

**CITY OF CONCORD, NH  
ZONING BOARD OF ADJUSTMENT  
JUNE 2, 2021 MEETING  
DRAFT MINUTES**

Attendees: Chair Christopher Carley, Nicholas Wallner, Laura Scott and Laura Spector-Morgan.

Absent: James Monahan, Andrew Winters

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.

**PUBLIC HEARINGS**

**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.

Postponed to July 7, 2021.

**31-19 [Liberty Utilities Corp.](#)**: Applicant requests a one (1) year extension of a Variance granted on July 10, 2019 for Case #31-19 and in accordance with Article 28-9-3(c)(6), Expiration of a Variance, original variance request as follows:

*"31-19 [Liberty Utilities](#): Applicant wishes to construct an office/warehousing/industrial flex, mixed use building (use L-11) and requests a Variance to Article 28-2-2(b), Purposes of the Established Districts, Section (16), The Industrial (IN) District to waive the requirement that the proposed building be serviced by municipal sewer, for property located at 14 Broken Bridge Road in an IN Industrial District."*

Postponed to July 7, 2021.

**29-21 [Audry and Denis Dion](#)**: Applicant wishes to expand their driveway width and requests a Variance to Article 28-7-7(f), Driveway Widths, to permit a driveway with a maximum width of 50 feet, where a maximum width of 28 feet is allowed, for property located at 22 Shaw Street (Pena.) in an RN Residential Neighborhood District.

Testified: Denis Dion. Also available to testify: Audry Dion. The applicant was advised that they had the option of being heard by a full five (5) member board and that with the four (4) member board they will still need three (3) votes in the affirmative for their request to be approved. They agreed they would like to be heard by a 4 member board. (Zoning Administrator, Walker, verified they understood they need three (3) votes in the affirmative.) They planned their driveway to be completed to the street. They are getting ready to finish the property and the variance for the driveway width is needed now.

Carley asked if they were aware when they built the garage that granting of a variance was not automatic. Mr. Dion said he was aware.

Mr. Dion explained that when he constructed the garage he was told he would need a variance to have a driveway greater than 25' in width. He decided not to apply for a variance at that time. He has recently decided to apply for the variance and get the driveway completed. Right now, they are parking on dirt.

Wallner heard Mr. Dion suggest that there was discussion about the driveway in 2006 at the original Zoning Board of Adjustment hearing. Mr. Dion said there was no discussion. (Note: there was no ZBA action on this property in 2006 or prior to this current appeal) They were told they were allowed 25 feet so that is what they did at that time. They have lived there 25 years and they want to get the driveway complete. Wallner asked how they access the third bay of the garage now. Mr. Dion said they drive over the dirt to get to that portion of the garage.

Spector-Morgan noted that in their application they mentioned that they are driving over a city easement to enter the left side of the garage. Mr. Dion explained that it is the grass he's driving over. It's City property, not an easement. He is not allowed to put asphalt on it. Walker explained that Mr. Dion is referring to the street right of way which extends beyond the width of the pavement. Spector-Morgan asked if there was an issue with them parking in that area without it being paved. Walker explained that it should be paved and there should be a curb installed. Parking is generally required to be paved for a 2 family/3 family home. Scott asked if that was the rule when the garage was built. Mr. Dion interjected that his assumption was that he was going to pave it. They built the garage knowing that they were going to pave their property but as far as the city's property they weren't sure.

Walker explained that when they built the garage, the full width as exists now, 28 foot width driveway would have been acceptable. Zoning should allowed 28' width but the engineering regulations may have limited to 25'. Their understanding was they were only allowed 25 foot width without a variance at that time. Now they are coming back to ask for the full width. Spector-Morgan asked if access wasn't discussed at the time they built the garage. Mr. Dion answered that they didn't think about that at the time. Spector-Morgan asked what they thought they would do? Mr. Dion explained they would just drive over the dirt as they are doing now. Walker showed the board the 2010 aerial photograph showing the pavement vs dirt area to access the third bay.

In favor: none.

In opposition: none. A letter was read that was submitted by Jim Foote and Will Foote of the Foote Family Trust. They are in opposition. They are concerned with snow removal and where he has been plowing the snow.

Code: none.

Rebuttal: Mr. Dion explained that he plowed street snow across the street. Their street doesn't get plowed often enough.

#### DECISION:

Wallner: He was surprised the driveway width didn't come up during first Zoning Board meeting when he was granted a variance for a multi-car garage. Walker interjected that there was no variance request needed for the garage when it was built and no variance for the garage is needed. Mr. Dion was told when he built the garage that he would need a variance to expand the driveway. Carley noted that Mr. Dion acknowledged this. Wallner's not sure why this didn't get address when he built the garage.

Spector-Morgan: Agrees with Wallner. Nothing about the property is burdened by the zoning restrictions. There is a way to access that third bay. The purpose of these limitations for driveways is for public safety. Having this large swath of paved driveway would present a safety problem with 3 cars trying to go in and out of the property at the same time. There is no loss to the owner if the board denies the variance. They can still utilize garage. She would vote to deny.

Scott: Agrees with Spector-Morgan. She sees no hardship. They were told when they built the garage they would need a variance. They have been accessing the third bay. Having a 50 foot wide driveway for a residential property is a lot of asphalt. She is not in favor.

Carley: Agrees with all.

A motion to deny the request was made by Scott, seconded by Spector-Morgan. Roll Call Vote: Wallner, Aye; Spector-Morgan, Aye; Scott, Aye; Carley, Aye. Motion carries by a 4-0 vote.

**30-21 [Jane Tewksbury for Warren Fitzgerald](#):** Applicant requests a Special Exception under Article 28-2-4(j), Table of Principal Uses, to establish a "Day Spa" (Personal Service, Use D-1), for property located at 54 South State Street in a UT Urban Transitional District.

Testified: Jane Tewksbury. Her business is currently at 244 N Main Street. She wanted to switch to 54 South State Street. Realtor Wendy Keeler suggested she reach out to the Board for approval. The current use of the building is similar to what they are doing right now. They do not have any more than 5 people that come in at one time. She only has 5 employees and it is one on one services at this point. She spoke with Nikki Fitzgerald, one of the building owners, who has had massage therapists renting in that building before. There is no additional services from the City needed or required.

Carley asked if the building had parking on site. Ms. Tewksbury answered that it has 18 spaces currently, which is more than what she has now. Carley asked how many clients would be there at one time. Ms. Tewksbury stated 5 clients. She works elsewhere so she wouldn't be there on a regular basis. The absolute max would be 20 people if she had 10 practitioners. Spector-Morgan asked if she would be utilizing the entire building. Ms. Tewksbury will be utilizing the entire building.

In favor: none.

In opposition: none.

Code: The parking is not an issue as it is essentially a change of one (allowed) use to another allowed by a special exception and the parking demand remains the same as the previous use.

**DECISION:**

Scott: It's a good use for the building. One business vs multiple businesses is better for parking. She is in favor.

Spector-Morgan: She is convinced they meet the 7 special exception criteria.

Wallner: Feels it meets requisite findings for a special exception.

Carley: Agrees.

A motion to approve the request was made by Wallner and seconded by Scott. Roll Call Vote: Wallner, Aye; Scott, Aye; Spector-Morgan, Aye; Carley, Aye. Motion carries by a 4-0 vote.

Minutes of May 11, 2020

A motion to approve the Minutes was made by Wallner and seconded by Spector-Morgan. AYE: Carley, Wallner, Scott, Spector-Morgan. Motion carries by a 4-0 vote.

*Respectfully submitted by,*

*Rose M. Fife, Clerk*

*Zoning Board of Adjustment*