

**CITY OF CONCORD, NH  
ZONING BOARD OF ADJUSTMENT  
MAY 5, 2021 MEETING  
MINUTES**

Attendees: Chair Christopher Carley, Nicholas Wallner, Andrew Winters, James Monahan, Laura Scott, Scott Sakowski 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.

Meeting commenced at 7:00 pm.

Chair Carley gave the roster of this meeting's cases as well as the roster of May 11, 2021.

A motion to open and recess Cases 21-21, 22-21, 23-21, 24-21, 25-21, and 26-21 to the May 11, 2021 meeting was made by Wallner and seconded by Spector-Morgan. Roll Call Vote: Wallner, Aye; Spector-Morgan, Aye; Monahan, Aye; Winters, Aye; and Carley, Aye. Motion passes.

**20-21 [Ne-Op-Co Signs for Duprey Companies](#):** Applicant wishes to install a 25 square foot wall sign on the eastern façade of the building above the sills of the second-floor windows and requests a Variance to Article 28-6-7, Signs Prohibited, Section (i), to allow a wall sign to be placed on a wall above the sills of the second-floor windows, for property located at 81 Hall Street in an OCP Opportunity Corridor Performance District.

**Note:** The proposed sign is in addition to an existing 125 square foot sign allowed at the same height by variance under Case # 16-10.

Board consisted of: Monahan, Acting Chair, Scott, Sakowski, Winters, and Spector-Morgan.

Testified: Glen Schadlick of Ne-Op-Co Signs. He is representing Avenue's. They would like to have a variance approved to install a sign on the building. Mr. Schadlick reviewed the packet of information he submitted to the Board. This location is on Hall Street. The building faces the highway. In the packet, the entrance is shown, the view that people see from the highway to the building was shown, and where sign will be located on the building was shown. Access is through the parking lot and drive around the building to enter in the front of the building, which fronts the highway. They have a directional sign that exists now, a 9" x 4' panel with logo. He showed the front view of the building, which gives you an idea of the front of the building as you look from the parking lot. They would like to place the sign on the left hand side. According to the ordinance, they are not allowed to have a sign over the sill of the first story window sill. If a sign were there, it would be too low to be visible. The location on the left side would be the only place where a sign would be allowed below the windows and that is behind the pine trees that are there. He showed photos of other neighboring businesses that have signs facing the highway. Those businesses also have the advantage of having a pylon signs out by the road. This property is surrounded by Residents Inn and Comfort Inn. They are not asking for something that isn't enjoyed by the neighboring properties. The sign is not illuminated. It will not impact neighboring businesses. It fits in with other signs in the area. They would like it seen from the parking lot and from the highway.

Spector-Morgan asked how many tenants were in the building. Mr. Schadlick said they share the building with Duprey Co. Sakowski asked if the access from Hall Street is owned by the hotel. Mr. Schadlick stated it was a different parcel.

In favor: none.

In opposition: none.

Code: none.

**DECISION:**

Winters: The applicant reasonably explained that it is the only logical place to put a sign where it will not look odd. It isn't an issue that drivers would be distracted. He is inclined to vote in favor.

Spector-Morgan: Agrees with Winters. There will be no diminution in values of surrounding properties. It will result in substantial justice.

Scott: Agrees with others. This is a good case for a variance.

Sakowski: Agrees. Where they could put a sign is essentially useless.

A motion to approve the request was by Spector-Morgan and seconded by Sakowski. Roll Call Vote: Winters, Aye; Spector-Morgan, Aye; Scott, Aye; Sakowski, Aye and Monahan, Aye. Motion passes.

**27-21 Pope Memorial SPCA:** Applicant wishes to merge and develop the subject lots for a stand-alone "kennel" use (Principal Use M-8), in conjunction with the Pope Memorial SPCA located at 94 Silk Farm Road and requests the following:

- 1) A Special Exception from Article 28-2-4(j), Table of Principal Uses, for a "kennel" use and in compliance with Supplemental Standards, Article 28-5-29, Commercial Kennels and Veterinary Hospitals,
  - 2) A Variance to Article 28-4-1(h), Table of Dimensional Regulations, to permit a total lot coverage of up to 26 percent where a 10 percent maximum lot coverage is permitted;
- for property located at 93 & 95 Silk Farm Road in a RO Residential Open Space District.

Board consisted of: Wallner, Acting Chair, Monahan, Sakowski, Spector-Morgan, and Winters.

Attorney Jason Craven testified. He is the President of the Board of Pope Memorial SPCA. They have been in existence since 1910. In 2014, with the support of the City, they moved into 94 Silk Farm Road. Over time some of their programs and offerings were competing for space. Examples: compassion camp for kids and kitten/bunny yoga, etc. Last fall the owners of 93 Silk Farm Road approached them asking if they would like to purchase their property. Pope Memorial SPCA purchased the property. They had to demolish the building as it was in poor repair. The owners of 95 Silk Farm Road approached them and asked if they wanted to purchase their property. Pope Memorial SPCA purchased the property. With some modest renovations they can maintain the residential appearance of 95 Silk Farm Road and have more program space. They propose to merge 93 and 95 Silk Farm Road's lots. They will have a 1.1 acre parcel when finished. The front of the building would remain except the porch. The back half would be renovated to make a larger meeting area. It will be a one story building. They want to maintain the front along the road to keep the same appearance. All other buildings on the lot will be removed. They based the parking on the typical number of people (16-20) that come to the events. They need a special exception to allow a kennel use in an RO zone. This would be deemed an ancillary use of their facility across the street. (Note: the use is a principal use on its own lot) There will be no kenneling or grooming at 95 Silk Farm Road. It would be an education center only. They also need a variance for the lot coverage. The renovated building would be 5% lot coverage but parking and walk ways brings the lot coverage to about 26%.

Special Exception: It will not create undue traffic or impair pedestrian safety. This section of Silk Farm Road is a dead end. They have two buildings on this side of the road, the Audubon Society being one. None of these programs will generate a high volume of traffic. The compassion camp in the summer runs for several weeks. They do not anticipate any increase in traffic. It is serviced by its own well and septic system. There is significant area on the site to dispose of storm water run-off. This will meet Engineering's requirements. No impact on schools. Not likely to need services more than a normal home. No hazards to health, safety or welfare of public. This neighborhood has evolved over time between this shelter and Audubon society. Both are important aspects to the community. It is an appropriate use of the property based on the merger of the lots. With the existing uses and the convenience of the shelter, this location makes sense. The request for a special exception is consistent with the spirit and intent of the ordinance. This is a low impact use.

Variance: The zoning ordinance is designed to avoid large expansion of pavement. The proposed parking and walkways will be concealed partly by the building. The pavement would not have an impact on the character of the area. There is a significant boundary between 95 Silk Farm Road and the Clinton Street property. It is a reasonable use of the property. The denial of the variance would not allow them to make reasonable use of the property. Granting will not diminish

surrounding property values. They submitted an opinion letter from Coldwell Banker stating that there will be no negative impact on the property values. This is a great project for them and the City as a whole.

Winters asked who owns the large woodland area surrounding the property? Mr. Craven explained that St. Paul's Schools owns to the north of 93 Silk Farm Road. To the rear of the parcel he believes it may be part of the Clinton Street parcel.

Spector-Morgan asked what their reasoning is for not allowing people to park across the street and walk across the street to this parcel for the programs? Mr. Craven stated there is no real reason other than they are trying to be responsible by not having people park on the street or cross the street.

In favor: none.

In opposition: none.

Coldwell Banker opinion letter was summarized into the record. Authorization letter from Whitman and Noreen to authorize.

Code: none.

Gregory Fleming, a friend/representative of Lynne Markey who owns 4.3 acres on Clinton Street. It is her belief that she abuts both of the properties along the rear property lines. He has spoken with Mr. Craven. The cooperation that the SPCA has provided has been outstanding and up front. They have no specific objections. Their overall concern is the increase of the density or the overlay of the land. It will change the character in the community. Even though it is difficult to oppose the SPCA, they want to keep this a neighborly objection at this time.

Rebuttal: Mr. Craven explained that they sent a letter to Ms. Markey of 240 Clinton Street over a month ago advising her of what they wanted to do. They offered and asked her to reach out to them. It wasn't until Monday that they received contact from Mr. Fleming. Mr. Craven immediately reached out and provided him with the information requested and spent time on the phone with him. He hasn't heard any articulated specific objections or what they would be looking for. They feel the parking is reasonable for the property and there are buffers.

Decision:

Sakowski: They don't currently intend to use the property as a kennel, but that's what the special exception allows. Are they voting on it as if it would be a kennel or specific to what they are testifying that they want to use it as? (Walker – approval based on the representations made to the Board that the space would not be used for housing animals.

Wallner: The Board will be voting on what they testified they would use it as. Walker stated that this will also go through a minor site plan review. All testimony presented tonight and represented to Planning Board would be a condition of approval, etc.

Winters: Asked if it were the same as a variance and if they do issue a special exception is there a time limit before it expires. Walker explained that as long as they have commenced utilizing the special exception within 2 years of approval, then its vests and runs with the land forever.

Monahan: He has enough information to decide.

Spector-Morgan: She has enough to decide. She has no issues with the special exception. The application explains the criteria and she is satisfied that they are met. She proposes that if approved, the special exception is limited to activities as described in the application. The variance is more difficult. This is a unique property. A small lot for that area. Lots of open space around it. It would decrease the density as the second house will be demolished. She would vote to grant the variance.

Special Exception: A motion to approve with a condition that the activities are as stated in the application (i.e. no kenneling of pets) was made by Spector-Morgan and seconded by Monahan. Roll Call Vote: Monahan, Aye; Spector-Morgan, Aye; Winters, Aye; Sakowski, Aye; and Wallner, Aye. Motion passes.

Variance: A motion to approve was made by Spector-Morgan and seconded by Monahan. Winters is persuaded by the fact that the surrounding properties are both owned by large institutions. The open space will be preserved. Roll Call Vote: Spector-Morgan, Aye; Sakowski, Aye; Winters, Aye; Monahan, Aye; and Wallner, Aye. Motion passes.

**28-21 Thomas G. Eaton:** Applicant wishes to construct a 24 foot by 30 foot addition (+/-) onto an existing non-conforming two-family dwelling and requests the following:

- 1) A Variance to Article 28-4-1(h), Table of Dimensional Regulations, to permit a front setback of 25 feet +/- where a 50 foot setback is required, and
- 2) A Variance to Article 28-8-4(c)(1), Expansion of a Non-conforming Use, to allow the continuation and expansion of an existing non-conforming two-family use, for property located at 97 Hopkinton Road in a RO Residential Open-space District.

Board, from this case forward, consisted of: Carley, Chair, Wallner, Sakowski, Spector-Morgan, and Winters.

Thomas Eaton testified. Rose Shiek, his daughter, also testified. The property is an existing non-conforming 2-family dwelling. He wants to add on 2 rooms of living space on the 97B Hopkinton Road portion of his property along with a garage underneath. They would enter from the back of the property. He will occupy the space himself. He would like single level living for his 'sunset' years. He'd like to reconstruct in the same location a barn that, years ago, was on the end of the house. It won't be the same size as the barn. It will be a single story with a future space above that will be a gable type structure. On the east side is the only spot that he could add onto this building. He cannot add on in the front or the rear or on the driveway (west) side. He'd like to occupy this space himself and his daughter and her family will occupy the house. He is not adding a kitchen or a bathroom. The existing bedroom will become an office and he will have a new bedroom that face his gardens and his backyard. His living room will be on the front side. He submitted sketches. He discussed it with St. Paul's School as their cemetery is the closest abutting thing. He also spoke to his neighbors Glenn and Barbara Gagne, Virginia Joselyn, Marcel and Debbie Daudelin and none of them had any issues with it. He didn't contact Neuro International across the street as they do not correspond with the neighbors. It's the only proper place to attach the addition. He has 35 feet from his property line to the addition. He cannot see any impact or burden being place on anyone nor on any services. This is just for their family to live in. It is not for resale or rental. He would like to keep the place in the family. His daughter Rose testified She was born at 97 Hopkinton Road, as was her brother. Her brother will be her responsibility in her older age. Her father having the ability to add the additional living space on now will provide that space for him in the future. It also allows her to be in a place that is dear to her while her dad is alive as well. She's always wanted to return back to Concord. Their intention is specifically and solely for his family to live there.

Spector-Morgan: Is there a reason they wouldn't want to put the addition towards the rear of the home? Mr. Eaton explained that it has to do with the pitch of the roof and it would block sunlight from all the other rooms. He has a photo of the old barn he showed. He would attach it the same way.

Wallner: Is there a porch there? Mr. Eaton stated there was a porch on the back. His daughter Rose stated that if they build onto the rear, they lose the capacity of building a garage on the bottom floor.

Sakowski: Is the home being used as a 2 family now? Mr. Eaton explained that in 1977 his grandmother made it a two family.

Winters asked Walker if any additions would require a variance for expansion of a nonconforming use. Walker explained expansion of non-conforming uses.

In favor: none.

In opposition: none.

An email from Virginia Joslyn of 114 Hopkinton Road. She is in favor.

Code: to clarify, it's not a non-conforming structure, It's the use that's nonconforming. There is a site discrepancy. The application says 35 feet and that is accurate based on the older plan he supplied with the application. But scaling off the GIS it would appear to be 25 feet. So as a caution he wrote it up as a 25 foot setback but the location of the building will remain the same.

Decision:

Spector-Morgan: She is not concerned about the variance for the expansion of nonconforming use. She is concerned about the front setback but the addition isn't any closer to the road. It is a unique property. Property values will not diminish. She's in favor.

FM ZBA 5.5.21

Sakowski: Agrees.  
Winters: Agrees.  
Wallner: Agrees.  
Carley: Agrees.

A motion to approve both requests was made by Wallner and seconded by Sakowski. Roll Call Vote: Wallner, Aye; Sakowski, Aye; Winters, Aye; Spector-Morgan, Aye; and Carley, Aye. Motion passes.

**57-20 Shampney and Sons Four Season Landscaping for Marie Blais:** Applicant wishes to establish a Contractors Trade Shop (Principal Use L-8) and accessory outdoor storage of materials, vehicles and equipment (Accessory Use business and requests the following:

- 1) Variance to Article 28-2-4(j), Table of Principal Uses, to allow a construction trades shop (Principal use L-8) where such use is not permitted,
  - 2) Variance to Article 28-2-4(K), Table of (uses) Accessory to a Principal Non-Residential Use, to allow the outside storage of vehicles, equipment and materials (Accessory Use B-7), in conjunction with the operation of a construction business where such a use is not allowed, and
  - 3) Variance to Article 28-5-37, Outside Storage of Materials and Inventory, Section (a), Required Setbacks, to allow the storage of materials, construction vehicles and equipment within the 50' required buffer along the southerly (side) property line, adjacent to Black Hill Road, and
  - 4) Variance to Article 28-5-37, Outside Storage of Materials and Inventory, Section (b), Screening Requirements, to waive the requirements for installing solid or opaque fences, walls or enclosures to screen the outside storage areas from view along the northerly (front) property line, the southerly (side) property line and the westerly (rear) property lines,
- for property located at 36 Manchester Street in a GWP Gateway Performance District.

Neither applicant nor representative appeared for this case. The case was put on hold for the remainder of the evening in case the applicant appeared before the end of the meeting.

**17-21 Greg and Donna Lessard:** Applicants requests the following:

- A) Equitable Waiver of Dimensional Regulations in accordance with RSA 674:33a, to grant legal status to a front setback for an addition approved and issued a Building Permit for constructed in 2007 with zero foot front setback where a 50 foot setback is required,
  - B) Variances to construct a detached shed as follows:
    - 1) to Article 28-4-1(h), Table of Dimensional Regulations, to permit a structure to be located 10 feet +/- from the front property line where a 50 foot setback is required
    - 2) Variance to Article 28-4-1(h), Table of Dimensional Regulations, to permit a structure to be located 25 feet +/- from a rear property line where a 50 foot rear setback is required,
    - 3) Variance to Article 28-3-3, Shoreland Protection (SP) District, Section (g)(2), to permit a structure (shed) to be located 25 feet from the reference line of Hot Hole Pond where structures must be located no less than 75 feet from the edge of the pond,
- for property located at 74 Hot Hole Pond Road in a RO Residential Open Space District.

Walker explained the request. In 1986 a prior owner requested a variance to add onto the south of the building. At the time the plans showed the outline of the pavement edge as the property line and that it was nine (9) feet from the proposed addition. It wasn't until Mr. Lessard brought his request to relocate his shed in that Walker observed there was a discrepancy of the location of the front property line between the plan available at the time and the current GIS maps. Thus, the addition was granted a variance to build with a zero setback vs. a 9 foot setback, which triggers the request for an equitable waiver if the Board deems this is an appropriate case to grant such a thing. Winters had questions regarding setbacks. Walker explained the setback encroachments.

Testified: Greg Lessard. Equitable waiver – that is half his house. The Shed – they bought the property over 2 years ago and they have been renovating it ever since. They put in a basement under the old structure. It was on pylons when they purchased the property and it was in rough shape. They had to remove a 10x10 shed at that time for access for excavation with the intention of replacing the shed. He reached out to the City to ask if he needed to do anything to change the location of the shed. That is when he was told that because he had removed the shed, he lost the vested right to have it there. Had he known, he wouldn't have touched it. They have a small basement which now holds snowblowers and yard tools in it as well as a riding mower which was in the shed before. He'd like to put the shed back. If he tries to comply with the setbacks it doesn't work. Exhibit 5 shows the shed placed near where they are currently parking. This property has a 45 degree angle slope to the water. They only have one level area to use for outdoor seating. He's trying to move the shed north approximately 15 feet.

Winters asked if the shed was there prior to his purchasing. Mr. Lessard said it was a 10' x 10' shed there and he removed it. He has been approved by NHDES for the location of the shed. As long as they are 50 feet off of the water DES is okay with it.

Spector-Morgan asked if there were any conforming place on the property for his shed? Mr. Lessard said there was not.

In favor: none.

In opposition: none.

Code: none.

Decision: Carley went over the testimony as given.

Wallner: This is a good example of unusual property. An equitable waiver makes sense. The property owner is entitled to a reasonable use of his property, i.e. a shed. There is no place to put it. He is inclined to support both requests.

Monahan: Agrees. The equitable waiver is obvious. A shed would give them the opportunity to keep their property in better order. It is beneficial.

Spector-Morgan: Agrees.

Winters: There is a home there and it's a modest home and should be able to have a shed.

Carley: Agrees. As far as the equitable waiver, it was a past mistake. There is no public interest in enforcing the law. The variance is a similar situation. It is a perfect fit for a variance.

A motion to approve the request for an equitable waiver was made by Spector-Morgan and seconded by Wallner. Roll Call Vote: Wallner, Aye; Spector-Morgan, Aye; Winters, Aye; Monahan, Aye; and Carley, Aye. Motion passes.

A motion to approve the variance request was made by Spector-Morgan and seconded by Wallner. Roll Call Vote: Wallner, Aye; Spector-Morgan, Aye; Winters, Aye; Monahan, Aye; and Carley, Aye. Motion passes.

**18-21 [Laura Hartz, Esq. for 3G Eagle, LLC.](#): (Recessed from April 7, 2021)** Applicant wishes to renovate an existing industrial building into 3 industrial flex tenant units with an automotive repair facility (Principal Uses J-4&5) as a tenant and requests a Variance to Article 28-3-6, Aquifer Protection District, Section (d)(3), Uses Prohibited, Item (m), ...automotive repair, servicing or automotive body work, to permit such automotive repair, service and, body work where such use is not allowed, for property located at 25 Henniker Street in an IN industrial District with an Aquifer Protection District (APD) overly on a portion of the property.

Spector-Morgan may need to recuse herself as her firm represents Pembroke Water and the Town of Pembroke. Because Pembroke is going to participate, she's concerned with sitting on the appeal. Jeremy Eggleton spoke. Matt Gagne, Superintendent of Pembroke Water spoke. Spector-Morgan asked if they had an objection to the plan before them. Matt Gagne stated that they want to have a study done and give them an opinion on any potential risk to their well.

Spector-Morgan felt that she needed to recuse herself due to this information.

Jeremy Eggleton stated that they have no objection to the testing requirement that Pembroke Water Works is asking for. Neither of those conditions are objections. He has no concern for Laura Spector-Morgan sitting on the case, so she agreed to stay.

This case was recessed from April 7, 2021.

Jeremy Eggleton, Orr & Reno testified. Carley asked if they would want to recess the case to allow for time to get the study done? Attorney Eggleton would like to make their pitch on the variance with a condition of having the study done. Spector-Morgan expressed concerns. She feels that would be a condition of approval but, would be hard to enforce. She would like the information before hand in order to decide. Carley thought they had two options. Option 1 would be that they could recess the case and wait for the study. Option 2 would allow Mr. Eggleton to proceed and then recess the case. Or the board could consider it with the condition of an approval of the study. Carley isn't comfortable with proceeding without the study. Winters felt that if they are being asked to approve/condition on a third party, that's a vague or hard condition for the City to enforce. Walker agrees with Spector-Morgan. It would be difficult if the board made a ruling in the affirmative and then there were unfavorable issues with the report. It would be difficult to know how to proceed. Monahan asked how long it would take to conduct the study? Matt Gagne thought that studies usually take 2 to 3 weeks. Monahan thought that he could make a more informed decision if he had all the information at once. Chris Brown, property is Attorney Eggleton's client. He's here with Erin Lambert who is also on the project. Chris Brown spoke. He understands the concern. NH Distributor's is an adjacent building around the corner that they purchased last year and he would like to renovate the property to warehouse and office suit. This client that they do business with has their trucks. They would like them to be one of their tenants there. They understand the issues with the Soucook river and Pembroke Water Precinct. He is willing to work with the Town of Pembroke.

Spector-Morgan and Monahan want to hear everything at once. Wallner does also. Carley is inclined to do the same. Winters as well.

A motion to recess the case to the June 2021 meeting was made by Spector-Morgan and seconded by Wallner. Roll Call Vote: Monahan, Aye; Winters, Aye; Spector-Morgan, Aye; Wallner, Aye; and Carley, Aye. Motion passes.

At this time, no one from Case 57-20 - Champney & Sons, has showed so the case was dismissed with no further action.

Minutes: A motion to approve the Minutes from April 2021 was made by Wallner and seconded by Spector-Morgan. Roll Call Vote: Spector-Morgan, Aye; Monahan, Aye; Winters, Aye; Wallner, Aye; and Carley, Aye. Motion passes.

Meeting adjourned at 9 pm.

*Respectfully submitted by,*  
*Rose M. Fife, Clerk*  
*Zoning Board of Adjustment*