sq ft is the minimum.

See below:

ZBA-0207-2024 12 Tahanto: RN - Neighborhood Residential District

Owner: GFROERER MICHAEL G & EILEEN M

Applicant is seeking a lot line adjustment between 11 Summit and 12 Tahanto and is requesting a variance from Article 28-4-1 (h) Table of Dimensional Regulations to allow for a rear setback of 20.5' where 25' is required and minimum lot size of 3968 sqft where 10,000 sqft is the minimum.

Mr. Wallner stepped down for these cases, and Mr. Evans stepped in. Ms. Spector-Morgan stepped in to Chair the meeting. The Board heard both 0200-2024 and 0207-2024 together, as they are connected.

Mr. Gfroerer testified, stating that he owns both properties. He discussed 11 Summit Street first, mentioning that there is a total of 26 feet between the two properties, 20 feet deeded to Summit Street, and 6 feet deeded to Tahanto. He would like to flip those dimensions. He bought the Tahanto property in 1977 from his neighbor. He stated that the issue is that the historical use of the property, is that the whole area has been treated as his back yard at 12 Tahanto, as he has always maintained the property. He is renovating 11 Summit Street, which will return to a single-family home. The property is orientated toward the south, and the backside of the house and the north side of the house has no egress or doors. He would like to leave a six-foot buffer on the west side of the Summit Street house. The hardship is that when he decides to sell, he would be giving up his yard if he could not get a variance. It has no effect on anyone in the neighborhood, except for himself. It recognizes the actual use, compared to the deed. It will not be contrary to the public interest, and there would be no diminution of value.

Mr. Monahan asked if there were any elevation differences.

Mr. Gfroerer stated that both lots are flat.

Mr. Winters mentioned that the Board would only act on the variances and asked who would approve the lot line adjustment.

Mr. Gfroerer stated that the Planning Board would then be the one to approve the adjustment. Mr. Winters mentioned that it appears that the Tahanto property has more total property. He asked what the yard for Summit would look like.

Mr. Gfroerer stated that the Summit Street property would be 35' x 60.' He stated as a practical matter that hopefully a future owner would agree to respect the property lines, however, they could put up a fence. He wants to ensure he maintains that portion of the property while he still owns both. The whole neighborhood is non-conforming.

Mr. Evans asked where the car would be parked.

Mr. Gfroerer stated that is where a garage is being built.

Mr. Gfroerer then discussed the Tahanto property, stating that he was mystified as to why he needed the variance. He is reducing the non-conformity of 12 Tahanto. When he filed the application for 11 Summit, he was told that he had to apply for 12 Tahanto and had to pay for two variance fees. He asked if the Board would waive/reimburse his filing fee for 12 Tahanto.

Ms. Spector-Morgan asked Code if the second application was required because he was altering the boundaries of a non-conforming lot.

Code: Mr. Hall agreed, stating that he did need the variance. He also stated that neither the Board nor Code Administration has the authority to grant fee waivers, that the City Council is the only body that has that ability.

Mr. Gfroerer stated that he is not asking for any relief for 12 Tahanto Street.

Ms. Spector-Morgan informed Mr. Gfroerer that he is asking the Board to approve the alteration of the boundaries. She also reiterated that only the City Council can waive that fee.

Mr. Winters asked Code if there are other situations where an application is deemed unnecessary, would the applicant get a refund.

Code: Mr. Hall stated if it was due to staff errors, yes. But in this case, it is required by the ordinance.

Mr. Monahan asked if someone asked to withdraw would they get a refund.

Code; Mr. Hall stated that if a case was noticed they would not get a refund.

In Favor:

Ms. Carta Barklow testified, stating she is a direct neighbor at 10 Tahanto. She stated that Mr. Gfroerer has been her neighbor for 46 years and has always taken care of the yard. She has no objections.

In Opposition: None.

Code; None.

DECISION:

Mr. Winters stated that there is no new construction, and it has been stated that there is non-compliance based on preexisting conditions, and really nothing changes. He sees no reason to deny.

Mr. Evans agreed.

Mr. Monahan stated that because he owns both properties it makes it much easier for the Board and there would be no reason to deny the variances.

Mr. Davie agreed.

Ms. Spector-Morgan agreed.

A **motion** was made to approve the variance for 11 Summit Street by Mr. Evans, seconded by Mr. Monahan; passing unanimously.

A **motion** was made to approve the variance for 12 Tahanto Street by Mr. Evans, seconded by Mr. Monahan; passing unanimously.

ZBA-0201-2024 163 Loudon Rd: CG - General Commercial District

Owner: RAI FAMILY LLC

Applicant is seeking a variance from Article 28-7-2 to provide a total of 35 parking spaces where 52 are required.

Mr. Evans stepped down from this case, and Mr. Winters stepped back in.

Attorney Shawn Dunfey and Ms. Rai testified. Attorney Dunfey stated that the intent of the variance is to use the second floor as an administrative office, resulting in a change of use from retail to office use, which changes the parking requirements. Ms. Rai had a parking survey completed and that survey determined that they required less parking than the ordinance requires. They currently could fit 35 spaces, and the ordinance states that they need 52 spaces.

Mr. Winters asked if the non-building portion of the lot is maximized for every space.

Attorney Dunfey stated that the only lined spaces are in the front, and the back portion is not lined. They would only be able to fit 35 lined spaces. There is a little green space in the back, however, there is a condo that abuts the property.

Ms. Spector-Morgan asked if the rented space on the top floor would be office space.

Attorney Dunfey confirmed that it was.

Mr. Winters asked what the top floor was it used for in the past.

Attorney Dunfey stated that the US Census was located there for a time being.

Mr. Monahan asked if they put retail on the second floor, how many spaces would be required.

Attorney Dunfey stated that retail would require more.

In Favor: None.

In Opposition: None.

Code: None.

DECISION:

Ms. Spector-Morgan stated that the hardship is the size of the lot compared to the size of the building, and there is no room on the lot to add additional spaces in order to keep the travel lane. It will not alter essential character of the neighborhood, which is already filled with plenty of parking, it will not diminish surrounding property values, and there would be no justice in denying the variance. She would be in favor of granting.

Mr. Monahan stated that he would also be in favor in granting the variance.

Mr. Davie agreed.

Mr. Winters agreed.

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

ZBA-0202-2024 12 Perkins Ct: UT - Urban Transitional District

Owner: GIFFARD STEPHANIE A

Applicant is seeking a variance from Article 28-4-1 (h) Table of Dimensional Regulations for the construction of a deck which will be 5' from the side property line where 10' is required.

Nathan Gifford testified, on behalf of his mother Stephanie Gifford. He stated that they are seeking a variance to build a deck. They designed the deck the way it is because the ordinance interferes with the reasonable use of the property. The hardship of the property is that the placement of the house makes it difficult to place the deck in another other location. A denial would cause an undue hardship on his elderly grandmother who has limited mobility, and she loves to sit outside. Substantial justice is done as the construction of the deck is consistent with area uses, and it would only help facilitate outdoor activities. It would not be contrary to public interests, and it would not affect the health, or safety of the public. The spirit would be observed, as the ordinance was put in place to prevent overcrowding near abutting properties. The deck would not extend passed the side of the house. There would no diminution of surrounding property values, and it would not change the essential character of the neighborhood, as his neighbor also has a similar deck.

Ms. Spector-Morgan asked why they can't move it closer to the driveway.

Mr. Gifford explained that there was a door there.

Mr. Monahan asked why they are building a deck instead of a patio.

Mr. Gifford explained that it would be level with the doorway.

In Favor: None.

In Opposition: None.

Code: None.

DECISION:

Mr. Winters stated that this case is similar to a case heard earlier. He felt it would not extend the setback worse than it currently is, and this is really the only place it could be placed. He would be inclined to approve.

Mr. Monahan agreed.

Mr. Davie agreed.

Mr. Wallner agreed, mentioning that usually when there is a less of an intrusion than the actual house, the Board usually approves the variance.

Ms. Spector-Morgan made a **motion** to approve the variance, stating that it is a minimal deck which complies with the front setback, and it does not impinge on the side setback any more than the house does, it does not alter the essential character of the neighborhood, which has tightly packed houses with similar decks, it will not diminish surrounding property values, there would be no justice in denying the variance, and the hardship is that the property is uniquely shaped and the house is uniquely located on that property, seconded by Mr. Davie; passing unanimously.

ZBA-0203-2024 287 Loudon Rd: GWP - Gateway Performance District

Owner: DUNDEE INVESTMENT ASSOCIATES LLC

Applicant is seeking a variance from Article 28-7-2 to provide a total of 153 parking spaces where 170 are required for a restaurant with drive through.

Applicant requested to defer until August, 2024.

A **motion** was made to continue the case until August 7, 2024, by Mr. Winters, seconded by Ms. Spector-Morgan; passing unanimously.

ZBA-0204-2024 76 Community Dr: RN - Neighborhood Residential District

Owner: BOYS & GIRLS CLUBS OF CENTRAL NEW HAMPSHIRE INC

Applicant is seeking a variance from Article 28-6-7 I and Article 28-6-8 A 1, to provide 62 sq ft of signage where 20 sq ft is allowed and to place the signs above the first story.

Craig Moore of NH Signs, and Chris Emond from the Boys & Girls Club, testified. Mr. Moore stated that the building is an 8,900 sq. ft. single-story building, with two public entrances which serves four organizations: The Penacook Community Center, The Boys & Girls Club, The Rowe Family Early Learning Center, and The Penacook Library & Activity Center. The signage is needed to properly direct traffic on the street, such as busses and cars.

Mr. Emond provided clarification that the Rowe Family Early Learning Center, The Penacook Community Center, and the Boys & Girls Club are really one entity. The name comes from the Rowe family who was very supportive of the project.

Mr. Winters asked if there was a variance for the property previously.

Ms. Spector-Morgan stated she believed it might have been for lighting. She asked if the signage was also for the library portion.

Mr. Emond stated it was not. The library is the portion on the right.

Mr. Winters asked if it was the Penacook branch of the Concord Library that was going to be located there.

Mr. Emond stated that it was going to be a condo situation. It would need to be approved by the City.

Ms. Spector-Morgan asked if the City is bound by the City ordinance.

Code: Mr. Hall stated that the City would only own a portion of the building. The City likes to follow the ordinances, but technically they could bypass the ordinance.

Mr. Emond pointed out the building and where each organization was located. It was really one building. They were trying to honor the history of the property.

Mr. Monahan asked if they were there because they needed the variance for the signage on the taller portion of the building.

Mr. Emond stated that they needed two variances, and one was for the taller portion.

Mr. Moore discussed that the building was constructed to appear as a two-story building, but it is a one-story building. The signage on the taller portion was for the Penacook Community Center.

Mr. Winters inquired if the square footage was the allowable amount for all organizations.

Mr. Moore and Mr. Emond agreed.

Mr. Winters asked about the size and number of signs.

Code: Mr. Hall stated that the ordinance follows the one building, one sign rule, so they need a variance for the sq. footage and the sign on the taller portion.

In Favor: None.

In Opposition:

Max Mayo testified, stating that he wanted to understand what the signage would look like. He asked if it would be illuminated, and during what hours if so. He is not opposed to the size of the signs as presented. He would be opposed if it was illuminated.

Code: Mr. Hall stated that the lighting issue would be determined by the Planning Board.

Mr. Winters stated that the application states that it will not be illuminated.

Mr. Wallner had a letter from David and Laura Field, 62 Community Drive, stating that they are in opposition of the signage.

Mr. Moore clarified that it will not be internally illuminated, however, there may be downlighting. There are no other free standing or ground signs.

Code: No comment.

Mr. Winters asked Code about the 20 sq. ft. requirement and if it comes from the size of the building and not the frontage. The property does not have a lot of frontage.

Code: Mr. Hall agreed.

Mr. Monahan asked if this is a rehabilitation of a former building.

Code: Mr. Hall stated that three lots were combined and a new building was constructed.

DECISION:

Mr. Winters reiterated that the 20 square feet is derived by the frontage on Dolphin Street, however, it serves area residents and the building was already approved. The signs are appropriate and modest.

Ms. Spector-Morgan agreed, stating that the signage is completely reasonable if not small for the size of the building. The hardship is the massive size of the building and the unreasonably small amount of signage that is allowed. She appreciates it is a neighborhood, but did not feel that the amount of signage would alter the essential character of the neighborhood, it would not diminish the surrounding properties, and there would be no justice in denying the variance.

Mr. Monahan agreed, stated that for the size of the building, the signage is modest. It meets the wayfinding goal of helping people find where they need to go.

Mr. Davie agreed.

Mr. Wallner agreed.

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

A **motion** was made to approve the June 5, 2024, Findings of Fact by Ms. Spector-Morgan, seconded by Mr. Monahan; passing unanimously. Mr. Winters and Mr. Davie abstained. It was noted to correct the date on the Findings to June 5, 2024.

A **motion** was made to approve the June 5, 2024, Minutes by Mr. Monahan, seconded by Ms. Spector-Morgan; passing unanimously. Mr. Winters and Mr. Davie abstained.

A **motion** to adjourn the meeting was made at 8:10 pm by Mr. Winters, seconded by Ms. Spector-Morgan; passing unanimously.

*Respectfully Submitted by
Deborah Tuite*