

**CITY OF CONCORD, NH
ZONING BOARD OF ADJUSTMENT
NOVEMBER 2, 2022 MEETING
DRAFT MINUTES**

Attendees: Chairman Christopher Carley, Nicholas Wallner, Andrew Winters, Jim Monahan, and Laura Spector-Morgan.

Staff: Tracey Hutton, Zoning Administrator
David Hall, Code Administrator
Rose Fife, Clerk

Meeting commenced at 7:00 pm.

46-22 135 North State Street: *RN-Neighborhood Residential District; by 135NSS LLC, Owner:*

Applicant seeks review of Administrators Decision regarding the current uses of 135 North State Street in comparison to the permitted uses and current zoning relief for the property. Variances were granted for the principal use of F1 with 3-4 Live/Work units. During a recent review of the property and website, it was determined that the Carriage House is being used in a different classification than general professional business and was classified as Commercial Indoor recreational Facility, use C3.

Testified: Attorney Kelly Ovit-Puc from Sulloway and Hollis and Fred Potter, managing member of 135NSS LLC.

Mr. Potter testified. He submitted a slide show titled "KV Realty Management (KVRM) presentation to Concord Zoning Board of Adjustment (ZBA) Appeal from staff decision requiring zoning change November 2, 2022". (Exhibit 1.) In 2018 it was brought before the Board for relief for 2 parcels, 125 N State Street, which is the oldest building on the block and was converted to an office building more than 30 years ago, the community building in the middle and an office on each corner and John Chorlian's development for a pocket neighborhood. In 2018 they were going to combine the carriage house with Rollins Court. Mr. Chorlian found that to be cost prohibitive, so Mr. Potter bought the carriage house. The first hearing Mr. Chorlian presented the information to the Board. He explained at that meeting the intended use of the property. The lot lines were revised. There was extensive development. Mr. Potter granted them access to land for a community garden for the Rollins Court inhabitants. Rollins Court has 8 residences with basements on wet ground. They have access into the property from Church Street and exit out onto North State Street. There are several easements on the property including underground utilities. When heard in 2018 there was general community support, but there was concerns about parking. The Rollins Court neighbors sought to limit the surrounding properties including completion of work that was part of original intention. There is no convention center. There are no actual parking, noise or other problems. Ten of the residents wrote letters in support. All of the neighbors that were there from 2018 to 2020 have submitted letters of support. Mr. Potter and his wife Mertie owned unit 2 in Rollins Court but had to sell it to make up for some of the financial needs of this project. No opposition letters have been filed as of 11.2.22. They have 4 racing simulators, which decreases number of people that are in that room at a time. He has an affidavit of Craig Walker, the retired Zoning Administrator. They have disclosed along the way what they are doing and disclosed it at the 10 plus meetings they have had. Slides 13 and 14 give examples as well as a copy of Craig Walker, the retired Zoning Administrator's affidavit. They have done several studies showing that only 50% of the parking lot is being utilized. It is half full on a typical day. They believe their interpretation of the new category of 'live/work' should be given some weight. Mr. Potter believes he has addressed all concerns. He feels it's less of a burden to the public.

Attorney Kelly Ovit-Puc testified. She submitted a chronology. The property is in the RN district. It's approximately 1/2 acre. Residential uses are largely permitted including the conversion of up to 5 units. Churches are there by special exception but this use was grandfathered when it was a church. There was residential and church uses as well as a community center use there when it was St. Peter's. Attorney Ovit-Puc submitted a handout with the heading "Appeal of David Hall's Administrative Decision" (Exhibit 2.), which gives an overview of the Zoning District, the Prior Historic Use and the Chronology, the Total development cost and the actual use of the carriage house. She reviewed each date listed in the chronology. See memo in file.

The Manse unit is being rented to a long term business tenant. The Carriage House has racing and golf simulator rooms. There is meeting space and kitchen facilities used from long term tenants on an unlimited basis. When not used by tenants of the Governor's Center, non-tenant members of Governor's Center use the property and they are entitled to use the space. Nonprofit is allowed to book space on a limited reservation at no fee. Business/members of the public are allowed to book space on a limited reservation for short period of times. A large majority of users are the business and residential tenants and members of the Governor's Center and non-profits.

In 2022 the Code Administrator determined that the use of the carriage house needs to be reclassified because the carriage house was not an accessory use but a principal use in itself. It is immaterial whether they use the space for yoga mats or racing simulators. They are all in the same class in the zoning ordinance. The question is not whether or not these types of uses are accessory to a business use. That determination was correctly made. It is common to provide those types of amenities accessory to a business use. The question is whether the use is properly characterized as a principal use or an accessory use. Leasing the building or space out for long term or short term use does not change the nature of the use. Short term rentals do not convert residential uses to business uses. This is a forward thinking model here at the Governor's Center. They have a suite of amenities that Mr. Potter makes available to other businesses. A use of historic properties or unique properties and/or their amenities being opened up to the public on an occasional basis is customary. Kimball Jenkins Estate property was cited as doing similar. It's common and customary to allow nonprofits to utilize their space at a no fee basis. The uses are being utilized by current tenants mostly. Less than 5% are outside fee rentals. Their position is that the Manse's principal uses remain as office, general office and live/work. They submitted new information in the form of Craig Walker's affidavit. Throughout the process they have been transparent, they have disclosed their intention with municipal officials.

The applicant's intent for Live/Work was that the Legacy Wise tenants would occupy the space. Craig Walker did not require employees to occupy the space. Residential spaces were counted independently from office spaces. Live/Work was a new use. Residential use was not classified as accessory use to an office use. This was contemplated as a multi-use property. In conclusion the carriage house use is accessory to the use of the manse. The carriage house should not be reclassified as a principal use. No parking recalculation is warranted. If the Zoning Board is inclined to deny the appeal, they want to know which uses exceed the scope of the zoning relief. They are seeking guidance.

Carley asked about her summary regarding accessory vs. principal use. Were they arguing that the carriage house is a principal use. Attorney Ovit-Puc stated that Mr. Hall's determination is that the carriage house is a principal use but they believe it to be accessory. Winters asked if they can have more than 1 principal use on a lot. Attorney Ovit-Puc answered yes. Monahan asked about their June 2018 request. What were they specifically asking for regarding the live/work determination. Attorney Ovit-Puc answered that the variance was granted and Mr. Chorlian had taken the lead on presenting the case at that time. Mr. Chorlian had hoped to sell just the manse to Mr. Potter and the plan at that time was that Mr. Potter would purchase the manse and move his business in. Then the carriage house was added at the suggestion of the Architectural Design Review Committee. Mr. Potter then purchased both properties. There was a non-formal agreement at that time that the Rollins Court neighborhood would be allowed to use the carriage house building, which never came to fruition. Mr. Potter then went to zoning who categorized the use as 'live/work' as it is a mixed use building. Monahan noted that the Zoning Board was concerned at that time that it would become a residential apartment building, but they were assured it wouldn't be and that everyone that lived there would work for a business in the building. It now looks like that isn't working out and they are asking for residential uses for people who are not working in the building. Attorney Ovit-Puc noted that Mr. Potter's business grew slower than anticipated. He had one residential unit that was vacant and he rented it to an outside person. Craig Walker came to them to propose this classification for live/work. Monahan was trying to understand what they meant by live/work. Mr. Potter stated it is a 'live' building per the affidavit. Their desire is to fill the building. Monahan was trying to understand how the Zoning Board's relief, which was granted in 2018, changed? He doesn't recall them granting relief to rent it out to non-employees, but to people that worked in the building. Potter described the residential spaces. There is a 2 bunk unit on the lower level with a private bath, a 2 bunk unit on the third floor with a private bath and a third unit with a bedroom, a loft, a kitchenette, and sitting area. There is a flex room on the second floor, which NH Business Finance Authority needed for business/office space. But in the future, it's conceivable that area will return to a residential space. Monahan reiterated one unit is rented to someone not working in the building. Attorney Ovit-Puc said that was correct. Monahan believes it is outside the bounds of their 2018 approval.

In favor: Kim Brown Hutton. She submitted a memo. Her parents got married in St. Peter's church on this property 62 years ago. She has lived across from 135 N State Street since 1986. She discussed the parking impact. Prior to this use they had the homeless shelter there. When Mr. Chorlian asked her if she'd be in favor of a pocket community, she was in favor. When it came to preserving that center, Mr. Potter has done a great job when he took over the manse and the carriage house. She has seen no negative impact. There have been no parking issues. If he gets a little revenue for renting out for public use, it's not going to hurt to have a few cars parked on the street. She's in favor. It benefits the community/neighborhood.

In opposition: Attorney Chris Boldt from Donahue Tucker and Ciandella PLLC. He represents Rollins Court. He submitted a packet earlier. (Exhibit 3.) The burden of proof is on the applicant to show Mr. Hall's determination is wrong. It has to be based on information in the record. His clients are concerned with developmental 'creep'. He's happy to hear they are not interested in an events center. This is a unique situation. It's not the only church property taken down. He is also the special council for the Diocese for development. St. Peter's was on the portion of the lot that now holds the Pocket Neighborhood. The Parish Hall was also on that property. The manse was the rectory and carriage house was just that, it housed horses. In 2010 the parish's food pantry moved into the lower level, but the garage was still there. It was in decrepit shape. He had concerns with the appeal document where it implicates municipal estoppel. Municipal estoppel is not within ZBA jurisdiction. He's given them a pack of information based on the cases they have heard. (Exhibit 3.) Things do change. Tab 2 you see decision letter dated 9.7.19. The date should read 9.7.18. The date is corrected in the text, but not at the top of the letter. That shows approval in case 54-18 which talks about use of existing building as accessory uses to office and live/work use for 135 N. State Street independent of 125 N. State Street. Tab 3 is Mr. Chorlian's narrative. Tab 4 is the notice of decision for Case #23-19 which involved maximum lot coverage of 63% vs. 50% allowed and to allow a detached structure to be converted for residential units. Tab 5 is Mr. Chorlian's narrative. The plan changed from 2018 to 2019. It was to be a community room for them not the public – see 3rd paragraph on first page. Carriage house. There is no reference to 125 N. State Street. There is a plan to put 2 residential units in the manse and 2 residential units in the carriage house. Tab 6 is a plan that shows the reconfigured of the pocket neighborhood and where the units are in the manse and carriage house. It is dated 4.1.19. Tab 7 is a presentation slide date stamped 5.01.19. The third page shows a new plan. That is what was approved looking back. He gave them a copy of the 1808 Corp Vs. Town of New Ipswich. Tab 9 is an email from Sam Durfee dated 9.26.22 stating weddings and simulators were not part of the discussion. He asks the Board to affirm Code Administrator Hall's decision and have the applicant come back for another variance for what they want to change.

Carley asked about municipal estoppel and how it relates to this case. Attorney Boldt explained. The Supreme Court states that the statutes do not authorize the Zoning Board to have jurisdiction over municipal estoppel. It distinguished the Thomas V. Hooksett case as the basis for municipal estoppel. Carley asked if they are interpreting it to mean that if the Code Administrator makes an interpretation of what the Zoning Administrator said for the benefit of someone getting a building permit, or grants a building permit, that the Board cannot rely on that having happened to overturn a subsequent ruling. Atty Boldt said they have a clear set of relief that was granted and your current zoning official is interpreting that relief to say that what they are advertising is beyond what was previously approved. He believes municipal estoppel is off the table. Carley asked if the appellant had no right to rely on the interpretation of the Zoning Administrator as it was a different Zoning Administrator. Carley asked if the original Zoning Administrator erred. Attorney Boldt believes this is an error and would call that affidavit suspect as it is notarized by Mr. Potter and a notary cannot notarized things they are involved in. Mr. Potter has recently purchased the property that Mr. Walker is referencing in that affidavit. Carley asked if Mr. Walker made an error in interpretation, and due to that, the appellant is not able to rely on that interpretation. Attorney Boldt said yes. He agreed Mr. Hall made the right decision. He's not clear what Mr. Walker did do, other than what is in the affidavit. Carley asked if the appellant is out of luck. Attorney Boldt explained that the appellant has the opportunity to get relief by requesting a variance.

Laura Spector-Morgan noted that it didn't matter whether the applicant is able to rely on Mr. Walker's determination. Winters asked if they could go to court. Laura Spector-Morgan explained that this Board can say that this is what they meant when they made their decision, and they can determine if it complies or not. Monahan asked if Attorney Boldt's client has a view on this interpretation. Attorney Boldt explained that there was no reference in the record about renting to a third party. They reference interns. His interpretation was that the relief was granted based on certain representations and that is what they are allowed.

Memos submitted into the file in support of this request. William Champney of 33 Christian Ave who owns buildings in the neighborhood. Barbara Ruedig, who is a realtor. Legacy Wise in support. Fred and Mertie Potter. David and Sharon Pickney. Victoria Campbell of 17 Church Street. June Wilson of 20-22 Church Street. All listed were in support of the appeal.

Code: David Hall testified that he relied heavily on the Minutes, which were clear on how 'live/work' was going to work. The accessory use of the carriage house was always accessory to the businesses of 135 N State Street. That is all in the Minutes. There is the memo from Sam Durfee in the file as well. There was no reference for advertising to rent out for wedding venues, etc. It's a commercial use when you start advertising.

Rebuttal. Attorney Ovit-Puc and Fred Potter. Attorney Ovit-Puc wanted to speak to the municipal estoppel. They are not asking the Board to decide if it applies. They are asking the Board to decide if the Code Administrator's decision/determination is correct. Municipal estoppel is not on the table here. They are not challenging Attorney Boldt's testimony that the only use approved was the residential units in the manse and carriage. There were some change in the plans though. Mr. Chorlian presented on that and then went to the Planning Board with that plan and mid-way through he changed gears and revised the plans showing the manse and carriage house would be used for office, live/work and accessory uses and that is what Planning approved. The September 27, 2019 letter she submitted gets into that. The Zoning Ordinance provides that in order for Planning Board to move forward, they need to determine that zoning relief was granted.

DECISION:

Carley reviewed the testimony as given.

Winters: Prior to their request for a rehearing his vote was to affirm Mr. Hall, as the total use exceeds the use represented to the Board when they granted the variances. It was represented as high end office use with live/work. He read the Minutes and listened to the recording of the meeting. It was specifically stated; the use is relevant for parking. It's high end use, so they don't need as much parking as the offices were bigger and the live/work people would be living and working there. The new information are the statements from Mr. Walker and Mr. Durfee and he believes it goes to municipal estoppel, which the ZBA does not have authority over. He would affirm Mr. Hall's determination/decision.

Laura Spector-Morgan commended them on a beautiful renovation. She appreciated that they weren't the original applicant. She reviewed the records. Their representation was that live/work people would work there. There was no discussion about weddings or nonprofit meetings. The public use is her issue. That has an impact on the parking variance. What she's seen in the record was not contemplated by this Board. She will uphold Mr. Hall's determination/decision.

Monahan agrees. The Board should affirm the decision. It is a beautiful building. He wanted to note that what was missing was in the chronology of events submitted in memo form was the matter of the parking issues. He would affirm the decision. The applicant should find a way to come before them for relief.

Wallner: Agrees with what has been said. It's expanded from what they heard.

Carley: He originally voted to uphold the Code Administrator's determination/decision. He voted for a rehearing after he read Mr. Walker's memo/affidavit. As a result of what he has heard tonight, he believes that the ZBA does not have the authority to overrule the Code Administrator's determination based on the information in Mr. Walker's affidavit. He supports the Code Administrator. Attorney Ovit-Puc made a request that the Board give them direction as to what they are allowed and not allowed to do. Essentially, the Code Administrator's ruling is that direction. The appellant can apply to the ZBA for relief.

A motion to affirm the Code Administrator's decision that the uses of the property, as they have evolved, are not consistent with zoning relief granted by this Board. i.e. rental for someone not working in the building and public rental of meeting/community room facilities. Motion was seconded by Monahan. Laura Spector-Morgan noted that they reviewed and affirmed the Code Administrator's decision. Monahan reaffirmed his second to the motion. Motion passed by a unanimous vote.

PUBLIC HEARINGS

59-22 2 Home Avenue: OCP-Opportunity Corridor Performance District; 43 Degrees North, LLC:

Owner wishes to replace the existing service business building with a 4-story self-storage facility. This activity would require the following variances;

1. Article 28-2-4(j), Table of Principal Uses, to allow for warehousing as the primary use.
2. Article 28-7-2(e), Table of Off-street Parking Requirements, to allow the reduction of 25 parking spaces (14 rather than 39).

Applicant asked that Case 59-22 be heard before Case 58-22. The Board allowed it.

Testified: Steve Duprey and Attorney John Arnold.

Mr. Duprey noted that he was involved and authored the OCP zoning district. He gave a history of how this district came to be.

It is a tough zone, as on the west side the property backs up to Snitzer, which is a metal crushing plant and to a storage yard for railroad ties. Warehousing in this district makes sense. Self-Storage is customer service based. They have people asking for this type of storage when they stay at the Residence Inn. There are limited upgrades that can be made in the OCP district. Of the 32 permitted uses, most of them make no sense in the OCP zone. They need to ask for a variance in order to deal with the hardship of this property. The property had a garage on it when he acquired it. It is a very narrow lot. He purchased the property and converted into a gym and then they upgraded the gym. The gym business has changed a lot since Covid. The property does not have enough parking for a restaurant, or an indoor recreation space. They want to construct a building that looks like a hotel. The more that the hotels are clustered together, the better the business does. Their goal is to take the building and make it look like a hotel. When the building was originally built, it was built by a concrete foundation producer. There is no structural support other than concrete. The number of windows you would put in for other uses would make the building structurally unsound. They have been trying to find a use that would improve the district, provide a service, add value, not increase traffic, and not be open at night. If he could create building to look like a hotel, it would be aesthetically pleasing to the area. He showed the design of what the buildings would look like. Zoning Ordinance presents a hardship as it doesn't allow any retail storage facility. They have a narrow lot. He couldn't fit any other hotel or an office building. They have a hardship related to the building itself. It's not against public interest. It's a vast improvement to the neighborhood. It doesn't require parking. It would help the hotels as it looks like a hotel zone there. They will also propose this same use at 62 Hall Street as well.

Attorney Arnold testified. He handed out printouts of the rendering of the new building. The facility would be owned and operated by 603 Storage, which is a local NH company with over 50 years of combined experience among the owners. There would be one to two employees on site on any given day. Customer access would be limited. It would generate very little traffic. There will not be any truck rental from this property. It is classified in the ordinance as warehouse use. Self-storage is an incredibly high demand use. It is the lowest impact commercial use. There would not be much demand on municipal services, not much traffic, etc. Self-storage use is different than commercial warehousing. It will not be detrimental to the public interest or be in opposition of the spirit of the ordinance. It will not alter the neighborhood. To the south they have 3 hotels and an office facility. It would be a dramatic improvement to the site. There will not be any threat to public safety or welfare as it is the lowest intensity of uses. They will only have a few employees. There will be remote monitoring. No demand for municipal services, generates very little traffic. At the peak times there will be basically 20 trips per hour. No impact in terms of traffic volume. Substantial justice is done. There is no harm to the general public. There are very few impacts associated with the use. It would improve appearance to the property. It is a high demand service. It would be the biggest boost to the tax role that can go on that property, given the property size. They submitted a proposal by B.C. Underwood Realty stating that there will be no negative impact on property values. The hardship is the unique characteristics of the property. It is a long narrow lot with hardly any frontage on Hall Street. It is an irregular shaped property. There won't be any driveway onto Hall Street. The lot is only about an acre. It is over a 10,000 s.f. footprint. Parking would be an issue as they wouldn't have space to put it on site. The building was built in 1980 and it is hard to convert the concrete block building. The property is close to the industrial zoning district. There is only one self-storage facility located in the industrial district. General public purpose in prohibiting warehouse uses in the OCP zone is most likely that there are negative impacts. It's important to note the key distinctions between self-storage and commercial warehouse. The building design is different. It is a consumer focused use. It is more consistent with the permitted uses in district. There will be no heavy truck traffic. The strict application isn't necessary to achieve the zoning objective. Other permissible uses are not viable for this property. Residential uses don't make any sense as they cannot put windows and doors in the existing structure. Service and retail uses don't make sense as the structure doesn't have access to Hall Street. There is no room for parking. This is an opportunity to improve the property and

area.

Monahan asked how many square feet. Mr. Duprey stated it is 40,000 s.f. Monahan asked if they will not have 24/7 access. Attorney Arnold answered that they would have limited hours. Spector-Morgan asked what other uses are allowed in the district. Mr. Duprey answered a bank, a restaurant, a gas station, a bus/taxi/rail station, a radio/tv station, a public works facility, a public parking lot, a conference center, a garden center, an outpatient clinic/urgent care, a health fitness center, an indoor recreation facility, a dance/music school, and a studio, but all require lots of parking. Winters asked Mr. Duprey if he would be controlling this. Mr. Duprey will not be, 603 Storage will be. Winters asked if they would lease it. Mr. Duprey will eventually sell it. Carley asked if his argument is that the zoning ordinance has a glitch in it. He asked why he wouldn't go to City Council and request a zoning change? Mr. Duprey talked to Carlos Baia, who is no longer with the City, about that and he was told Concord is rezoning and they will get to this area later.

In favor: none.

In opposition: none.

Code: Dr. Hutton noted that she did not receive elevation plans in time to review it before this meeting. If they want hours of operation, etc. they can condition their motion.

Rebuttal: none.

DECISION:

Carley reviewed testimony as given.

Wallner noted that the area allows many contrasting uses. This would fit in nicely. It is in the public interest to do as designed. It would add value to the neighborhood. It won't diminish the values of surrounding properties. He is persuaded there is a hardship due to lot size, etc.

Monahan thought that Wallner captured it well. He asked about hours of operation, but thinks it's up to the business owner as the hotels run 24/7.

Spector-Morgan agrees.

Winters rejected the argument that it's a 'hole' in the zoning. They raised enough valid points, the building, the lot size, etc.

Carley is inclined to agree with other Board members. They've seen a representation of a building. The appellant's request is based on what was submitted. Should the motion include the renderings seen here as to what the ZBA is approving and anything different would need to come back.

Monahan asked if the renderings show it as interior access to the storage units. Carley said correct, they show interior access, character, scale of building, etc.

Winters noted that the representation of applicants should be an implied condition, so he's not opposed to adding it on but doesn't believe its necessary.

A Motion to approve the request for both variances and the parking variance was made by Spector-Morgan. She believes it is unique due to the size and existing configuration and construction of the building. It won't alter the character of the neighborhood or diminish the surrounding property values. There is no benefit to the public by denying this request. She would note that the decision is based on representations made to this Board; i.e. it won't be open 24/7 and the building looking more like an office/hotel building than traditional self-storage. Motion seconded by Wallner. Monahan wanted it noted for the record that the applicant is asking for warehousing but it is for interior self-storage. Motion passed by a unanimous vote.

58-22 62 Hall Street: OCP-Opportunity Corridor Performance District; 62 Hall Street, LLC:

Owner wishes to replace the existing service business facility with a 4-story self-storage facility. This activity would require the following variances;

1. Article 28-2-4(j), Table of Principal Uses, to allow for warehousing as the primary use.
2. Article 28-7-2(e), Table of Off-street Parking Requirements, to allow the reduction of 28 parking spaces (28 rather than 56).

Steven Duprey and Attorney John Arnold testified. Attorney Arnold explained that the Hall Street request is for 14 rather than 38 parking spaces. He believes there is a mix up in the write ups.

Mr. Duprey testified. This is a companion building to the previous case. The property backs up to a utility storage facility. It has an old garage on it. The property was originally purchased by Mr. Duprey as he didn't know if he'd need more parking when he built the Residence Inn. It is a narrow lot, the same design. They still need to go back to the Planning Board. It will match the one across the street. Right now, it has a single family home in the front and it homes an ambulance service and a garage facility. The west wall has a single story building. There is no visibility. The lot is under-utilized. It is not a great place for an office or hotel. It is a narrow lot with limited access. There was litigation over the south boundary. There was concern about their encroaching on 72 Hall Street, but it will not. It is too narrow for any other functional use. It would create more of an upscale appearance. The only way to effectively use it is to build up. Carley asked if they would tear down what was there now. Duprey said yes. Spector-Morgan asked why they couldn't build a multi-family building. Attorney Arnold answered that they could do it, but it would be too small to be feasible in order to comply with the parking requirements. Mr. Duprey noted that no other permitted uses would work there and it is undesirable to back up to the railroad storage yard.

Attorney Arnold asked to incorporate testimony given for case 59-22. The current uses are nonconforming. There is a large storage lot behind it for railroad ties and utility poles. The parking calculation was based on warehousing use. The 14 spaces provided are more than enough. That is more than they will need. By zoning calculations, they are 24 spaces short. They have a surplus of 28 spaces on Home Avenue, so there is overflow parking across the street. Carley asked about parking. Attorney Arnold said they need 38 spaces per calculation. Carley asked Dr. Hutton if she agreed with calculation. She said yes.

Attorney Arnold explained that their 62 Hall Street design calculates to 28 spaces. Attorney Arnold explained they are providing 14 spaces, but the ordinance requires 38 spaces. Home Avenue has a surplus of 24 spaces, so that site can be their overflow parking.

In favor: none.

In opposition: none.

Code: Dr. Hutton noted that their plan for this particular property is not based on a survey, but based on the GIS map. She cautioned people that GIS is inaccurate. That was not resolved prior to this meeting. In addition, as stated in her memo, sometimes it is prudent of the Board to check in with Planning for a master plan 'check'. The neighborhood across the street are very different. Monahan asked if she were suggestion they defer action to check in with the Planning Board.

Rebuttal: Mr. Duprey noted that Erin Lambert is the engineer on this. Ms. Lambert is confident that even though she used the GIS map, they will take it up at Planning. It was designed in accordance to that. Attorney Arnold looked at court documents as well, and it looks like GIS picked up the lot line adjustment of 12 feet. Mr. Duprey stated that the easement holder was the abutter who was in the court case. This a decision on a variance from the ordinance, not on the master plan.

DECISION: Carley reviewed the testimony as given.

Spector-Morgan: There is not an existing building there and there may be other uses that can be made of the property. It is a narrow lot. And sufficient parking may be an issue. She doesn't believe it alters essential character. The other side of street is somewhat different than the hotel side of the street. This will not diminish property values. There is no harm in granting. She is in favor of granting both. She doesn't believe she needs weigh in from planning.

Monahan: There is hardship with the narrowness of the lot and the ability to provide parking.

Winters: He thinks the two issues on this lot are that it is narrow lot, which makes other uses difficult with the parking required for those uses. He doesn't believe the weighing in of Planning is necessary as it is a new/novel idea to him. Considerations to him is that they could get valuable information, but it also causes delay. Making timely decisions is also important.

Wallner: Agrees with others.

Carley: In general, the appellant's arguments are reasonable in terms of hardship and he agrees with Spector-Morgan. As far as consulting with the Planning Board; if the ZBA were to consult with the Planning Board and they received an ambiguous answer, how would that affect their decision? He can see other situations where it might be useful, but this one doesn't strike him as being that level of extraordinary. He'd be inclined to make a

decision.

Monahan: Occasionally they have had Carlos Baia or the City Attorney come in and speak with them.

Dr. Hutton didn't consult with any other departments on this application.

A motion to grant the two variances was made by Winters, based on the narrow lot and the nearby properties making any other use difficult or not feasible. Winters also wanted it noted that all representations from case 59-22 are also representations for this variance. Motion was seconded by Monahan and passed by a unanimous vote.

0000-2022 21 Becky Lane: RO-Open Space Residential District; Kevin M Clough:

Owner wishes to construct a detached 2-car garage with carport. This activity would require a variance from:

1. Article 28-4-7 (f), Perimeter Buffer Required, to allow an encroachment on the north buffer.

Testified: Kevin Clough. He wants to build a detached garage. The setbacks of 40 feet leave him very little room for his design. He wants to encroach into the buffer by 9 feet. All of his neighbors are aware. He has plenty of useless land down below. Anything beyond the drive way has steep topography. He has very little flat ground. He looked at placing the garage behind the driveway, but it would isolate his back yard.

Carley asked if they were going to put a garage the same level as the house and put fill in. He asked if he had a drawing of what he would like to build. Mr. Clough showed the flat spot where he would like to build. The buffer zone comes in to his buildable area. Carley asked why not put it closer to the driveway. Mr. Clough explained that he would, but to back a trailer in is almost impossible without taking out the house or detaching it or trying to walk it in. By pushing the garage back, it would allow him to put an apron in and back in. Carley asked what was to the north of his property. He said the Spain's house. Spector-Morgan asked if he had a garage. Mr. Clough said he had an attached garage. Winters asked if he had a lot of toys to put under cover. Mr. Clough testified that he had a truck, a trailer, etc. Winters asked why he needed so much garage space. Mr. Clough likes to put everything under cover. Winters asked if the trailers he has were in support of his occupation? Mr. Clough said no, they are snowmobile trailers. This is a single level garage with electricity in it. Monahan asked where Becky Lane was. Mr. Clough explained that it is east of Shaker Road.

Winters sees the hardship in the sense that he doesn't have much buildable space, but he's caught up with reasonable use. Is it common in his neighborhood to have so much garage space? Clough explained that his in-laws moved in with him too so he needs garage space. Winters asked if it were a single family home. Clough said yes. He'd also like the garage to be able to work on things.

In favor: none.

In opposition: none.

Carley got a letter from Catherine Tucker in support.

Code: There is a structure where this garage is going, which will be moved.

DECISION: Carley reviewed the testimony as given.

Monahan is inclined to support. As a general matter they have approved this before. The hardship is the topography. There is no other spot to put it.

Wallner agrees with Monahan.

Winters is caught up with the reasonable use. In an RO zone it is common that people would have this type of equipment.

Carley noted that the plan submitted is dated 2008, possibly when the house was built. The finished topography is not actually accurate, which would support the appellants argument. He thinks, based on the photos, that the fill went further out to the north than the plan suggests.

A motion to approve the request was made by Wallner, and seconded by Monahan. Motion was passed by a 4-1 vote with Spector-Morgan in the minority. She doesn't see the hardship.

0001-2022 78 Lilac Street: *RM-Medium Density Residential District; Eric Biron:*

Owner wishes to develop an in-home salon. This activity requires a Special Exception for a Major Home Occupation under Article 28-5-30.

Testified: Heather Biron. She is asking for an in home salon. It will be a single chair with no employees. She has 4 small children and trying to back to work is difficult. Carley asked about her hours. Ms. Biron answered that she would take customers by appointment only. Spector-Morgan asked if she would be taking no more than 1 or 2 customers a day. Ms. Biron stated that was correct. And she lives there.

In favor: Matt Bacon. Private property rights are important. The request is not contrary to the public interest. This type of uses tend to be very well maintained when its at their own home. The use is consistent with the ordinance. As the direct abutter who shares open yard space, he's in favor.

Nicole Gay, 6 Hullbaker's Place, lives right behind the property. She is in favor. Ms. Biron has been a good neighbor. A one chair salon will not impact traffic or noise on their street.

DECISION: Carley reviewed testimony as given.

Winters: All of the criteria have to do with the impact on traffic, utilities, things of that nature and historically they have granted single chair salons by appointment. In favor.

Spector-Morgan agrees. Dr. Hutton's findings of fact in her memo are great.

Monahan: Representation of one chair, by appointment only, is in the record.

Wallner: It meets a through I of special exception criteria.

A motion to approve the request was made by Wallner, seconded by Spector-Morgan. This request is for a 1 chair salon, 1 customer at a time, owner occupied. Motion passed by a unanimous vote.

0002-2022 131 School Street: *RS-Single Family Residential District; Clifford W Kahrs:*

Owner wishes to construct a second story on a non-conforming garage. This activity would require a variance to Article 28-4-1(d), side yard to encroach 5 feet into the side yard with an expansion of floor area to allow for a second story great room on the existing footprint of a single-family dwelling.

Testified: Clifford Kahrs. The area he would like to expand is within the footprint. It is a 12x16 room above the garage, which is not a useful or useable garage. The garage's full footprint is 22x22 and he would like to expand out to that. It is a small home to begin with, and this will increase the value and make the home more appealing. Any improvement to his house would be beneficial. He's planning to move back there with his wife and adult step son who has some care needs. To have 3 adults in there is limiting. There is no other area to add on as it is a narrow lot and it was built in 1910 and it is 66 x 137. Carley asked if he were behind the high school. Mr. Kahrs said the driveway is on the property line on the west and to move the garage or build a room to the end of the driveway would require a new driveway and new foundation and more variances. He spoke with the neighbor on the nonconforming side and she is in favor.

Winters asked if the 10 foot were the encroachment already exists. Mr. Kahrs said correct. He is adding up on top of garage. Monahan asked if he were adding plumbing? Mr. Kahrs said he is not. It is just going to be a big room. He bought it from an estate in 2003 and he couldn't get any historical information.

In favor: none.

In opposition: none.

Code: none.

DECISION: Carley reviewed testimony as given.

Monahan is in support. Adding up on the current footprint doesn't cause any undue impacts Neighbors are supportive.

Wallner: He is not increasing the footprint.

Winters, Spector-Morgan and Carley all agree.

A motion to approve the request to add the second story was made by Spector-Morgan. It is not contrary to the spirit or purpose of the ordinance, it will not alter character of neighborhood or property values, etc. Due to the existing location of the house on the small lot, there is a hardship. Motion seconded by Monahan and passed by a unanimous vote.

0003-2022 5 Thomas Street: RH-High Density Residential District; ZV Investments LLC:

Owner wishes to redesign the property and expand from 3 dwelling units to 10 dwelling units on site. This activity would require variances from:

1. Article 28-4-1(d), front yard to be reduced to 9.5 feet to accommodate the structure replacing the existing garage;
2. Article 28-4-5-d(2), density of multi-family to allow 10 units rather than nine;
3. Article 28-4-5-d(3), to allow separation of parking from primary structures to be 7 feet as opposed to the required 15 feet;
4. Article 28-4-5-d(5), perimeter buffer requirements will be reduced to accommodate existing and proposed reconstructed buildings;
5. Article 28-7-7(g)(1), five parking spaces will need to be located in the front yard; and to
6. Article 28-7-8(a), to allow 12 of the required parking spaces to back onto the dead-end street.

A motion to recess this case to the December 7, 2022 meeting was made by Wallner, seconded by Winters and passed by a unanimous vote.

Minutes of October 2023: A motion to accept the Minutes as presented was made by Wallner, seconded by Winters and passed by a 4-1 vote. Spector-Morgan abstained.

*Respectfully submitted by
Rose Fife, Clerk*