

**CITY OF CONCORD, NH**  
**ZONING BOARD OF ADJUSTMENT**  
**February 3, 2021 MEETING**  
**DRAFT 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.

**01-21 Granite State Baptist Church of Concord for Manchester Sand and Gravel, Inc.:** Applicant wishes to merge the subject properties with the existing church\* property at 236 Sheep Davis Road and requests a Variance to Article 28-2-4(j), Table of Principal Uses, the permit the combined lots to be used for, "churches, synagogues, and places of religious worship" (principal use B-7) along with associated accessory uses where such uses are not permitted, for properties known as 238 Sheep Davis Road, 240 Sheep Davis Road, and the vacant land to the east of 240 Sheep Davis Road known as lot #622/Z 11//, for properties with portions located the IN Industrial District and the RO Residential Open Space District.

\*Variance granted under Case #18-2015 to establish the use and Variance granted under Case #31-2018 to expand the use at 236 Sheep Davis Road.

Testified: Pastor Chamberland. Scott Walker available for questions if needed.

GSBC required variances when they originally purchased the (adjacent) property to allow the use of the church, which has worked out well. They have improved the (adjacent) property. They expanded in 2018 and added an addition to the front of the church for handicapped accessibility. They have had continued growth. They have looked at 238-240 Sheep Davis Road which used to be Outdoor World Landscaping now owned by Manchester Sand and Gravel. It is zoned industrial and the topography drops off to the river. In 2010, the Aquifer Protection Zone came into play. The Aquifer Protection Zone has created a hardship for the property sale. This property has been on the market for a few years. It has been empty and not used for at least the last 4 years. They would like to purchase the 3 lots that are north of them right now. The goal would be to merge the lots into one piece of property. In the future the church would like to expand and build a new place of worship, then expand on the northwest corner with some outreach ministry that they are currently doing in the community. This would possibly be for a food pantry, clothing storage, and prison outreach. They would like to expand onto that property. They have no green space on their current property. There is no area for outside play for the children during bible study vacations in the summer. They would like to plant grass seed on the subject properties down below and use it as green space for church activities.

At this point Chair Carley stopped the testimony to polled the Board members, as he overlooked doing do so at the beginning of the meeting. He asked for the board members names and if there was anyone in the room with them. James Monahan – alone, Nicholas Wallner – alone, Andrew Winters – alone, Laura Spector-Morgan – alone, and Chair Chris Carley – alone.

Testimony for Case #01-21 continued.

In favor: none.

In opposition: none.

ZBA DM 2.3.21

Code: Walker emailed a letter from an abutter that needs to be read into the record to Carley.

Carley read the letter into the record. The letter was from the Hardy's at 220 Pembroke Road, Concord NH. They do not support the application. There is an easement across their property used to access the subject lots below the bluff. They are concerned with increased traffic across their property. They suggest a foot trail from the top lot to the bottom lot.

Rebuttal by Pastor Chamberland. There are several things they would need to look at before they could use the lower piece of property. And the lower area by the river is in the flood plain. Use will be limited. Their intentions, right now, would be not to do anything with that area for a year or two. They would love to develop that area down there to use as a day camp or for the church to gather down there or have an open air tabernacle by the river and use it for baptisms or a picnic area or a ball field. He understands the Hardy's concerns about their right of way usage. It is a right of way to give access to the property. It would not be open to the public to go back and forth, but would be under the controlled use of the church. A walking path would hinder accessibility for those that are handicapped. They are open to have a gate down there also. Before the snow they did go walk the entire bottom of the property and there are no current signs of homeless camps or party remnants along the river or in the fields.

Winters asked if he or anyone in the church spoke with the Mr. & Mrs. Hardy. Pastor said he had not been able to make contact. It is one of the church's steps to personally speak with them. Mr. Hardy does plow his snow from his driveway to the opening of the right of way.

Pastor Chamberland spoke regarding the current office modular building that exists on the new property. The church would like to use that modular as long as it is structurally sound. They would like to use it for an office or outreach. It does have water and sewer hooked up to it.

#### DECISION:

Monahan: He sat on the original case a few years ago when they approved the church use. The proposed use seems consistent with what they previously approved. The Pastor has addressed the abutters concerned.

Wallner: He also sat on the original case. He agrees with Monahan. Due to the Aquifer Protection, there is limited use of that property. He is in favor of the request.

Winters: The original variance they granted was due to the unique nature of the Aquifer district. It created a hardship. At that time the Pastor was candid that the church would like to grow. He agrees with Monahan.

Spector-Morgan: She didn't sit on the original case. She agrees with others. The church is already there. She is in favor of granting the request.

Carley: He is also in favor for the same reasons as the other Board members stated. Topography and previous uses make it more suitable for the way the church would like to use the properties.

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

**04-21 [Concord Hospital, Inc. & Capital Region Health Care Corporation](#):** Applicant wishes to subdivide and create a new lot for the newly constructed Concord Hospital Memorial Building and adjacent parking lot as a separate lot (approximately 2.85 acres) subdivided from the existing Concord Hospital Campus lot (approximately 55.8 acres) and requests the following:

- 1) Variance to Article 28-4-1(h), Table of Dimensional Regulations, to provide zero frontage where 150 feet is required;
- 2) Variances to Article 28-4-1(h), Table of Dimensional Regulations, to provide no front, rear or side setbacks where a 30 foot front, 30 foot rear and 25 foot side setbacks are required,

All for a 2.85 acre +/- proposed lot to be subdivided, if relief is granted, from the existing 250 Pleasant Street parent lot located in an IS Institutional District.

Testifying: Scott Sloan of Concord Hospital, Bill Tucker of Wadleigh, Starr and Peters, PLLC and Sean McDowell of Nobis Group. Also available for questions, Alison Brisson from Concord Hospital.

Walker explained that as they are proposing to create a new property line they will be creating new nonconformities on both sides of that line. So therefore, they need both applications. One for the new lot and one for the parent lot.

Chairman Carley polled the Board to see if they would like to consider both cases simultaneously. In favor of hearing both cases simultaneously: Winters, Wallner, Spector-Morgan, Monahan, and Carley concurred that they would like to do so.

Carley read case 06-21 into the record as they will be hearing it at the same time as Case 04-21. The first case 04-21 is for the new 2.5 acre lot parcel. Case 6-21 is for the larger lot left behind.

Scott Sloane who is the Chief Financial Officer for Concord Hospital testified. Attorney Bill Tucker will talk about the legal terminology further in the testimony. Scott Sloane gave an overview of how this request came to be. Between 2016 and 2017 they were looking at building this new building due to space constraints. Part of the building was constructed to allowed a surgical suite at the lower level. Concord Orthopedics' was discussing building a new building, but after they did a site analysis they realized they weren't going to be able to do that on their site. Concord Orthopedics' then looked for other sites near the hospital to build a 20,000 s.f. surgical center. They purchased 290 Pleasant Street and a request to rezone the property was on the table. The neighbors rallied not to rezone that area of Pleasant Street. At that time City officials reached out to the hospital to find out if they could find Concord Orthopedics' a place on the hospital campus. The hospital reached out to Concord Ortho to discuss moving their orthopedics surgery center to the lower level of their new building. They reached agreement to sell them a condo in this building which is what lead them to the Zoning Board this evening.

Attorney Bill Tucker, Concord Hospital's attorney, further explained the legal aspect. They have to create this lot in order to create the condo. After that they need to get subdivision approval from the Planning Board. Carley asked for an overview of the 5 criteria. Attorney Tucker felt that there are special conditions as the property created will be an integral part of a medical/hospital complex. The plan for this building and the Planning Board approval for it was done before they planned to carve this lot out. It took into consideration the landscaping requirements. It was not designed with setbacks. It was designed and connects to and has a common entrance to the Memorial Building which has been there for many years. They want this to be integrated into the medical complex. The general purposes of the zoning ordinance – the ordinance didn't contemplate a facility like this where many buildings were interconnected. It is not contrary to the spirit and intent of the ordinance as this lot is being created for condominium purposes only. What you see there today will be the same after this variance is granted. This will be in the public interest as it will allow a full range of medical services be provided in the same location. Substantial justice will be done as it will allow continuation of medical services at this one campus. This will not diminish property values as all surrounding properties are owned by the hospital. Nothing will physically change on the grounds.

Spector-Morgan asked if the building will be condominium as well? Attorney Tucker explained this allows a separate lot to be the basis of the condominium. The 2.58 acre lot will still be owned by the Capital Regional Health Care Corp. which owns the entire campus and leases it to the hospital. This will be a separate sublease.

Winters asked if they weren't erecting a new building. Are they creating space in the Memorial Building that is currently unfinished to put in the surgical center? Scott Sloane explained that it is space in the recently completed building they opened last summer in July.

In favor: none.

In opposition: none.

Code: none.

#### DECISION:

Spector-Morgan: The only reason relief is needed is the condo use. Nothing will change on the property. She has no objection to any of the variances.

Winters: He feels that it is a little absurd that this is put on as a zoning issue per say as the hospital campus is unique other than any other lot in the City. Walker explained that Langley Parkway is not publicly owned, it is privately owned at

this time. They could have created condominiums in that building without coming to the Zoning Board. This is creating a lot surrounding that building. Winters would approve.

Wallner; Has no issues and feels it is a unique case.

Monahan: He agrees with his colleagues. He feels it is a reasonable solution to the hospital's challenges.

Carley: He agrees with all his colleagues. This lot is unique.

#### Case 04-21

A motion to approve all variance requests was made by Spector-Morgan and seconded by Wallner. Roll Call Vote: AYE: Monahan, Wallner, Winters, Spector-Morgan, and Carley. NAY: none. Motion passes by a unanimous vote.

#### Case 06-21

A motion to approve all 3 variances was made by Winters and seconded by Spector-Morgan. Roll Call Vote: AYE: Monahan, Wallner, Winters, Spector-Morgan, and Carley. Motion passes by a unanimous vote.

**06-21 Capital Region Health Care Corporation:** Applicant wishes to subdivide and create a new lot for the newly constructed Concord Hospital Memorial Building and adjacent parking lot as a separate lot (approximately 2.85 acres) subdivided from the existing the Concord Hospital Campus lot (approximately 55.8 acres) and requests the following:

- 1) Variance to Article 28-4-1(h), Table of Dimensional Regulations, to provide no front, rear or side setbacks, where a 30 foot front, 30 foot rear and 25 foot side setbacks are required,
  - 2) Variance to Article 28-7-7(g), Parking Area Setbacks and Restrictions, to allow no off-street parking setback where 5 feet is required,
  - 3) Variance to Article 28-7-10(a), Parking Lot Perimeter Landscaping Required, no perimeter landscaping is provided where not less than 5 feet in width along the perimeter is required,
- All as shown on the accompanying plans,

for the remaining 55.8 acre +/- "parent" hospital campus lot from which a 2.85 acre +/- proposed lot is to be subdivided (Case #04-21), if relief is granted, from the existing 250 Pleasant Street campus lot located in an IS Institutional District.

Case was heard with case #04-21. See testimony and decision above.

Minutes from 1.6.21 meeting: A motion to approve the Minutes was made by Wallner and seconded by Spector-Morgan. AYE: All. NAY: none. Motion passes by a unanimous vote.

Meeting adjourned at 7:46 pm

*Respectfully submitted by,*

Rose M. Fife, Clerk

Zoning Board of Adjustment