

**CITY OF CONCORD, NH**  
**ZONING BOARD OF ADJUSTMENT**  
**NOVEMBER 4, 2020 MEETING**  
**MINUTES**

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

Absent: Robert Harrison Jr.

Staff: Craig Walker, Zoning Administrator, Rose Fife, Clerk of the Board, and David Hall Code Administrator.

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Meeting commenced at 7:00 pm.

Chair Carley explained that due to the Covid-19/Corona Virus crisis and in accordance with Governor Sununu's Emergency Order #12 pursuant to Executive Order 2020-04, the Board was authorized to meet electronically. The City of Concord utilized the Zoom platform for this electronic meeting.

Case 56-20 not being heard tonight – withdrawn.

**41-20 Fred L. Potter for 135 NSS, LLC:** Applicant wishes to install 2 freestanding signs, (sign #1 is 4.58 SF in area and 7.9' tall & sign #2 is 24.08 SF in area and 7.4' tall) on a lot, with sign #2 located in the "corner no-obstruction area" and requests the following:

- 1) Variance to Article 28-6-8, Signs Permitted in Residential Districts, Section (a)(1), to allow 2 Freestanding Signs on a lot in a residential district where only 1 freestanding sign is allowed,
- 2) Variance to Article 28-6-8, Signs Permitted in Residential Districts, Section (a)(1), to allow 2 Freestanding Signs on a lot in a residential district, with a combined area of 28.66 +/- square feet, where 1 sign is allowed and the maximum sign area allowed is 20 square feet for a single sign,
- 3) Variance to Article 28-6-8, Signs Permitted in Residential Districts, Section (c), to allow a height of 7.9' for sign #1 where a maximum height of 6' is allowed in a residential district,
- 4) Variance to Article 28-6-8, Signs Permitted in Residential Districts, Section (c), to allow a height of 7.4' for sign #2 where a maximum height of 6' is allowed in a residential district,
- 5) Variance to Article 28-6-7, Signs Prohibited Under This Ordinance, Item (e), to allow a 7.4' sign to be placed within the thirty (30) foot triangular area adjacent to the corner where no obstruction is allowed between a height of 2.5' and 8' above grade,

for property located at 135 North State Street in an RN Residential Neighborhood District.

A motion to open the recessed case was made by Wallner and seconded by Monahan. AYE: Wallner, Monahan, Spector-Morgan, Winters, Carley. NAY: none. Motion passes.

Carley reviewed where the Board was at the time the case was recessed. They were waiting for city official's input on the sign placement. Since then Mr. Potter has amended his application and changed things a bit.

Testified: Fred Potter. They do not need all the variances originally requested as they have relocated the sign so that it is not in the no obstruction area and they have modified the building identification sign so that it conforms and doesn't count as a second sign. They have withdrawn all requests except variance #4. They are requesting only relief on item #4 for a 7'4" sign height. They understood that the size of the sign, being the same as the one on the other corner, was too large. They reduced it to 20 s.f. They reduced the marker sign to 4 s.f. and removed the "tag" line so it not considered a regulated sign. They also removed one of the slats on the freestanding sign to make the size less than 20 s.f. They have preserved a stone wall that has a 150 year history. That wall is from 30" high to 56" high. They wanted 14 inches above the normally allowed height to clear that stone wall. There is parking along North State Street and the roadway which impedes visibility. The grade slopes downward. The top of the sign will be at 7.4'. That is a foot shorter than the sign at the opposite side of the property.

Wallner asked if the lamp post sign was still on the docket. Mr. Potter said it is no longer a sign, but a marker so no variance would be required for a marker.

Walker clarified that it is a building marker sign identifying the building. They are allowed 1 per lot as long as it is less than 4 s.f. in area it does not require a permit.

Spector-Morgan asked if the height requested were needed because of the stone wall that is there. Mr. Potter said that was correct.

Winters asked if the objections from the neighbors regarding the sign blocking the stop sign is related to the height? Mr. Potter said no, it was related to request #5, which is now off the table.

In favor: none.

In opposition: none.

Code: none.

Letters: Ilene Keim, 7-9 Bradley Street. She feels that the signs are too large. She opposes the request.

James Major, General Services, City of Concord NH. The stop sign and the street sign is not recommended to be moved.

DECISION: Carley reviewed the testimony as given.

Wallner: The stone wall issue is creating unnecessary hardship.

Monahan: Agrees.

Spector-Morgan: Agrees.

Winters: The stone wall is a legitimate reason. His concerns were addressed.

Carley: Agrees with all.

A motion to grant the request (#4) was made by Wallner and seconded by Monahan. AYE: Winters, Spector-Morgan, Monahan, Wallner, Carley. NAY: None. Motion passes.

**50-20 Bubbles Enterprises, LLC.:** Applicant wishes to develop an existing structure for use as a 3 unit multi-family dwelling and requests the following:

- 1) Variance to Article 28-2-4(j), Table of Principal Uses, to permit the conversion of an existing residential structure to accommodate 3 residential dwelling units on a lot with no frontage when such conversion requires lot frontage of 80 feet on an accepted City street,
- 2) Variance to Article 28-8-3, Non-conforming Lots, Section (c)(2), Conditions for Development of a Non-conforming Lot, Item a., to permit development of a non-conforming lot, in legal existence at the effective date of the current Ordinance, and which does not have frontage on an accepted City Street when a minimum of 22 feet of frontage is required,

For property located at 85 Pleasant Street in a RN Residential Neighborhood District.

A motion to open the recessed case was made by Spector-Morgan and seconded by Winters. AYE: Wallner, Monahan, Spector-Morgan, Winters, Carley. NAY: none. Motion passes.

Testified: Barry Hoeg, Architect with HL Turner Group. It was a 2 family home built back in the early 1900's. It was acquired by the State Hospital around 1930 or 1940. It was recently acquired from the State. The current owner would like to convert it to a 3 family dwelling. It has no frontage. Its access is through Bayberry Lane. There is space enough for 6 vehicles to park.

Carley asked about the easement to access the site. Mr. Hoeg pointed it out. There is a boundary survey and Mr. Walker has it. It goes from Pleasant Street to the building. It shares a drive/right of way. It shares the drive with the building in front of their property. This right of way was deeded in 1914 when the property was subdivided.

Winters asked how the property is used now. Mr. Hoeg testified that the property is vacant. It was used by Health and Human Services for transitional housing. The State abandoned it for a number of years and then sold it. Winters noted that it will need a significant amount of renovation. Mr. Hoeg said it was originally constructed as a 2 family home.

Zeus Simeoni of Bubbles Enterprises testified. This property is listed on the historical registry. They want to turn it into something nice and useable. When they purchased it, it had already been turned into a 3 family building. There are 3 floors, all with bathroom, kitchens and bedrooms. Turning it into a 3 family would take the least amount of effort. The State has had it since the 1940's so zoning didn't come into play. Since the State is exempt from local land use regulations the property does not have vested rights to continue the uses established by the State without local approvals.

In favor: Attorney Amy Manzelli. BCM Environmental and Land law, Legal counsel for the applicant. She submitted letters touching on variance request information. Carley swore her in. She testified. This is the most logical use for this structure. It is in an area with other residential structures. It would bring the property back onto the tax rolls for the City of Concord. It meets the variance criteria. It is not contrary to the public interest. It does observe the spirit of the ordinance. The use fits within the character of the neighborhood and it has access. The easement issue is irrelevant to the requests that are before the Zoning Board tonight. As far as substantial justice, it would be a tremendous loss to the applicants or any owner of this property if it were not allowed to be redeveloped without frontage. There is nothing they could do without this relief. There is nothing that the public stands to gain by denying the variance. This home is getting more and more dilapidated. Property Values would increase if this building were refurbished to a historic gem vs. the deteriorating unoccupied building it is. Necessary hardship stems from the State deciding they weren't going to use it and sell it off. It is land locked frontage wise. If access and easement issues were concerns, the applicant would not object to a conditional of approval. Attorney Manzelli submitted this information in letter form to the Board.

Spector-Morgan asked Walker if there were any use that could be made of this property without a variance. Walker would not say a definite yes. It could be used as a single family home even without frontage. Attorney Manzelli asked if single family homes were still required to have parking (yes). They would still need the frontage requirement. Walker explained that from a practical standpoint they would have to have access. Mr. Simeoni explained that they would have an 8 bedroom, 3 bathroom, 3 kitchen single family dwelling if they were to use it as a single family home. And if they renovated, it would become a 10 bedroom home with no resale value.

Walker noted for the record that the letter Attorney Manzelli is speaking of was emailed out to the Board prior to the meeting. Winters thought that Attorney Manzelli summarized the letter well in her testimony.

In opposition: Attorney Robert Stein, sole and single stock holder of Barberrry Lane LLC. The letter that is being referenced he doesn't believe he has. He has one dated 10.2.20. Is that the letter that was submitted today? Winters answered that the Board has a letter dated 11.4.20 which is the one Attorney Manzelli is referencing. Attorney Stein has not seen that letter. The history of this property which has been in litigation for 6 or 7 years is different from what you heard. This house was a single family home when the 1912 deeds were created. In order to accommodate Harry (Henry) Huntress, the owner of the Huntress House, the owner of the adjacent property gave him a right of way which continued until the present. This easement went across Barberrry Lane which goes across the front of his property. It's been a single family until the State of NH took it over in the mid 1940's. In 1988 the State abandoned the property. It had been used for nurses' residences. From 1988 to present it has been abandoned and in disarray. June 2018 Bubbles Enterprises took it over. The court found unequivocally that the right of way for the access to that property was owned by Barberrry Lane LLC. The State was ordered Bubbles to pay him for the use of the right of way. The court made findings and made a ruling that the State had to pay for plowing, sanding, lights. Dr. Simonunis and his partner established Bubbles to buy the property. The deed references the prior litigation and the rights thereof. That house had always been serviced through the State Office Park. Bubbles is waiving all claims against the State to allow access. The place is filled with asbestos, its caving in and sewer/septic are being pumped out every Spring. This property was to be destroyed as it is deemed to be worthless. This house was used for practice for the firefighters. It is in terrible condition and has not been touched since this purchase in 2018. They have not paid him any money for the use of Barberrry Lane. That action is being brought before the Superior Court. As of this week, the judge has ruled that all their claims (the owners) have been denied. It is his position they come before this Board with unclean hands. They want to use the right-of-way with 6 or 7 plus service vehicles without ever compensating him for the taking of the property he owns. They are trying to use this Board to get an order to be inconsistent with Judge Kissinger's last 3 orders. This is a single family right of way. There have been some renovation efforts to the building. It has been painted. He's not sure what the inside is like anymore. It is their position that Bubbles waived any claim to expand the use of his right of way when they agreed with the State to use what was historically used. He is concerned that the application originally submitted had a map/plot plan attached to it that he has never seen before. In conclusion they are asking that you deny the application for the variance as it would be interpreting the deed and grants would be adverse to him. At this point it is adverse to the Superior Court's order. They still have never paid for the obligation to maintain the right of way as per the 1912 deed. It is still capable of being a single family home.

Winters asked Attorney Stein if it is true that the right of way only allows access to a single family. If they grant this request, he would still be able to act through the Superior Court. Winters asked if he said the easement was only limited to a single family. Attorney Stein said that was correct. They have that, now they just have to pay for it.

Code: It is Walker's understanding of the history is that building is that it was built as a single family home for Harriet Huntress and her brother Henry Huntress. In 2009 he was inside the property. The interior surfaces/cosmetics were pretty rough. Heat pipes had burst and paint was peeling. It has 'good bones' and is a solid building. It was used as a community/rooming/halfway house. A kitchen on the first floor and kitchenettes on the second and third floor. He looked at the deed for the adjacent building, 2-4 Fuller Street, where they described the sewer going and there is an easement on that deed that grants a permanent sewer easement to Harry Huntress and his heirs (alker stated he has no conformation that the sewer runs through the easement).

Carley asked if the frontage were sufficient did the property meet all other requirements to be transformed into 3 family. Walker stated that the Variances requested were all the non-compliant issues he was aware of.

Rebuttal: Attorney Manzelli. She feels that Attorney Stein's presentation underscores that they would not object to a condition of approval as she suggested. They don't believe there is a taking or has anything to do with a frontage variance. This is a very well suited use for this large building in this area.

Carley, Letter to the Board from Attorney Stein, but he has made a presentation, so they did not read into the record.

DECISION: Carley reviewed the testimony as given.

Winters: Attorney Stein raises an objection he's never heard. The Board is not prejudicing any rights he has before the Superior Court. There is an additional burden with a 3 family home vs. single family home. If the variances are granted, they will not undermine the Superior Court's order. He thinks they can consider the variance on its merits.

Spector-Morgan agrees with Winters. The other issues raised by Attorney Stein are not the Board's issues. The property is unique as it was created without any frontage in the early 20<sup>th</sup> century. Attorney Manzelli discussed the intent appropriately. There is a loss to the applicant if this is not granted which is outweighed by the benefit to the public so she is in favor of granting.

Monahan: Agrees with both Spector-Morgan and Winters.

Wallner: Agrees.

Carley: Agrees.

A motion to approve both requests and suggests a condition that legal access be confirmed by the Superior Court was made by Spector-Morgan and seconded by Monahan. AYE: Wallner, Monahan, Spector-Morgan, Winters, Carley. NAY: none. Motion passes.

**51-20 [Advantage Signs for 58 North State Street Property, LLC. & Nicholson Law](#):** Applicant wishes to install a freestanding tenant sign and requests a Variance to Article 28-6-9(c)(2), to allow a setback from the front property line of no less than 1 foot where a minimum setback of 5 feet is required from any property line, for property located at 58 North State Street in a CVP Civic Performance District.

Testified: Josh Messenger of Advantage Signs. The customer had an existing sign that they removed and are asking to put the new sign in the same location as the previous sign. If sign were moved back 5 feet as the ordinance requires, the sign would be on the front porch. It would not work for this property.

Spector-Morgan asked if they are replacing the existing sign, why do they need a variance. Walker explained that if the sign structure is fully removed, any replacement needs to comply with the current ordinance which requires a 5 foot setback.

Mr. Messenger explained that the customer would like their sign post to be granite (previously wooden posts). Spector-Morgan asked if it were going to be the same size sign. Mr. Messenger said yes.

In favor: Neil Nicholson of Nicholson Law. The building was purchased in 2017 by he and his then partner. They put a new sign up in the same location, changing out the name of prior owners. In April of this year he and his partner went their separate ways and he stayed in the building he's in now. The sign had to come down in April after their split. The new sign will go in the same location as the one Mr. Walker showed on the shared screen. The style of the sign will now

have granite pillars. The sign fits with the neighborhood. Extensive renovations have been made to this building in the last 2.5 years.

In opposition: none.

Code: none.

DECISION: Carley reviewed testimony as given.

Wallner: The hardship is that there is no other place to put the sign.

Monahan: Agrees. The hardship is the building interferes with the setback.

Spector-Morgan: Agrees.

Winters: Agrees.

Carley Agrees:

A motion to approve the request was made by Wallner and seconded by Spector Morgan. AYE: Winters, Spector-Morgan, Monahan, Wallner, Carley. NAY: none. Motion passes.

**52-20 Timothy Stohrer:** Applicant requests a Variance to Article 28-4-1(h), The Table of Dimensional Regulations, to allow the construction of a porch on the on the south-westerly front of the existing house and to legitimize a porch constructed on the north-west side of the house (adjacent to Oak Hill Road) to allow the closest point of the new construction (porch size and location shown on submitted plans) to be 7 feet from the Oak Hill Road front property line and allow a front setback of 6 feet from the Appleton Street front property line where a front setback of 25 feet is required for property located at 1 Appleton Street in an RM Residential Medium Density District.

Testified: Timothy Stohrer. The house sits in a rather precarious position right at the fork in the road. There is a lot of traffic. There's been accidents there in the past. Prior to the porch being there, coming out of the front or side door is very exposed. There isn't much space between the door and the road. He's asking for the variance due to the nature of where the house sits. He feels more comfortable with something between the fork in the road and the house. In the past they had trees there, but they agreed to let Unitil cut them down as they were interfering with a power line. It looked awkward before with no porch.

Carley sees that there is a deck there already and one of your requests is to bless that deck. Mr. Stohrer built that deck prior to asking for a variance. He didn't know about the variance needed and he didn't get a permit either. He wasn't really in understanding of the permitting process and rules. If there were nothing there it would be just a doorway on the side of the house to Oak Hill Road. There is a lot of high speed traffic. Having something between the house and the road there makes him feel better. All the invasive bamboo adjacent to Oak Hill Road was removed. The bamboo hindered visual site distance from coming out of Appleton Street.

In favor: Scott & Crystal Haskill at 3 Oak Hill Road. They live directly across the street. They have been there for 5 years. He agrees with Mr. Stohrer. He has definitely improved his property. The bamboo removal has been greatly appreciated. The porch is an improvement. His property is on the corner and it has been a hazard. It is a safety feature to have this porch on it. The property has a hardship in the shape and placement.

Jeff Foote, 92 Shawmut Street. He wanted to be sure Mr. Walker received the 2 letters they submitted. They approve what they are doing. He's lived adjacent to the fork in the road for 30 years and then at 6 Appleton Street. They have been in the neighborhood for about 48 years. The house, he doesn't believe, meets the setbacks. It's been there for about 100 years.

In opposition: none.

Code: none.

Letters: Foote Family Revocable Trust, 92 Shawmut Street in support. James and Mary Foote, 6b Appleton Street in favor. Email from Mike & Jess Rockwell, 7 Oak Hill Road, in favor.

Spector-Morgan asked Walker if the house exists in the front setbacks. Walker is fairly certain that on the east side it is in the setback and believes the other side is close.

Mr. Foote added that he has lived there for 48 years and there has been porches and stoops there before.

DECISION: Carley reviewed the testimony as given.

Wallner: The triangle shaped property is a classic hardship.

Winters: Incredibly unique.

Spector-Morgan: Not buying the safety issue. But the property is uniquely shaped and the location of the house on the property. A porch is a reasonable use. They meet the hardship criteria.

Monahan: Safety issue was unique. He agrees with Spector-Morgan.

Carley: Agrees with Spector-Morgan and Monahan. Lot is unique.

A motion to approve the request was made by Winters and seconded by Spector-Morgan. AYE: Wallner, Winters, Spector-Morgan, Monahan, Carley. NAY: none. Motion passes.

**53-20 John Radley:** Applicant wishes to establish a two-family/duplex dwelling and requests a Variance to Article 28-5-2, Duplex or Two-Family Dwelling, to permit the establishment of a two-family/duplex on a lot with 100 feet of frontage when 120 feet of frontage is required, for property located at 15 Cross Street in an RN Residential Neighborhood District.

Testified: Attorney Jeffrey Christensen of Cleveland Waters and Bass testified. John Radley was also available to testify. The property is 24,000 s.f. lot that is currently a SF residence. Mr. Radley is renovating and hoping to convert to a duplex. The district allows duplexes as of right. There are several in the area as well as multi-family. 21 Cross Street is a 4 family. This property is larger than all of the other duplexes. It is large enough to be suitable for a two family, but it is an irregular shape with about 10 sides carved out which reduces the frontage on the property. The Ordinance allows two family duplexes but does impose minimum lot size and frontage requirements. The property is shy of the frontage requirements of 120 feet. They only have 100 feet. The written application submitted addresses all 5 of the elements in detail. The main highlight is the hardship imposed on this property. The height and frontage requirement prevent reasonable use of a two family. The use is consistent with the area. The buildings on both sides of this property are duplexes. The frontage and other area requirements are generally regarding over development of lots. The lot is not over crowded. Nothing is changing about the building from the current single family use to a two family. No adverse impact at all. The variance will only affect the interior of the building. No connection or no purpose from preventing this lot from being a two family just because the frontage is lacking 20 feet.

In favor: Nawaz Assum. Lives (owns) across the street and is in favor. This is a very large home. It has enough parking.

In opposition: none.

Code: none.

DECISION: Carley reviewed the testimony as given.

Monahan: Uniquely shaped lot.

Spector-Morgan: Agrees. The criteria are met.

Wallner: The character of neighborhood is such that duplexes are common.

Winters: Agrees

Carley Agrees.

A motion to approve the request was made by Spector-Morgan and seconded by Monahan. AYE: Winters, Wallner, Spector-Morgan, Monahan, Carley. NAY: none. Motion passes.

**54-20 Abbott Farm, LLC.:** Applicant wishes to subdivide a lot from an approved attached dwelling condominium development (Use A-4), resulting in one lot with an area of 14.83 Acres (Lot "A") and a 0.45 Acre lot (lot "B") and requests the following variances:

- 1) to Article 28-4-5(d)(5), Perimeter Buffer Required, to allow a 9.5 foot buffer (setback) between Building 2 (as shown on plans) and the proposed property line where a 50 foot perimeter buffer is required and

- 2) to Article 28-4-5(d)(5), Perimeter Buffer Required, to allow 10 feet between Building 5 and the proposed property line where a 50 foot perimeter buffer is required and
- 3) to Article 28-4-5(d)(5), Perimeter Buffer Required, to allow parking to be located on lot "A" within 10 feet of the easterly proposed property line when parking is not allowed within the 50 foot perimeter buffer and,
- 4) to Article 28-4-5(d)(5), Perimeter Buffer Required, to allow a driveway accessing a property that is not part of the attached dwelling development when driveways are not permitted within the 50 foot perimeter buffer, for property located at 4 Cleveland Avenue (a.k.a. 382 North State Street) in an RN Residential Neighborhood District.

Testified: Attorney Elizabeth Nolin testified. Also available to testify was Mr. James Garland who also represents Abbott Farm. Attorney Nolin gave a background as to why they are before the Board. The property is currently the site of Abbott Village Condo's. The buildings have already been constructed. Some have not yet begun. The Abbott House is the issue. It's a 1760 federalist style single family home that has been on this lot since its original construction. It still stands today. They have replaced siding, roofing and windows to make it structurally sound. They want to develop Abbott Village as a Condo and would like Abbott House to remain as historically preserved as possible. It is difficult to have the home restored to its former glory. They have worked with the City's Planning office and have come to an idea to subdivide the Abbott House from the master lot into its own 'Lot B' as shown on the plan which will be 0.45 acres. They are requesting variances for the buffer requirements. How can they make a good enough lot so that the Abbott House is desirable for someone with historical preservation knowledge to come and preserve it? It is not registered as a historical building but it has historic value. They need variances because the lot lines they are requesting are too close to building 5 and building 2. They will not be able to make the 50 foot buffer requirement. Unnecessary Hardship: It is a unique property. The property owner wants to subdivide Abbott House with property to preserve the home and transfer it to a third party. It is a reasonable use of the property as it would allow her developer client to continue to develop and it shows a great amount of care to keep the Abbott House as preserved as possible. They believe the Abbott House is a historic resource. In keeping with the spirit of the ordinance. They believe it is not contrary to the spirit and intent as it is consistent with uses in the area. It's in keeping with the essential character of neighborhood. Just looking to allow a division to be made. It is not contrary to public interest. It will not diminish value of surrounding property values. They have spoken with the Association of Abbott Village and they are in favor of this request.

Winters: There are 4 requests to reduce perimeter buffer. Will that be for only the larger lot that they are subdividing from. Attorney said yes.

In favor: none.

In opposition: Laura Scott, 35 Calloway Drive Unit 7. She is in opposition because the Abbott House was meant to be part of this development. It was well known to every owner, as well as this developer, who is not the original developer. The restoration and preservation have no relevance to the development. They could easily meet the buffer requirements by reducing by 1 unit each of the buildings that are affected. There isn't a relevance to maintaining that house as it should be maintained and the buffer requirements. It could be subdivided without variances. There is no hardship. It doesn't meet the spirit and intent of a variance. Every developer knew it was a requirement of the development to maintain the house.

Letter: Elizabeth Knowland. Opposed to reduction of buffers. This would eliminate the privacy berm of Hillcrest Avenue.

Code: noted that the berm and buffer south of Hillcrest Avenue will not be affected by the proposal before the Board.

Rebuttal: Attorney Nolin. This does not impact the Hillcrest Avenue properties.

DECISION: Carley reviewed the testimony as given.

Winters: They sound like they have good intentions. There could be the space there if they wanted to. He's inclined to deny.

Wallner: It's extreme setback requests.

Spector-Morgan: Struggling with unnecessary hardship criteria. They are creating the issue by creating the lot. She agrees with Laura Scott that they could meet the requirements by getting rid of 1 unit on 2 buildings.

Monahan: Agrees. Self-imposed hardship.

Carley: Inclined to agree with colleagues. The building has been part of this development from the beginning. The condition that the building was to be preserved was always part of the package.

A motion to deny all variances was made by Spector-Morgan because there is nothing unique that stems from the property as opposed to the desires of the applicant and while creating a self-created hardship is not enough to deny a variance, there is no real need to create this new lot, it is an option as the developers are not able to maintain the house. The motion was seconded by Monahan. AYE: Monahan, Spector-Morgan, Wallner, Winters, Carley. NAY: none. Motion to deny passes.

**55-20 [Katie Cailler](#):** Applicant wishes to use an existing property and buildings for a single bay automotive repair facility (Principal Use J-4) and requests the following variances to:

- 1) Article 28-2-4(j), Table of Principal Uses, to allow a single bay automotive repair facility where such use is not allowed,
- 2) Article 28-7, Access, Circulation, Parking and Loading, Section 1(a), Applicability, to maintain the existing non-conforming parking and circulation layout when compliance with the entire section, as applicable, is required; and
- 3) Article 28-6-8, Signs Permitted in Residential Districts, Section (a)(1), to permit 3 building signs with a combined area not to exceed 30 square feet where 1 sign is permitted per lot with a maximum area of 20 square feet, for property located at 49 West Street (aka 14 Spruce Street) in an RD Residential Downtown District.

Testified: Katie Cailler. Brian George also available to testify. This property was an automotive garage from 1965 to 2009. It was her father's house. She was under the impression it was a commercial space. She wasn't aware the use had lapsed. She'd like to reestablish the pre-existing use. Variances are appropriate because it's the intended designed use of the property. That was the goal when she purchased the home from her father's estate. It would be a benefit to the neighborhood.

Carley asked if she lived there. She said she and her wife live in the home. The business would be out in the garage. Carley asked if she would operate the business. She said yes.

Spector-Morgan asked if there were businesses in the area. Ms. Cailler said there is a day care, a market, a ward house, a hair salon and a few medical offices and McKee Square is close which has restaurants, and Rite-Aide. It's a consistent neighborhood use.

Winter asked about the intensity of the use. Katie Cailler stated that she's planning on scheduling 3 or 4 appointments a day. She's trying to start a small business and keep herself busy. She doesn't want to expand past the space and resources she has. It's a single bay garage. She put a 12 foot door in to accommodate a single bay.

Brian George testified. When Katie's dad passed she bought the property from the estate. If you look at the records from 1965 to 1985 you will see it was registered as a business in this neighborhood. Until 2009 it was operated as a garage. He gave a history of the building. Historically its pretty much always been a viable business in that area.

Katie Cailler said the buildings were always separated so the garage was always 14 Spruce Street. That building has separate services. It has its own water and sewer, electric and gas services.

Winters asked if because it's a single bay, will that mean its only 1 mechanic working at a time. Katie Cailler will be the sole mechanic there and may have someone helping her in the office. She's spoken to all of her neighbors. There will be a sign on the face of the building saying the business name above the large door.

Monahan asked about on site storage. Katie Cailler will have very minimal on site storage. She is focusing on routine maintenance and hoping to be an inspection station. She doesn't have the space to be housing multiple cars.

In favor: Kenneth Cox, 17 Spruce Street who lives across the street. This business has been there since before they moved in 20 years ago. Katie's dad was a mechanic. Katie is doing the same thing. It's a day time business. The person that is most effected by it is him. They have never had a problem with customers or traffic. It's a community service center for 1 or 2 cars. There are a lot of customers that her father had that she will probably get back.

In opposition: none.

Code: This was a pre-existing nonconforming use that sat empty for a period of time and any vested rights to the use have expired. They wish to reinstate the previous use.

Letter: Heather Shank, 19 Spruce Street. In support. Its historically been conducted on this property. It's a small well maintained commercial garage. The signage would face West Street.

DECISION: Carley reviewed the testimony as given.

Winters: He is persuaded as to the use, although it lapsed and she needs the variance, it was used similar for a very long time. That persuades him it fits in the neighborhood. There would be one car and one mechanic at a time.

Wallner: Agrees with Winters. Variance #2 there wasn't much discussion but there was a plot plan issued and it shows 6 parking spaces.

Spector-Morgan: She appreciates the history of the property and what she is trying to do. This is a residential district. The expectation of zoning is that non-conforming uses be eliminated and replaced by conforming uses. The standard is that there is something about the property that makes it different and she doesn't see that. Not in favor.

Monahan: He is inclined to support. Extenuating circumstances regarding the lapse. This use has been part of this property and there is no opposition from the neighbors.

Carley: In favor of the appeal. As far as the signs go they are pretty modest.

A motion to approve all 3 requests was made by Winters and seconded by Wallner. AYE: Monahan, Wallner, Winters, Carley NAY: Spector-Morgan. Motion passes by a 4-1 vote.

**56-20 Family Promise of Greater Concord for 95 Loudon Road, LLC.**: Applicant wishes to convert an existing mixed-use commercial/residential building, most recently occupied by medical offices (Use E-3) and two (2) dwelling units, for use as a Social Service Center (Use B-6) and maintain the 2 dwelling units and requests the following variances to:

- 1) Article 28-2-4(j), Table of Principal Uses, to allow a Social Service Center where such use is not allowed; and
- 2) Article 28-7, Access, Circulation, Parking and Loading, Section 1(a)&(b), Applicability & Design Approval, to maintain the existing non-conforming parking and circulation layout when compliance with the entire section, as applicable, is required,

For property located at 111 Loudon Road in a CG General Commercial District.

Withdrawn.

October 7, 2020 Minutes: A motion to approve was made by Wallner and seconded by Winters AYE: Winters, Wallner, Spector-Morgan, Monahan, Carley. NAY: none. Motion passes.

July 1, 2020 Minutes: A motion to approve was made by Wallner and seconded by Winters. AYE: Winters, Wallner, Spector Morgan, Monahan, Carley. NAY: none. Motion passes.

*Respectfully submitted by  
Rose Fife, Clerk*