



David Hall
Code Administrator

CITY OF CONCORD

New Hampshire's Main Street™

Zoning Board of Adjustment

August 7, 2024
MEETING MINUTES

Attendees: Chairman Christopher Carley, Nicholas Wallner, James Monahan, Andrew Winters,

Alternates: Mark Davie, Brenda Perkins

Absent: Laura Spector-Morgan, Tedd Evans

Staff: David Hall, Code Administrator
Deborah Tuite, Board Secretary

Meeting commenced at 6:00 pm.

- 1) Call meeting to order
- 2) Chairperson's comments
- 3) Public Meeting
- 4) Public Hearings
- 5) Review and acceptance of Findings of Fact
- 6) Review and acceptance of Minutes
- 7) Any other business that may legally come before the Board

PUBLIC MEETING

Ms. Perkins stepped in to vote on this case, Mr. Davie remained an alternate.

ZBA-0209, 24 Pierce St Request for Rehearing submitted by Joseph Sculley
ZBA-0210, 24 Pierce St Request for Rehearing submitted by Todd Fahey

Special Exception was granted during the June 2024 ZBA.

0169-2024 The owners are requesting a Special Exemption according to article 28-2-4 (A) 15 to operate a Rooming House (Sober Living Facility) in a Residential District. Article 28-5-6 allows for up to 10 individuals, applicant is proposing max of 6.

At the June ZBA, with a vote of 3-2, the Board voted to approve the variance.

Chair Carley advised the Board that these two cases were Rehearing Requests for 24 Pierce Street. He explained the process for a Rehearing Request, pointing out that typically there is no new

testimony taken, rather the Board relies on the written submissions from the applicants submitting the Rehearing Requests.

Mr. Monahan questioned the minutes from the June meeting for 24 Pierce Street.

Chair Carley clarified that the Special Exception was granted.

Mr. Wallner did not feel an error was made and he did not feel any new information was presented to rehear the case.

Mr. Monahan stated that he reviewed the submissions and while there was some new information presented on Police calls, he was not sure it was material to the limited scope of what the Board had to vote on. He further stated that at the time he felt the application was weak, and there was enough of a record to get to a yes on the vote. He is still concerned around the City's obligation to the American's with Disabilities Act as far as a sober living facility. He would like to ask the City Solicitor's Office for further information.

Mr. Winters stated that he was not on the Board that night, however, he did read the minutes as well as the Rehearing Requests, and he did not see anything new that was material. He did not see anything new to justify reopening the case.

Ms. Perkins stated that at the time she felt for the neighbors, however, she does not feel the Board made any errors.

Chair Carley did not see a rationale in either submission for a Rehearing.

ZBA-0209-2024; A **motion** was made to deny the Request for Rehearing by Mr. Winters, seconded by Mr. Wallner; passing with a vote of 4-1, with Mr. Monahan in the minority.

ZBA-0210-2024; A **motion** was made to deny the Request for Rehearing by Mr. Winters, seconded by Mr. Wallner; passing with a vote of 4-1, with Mr. Monahan in the minority.

PUBLIC HEARING

Mr. Davie stepped in for the next case, and Ms. Perkins stepped down.

ZBA-0196-2024 192 N State St, UT - Urban Transitional District

Owner: MALOUTAS HRISI

Applicant is looking to operate a Dog Grooming business and requires a Special Exception for Personal and Business Use in Urban Transitional (UT) District.

Mercedes Scott and Maloutas Hrisi testified. Ms. Scott explained that the parcel used to be a restaurant and she is looking to open a 1-on-1 dog grooming business. She stated that the dog grooming business would reduce traffic from the former use as a restaurant.

Chair Carley asked if she expected an excessive demand from Municipal Services or Police.

Ms. Scott stated that she did not expect a demand for those services.

Code: Mr. Hall mentioned that Ms. Scott is looking for a business use through a Special Exception.

Mr. Monahan asked if the dogs would stay overnight.

Ms. Scott stated that there would not be any dogs overnight, there would not be any overlapping clients, and there would not be any excessive barking due to the 1:1 nature of the business.

In Favor: None.

In Opposition: None.

Code: None at this time.

DECISION:

A **motion** was made to approve the Special Exception by Mr. Wallner, seconded by Mr. Winters. Mr. Wallner stated the request meets all nine criteria for a Special Exception. The motion passed unanimously.

Ms. Perkins stepped in for the next case, and Mr. Davie stepped down.

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. (Raising Cane)

Attorney John Sokul, Michelle Robinson, Matt Ashley, and owner Rick D'Amante testified.

Michelle Robinson, Project Development Coordinator for Raising Cane, explained the business model for Raising Cane which is a quick serve, fast casual restaurant, where approximately 75-80% is served primarily by drive-through. They are expanding rapidly, with another location nearing completion in Manchester.

Matt Ashley, Bohler Engineering, discussed the development, mentioning that the site was previously permitted for a drive-through use. He explained that there will be no new drive-through connections as they will use the utilize the existing access. All utility connections will be made within the site. They are proposing some modifications to the development, being more specific to the Raising Cane use, such as the parking and the drive-through model. The driveway will be a dual drive-through, as additional capacity there would be necessary. He explained that they are proposing 33 parking spaces.

Attorney Sokul testified that this is a land condominium and the parking calculations are for the lot as a whole. There is an existing site plan approval for the three buildings. This is next to the Aldi's on Loudon Road. The double drive-through would alleviate traffic on Loudon Road and therefore it would take up a few parking spaces. He felt this was a modest request.

Mr. Ashley stated that they are introducing a drive-isle, creating a stacked drive-through, which would not interfere with Aldi's.

Attorney Sokul stated that they are aware that they need a conditional use permit for the drive isle through the Planning Board.

Mr. Winters questioned if there was a previously approved plan for a single drive-through and where did that approval come from.

Attorney Sokul stated that the Planning Board had previously approved the drive-through.

Mr. Monahan asked if this was not a stand-alone condo, how many spaces would they need.

Attorney Sokul reviewed his materials. He stated that based on the square footage of the building and the outdoor seating area, that they would need 55 spaces on that specific lot, and they are asking to provide 35.

Chair Carley mentioned that earlier they mentioned that the parking requirement request was for the entire parcel.

Attorney Sokul clarified it is for a single lot, and that each condominium owner has cross access to the parking.

Chair Carley asked if Aldi has enough parking.

Attorney Sokul stated that Aldi appears to have enough, and that they would acquire three more spaces.

Code: Mr. Hall explained that since it is one lot, they are required to have a total of 170 spaces, of which they would be offering 153 spaces.

Attorney Sokul stated that they have discussed this with Aldi's and they are on board with this proposal.

Mr. Winters asked about the three condos and what type of structure would possibly come in.

Richard D'Amante stated that there is nothing slated yet, but it is approved for a 60,250 sq. ft building,

Attorney Sokul mentioned that the square footage is calculated for the overall parking requirement.

Chair Carley asked how much stacking would be provided by the double lane, specifically how many cars, and how many parking spaces would they be losing.

Mr. Ashely stated that they doubled it, which would add 10 cars on the inside lane, losing 3 parking spaces.

In Favor: None.

In Opposition: None.

Code: None.

DECISION:

Ms. Perkins mentioned that it is a change from 170 spaces to 153 spaces. She does not see a problem with the request. She feels it is smart to have a two-lane drive-through.

Mr. Winters stated that the Board had heard and approved a similar request on Whitney Avenue. He agreed.

Mr. Monahan had nothing to add.

Mr. Wallner stated that due to the drive through element, the need for parking is substantially less. He would be inclined to approve the request.

Chair Carley stated that he agreed with his colleagues. He further added that the condominium structure of the lot is a unique feature, and that the required number of parking spaces are not necessary, providing that they are adding 10 stacking spaces in the drive-through which compensates for the number they are losing.

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

Mr. Davie stepped in for the next case, Ms. Perkins stepped down.

ZBA-0211-2024 2 Portsmouth St, RN - Neighborhood Residential District

Owner: BEDARD PAUL E JR & LISA A REV TRUST

Two variances are requested: to allow for a more uniformly dispersed 10-unit development across two zoning districts with different density requirements, and to allow for a cluster development perimeter buffer encroachment for an existing structure.

Daniel Barowski, Paul Bedard, and Orion Shea testified. Mr. Barowski, of Fieldstone Land Consultants, reviewed the variance requests. He stated the cluster development proposes to combine two parcels for a combined 250 feet of frontage and seven and half acres of land. The RN/RO bisects the lot. The lot lies in the Shoreline Protection Zone and a small section is located in the 100 Year Flood Zone. They are seeking the variances to create a cluster subdivision with a layout that is more desirable for the City. The RN zone is the least restrictive, and the RO is the most restrictive district with regards to density. He pointed out two proposals, one that follows the density requirements in the ordinance (EH2), and one that they are proposing (EH1) that allows the development to be spread-out for a more desirable development.

Mr. Winters asked if the sketches were created to show what they are allowed to do compared to what they would like to do.

Mr. Barowski stated that they are asking to be allowed two and a half additional units in the RO zone so they can spread it out more evenly on the lot.

Mr. Winters asked if they were allowed to put 1.5 units in the RO zone.

Mr. Barowski stated that was the case, based on the density calculations.

Ms. Perkins asked if this was by the river.

Mr. Barowski stated that it was near the river, and that allowing the variances allows for the best features of both zoning districts, whereas the units in the RN district can be more evenly spaced out, and the units in the RO district can take advantage of municipal sewer and water which is available on site. They believe this layout allows for the best balance between the two zones, and honoring the spirit of the zoning ordinance. Allowing the uniformed development of the lot will not be against public interest, as it will prevent overcrowding in the RN zone, and will allow the yard area in each unit one might expect for a single-family home. The character of the neighborhood will be upheld, the spirit of the ordinance is observed by preventing overcrowding of the land, while allowing reasonable growth in the community. This will allow much needed housing opportunities. The stated purpose of the cluster development in the ordinance is to allow greater flexibility and more creative design in residential areas than is generally possible. Mr. Barowski read through his variance request in greater detail, discussing each criterion, including substantial justice, property values, and substantial justice.

Mr. Barowski then discussed the second variance request for the perimeter buffer encroachment. He stated that the first house on the lot is 15 feet from the right-of-way, which is suitable for a RN zone, however, a cluster development requires a 25-foot perimeter buffer to be maintained. This structure was built in the late 1800's and faces the intersection of Eastman and Portsmouth Streets. They are hoping to keep the existing structure and not have to modify it or demolish it because of the perimeter buffer. The special circumstance is that they have a historic structure located to a uniquely shaped right-of-way. He described the area, including the abutters, the intersection, etc.

Ms. Perkins asked for confirmation that one plan showed what is allowed currently, and the second plan shows what they are asking for. She mentioned it is tough that there is a zoning change half way through the property.

Mr. Winters asked if on the issue of the butter if each unit has to meet the buffer.

Mr. Barowski stated that a 25-foot perimeter buffer is required around the entire tract of a cluster development.

Mr. Winters questioned if the existing structure was the only structure that would not meet the 25-foot buffer.

Mr. Barowski stated that the existing structure is about 15 feet back.

Mr. Bedard stated that about eight feet of that is the front porch.

Mr. Winters asked if the idea was that it would be subdivided and sold into individual lots.

Mr. Barowski stated it would be one lot with 10 single-family units, of which two units are already existing. It will be an HOA format.

Ms. Perkins confirmed an HOA is like a condo development with an association with rules, sharing maintenance, etc.

Mr. Monahan asked if it is one lot now or multiple lots.

Mr. Barowski stated that they are two separate lots, and they are proposing to combine those lots.

Mr. Monahan asked about the Shoreline Protection Zone.

Mr. Barowski stated that as long as they maintain a 150-foot natural woodland buffer, they are allowed to build.

Mr. Davie asked if it would add significant costs to follow the compliant sketch.

Mr. Barowski stated it would be less costly, stating that they would be closer together, the road would be shorter, and that utilities would be cheaper etc. They are trying to make it more harmonious.

Mr. Bedard mentioned that he is a land specialist and the hardship is the split zoned lot. It is an arbitrary line and they are trying to abide to the spirit of the intent.

Chair Carley asked about the dashed lines on the drawing.

Mr. Barowski stated they represent the individual yard allotments for a unit in a cluster development. This would allow them to exceed the minimum allotments.

Mr. Winters mentioned that they exceed the minimum in the compliant plan.

Mr. Barowski agreed for both sketches.

Mr. Monahan asked what homes they are proposing.

Mr. Bedard said it is yet to be determined, barring approvals, costs, etc.

Mr. Monahan asked if they are looking at 4,000 sq. ft. homes, etc.

Mr. Bedard explained that it would be determined on the economic side of things and yet to be determined.

Mr. Barowski stated that they are limited by the ordinance requiring spacing between the houses.

Mr. Bedard mentioned that the current houses are between 2,800 sq. ft. and 3,500 sq. ft.

Mr. Shea stated that the current houses on the road are all single-family homes, and the intent is to have single-family homes that can enjoy the surroundings.

In Favor: None.

In Opposition: Donna Cassidy, 14 Portsmouth Street abutter, testified. She abuts the property at 6.5 Portsmouth Street, which is behind her property. She stated that there are other neighbors that live in front of the property and next to the property who do not want traffic next to and behind them day and night. The house at 6.5 Portsmouth Street is the oldest house in East Concord. She is opposed to the variances and the cluster development. She mentioned that this is a very historic neighborhood. Her grandparents lived across the street, and now her cousin is the 5th generation to live in that house. 58 years ago, her home was built, and 13 of the 17 houses were already there, where some of those houses were well over 100 years old at the time. Adding the homes will be right

next to 93 N & S, the bike path, and the City pump station. Four of the neighbors would literally have this development right in their backyard, only a few feet from the proposed road. They do not want the development and they are not ready for it. There are runners and walkers and bikers that use the conservation trails. The Society for the NH Forests abuts the property. They are blessed with wildlife of all kinds and this will encroach on the wildlife habitat. The land in question is no longer zoned in the floodplain, however, the river bank erodes a few feet every single year. This will impact many lives.

Chris Miller, 25 Portsmouth Street, testified. He mentioned that he is a former Zoning Board member. He was present to speak in opposition to the requests. His principal perspective is the access way, which is shoehorned between two properties. He stated that there is no justification for the variance, as the access way would literally be right next to an abutters house. They have an option, even though they don't want to demolish the house or a portion of it to accomplish the plan.

Carrie Deegan, from the Society for the Protection of NH Forests, testified. She does not have an official statement, however she provided two points for the Board to consider. There is a very dynamic ecosystem in the flood plain, and they are losing 1-3 feet of shoreline a year. The other point, is that there are several animal species of concern in the flood plain, such as wood turtles and bank swallows. They make their nests in the banks of the river. Shoreline protection is to keep pesticides and other household chemicals out of the Merrimack frontage. Please consider those points.

Mr. Monahan stated that many of those issues are not before the Board.

Ms. Deegan mentioned that increasing the density in the RO is before the Board.

Mr. Monahan stated that they can develop the property to include eight additional structures. The question is are they going to do it within the current rights that they have as the property owners, or with the changes they have proposed. He asked Ms. Deegan how the Society's property is impacted.

Ms. Deegan stated that the plan with the most houses in the shoreline protection area is the one that would impact the most wildlife and would impact the buffer more.

Mr. Winters mentioned they are allowed to build 10 houses, and then asked would it be superior ecologically to push them further away from the river.

Ms. Deegan agreed, as far as the shoreline and the wildlife habitat.

Ms. Perkins asked if the land the Conservation has runs all along the river.

Ms. Deegan confirmed that the land runs along the river, stating that a lot of the area is an open field.

Paul Camacho, 52 Eastman Street, testified, stating that he is still not sure what they are proposing. He mentioned that 6.5 Portsmouth Street is the oldest house in the area, and that the road would go by what was a historic inn. The highway creates vibration from the traffic. He would imagine that would impact the sand that the structures sit on and the sand is shifting all the time. There used to be roads there that are gone now. He stated that it would have made more sense if they came and talked to the abutters prior to this evening.

Mr. Winters mentioned that these types of questions can be presented to the Planning Board.

Randy Cotton, 46 Eastman Street, testified. He asked the Board to consider the history of the neighborhood and to please take that into consideration. There is a marker where Portsmouth Street meets Eastman Street that states it is the first turnpike in the state.

Lisa Bisson, 8 Portsmouth Street, testified. She has lived there for the past 30 years. She lives right in front of 6.5 Portsmouth Street. Her house was built in 1816, and she lovingly restored the home. She is concerned and feels pushed into a corner with the proposed development. This will change the whole aesthetic of her property and the neighborhood.

Chair Carley asked if she has reviewed both of the plans, pointing out that one plan they can do by right. He asked if there was a plan that was preferable.

Ms. Bisson stated the plan with eight houses, as she has to pick the lesser of two evils. She wished they would cut down the number of houses. She has many questions, such as lights, and buffers, etc.

Ms. Perkins stated that most of those questions will be handled by the Planning Board.

Chair Carley confirmed again that Ms. Bisson felt the plan with eight looked better in her opinion.

Ms. Bisson agreed, stating that the neighborhood is utilized by many Concord residents. She is concerned that there will be an increase in traffic. She does not see any goodness coming to the neighborhood.

Michael Gray, 5 Portsmouth Street testified. He asked questions about the last time the river was surveyed to ensure the buffer area is correct.

Chair Carley mentioned that he imagined that the surveyor would come back up to review those questions.

Mr. Gray felt that spreading the houses out looked better but asked how many feet from a house to the river is required.

Chair Carley stated that is determined by both state and local regulations.

Mr. Winters advised that the Board is not addressing that particular question. If the applicant put it closer than the regulations, there would be a problem. It would be on the applicant to ensure the distances are per the regulations.

Mr. Gray stated that three or four houses would look better.

Chair Carley read an email from Douglas Finney, 30 Portsmouth Street, who object to the proposed variance. They are concerned about the sensitivity of the river. Requested that the variances be denied.

Mr. Barowski stated that the concerns will be heard in front of the Planning Board and appreciated the concerns of the abutters. This is the first step of a long process. He mentioned the erosion of the river in this area is minimal compared to other areas of the Merrimack River. They had a wetland

scientist review the lots and they found no wetlands on site. The road placement looks large on the plan, however, the road itself will be a common driveway and is much narrower. The right of way provides enough for utilities to get to the site. The pavement is much narrower than what is depicted on the plan. As far as the history of the neighborhood, they would like to keep the two existing houses on the lot as part of the development. They would like to keep the character, while developing prime land when there is a housing crisis. He mentioned that there are 7.5 acres, $\frac{3}{4}$ of an acre per house combined, where a lot of houses in the area are much smaller tracts. They feel it is a reasonable request and just looking to spread it out in a more favorable manner.

Code: None.

DECISION:

Ms. Perkins mentioned she has been a realtor, as well as resident of Concord, for over 30 years. She further mentioned that by right they can build the additional houses, and by right can push those houses right up to the neighbors, and that it shows a lot of consideration asking for the variances to pull the homes away from the neighbors while not encroaching too much into the shoreline protection area. They are trying to make it work, cut out a house from the design, and while she completely understands the concerns of the neighbors, most of the concerns would be for the Planning Board to consider. She knows that change is difficult but that it shows great respect for the neighbors by showing a considerate design.

Mr. Davie stated that he is not opposed to housing or the amount of density. It is walkable to parks and local businesses. He felt that the traffic was negligible, with the bike path there, as well as a lot of traffic going in and out of the Forest Society and swimming area. The applicant's concern for a particular housing size is negligible, as there is a housing crisis and people will live there no matter the size. Mr. Davie stated that he resonates with the Forest Society around climate readiness. Ultimately, he does not see the hardship. He would likely vote no. He asked if the plan would go before the Conservation Commission.

Mr. Winters mentioned that he could appreciate the neighbors' concerns for the historic character of the neighborhood. He stated that a cluster development is allowed by right. They are not ruling on that aspect. The only two questions are, first the buffer, which he feels is an obvious hardship, mentioning that it would be a terrible idea to tear down the structure or the porch. He sees the existing structure as a hardship. He then stated that the other hardship is the splitting of a zone. It makes more sense to spread out the houses in an equal way. He is concerned with the erosion; however, he also is considering the abutting lots. He feels it makes more sense for a variance to have the houses more spread out.

Mr. Monahan stated that he is in favor of the second request with regard to the buffer in order to maintain the historic house. As far as the first request, he stated that if the Board voted against it, it would create more density. He was surprised to hear from the neighbors that they would like to have it closer. He is not convinced, as seen in the record, that the zone line is there for no good reason. It is distinguishable that there was a historic neighborhood there, and the zoning was put in place for the RO district to serve as the ecological buffer. Less density is more desirable and that's why the zone is there. He stated that he does not have enough in front of him to vote yes and interrupt the RO in that part of the City.

Mr. Wallner stated that it is unfortunate as it will change the character of the neighborhood, but they can do it. He felt that pushing the buildings up to the abutters was not in the best interest of the community and leaning to support the variances in order to spread out the properties.

Chair Carley stated the he agrees with his colleagues about the buffer as far as the setback, as there is clearly a hardship there by the placement of the existing building, and nothing would be gained in enforcing the ordinance. He has two thoughts on the other request. He mentioned that Carrie Deegan pointed out that this would result in putting more houses in an area that is segregated to be protected. The appellant argued that it was an arbitrary line, and he did not agree with that statement, as it follows the line of the river for obvious reasons. Then he questioned on the other hand, by looking at the difference of the two plans, how much additional impact would there really be.

The Board discussed the potential impacts if the variance was approved.

Chair Carley stated that it does have an impact on a zone that was put there for protection of the edge of the river. He did feel there could be a hardship where the zoning creates a requirement for an inferior plan as a result of complying with the zoning. They did hear arguments that buildings closer together created an inferior plan, however, he was not sure that was proven. It is denser, and further away from the river, which is consistent with the intent of both the Shoreline Protection Zone and the RO district. He mentioned that although he was divided, but he would come down on the side of not granting the variance for the greater density in the RO zone.

Mr. Davie stated that he is in support of the buffer variance.

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

A **motion** was made to deny the variance to allow additional houses in the RO zone by Mr. Davie, seconded by Mr. Monahan. Mr. Monahan asked that the record rely on the conversation that the reason the RO district is there is to protect the shoreline. Passing with a vote of 3-2, with Mr. Wallner and Mr. Winters in the minority.

Mr. Barowski stated that the RO zone is 250 feet from Portsmouth Street.

Mr. Davie stepped down, and Ms. Perkins stepped in.

ZBA-0212-2024 80 Storrs St, OCP - Opportunity Corridor Performance District
Owner: BRIXMOR CAPITOL SC LLC

Variance from Section 28-7-2(e) to permit 769 parking spaces where 1,172 are required, or, in the alternative, where 984 (reduced to 799 by 2020 variance) are required;

Variance from Section 28-6-7 (f) to permit building signs with any points located higher than the plate of a flat roof;

Variance from Section 28-6-9(b) (1) to permit 5 building signs on the front of the building with a total of 990 sq ft (366 sq ft permitted,) 5 signs on the rear of the building with a total area of 570 sq ft, and one sign on each of the side faces of the building, 111 sq ft and 228 sq ft;

Variance from section 28-4-1(h) to allow an encroachment of 73 sq. ft within the setback at the rear of the building

Attorney John Sokul, of Hinckley Allen, Morgan Dunson, from Nobis Engineering, Shawn Lauge, from Create Architecture Planning and Design, and Marc Newman, Vice President of Development for Brixmor, testified. Attorney Sokul provided a handout for the Board. He mentioned that the

Board granted a parking variance a few years ago for 110 Grill and Starbucks. When that was done, the parking was reduced to 799 spaces, and as it stands today, there are 800 parking spaces. They would be adding a little bit of space, which negates the original variance. They are essentially starting over to see what the plan requires. When looking at the proposed gym plan, if instead there was a retail use there, the zoning requirements would be 984 parking spaces. For a gym use, it would require 1172 spaces. When they first started the process, they thought that they would have a gym user and at the present moment they do not. They are proposing 769 spaces on site, irrespective if it is occupied by a retail user or a gym user in the back space.

Attorney Sokul then mentioned that the original plan had a higher sign request on the rear of the building than what they need after speaking with Code Administration. The 570 sq. ft. that was noticed is accurate and they are seeking a variance for that square footage. They reduced the height of the proposed signs in the rear so that they are equal to the flat roof, so that request is withdrawn. Lastly, he mentioned that the Chamber of Commerce has a licensed agreement for 50 spaces near Marshalls, where they pay a monthly fee. Currently, the Chamber is subleasing these spaces for other employees or other tenants on Main Street. This is a revenue generator for the Chamber, however, that may need to be reviewed going forward.

Chair Carley asked for clarification that the parking the Chamber of Commerce uses belongs to Brixmor.

Attorney Sokul concurred that is the case.

Mr. Winters asked how that would work as far as the variance.

Mr. Newman stated that it is a monthly license agreement that can be terminated at any point with a 30-day notice, or quite possibly a 10-day notice, and given the fact that they are not even using the space, and unbeknownst to Brixmor until this week, that the Chamber is actually subleasing the spaces.

Code: Mr. Hall stated the variance that was approved years ago included the Chamber spaces in the calculation.

Mr. Newman mentioned that they have discussed this with the Chamber and it is likely that they would have to end the agreement with the redevelopment of the site.

Attorney Sokul mentioned that one of the proposed changes on the first page of the handout is the color, with one of the changes to a portion of the sidewalk. He stated that the City mentioned that if they create a new entrance that they would require an ADA sidewalk. The proposal is the City preferred plan, which would chip away at some of the parking.

Chair Carley asked for clarification as to where the ADA sidewalk would be placed.

Mark Newman explained that for the last five years, Burlington has wanted to downsize. Brixmor has not been able to facilitate downsizing the store until they have a viable plan. They have commitments from four new retailers, with 20,000 sq. ft. in the rear still remaining. They feel it would be an excellent use for a Gym. There are always challenges, and the rear uses are always tough to lease. They are proposing some enhanced signage to attract potential retailers for that rear space. They have been in conversation with members of the City staff to discuss possibilities. They are happy with the proposed plan. With a redemise and a subdivision of the Burlington store, this

would bring it down to 22,000 sq. ft., leaving three new retail spaces in the front and a space in the back. They are proposing a 2,850 sq. ft. addition in the front in order to square off the building, and make it flush. They would also be creating a new addition to the rear space, for an entrance for a gym or store, and they believe that they need to create an ADA sidewalk, resulting in a total of 31 parking spaces lost. They are seeking a setback variance for a shared loading dock in the rear, which would not go any further than the existing Burlington loading dock. They are seeking a reduction in parking. Lastly, while meeting with the City, they proposed a master sign plan be submitted, which they have done. There would be a new façade for Burlington, and then three tenants facing Storrs Street. He then discussed the right side of the building, where they would replace the current sign with an updated sign. The new entrance for the rear user would also require new signage. He mentioned that since the rear space has been hard to lease, so they are trying to work with the City for enhanced signage for this particular space, which is behind Marshalls near Route 93.

Attorney Sokul mentioned that there is parking behind Marshall's.

Mr. Newman stated that the parking that they would be losing would be coming from the far-left corner. They would like to have a sign for Burlington behind the building and on the side. He then discussed the signage behind the building for the other new tenants, where they lowered and reduced the proposed signs to 90 sq. ft. They would like to have the visibility on the rear for each new tenant as well as the corner space as it is tough to lease.

Mr. Winters stated that having that signage on the corner would be prime marketing and a good selling point.

Mr. Newman mentioned that it will help them lease a tough space.

Mr. Monahan asked if the changes are reflected in the variance.

Mr. Newman stated that the only change is the reduction from 180 sq. ft. to 90 sq. ft for the back signs as well as the fact that they lowered them.

Attorney Sokul mentioned that after speaking with Mr. Hall, they reduced the square footage, which was noticed accurately.

Mr. Newman mentioned that the last few pages showed the existing sign plan.

Chair Carley asked about the monument sign.

Mr. Newman stated that they pulled the monument sign.

Chair Carley asked Code about the rear space, mentioning that the entire building appears to be raised. If the parapet is below, would it be below the allowable roof height.

Code: Mr. Hall stated that the sign should not go over the visible roofline.

Ms. Perkins questioned Code if there are any exceptions.

Code: Mr. Hall stated not that he is aware of.

Mr. Newman continued, discussing the illustration of signage as it currently stands today. The Market Basket signs are 309 sq. ft. He stated that the sign code is based on the frontage of a building, but not the distance from the street. He discussed the sign study, which included proposed signage as a mock-up as viewed from Storrs Street for the Burlington building for a sense of proportion.

Ms. Perkins mentioned that companies come forward with signs that are corporate specific.

Code: Mr. Hall mentioned that the master plan has not been approved by the City and not reviewed or approved by the ADR or Planning.

Attorney Sokul mentioned that the master sign plan is just for layout purposes showing existing approval. They are not looking for approval as it already exists.

Mr. Newman stated that when they came in front of the Board three or four years ago, they did not come in seeking individual sign variances. He mentioned that after speaking with the Planning staff, they mentioned given the complexity of the redevelopment of the space, that it would be preferred that they come in with one request for a master sign plan. This has added a little bit of a complication on the four leases that they have secured, and they have had to be very careful about the language in those leases that they are subject to the agreement of the master plan. Each lease has had to qualify according to what is approved. The leases are for soft products.

Ms. Perkins asked Code about the variances they are seeking for the signs; five on the front, five on the rear, one on each of the sides.

Code: Mr. Hall mentioned that the Board would be voting to approve the square footage that they are asking for. The City has concerns for the signage over the roofline and along the highway.

Mr. Winters asked for clarification from Code that this is not for the number of signs but for the total square footage of all the signs.

Code: Mr. Hall explained that each establishment needs a sign, and the square footage of the front of the building establishes the square footage of the signs. The City does not have an equation based on how far back signs are from the street.

Chair Carley asked Code if all of the original signs on the highway side required a variance, and if any proposed signs require a variance. He then asked about the signs on the front on the Storrs side.

Code: Mr. Hall agreed that the signs had a variance, and the proposed signs need a variance.

Mr. Newman mentioned that they specified what square footage they are seeking and what the ordinance allows. They understand that they are taking a larger space and splitting it up, thereby locking in the signage that is allowed for future tenants.

Mr. Monahan asked for clarification around parking.

Mr. Newman stated that they were at the threshold, and with the 2,800 sq. ft. addition they are seeking a variance for a reduced number of spaces.

Mr. Monahan inquired that if the Board approved the 769 parking spaces, where 1172 are required, that it allows them the flexibility to have a gym in the back space.

Mr. Newman agreed, stating then they would not need to return for another variance in the future for a gym.

Mr. Monahan asked if they only approved 769, where 984 are required, it would limit who they could lease that back space to.

Mr. Newman agreed that it would limit that back space to retail, or other allowable uses.

Mr. Monahan asked how many parking spaces would be needed if a Police Station was put back there.

Code: Mr. Hall stated that he did not have the square footage to determine that, and that scenario is not going to happen.

Mr. Monahan asked for clarification that they are seeking more flexibility for the back space, however, it is still 403 spaces short.

Mr. Newman stated that they were originally over 300 spaces short. The entrance to the proposed gym is in the rear.

Code: Mr. Hall mentioned that the City knows that they need to look at the parking ordinance.

Mr. Monahan mentioned that it is a very dense parking lot. He asked about the signage request, as far as the square footage on the front of the building, mentioning they are allowed 366 sq. ft. and they are asking for 990 sq. ft. He asked how many square feet are used currently.

Mr. Newman stated that Burlington is not using close to what they are entitled to.

Mr. Lauge testified that Burlington uses 112 sq. ft. on the front, and 112 sq. ft. on the side.

Mr. Newman pointed out that Market Basket has 310 sq. ft. and they only have 212 sq. ft. of frontage, which is at 47% above the allowable amount. Marshalls has two signs that equal 262 sq. ft., when they only have 140 linear feet, which is an 88% increase in what the code allows.

Mr. Monahan stated that they are looking for 250-300% more square footage than what is allowed.

Mr. Newman stated that is not the case if the Board looks at the space for new tenants.

Mr. Monahan pointed out that the square footage is for the building, not for each space.

Code: Mr. Hall stated that typically the City looks at the linear square footage.

Mr. Newman stated that is a real hiccup in the ordinance, because if you take a space with five tenants, they would not be able to do anything with the amount they would be allotted. He also mentioned that this building is set back quite a bit from the street.

Attorney Sokul mentioned that the code does not do a good job as far as a double-sided building.

Mr. Newman mentioned that is why they had a sign study done to show what it would look like from Storrs Street, and that it is proportionate and tasteful.

Attorney Sokul stated it is a massive building that is well setback from Storrs Street.

Chair Carley asked about the encroachment.

Mr. Newman stated that they are proposing a new loading dock, which will not extend any further than the existing one for Burlington, which is 13 feet off of the property line, and 12 feet off of the building.

Chair Carley asked if the existing one is already in violation. He also asked if the paved area goes off the property.

Mr. Newman stated that the paved area does go off the property and there is an easement.

Mr. Monahan asked if they are losing the Architectural peak, and does that affect the frontage.

Mr. Lauge mentioned that they are, but based on the code, it is linear frontage.

Mr. Wallner asked about the traffic counts, and how three additional units could impact parking. He mentioned that when he visits, the area near Joanne's and the State Liquor store are always full, and the Market Basket area tends to have more available spaces. He is concerned that there will not be enough parking in the area near the proposed tenants.

Mr. Newman stated that they are going to do a better job of policing the parking lot, which has a lot of people who park there that are working and shopping in downtown Concord.

Mr. Wallner stated it will only get worse when the legislative parking garage is torn down.

Mr. Newman stated that right now there is 77,000 sq. ft. of retail and that although there will be new traffic with four new retailers coming in, they would not be restaurants, or grocery stores that drive tremendous amounts of traffic. The stores are more basic goods and the traffic will be the same overall.

Attorney Sokul stated that the unused parking near the rear will need to be used.

Mr. Winters asked if they are continuing to see a problem with people parking there for downtown uses, and how would they police that.

Mr. Newman mentioned that they have hired a company to help them police the parking. It used to be policed by the Chamber of Commerce, however, they changed their agreement with the Chamber and are now policing the parking themselves.

Ms. Perkins mentioned that it sounds like a lot of the same people visiting the current store will visit the new stores. She wished there was a way to put a path between the building and Marshalls for better use of the back parking, but that's not possible with the loading docks there.

Mr. Newman stated that long-term they believe there will be activity on that side of the property. He mentioned that they have suffered for a long time as a lot of the retail traffic tends to go to the Loudon corridor across the river. It has taken them five years to come up with this plan, as well as a long time to come up with retailers that would commit. They are here because they don't believe the building is viable any longer, and they are looking for options to make better use of the space.

In Favor: None.

In Opposition: None.

Code: None.

DECISION:

Chair Carley asked that the Board consider the height variance for signs on the corner unit on the east side of the building first.

Ms. Perkins stated that she is concerned that it would create a precedent.

Mr. Winters stated that he is not inclined to grant the height request, as he feels the Board needs to be consistent in fairness. He is leaning to approve as far as total square footage.

Mr. Monahan stated that he is looking at everything as one package and he is trying to figure out what is in the best interests of the community.

Mr. Wallner stated that it seems like a precedence issue.

Chair Carley stated that the sign ordinance, especially as it applies downtown, envisioned something rather different than this shopping center. It envisioned a series of relatively narrow storefronts going down the street, with a sign on each one, and a separate business for each one. The scale of this location, the distance back from the street, and the scale and distance from the highway, says to him that this is a different situation. It happens to be downtown, but it is really in the style of a suburban shopping mall. For those reasons, the entire composition including the way it sits on the site, is a hardship for signage. He would be inclined to look at the entire package. It looks like a reasonable use given the context. He would support the changes including the height.

Code: Mr. Hall requested that if it is approved as a blanket square footage, that it is approved as presented in the applicants plans.

Mr. Monahan stated that he had a different vision for Storrs Street, in that it would eventually become almost like a second Main Street, and instead they may be looking at it as a suburban shopping mall in the middle.

Chair Carley stated that was reasonable, however, the mall is already there.

Ms. Perkins is concerned that more new businesses will come and request elevated signage.

A **motion** was made to deny *Variance from Section 28-6-7 (f)* by Ms. Perkins, seconded by Mr. Winters; passing by a vote of 4-1, with Chair Carley in the minority.

A **motion** was made by to approve *Variance from Section 28-6-9(b) (1)*, with conditions based on the submitted sign plan, by Mr. Winters, seconded by Ms. Perkins. Mr. Monahan wanted to observe that it is a lot of square footage. Mr. Winters agreed and mentioned that they are in a tough location. He is concerned how it will all work out, as it is an important location in the City, however, giving them some leeway to market it the best they can is appropriate. The vote passed unanimously.

Parking:

Mr. Monahan asked Code about the Chamber spaces.

Code: Mr. Hall stated that the Board would be granting the variance as presented for the numbers, and they understand that 50 of those spaces belong to the Chamber right now.

Mr. Monahan revisited that those are 50 spaces that would not be available for downtown customers that will have to find parking somewhere.

Ms. Perkins stated that the Chamber is not using the spots, and that the license agreement could be given a 30-day notice.

Mr. Winters mentioned that the Board could add a condition.

Chair Carley stated that the applicant said they would have 769 spaces available, and they own those spaces.

A **motion** to approve the Variance for parking spaces was made by Mr. Monahan, pointing out that they are able to accommodate the gym, for a forgiveness from 1172 spaces, seconded by Mr. Winters. Mr. Winters stated it is a well-known problem that the parking lot is being used by many people from downtown due to the unique location, which is not Brixmor's fault. He feels parking will be tight there regardless. They have enough spaces for their use, and possibly parking enforcement should help to monitor. The motion passed unanimously.

A **motion** was made to approve *Variance from section 28-4-1(h)* by Mr. Winters, stating it was logical, seconded by Mr. Wallner; passing unanimously.

Ms. Perkins stepped down and left the meeting. Mr. Davie stepped in for the remainder of the meeting.

ZBA-0214-2024 3 Barrell Ct, OFP - Office Park Performance District

Owner: GRANITE EDVANCE CORPORATION

Variance from 28-6-9 (c) for two additional free standing signs and 28-6-9 (a) to allow 95 sq ft of signage where 40 sq ft is allowed.

Kendra Price testified, stating that the current company is rebranding their two signs which have been there for over 20-30 years. The signs stand about 300 feet from the main road and are for wayfinding. This would help as far as traffic concerns. These two signs will be matching the current signs that they replaced earlier in the spring. One sign is under 30 sq. ft. and the other sign is at 36 sq. ft.

Code: Mr. Hall stated that they are replacing signs that were never permitted.

Ms. Price mentioned that the signs had been there for over 20 years. The frontage is based on the frontage of Barrell Court where the main entrance is.

Mr. Winters mentioned that if it was based on Pembroke Road or Regional Drive they would not need a variance.

Code: Mr. Hall pointed out that they do not base the frontage on street frontage, it is based on building frontage.

Chair Carley asked if the signs would be the same size as the older signs. He asked Code if it would be eligible for an equitable waiver.

Code: Mr. Hall stated that if they were not changing the signs, possibly.

In Favor: none.

In Opposition: None.

Code: None.

DECISION:

Mr. Wallner stated that he is inclined to support the variance, however, he is trying to understand the hardship. Although it is a very large building, the frontage is the issue. It would not be contrary to the public interest, it won't decrease property values, and it would not harm the public in any way.

Mr. Monahan stated that he is inclined to support, and that the layout of Barrell Court could be confusing to the public as far as wayfinding.

Mr. Winters mentioned that it is a very large lot, and with the speed limits of Pembroke Road and Regional Drive, it is a safety issue for visibility.

Mr. Davie agreed.

Chair Carley agreed with his colleagues.

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

ZBA-0216-2024 190 Airport Rd. RS – Single Family Residential District

Owner: DAVID & ROBERTA THOMPSON

Variance from Article 28-4-1(h) Table of Dimensions to allow a 1' setback from side property line where 15' is required.

Robert and David Thompson testified. Mr. Thompson stated that they are looking to replace an existing garage, due to settling issues. It is a 24' x 24' garage that needs to be demolished as it is cracking and the slab is caving in. He mentioned that it is probably a stump dump situation underneath which created the issue. They plan to add eight feet in the back. They will be tearing out the slab.

Ms. Thompsons stated that possibly they did not put a frost wall in, which most likely caused a lot of the issues. It is unsafe.

Mr. Wallner asked about the setback.

Ms. Thompson mentioned that the current setback is one foot and they will be maintaining that same setback.

Mr. Winters asked about the justification for adding the eight feet of space.

Mr. Thompson stated that the additional space would be for a workspace and storage. It is a pre-fab garage.

In Favor: No one present.

In Opposition: No one present.

Code: None.

DECISION:

Mr. Davie stated that he is inclined to support. He was unsure of the hardship, and agreed that it was an unsafe structure.

Chair Carley stated that the hardship could be that it is placed where it is, in relation to the lot.

Ms. Thompson stated that by extending the eight feet it puts the structure 34 feet from the back-property line, which is a chain link fence the City installed.

Mr. Winters stated that it is replacing the existing garage, and it is where the existing driveway is located. The eight feet is reasonable for todays homeowner. The use is reasonable.

Mr. Monahan stated he had nothing to add

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

A **motion** was made to approve the July 10, 2024, Findings of Fact by Mr. Wallner, seconded by Mr. Winters; passing unanimously.

A **motion** was made to approve the July 10, 2024, Minutes by Mr. Wallner, seconded by Mr. Winters; passing unanimously.

Mr. Hall introduced AnneMarie Skinner, City of Concord Planner.

A **motion** to adjourn the meeting was made at 8:54 pm by Mr. Wallner, seconded by Mr. Winters; passing unanimously.

Respectfully Submitted by
Deborah Tuite