



CITY OF CONCORD
New Hampshire's Main Street™
Zoning Board of Adjustment

December 3, 2025
MEETING MINUTES

Attendees: Chair- Christopher Carley, Member- Laura Spector-Morgan, Member- Nicholas Wallner, Member- Andrew Winters, Alternate Member- Brenda Perkins and Alternate Member- Mark Davie.

Absent: Member- James Monahan

Staff: Stephanie N. Verdile, Assistant City Planner-Zoning
Krista Tremblay, Administrative Technician III

1. Call to order

Chair Carley called the meeting to order at 6:02 p.m.

2. Chairperson's comments

3. Public meetings

4. Public hearings

- 4.1 Ryan Washburn requests a variance from *Article 28-4 Development Design Standards, Section 28-4-1(d)3 Minimum Side Yard Requirements/(h) Table of Dimensional Regulations* to permit the location of a screened porch to be located within five (5) feet from the side property line where fifteen (15) feet is required. The property is known as Tax Map Lot 291/Z-15 located at 2 Otter Dr. in the Single-Family Residential (RS) District. (ZBA-0342-2025)

Chair Carley asked Alternate Member Davie to weigh in on this application to have a five-member Board.

Ryan Washburn (2 Otter Dr, Concord) is present to represent this application. Mr. Washburn read the five criteria submitted with the application.

Member Wallner stated he is looking at the site map and is it in the back of the house.

Mr. Washburn said it is on the back of the house. Mr. Washburn was told Second St and Otter St are two front setbacks and he has two side setbacks. It is on the back of the house but in a side setback.

Alternate Member Perkins asked if there is a road on that side of the house.

Mr. Washburn stated there is a road on Otter Drive on the right and then Second St at the top. Mr.

Washburn stated he is on a corner lot.

Member Winters stated for corner lots you get two fronts and two sides.

Chair Carley asked where he would like to put the porch is in the side yard.

Mr. Washburn stated it is a side yard.

Member Spector-Morgan asked if it were a rear set back what would be the requirement.

Mr. Washburn responded 25 feet and 15 per side.

Member Winters asked for expansion on the statement about the property layout and dimensions being unique.

Mr. Washburn stated the side yard cuts an angle through the yard and it is not straight. The house is more at an angle in the lot.

Alternate Member Perkins asked for the house next door is that their garage.

Mr. Washburn responded yes.

Member Winters asked why they set it that way.

Mr. Washburn stated it was built in 1995 and he could not tell you.

Chair Carley asked if there is any member of the audience that wishes to be heard in favor of this appeal, anyone in opposition, and if Planning Division staff had any comments. With no comments, Chair Carley closed the public hearing.

Member Wallner thinks the hardship lies in the way the house is positioned it is close to the rear setback and reasonable to expect a porch to be in the back of the house.

Member Winters agrees and thinks it is a fairly modest porch and there is no other place where they can put it.

Alternate Member Davie agrees the corner lot makes odd so there is no rear or side yard and it would not be uncharacteristic for the neighborhood.

Member Spector-Morgan thinks there is somewhere else to put it and not where they are proposing to put it so sure.

Chair Carley is inclined to agree with his colleagues. There is a hardship based on the configuration of the house on the lot and it is a reasonable use.

On a motion made by Member Winters, seconded by Member Wallner, with a vote of 5 (Carley, Davie, Spector-Morgan, Wallner and Winters) in favor to 0 opposed, the Board vote to ***grant the variance from Section 28-4-1(d)(3) Side Setback/(h) Table of Dimensional Regulations*** according to the provisions of RSA 674:33 to permit a side setback of 5 feet where 15 feet is required for the construction of a screened porch, at 2 Otter Drive, in the Single-Family Residential (RS) District,

because all of the criteria under and 674:33 have been met based on the record before us, and the Board adopted the applicant's findings as the Board's findings of fact as follows:

1. *The variance will not be contrary to the public interest.*

"The proposed porch will be modest in size and in keeping with the character of the neighborhood. It will not encroach on any public rights-of-way, nor will it obstruct visibility or public access. Ne negative impacts to public health, safety, or welfare are anticipated."

2. *The spirit of the ordinance is observed by granting the variance.*

"The intent of the setback is to preserve open spaces between structures and protect neighboring properties' privacy and enjoyment. The porch will be unobtrusive, hidden by the neighbors natural fencing, and will not affect the neighbors use or enjoyment of their property, thereby maintaining the spirit of the ordinance."

3. *Granting the varaince would do substantial justice*

"Granting the variance allows us to make reasonable use of our property without harming the public. Denying the variance would create an unnecessary hardship while offering no substantial gain to the public."

4. *If the variance were granted, the values of the surrounding properties would not be diminished because:*

"The addition of a small porch is consistent with neighborhood aesthetics and is likely to increase, or at a minimum maintain, property values. It is not a commercial or disruptive use, and it does not impair views or privacy."

5. *Unnecessary Hardship*

A. *Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:*
i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property;

"i: The property's shape and layout limit the build-able area. Applying the full setback prevents reasonable use of the yard space for a common residential feature such as a porch. The intent of the ordinance is preserved even with the reduced setback, as there is no adverse impact to public or neighboring interests." *and*

ii. The proposed use is reasonable

"ii: The proposed use is a reasonable one. A porch is a customary residential use and is reasonable for a single-family home. The request is not excessive and does not propose an unusual use of the property.

4.2 T. F. Moran on behalf of Unutil Energy Systems requests a variance from *Article 28-4 Buffers to Bluffs, Section 28-4-49(c) (1)(a) Certain Uses Prohibited, the erection or construction of a building or structure* to permit the construction and location of an electrical control enclosure for the West Concord Substation pole storage yard. The property is known as Tax Map Lot 494/Z-44 located at 1-7 McGuire Street in the Industrial (IN) District. (ZBA-0345-2025).

Chair Carley read agenda item 4.2 and agenda item 4.3 in together to be discussed at the same time and the Board will vote separately.

Nicholas Golon (48 Constitution Dr, Bedford) and Nathan Sherwood (30 Energy Way, Exeter) are present to represent this application.

Chair Carley asked Alternate Member Davie to weigh in on this application to have a five-member Board.

Ms. Verdile stated in the staff report on whether or not this application is a Development of Regional Impact and the Board will need to make a motion. The Board needs to determine before the hearing starts based on the information provided in the staff report.

Member Winters asked if that is something you would suggest the Board get testimony for their position.

Ms. Verdile responded no, that is the Board's determination based on the criteria provided in the staff report and whether the application meets those criteria or not. If they feel like it meets the criteria, then you would declare it a Development of Regional Impact and if the application does not meet the criteria as listed in the staff report, then you do not declare it a Development of Regional Impact and the applicant can move forward.

Member Spector-Morgan asked if it abuts Pembroke.

Ms. Verdile responded no, but it is in the aquifer protection community overlay district.

Chair Carley asked if there are six criteria.

Ms. Verdile responded yes, they are in the staff report and there is a proposed motion there as well.

Alternate Member Davie asked if they delay this does it have to go to Central New Hampshire Regional Planning Commission.

Ms. Verdile stated if it is declared a Development of Regional Impact then yes it does and the neighboring communities will need to be notified and they have an additional 30 days within the time frame to move forward.

Chair Carley asked why is the staff ambivalent about.

Member Spector-Morgan stated staff does not get to make that decision the Board makes that decision.

Member Winters stated there are some facts that he can make reasonable guesses about and don't really have the scope of how this will impact. There are no dwelling units and it is not on the border of Pembroke. However, in terms of emissions and water impact that is what he would have questions about.

Chair Carley stated there is nothing from stopping them from asking the applicant.

Member Winters stated there are no emissions from this it is simply transporting power that is already generated.

Mr. Golon stated it is a control building and electrical infrastructure.

Member Winters asked if there is any additional light, noise, odors or smoke.

Mr. Golon responded no, any lighting would be emergency lighting when their lights are on and your lights are off.

Member Winters noted they are near the river and asked if there will be any impact on the water.

Mr. Golon responded no, this will require an alteration of terrain permit and the city will review the storm water.

On a motion made by Member Wallner, seconded by Alternate Member Davie, with a vote of 5 (Carley, Davie, Spector-Morgan, Wallner and Winters) in favor to 0 opposed, the Board voted that *proposed project not be determined a Development of Regional Impact under RSA 36:55, as it does not meet the criteria for regional impact.*

Chair Carley asked staff up until now the Board has not been making this determination in every case and asked if this is something they will have to do with every case.

Ms. Verdile stated they are still in the process of working out the process. There was some confusion with this particular application and when it was declared a DRI by staff and staff is not the body by the RSA to declare a DRI. The RSA 36:55 says any application that comes before a local land use board. They are working through the process to figure out when applications come in, and depending on which Board the applicant goes to first and who will make the determination of a regional impact. Ms. Verdile stated the previous application (a variance request for a setback) nowhere near fit the criteria for a development of regional impact. When you have these applications where it can be questionable to an aquifer and things like that, then a Development of Regional Impact declaration would come before the Board. They are still working on the internal process.

Mr. Golon stated he takes it the Board has read the application and there is no need to recite it page and verse. Unitil has an office, outdoor storage, warehouse and the home of the West Concord substation that has been there since the 1940's. They have reached the point that the 1940 substation has reached its useful life and it is time to upgrade. This will provide more reliability of service and the next logical step for the surrounding communities. This has a closer proximity to the Merrimack River and there is a portion of the property that is considered bluff. Mr. Golon noted this is a river bluff with a steep high cliff and bank that overlooks the body of water. Mr. Golon stated river bluffs are important in New Hampshire because a crucial habitat for plants, animal species, provide historical and geological records and steep site have nesting places for birds. Mr. Golon noted the first variance is in regards to a structure relevant to be located within a 50-foot buffer above the bluff. That area is currently Unitil's pole storage area. They are not clearing any vegetation. The substation is going in the most easterly corner and in the lower right corner is the pole storage. They will install the substation in the upper right corner of the existing yard. The second zoning request has to do with recontouring a portion of that. As part of the redevelopment of the site there is storm water management that are now required to be incorporated that were not required in the 1940's. The site drains through the low point through the ravine and directly to the river.

Chair Carley asked if they are rebuilding and relocating the substation.

Mr. Golon responded yes, the old substation will be decommissioned and the yard may be used for storage.

Chair Carley asked if the reason they are relocating because you want to keep the one running while you are waiting for the other one to be ready to go.

Mr. Sherwood stated partially that and where it is now is small. They store equipment and there is no way to expand that it is small substation and cannot fit what they are trying to install now. They need the extra storage for the equipment around the building.

Mr. Golon noted the existing substation is around 4000 square feet and the new substation will be 22,000 square feet.

Chair Carley asked about the regrading and why that is necessary.

Mr. Golon mentioned the storm water management system that would be incorporated in this. Right now, that area is centrally located in an area of a ravine which storm water currently drains to and then to the Merrimack River. At the head water of that there is a small triangular piece.

Chair Carley asked where it happens to be close to the bluff.

Mr. Golon responded yes, by regulations the ravine associated with the bluff is also considered a bluff. Because they are working in that ravine portion it is considered a bluff impact. Mr. Golon stated this is restoration work because these are not naturally occurring existing soils as part of the test pits that were conducted they found it is a fill area.

Member Spector-Morgan asked if there is a way to expand the existing building.

Mr. Golon responded correct, looking at the 4000 square foot substation and it now needs to be 22,000 square feet.

Member Spector-Morgan asked if they will keep them both.

Mr. Golon responded no, the existing substation will go away after the new building is constructed.

Member Spector-Morgan asked if Conservation Commission had requested a wildlife survey of the bluff.

Mr. Golon stated as part of the alteration of terrain permit with NH Fish and Game that box is automatically checked as they go through that process.

Member Winters asked what is a substation and its function.

Mr. Sherwood stated electricity is transmitted at high voltages because the losses are lower. When you go 20 miles to 100 miles you need the higher voltage otherwise you would lose voltage along the way. A substation takes the higher voltage and steps it down to a lower voltage that you can put on the street. Then, you transform that and it will go into someone's house to 120 volts.

Member Winters asked if it is a transformer.

Mr. Sherwood stated it is a transformer station and there are circuit breakers that trip and isolate if there is a tree that takes a pole down only a few customers are out and not thousands.

Member Winters asked if there are some people manning it at different times.

Mr. Sherwood stated it is all electronically monitored and controlled. They also have remote control over the whole yard which is monitored 24/7.

Chair Carley asked if there is any member of the audience that would like to speak in favor or opposition to this application.

Cheryl Gochez (254 N State St, Concord) and Carlos Gochez (254 N State St, Concord) are abutters to this property. Ms. Gochez asked for the amount of power going through and how will it affect them. Will there be fencing.

Mr. Gochez stated they have a license with them to only transfer so much power through their land.

Chair Carley asked if there is any comment from the Planning Division staff, with none, asked the applicant to provide comment in response to what they heard.

Mr. Sherwood there is an easement that goes across the property and there are power lines that go to North State Street.

Mr. Golon stated they can bring that up to the Planning Board as that is a more appropriate venue. This is not a generation facility.

Mr. Sherwood stated the power will be flowing through and the voltage will be the same.

Member Winters asked if the power at any given time will be the same and there will be more total.

Mr. Sherwood stated it could be more power but the voltage is the same.

Member Winters asked if it increases the risk.

Mr. Sherwood stated it would decrease the risk because there is more of a high-tech protections system.

Chair Carley closed the public hearing. Chair Carley noted there are two variances which are two separate cases and will start with agenda item 4.2.

Member Spector-Morgan does not have any concerns about building this building in the setback of a bluff. The public interest is not hindered with granting this variance. This will not alter the character of the neighborhood. This is an industrial neighborhood. There is already a substation there and they are moving into the buffer and not into the bluff. The appropriate research has been done to make sure the environmental characteristics of the bluff are being protected. Substantial justice is being done because there is no gain to the general public from denying the variance. Where as the harm to the general public of denying the variance is real and there is no evidence of any diminishing of surrounding property value. The hardship is that the property was developed in the 1940's. Member Spector-Morgan is in favor of granting the variance.

Alternate Member Davie has nothing to add.

Member Winters agrees stated they need to listen to the applicants as they are the experts. Member Winters does not blame the abutters for their concerns and their rights are by the easement they have with Unitil. The concern is the variance for the on the bluff. The benefits of the community outweigh. This will not change any of the existing impact to the bluff.

Member Wallner had nothing to add.

Chair Carley had nothing to add.

On a motion made by Member Spector-Morgan, seconded by Alternate Member Davie, with a vote of 5 (Carley, Davie, Spector-Morgan, Wallner and Winters) in favor to 0 opposed, the Board vote to **grant the variance Article 28-4 Buffers to Bluffs, Section 28-4-49(c) (1)(a) Certain Uses Prohibited, the erection or construction of a building or structure to permit the construction and location of an electrical control enclosure for the West Concord Substation pole storage yard, located at 1-7 McGuire Street** because all of the criteria under RSA 674:33 have been met based on the record before us, and the Board adopted the applicant's findings as the Board's findings of fact as follows:

1. *The variance will not be contrary to the public interest.*

“To be contrary to the public interest, a variance must unduly and in a marked degree conflict with the zoning ordinance such that it violates the ordinance’s basic zoning objectives. The requested variance will allow for installation of a safe, secure, upgraded electrical substation with the purpose of providing an essential service to the general public. The design of the relocated substation yard and electrical control enclosure provides the least impactful layout by utilizing the existing electrical infrastructure interconnection points, and previously altered areas of the site, currently being utilized as a pole storage yard. Granting the variance would not alter the essential character of the locality in relationship to the bluff, as the site has been utilized by Unitil, including the existing West Concord Substation, dating back to the 1940s. Further, the proposed enclosure will not impede the intent of the ordinance to ensure the long-term stability of the landform and protect the surrounding environment.”
2. *The spirit of the ordinance is observed by granting the variance.*

“The variance fits within the spirit of the zoning ordinance in that it facilitates the adequate provision of electricity, an essential public utility, while also preserving long-term stability of the landform and protecting the surrounding environment. The proposed location of the control enclosure has been designed in accordance with the National Electrical Safety Code (NESC) standards and electrical interconnection requirements to the existing distribution system. This project will have a positive effect on the public health and safety in that it meets the growing electrical demand in the Concord area and provides further redundancy for service reliability. Granting the variance would not be contrary to the public interest as it facilitates the adequate provision of electricity and essential public requirement and does not depart from the intent of the ordinance to protect bluffs as an important geological landform..”
3. *Granting the variance would do substantial justice*

“The guiding factor for substantial justice is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. Under the specific design of the proposed substation and electrical control enclosure, the gain to the public will not outweigh the harm to the applicant, as the public is protected equally in either case. The proposed infrastructure improvements will allow Unitil the continued use of the property to provide a safe, secure, electrical facility built in accordance with NESC standards, while maintaining the natural land formation associated with the bluff and further stabilizing the area. As currently presented,

the gain to the public would not outweigh the harm to the applicant, as the public is best served by the design as proposed..”

4. *If the variance were granted, the values of the surrounding properties would not be diminished because:*

“Specific to the variance requested, Unitil has continuously operated the West Concord Substation dating back to the 1940s. The existing campus also houses Unitil’s Concord offices, warehouse space, and storage yards, enabling Unitil to best serve the City and surrounding communities. As the industrial character of the site and its proximity to the bluff and its associated buffers have already been established, the value of the surrounding properties already reflects this use. Therefore, no diminution in value would be expected from the authorization of the requested variance.”

5. *Unnecessary Hardship*

A. *Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:*

- i. *No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and*
- ii. *The proposed use is reasonable*

“The overall purpose of the ordinance is to promote the health, safety and general welfare of the public. Relief from the 50-foot bluff buffer as specified by the ordinance can be provided without frustrating the purpose of the ordinance in that the overriding factor of the safety of the public is observed and the work will not encumber the long long-term stability of the landform. Special conditions pertaining to this property that distinguish it from other properties include the existing use of the site as an electrical substation and pole storage area, the extent of prior disturbance to the bluff, and the need to comply with NESC standards. The site plans expressing the limits of anticipated work and the location of the proposed electrical control enclosure have been reviewed with the Concord Conservation Commission at their October 8th meeting. The Commission did not take issue with the proposal to locate the electrical control enclosure as shown and voted unanimously to support the site plan as presented. This determination reflects there being no fair and substantial relationship between the general public purposes of the ordinance and its application to the property. Denial of the variance would result in not only unnecessary hardship for the owner, but also the customers which Unitil serves.

The location and existing use of the property as an electrical substation and pole storage yard make the continued use of this property to support the electrical infrastructure needs of the community and surrounding area an appropriate selection. Relocation elsewhere in the City would create an economic hardship for the owner as well as the customers which Unitil

serves. Relocating elsewhere on site outside the bluff buffer would create a less effective electrical configuration that would also not serve the needs of Unitil or their customers.”

4.3 T. F. Moran on behalf of Unitil Energy Systems requests a variance from *Article 28-4 Buffers to Bluffs, Section 28-4-4(c)(2)(b) Certain Uses Prohibited, the recontouring or grading of the land, construction of a building or structure* to permit the construction and location of an electrical control enclosure for the West Concord Substation pole storage yard. The property is known as Tax Map Lot 494/Z-44 located at 1-7 McGuire Street in the Industrial (IN) District. (ZBA-0346-2025).

Chair Carley asked Alternate Member Davie to weigh in on this application to have a five-member Board.

Member Winters feels the statements made previously from Member Spector-Morgan remain true for this variance.

Alternate Member Davie stated same. They are going to get the alteration of terrain permit and there will be mention of the impact of the regrading.

Member Wallner has nothing to add.

Member Spector-Morgan stated she does not see the downside.

Chair Carley agrees with his colleagues.

On a motion made by Member Spector-Morgan, seconded by Alternate Member Davis, with a vote of 5 (Carley, Davie, Spector-Morgan, Wallner and Winters) in favor to 0 opposed, the Board vote to ***grant the variance Article 28-4 Buffers to Bluffs, Section 28-4-49(c) (1)(a) Certain Uses Prohibited, the recontouring or grading of the land, to permit the construction and location of an electrical control enclosure for the West Concord Substation pole storage yard, located at 1-7 McGuire Street*** because all of the criteria under RSA 674:33 have been met based on the record before us, and the Board adopted the applicant’s findings as the Board’s findings of fact as follows:

1. *The variance will not be contrary to the public interest.*
“To be contrary to the public interest, a variance must unduly and in a marked degree conflict with the zoning ordinance such that it violates the ordinance’s basic zoning objectives. The requested variance will allow for installation of a safe, secure, upgraded electrical substation with the purpose of providing an essential service to the general public. Areas of recontouring within the bluff take place entirely within areas previously disturbed by site construction and specific to the requested relief, recontouring of the land involves removal of fill/unsuitable materials observed during subsurface soil evaluation. Consistent with Article 28-4-4(b)(4) of the zoning ordinance, this area would be revegetated to a more natural condition. Granting the variance would not alter the essential character of the locality in relationship to the bluff, as the site has been utilized by Unitil, including the existing West Concord Substation, dating back to the 1940s. Further, the proposed work is intended to prevent erosion and stabilize the soil on

the bluff, consistent with the intent of the ordinance to ensure the long-term stability of the landform and protect the surrounding environment.”

2. *The spirit of the ordinance is observed by granting the variance.*

“The variance fits within the spirit of the zoning ordinance in that it facilitates the adequate provision of electricity, an essential public utility, while also preserving long-term stability of the landform and protecting the surrounding environment. The proposed limited grading within the bluff to facilitate the rebuild of the West Concord Substation and pole yard storage area has been designed in accordance with the National Electrical Safety Code (NESC) standards and electrical interconnection requirements to the existing distribution system. This project will have a positive effect on the public health and safety in that it meets the growing electrical demand in the Concord area and provides further redundancy for service reliability. Granting the variance would not be contrary to the public interest as it facilitates the adequate provision of electricity and essential public requirement and does not depart from the intent of the ordinance to protect bluffs as an important geological landform.”
3. *Granting the variance would do substantial justice*

“The guiding factor for substantial justice is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. Under the specific design of the proposed substation and pole storage area and the associated recontouring of the bluff, the gain to the public will not outweigh the harm to the applicant, as the public is protected equally in either case. The proposed infrastructure improvements will allow Unitil the continued use of the property to provide a safe, secure, electrical facility built in accordance with NESC standards, while maintaining the natural land formation associated with the bluff and further stabilizing the area. As currently presented, the gain to the public would not outweigh the harm to the applicant, as the public is best served by the design as proposed.”
4. *If the variance were granted, the values of the surrounding properties would not be diminished because:*

“Specific to the variance requested, Unitil has continuously operated the West Concord Substation dating back to the 1940s. The existing campus also houses Unitil’s Concord offices, warehouse space, and storage yards, enabling Unitil to best serve the City and surrounding communities. As the industrial character of the site and its proximity to the bluff have already been established, the value of the surrounding properties already reflects this use. Therefore, no diminution in value would be expected from the authorization of the requested variance.”
5. *Unnecessary Hardship*
 - A. *Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:*

i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and

ii. The proposed use is reasonable

“The overall purpose of the ordinance is to promote the health, safety and general welfare of the public. Relief to recontour within the bluff as specified by the ordinance can be provided without frustrating the purpose of the ordinance in that the overriding factor of the safety of the public is observed and the work will not encumber the long long-term stability of the landform. Special conditions pertaining to this property that distinguish it from other properties include the existing use of the site as an electrical substation and pole storage area, the extent of prior disturbance to the bluff, and the need to comply with NESC standards. The site plans expressing the limits of anticipated work have been reviewed with the Concord Conservation Commission at their October 8th meeting. The Commission did not take issue with the proposal to recontour within the bluff where specified as these areas were documented to consist of fill/unsuitable materials removal and voted unanimously to support the site plan as presented. This determination reflects there being no fair and substantial relationship between the general public purposes of the ordinance and its application to the property. Denial of the variance would result in not only unnecessary hardship for the owner, but also the customers which Unitil serves.

The location and existing use of the property as an electrical substation and pole storage yard make the continued use of this property to support the electrical infrastructure needs of the community and surrounding area an appropriate selection. Relocation elsewhere in the City to avoid recontouring of the bluff would create an economic hardship for the owner as well as the customers which Unitil serves.”

4.4 John L. Arnold on behalf of William Young Properties, LLC requests a variance from *Article 28-4 Development Design Standards, Section 28-4-1(c) Minimum Lot Frontage/(h) Table of Dimensional Regulations*, to permit 80 feet of frontage where 100 feet is otherwise required for the conversion of a non-residential building to a residential building. The property is known as Tax Map Lot 1413/P 33 located at 37 Washington Street, Penacook in the Urban Commercial (CU) District (ZBA-0347-2025).

John Arnold (45 S Main St, Concord) is present to represent this application. Mr. Arnold stated the site was previously owned by Capital Alarm Systems which is a commercial use in an existing building from the 1960's. The owner wants to convert the inside the property to three apartments. The lot is a preexisting non-conforming lot with about 80 feet of frontage when 100 feet is required. The city determined they need a frontage variance to convert the building from the commercial use to the residential use and they applied for that variance. In their application they do not believe that a variance is necessary. Mr. Arnold wanted to address that first. Mr. Arnold stated section 28-8(d)(2) of the zoning ordinance says you can develop any non-conforming lot for any use is permitted by right in the non-residential district if five conditions are met. Mr. Arnold stated the first condition is that the lot has at least 22 feet of frontage and they have 80 feet. The second condition is that all of the setbacks and dimensional requirements can be met. Mr. Arnold here we meet all of the dimensional requirements

except the existing building is in the side yard setback. However, that encroachment in the side yard setback is entitled to remain because the building itself is a preexisting non-conforming structure. Mr. Arnold stated the 15-foot side yard setback does not apply to that building. The third criteria is that the lot was under separate ownership from the adjacent lots when the ordinance became effective. Fourth is that the lot be combined with any adjacent lots under common ownership and this does not apply. Fifth the property is served by public sewer or septic system approval this property is on public sewer. Mr. Arnold noted in the staff report the city takes exception with two issues in that section the first is they believe the second criteria is not met because the building is in the side yard setback. Mr. Arnold disagrees with that because he believes the grandfathering provision in the ordinance that allows the building to remain in the setback. They comply with the setback and do not need to comply with the 15-foot setback. The building was built before the ordinance came into effect. The second issue is they do not believe this constitutes development. The ordinance allows the development of any non-conforming lot with a permitted use. Mr. Arnold disagrees and believes it is development. The ordinance does not define what development is. Mr. Arnold believes a common-sense understanding is the word development includes renovations and conversions from commercial use to residential use on a preexisting lot. Mr. Arnold stated if they find a variance is not needed he thinks they are done. If a variance is needed he is happy to address the criteria.

Chair Carley asked for staff to provide comment.

Ms. Verdile stated it is clearly spelled out in the staff report. The staff has made the interpretation that this application does require a variance for frontage as the use is changing, allowed use, to residential use and that is the frontage requirement is 100 and they have 80. This is not a single-family dwelling.

Mr. Arnold noted there is a provision in the ordinance that allows in a residential district the lot to be developed for a single-family residence. In a non-residential district it is allowed to be developed for any permitted use in the district and this is the urban commercial district it is a non-residential district so it can be developed under the provision Mr. Arnold cited for any permitted use not a single-family residence.

Member Spector-Morgan stated he needs a variance because it is in the side setback. Member Spector-Morgan understands that it is a non-conforming building and the building is entitled to stay there. But the condition for developing on a non-conforming lot is that all yard setbacks, parking and other requirements in the ordinance can be met. If this was a vacant lot and they were going to build a building there they would have to meet the side setbacks. It is not the same thing as saying if this was a vacant lot and put this building on it because you cannot do that without a variance. While the existing building is entitled to remain, but in order to convert the use you have to comply with the required city ordinance. In this case you have a non-conforming lot and you want to develop it you need to comply with the requirements for doing that and you need to comply with the side setbacks of the frontage variance.

Alternate Member Davie stated they are not into the variance yet and still having trouble understanding the why the single versus three units hits the trigger when it is surrounded by residential in a non-residential district. Alternate Member Davie asked do we know why the threshold is the way it is for a single family and not a multifamily.

Member Spector-Morgan stated in a residential district a one family detached dwelling may be constructed on a non-conforming lot in a non-residential district of a permitted use.

Alternate Member Davie stated they should do the variance.

Member Winters stated Mr. Arnold made some interesting points. The sense is the way staff interprets is traditionally how the Board has viewed it. Member Winters stated if the Board took his position it would change some of their practices. Member Winters thinks this is a pretty easy variance case and note sure if

this is the right case to make that big change in precedent. Member Winters would error on the side of the staff recommendation.

Member Wallner is tending to lean that this is a variance.

Chair Carley asked about the violation that triggers this is the side yard setback and yet we are talking about asking to get a variance for frontage.

Member Spector-Morgan stated because it is a non-confirming lot and you can develop a non-confirming lot if they can meet among other things the side setbacks.

Chair Carley stated it can be fair to say they do not meet all of the criteria even though the building is entitled to be there. The most straightforward thing to do is hear the request for a variance.

On a motion made by Member Spector-Morgan, seconded by Member Wallner\Winters, with a vote of 5 (Carley, Davie, Spector-Morgan, Wallner and Winters) in favor to 0 opposed, the Board voted uphold staff's interpretation to require a variance because the requirements of section 28-8-3(c)(2) are not all met.

Chair Carley asked Mr. Arnold to please proceed.

Mr. Arnold read the criteria submitted with the application materials.

Member Winters asked if converting to any allowed use would trigger this problem.

Mr. Arnold stated it is debatable. Under the ruling the building being in the side setback precludes the use of this lot for any other use without a variance.

Chair Carley asked if there is any member of the audience that wishes to be heard in favor of this appeal, anyone in opposition, and if Planning Division staff had any comments. With no comments, Chair Carley closed the public hearing.

Member Wallner is inclined to favor this because it meets all five criteria. In granting the variance the hardship is there and property values will not be diminished. It would do substantial justice by granting it.

Member Winters thinks the conversion is a strong use of the building. It is beneficial to the city as a whole by adding more housing. It seems like the best way to convert it.

Alternate Member Davie stated the same as the above. It is an excellent re-use of structure. The lot predates any of the current zoning. It aligns with the character of the neighborhood. Which appears as residential however it is urban commercial zoning district and inclined to support it.

Member Spector-Morgan replied me too.

Chair Carley agrees with his colleagues.

On a motion made by Member Spector-Morgan, seconded by Alternate Member Davis, with a vote of 5 (Carley, Davie, Spector-Morgan, Wallner and Winters) in favor to 0 opposed, the Board vote to ***grant the variance from Article 28-4 Development Design Standards, Section 28-4-1(c) Minimum Lot Frontage/(h) Table of Dimensional Regulations, to permit 80 feet of frontage where 100 feet is otherwise required for the conversion of a non-residential building to a residential building at 37 Washington St Penacook*** because all of the criteria under RSA 674:33 have been met based on the

record before us, and adopted the applicant's findings of fact as the Board's findings of fact as follows:

1. *The variance will not be contrary to the public interest.*
“A variance is contrary to the public interest if “it unduly and in a marked degree conflicts with an ordinance such that it violates the ordinance’s basic zoning objectives.” *Farrar v. City of Keene*, 158 N.H. 684, 691 (2009) (internal quotations omitted). In determining whether a variance would violate basic zoning objectives, the board should examine whether the variance would alter the essential character of the locality, or whether the granting of the variance would threaten public health, safety or welfare. *Id.* Here, the variance will not alter the essential character of the locality. The lot frontage is existing, and will not change. Moreover, there are several other properties in the immediate vicinity with deficient frontage. For example:
 - The adjacent property to the North has 42’
 - 27 Washington Street has 12’
 - 44 Washington Street has 75’
 - 46 Washington Street has 73’

Further, the existing frontage has not threatened public safety, health or welfare in the past, and therefore will not moving forward.”

2. *The spirit of the ordinance is observed by granting the variance.*
“The New Hampshire Supreme Court has determined that this criteria overlaps with the public interest requirement. See *Chester Rod & Gun Club v. Town of Chester*, 152 NH 577, 580 (2005). The spirit of the ordinance seeks to ensure that there will be certain minimum frontage to provide safe and adequate access to the Property, and to prevent overcrowding of the streetscape. But none of that is changing under this request. The Property has existed and functioned adequately for an extended period of time. The conversion from commercial to residential use will have no impact whatsoever on the adequacy of access, or the appearance of the streetscape..”
3. *Granting the varaince would do substantial justice*
“Substantial justice is done where granting a variance will not cause harm to the general public that outweighs the benefit to the applicant. See *Malachy Glen Associates v. Town of Chichester*, 155 N.H. 102, 109 (2007). That is the case here. The conversion of the building to residential use with 80’ of existing frontage will not harm the public in any way. The creation of housing serves the public interest, as the City has recognized there is a housing shortage. The variance would greatly benefit the applicant because it would allow the existing building to be repurposed for a higher and better use.”
4. *If the variance were granted, the values of the surrounding properties would not be diminished because:*

“The variance will not impact surrounding property values, as it relates solely to continuation of existing conditions. As noted above, many other lots in the area have similar, or less frontage than here.”

5. *Unnecessary Hardship*

A. *Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:*

i. *No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and*

ii. *The proposed use is reasonable*

“The Property is unique in that it is a pre-existing nonconforming lot with 80’ of frontage where 100’ is now required. There is an existing building on the Property that can be readily converted to residential use. Whether the Property is used for residential or commercial use is immaterial for purposes of the existing frontage, and there is no public purpose served by either (a) allowing the commercial use to continue but prohibiting residential use; or (b) requiring Mr. Young to demolish the existing building and start from scratch with a new building.

The proposed use is reasonable because both multifamily use and the conversion of nonresidential structures to residential units, are allowed by right in the CU District. The proposal preserves and repurposes an existing building, and helps to alleviate the housing shortage in the City.”

5. **Review and acceptance of minutes from September 3, 2025, October 30, 2025 and November 5, 2025**

The September 3, 2025 meeting minutes will carry over to the January meeting due to one of the three members that were in attendance not being present at tonight’s meeting.

On a motion by Member Spector-Morgan, seconded by Member Winters, the Board voted 5 (Carley, Davie, Spector-Morgan, Wallner and Winters) in favor to 0 opposed to approve the meeting minutes from October 30, 2025, as written.

On a motion by Member Spector-Morgan, seconded by Alternate Member Davie, the Board voted 5 (Carley, Davie, Spector-Morgan, Wallner and Winters) in favor to 0 opposed to approve the meeting minutes from November 5, 2025, as written.

6. **Approve 2026 Meeting Dates**

On a motion made by Member Spector-Morgan, seconded by Member Winters, with a vote of 5 (Carley, Perkins, Spector-Morgan, Wallner and Winters) in favor, 0 opposed and 1 abstained (Davie) to approve the 2026 Zoning Board of Adjustment 2026 meeting dates as written.

7. **Any other business that may legally come before the Zoning Board**

8. **Adjourn**

On a motion made by Member Spector-Morgan, seconded by Alternate Member Davie, the Board voted 5 (Carley, Davie, Spector-Morgan, Wallner and Winters) in favor to 0 opposed to adjourn at 7:09 p.m.

Respectfully submitted,

Krista Tremblay

Krista Tremblay

Administrative Technician III