

**CITY OF CONCORD, NH**  
**ZONING BOARD OF ADJUSTMENT**  
**August 4, 2021 MEETING**  
**DRAFT MINUTES**

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

Absent: none

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

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Meeting commenced at 7:00 pm.

**39-21 [ECRPDK, LLC](#):** Applicant requests that the Board overturn the Code Administrator's decision that the subject property must comply with Article 28-7-7(g)2, and rule that the subject property may have a non-conforming parking spot in the setback area on its southerly side, for property located at 46 North State Street in a CVP Civic Performance District.

Testified: Attorney Frederich Moeckel of Tarbell and Brodich. He'd like to continue this case for 30 days.

A motion to recess the case to the September 1, 2021 meeting was made by Monahan, seconded by Wallner and passed by a unanimous vote.

**40-21 [Robert & Jayne Crevier](#):** Applicants wish to construct a 20-foot by 26-foot garage at an existing single-family dwelling and requests the following variances:

- 1) To Article 28-4-1(h), Table of Dimensional Regulations, to permit a structure to be located 7'2" +/- from the southerly side property line where a 15-foot setback is required, and
- 2) To Article 28-4-1(h), Table of Dimensional Regulations, to permit a structure to be located 19 feet +/- from the front property line where a 25-foot setback is required, for property located at 3 Guay Street in an RM Residential Medium Density District.

Testified: Robert and Jayne Crevier. Mr. Crevier explained that there were other garages in the neighborhood. The area is not going to exceed the existing pavement. The garage will be flush with the back of house. It will be 2 feet closer to the front property line than the house. Monahan asked if it would be attached to the home. Mr. Crevier said it would be attached to the home. Carley asked if the mudroom were existing? Mr. Crevier said it was. Carley asked if the garage would be 20 feet wide. Mr. Crevier answered it would be. Carley asked why they didn't move the building back on the lot. Mrs. Crevier explained that it would be too close to the pool when the snow comes off of the roof. Wallner asked if their neighbor's garage is close to the property line? Mr. Crevier explained that it is not as close as it seems.

In favor: none.

In opposition: none.

Code: none.

**DECISION:** Carley reviewed the testimony as given.

Wallner: The Board has supported garage additions, within reason, before. He is in favor.

Monahan: Agrees. The nature of the lot is such that if they pushed the building back it would disrupt the pool in the back yard.

Scott: Agrees. It is placed in line with the existing driveway and with the existing home.

Winters: Agrees.

Carley: Agrees.

A motion to approve the request was made by Wallner, seconded by Monahan and passed by a unanimous vote.

**41-21 Alexander Matson III:** Applicant wishes to replace an existing 4-foot by 11-foot enclosed porch with an 8-foot by 18-foot enclosed three-season porch on the front of an existing single-family dwelling and requests a variance to Article 28-4-1(h), Table of Dimensional Regulations, to permit a structure to be located 13-feet +/- from the northerly front property line where a 25-foot setback is required, for property located at 1 Kellom Street in an RM Residential Medium Density District.

Testified: Alexander Matson III and Michelle Matson. Mr. Matson testified that the home was built in 1930 prior to any ordinance being in place. The property line is where his fence is located. The porch that exists is 4 x 11. It does need work. They bought the home 3 years ago. They have trimmed the door on the porch as it has settled. They are currently siding the home. They would like to put up the 3 season porch before they complete the siding. This will allow them to get a wheel chair into the home if needed as well. He will resubmit plans to Code as the steps were originally off of the front of the porch, but they will now place them towards the driveway side so as not to encroach more into the setback.

Carley asked if the door with the gable over it will be subsumed by the new design. Mr. Matson said that was correct. Carley asked if it would extend to the right of the property? Mr. Matson said correct. Winters asked if including the steps, the build will not encroachment any further? Mr. Matson said correct. Wallner explained that the end of steps will be the end of the new structure. Mr. Matson said correct.

In favor: none.

In opposition: none.

Letter: Dan and Aaron Feltes, 44 Hope Avenue. In support.

Code: none.

DECISION: Carley reviewed the testimony as given.

Winters: Their design doesn't encroach further than what is there. The home location on the lot leaves them no where to add. He feels it is a reasonable extension.

Scott: There is no negative impact. It is a corner lot.

Monahan: Agrees with both.

Wallner: Agrees.

Carley: Agrees. One of the purposes of variances is to recognize buildings that were constructed prior to the enactment of ordinances.

A motion to grant the requests was made by Scott, seconded by Winters and passed by a unanimous vote.

**42-21 Joseph Vanaria for Manchester Sand, Gravel & Cement Co., Inc.:** Applicant wishes to establish a composting facility (Materials recycling and processing, Principal Use L-4) and requests the following variances:

- 1) To Article 28-5-37(d), Maximum Area of Lot to be Used or Designated for Outside Storage, to permit the outdoor compost processing operation (Use L-4) to occupy an area of approximately 239,580 square feet of land area on a lot with a 900 SF building, and to waive the restriction that outside storage and processing is allowed only as a ratio of land area to building area of 1.3 to 1 which is the ratio of the area of outside storage to the gross floor area of the buildings on the lot which houses the principal use;
- 2) To Article 28-7-2(e), Table of Off-Street Parking Requirements, to permit the provision of two (2) parking spaces where forty-nine (49) spaces are required, and
- 3) To Article 28-7-7(h), Surfacing and Drainage, to permit the use of alternative surfacing for the access drive and parking area in lieu of a paved surface,

for property located at 200 Sheep Davis road on a property the with portions in the IN Industrial District and the RO Residential Open Space District.

Testified: Peter Holden of Holden Engineering. He showed the property on a map. The neighbors are businesses and vacant lots. Most are industrial neighbors. The land is in 2 zones. It was owned by Manchester Sand and Gravel a long

time ago. It was sold to another company and resold back to Manchester Sand and Gravel. The property has been reclaimed. He showed where the drainage is on the lot. Mr. Vanaria wants to start a composting business there. He goes to other places and buys materials and hauls it to Massachusetts where his business is located. He now has no place to bring his composting. He has a fair amount of yard waste i.e. leaves and grass. No trees or stumps. He will bring in materials via Manchester Street to Route 106 to his driveway. He'd like to have a building there to put equipment in out of the weather. Monahan asked what the size would be. Mr. Holden said it would be 30 x 30. Driveway pavement does not encroach far into the property. He'd like to put in 3" stone on the driveway up to where the culvert is located. Currently it has grass and weeds growing on  $\frac{3}{4}$  of the driveway. Pine trees were planted along the river. You cannot see to the river from the property. There is an existing conservation easement and landscape buffer along the river. The entire operation will be in the IN zone portion of the property. There will be none in the RO zone portion of the property. They need variances. One variance is from the parking requirements. This is considered recycling, which makes it 'outside storage'. If they were to use the entire area in the IN zone they would need 48 parking spaces, but they are asking for 2 parking spaces. There will be no customers at this location except the truck driver and the loader operator. The second variance is from the ratio of storage to building size. Their storage area would require 184,292 s.f. of building space in order to comply with the ordinance. The third variance is for paving. The ordinance requires parking spaces have a paved surface, etc. Carley asked why they aren't applying for a CUP permit. Holden thought they would be required to reserve the area for parking if they did that. They will be building a berm along the edge towards the river. The area is large enough to hold 100 year flood twice over.

Carley asked if a gravel driveway was also available as a CUP? Walker explained that if the business were part time i.e. less than 6 months out of the year, they could have alternative surfaces, but no CUP for the driveway.

Monahan asked how the material would leave the property. Mr. Holden explained that once composted, trucks will be loaded and the material will be taken back to Massachusetts. The owner uses the material in his landscaping.

Winters asked to have the rationale or hardship explained. Mr. Holden explained that it is an allowed use and an unanticipated use.

Scott asked if there would be an office, bathroom or storage area in the building for the 2 staff members they plan to have. Mr. Holden explained that the purpose of the building is to store equipment. There will only be 1 person working there and one truck coming onto the site. There is nothing else they do there other than turn over the piles of compost. A bathroom is anticipated. They also will have lights in the building.

Carley asked if they will operate all winter. Mr. Holden answered that it does not. They will operate quite a bit during Spring and Fall. There will be piles there during the winter, but not used.

Monahan asked why it was not an agricultural use but a recycling use. Walker explained that the proposed use is a manufacturing/materials processing use. Materials are brought to the site from other locations, processed into a new product and then shipped to another user.

In favor: none.

In opposition: none.

Richard Hill of 203 Sheep Davis Road Spoke. Ronald Mahoney, his father-in-law also spoke. They are not sure if they are in favor or in opposition. Their residence is across the street. The impact of the number of vehicles is of concern. If the variance is granted and the land is sold does the variance go with it? Carley explained it does. Walker explained that this request will be going to the Planning Board for Major Site Plan Review which will be a good place to address any of their concerns as well. Mr. Mahoney asked if they are leasing the land or purchasing it. What about hours of operation?

Code: Walker explained that the purpose of the ratio is to ensure that the limited industrial land is used for purposes that will have a general benefit to the city. The building ratio helps to ensure properties are improved for taxation purposes and that good jobs are created. This proposal doesn't appear to satisfy either goal.

Rebuttal: Peter Holden. He is not sure of the hours of operation but thought it would be part of CUP. He will go out on a limb and say they will not start before 7 am and will end by 7 pm. Wallner asked if that were for 5 or 7 days a week. Mr. Holden believes it is for 6 days a week.

DECISION: Carley reviewed the testimony as given.

Scott: Variance #2 - Parking variance: she felt the request is reasonable. She supports the variance. Less parking spaces is always better than more. If that is what they need, it is reasonable.

Monahan: Agrees with Scott.

Wallner: Agrees.

Walker explained that the parking calculation is based on outside storage.

Winters: He has no issue with #2.

Carley: The request is reasonable. Agrees with Scott, less is better than more.

A motion to approve variance request #2 was made by Scott, seconded by Monahan and passed by a unanimous vote.

Variance #3

Wallner: It sounds logical to argue for this.

Monahan: Agrees.

Scott: Agrees. It has an existing paved apron. More environmentally sound.

Walker: Suggested that perhaps they make a note that they will need to address fugitive dust levels at the Planning Board if approved.

Carley: Agrees.

A motion to approve request #2 was made by Wallner, seconded by Scott with condition that there is a dust control plan, (Wallner agreed.) and passed by a unanimous vote.

Variance #1

Winters: His initial reaction is that he's having issues distinguishing this request from a previous case the board denied on Locke Road. This does seem to have an actual plan though where the previous case did not. The ratio they are proposing is 250 to 1 instead of 1.3 to 1.

Scott: Agrees with Winters. This has more of a plan vs. just storing items out there. She didn't hear enough as to why there is a hardship. She thinks it's a great idea and use of the property. But she's not sure she heard enough of a hardship reason.

Carley asked Walker what the use is as defined in the ordinance: Walker answered that it is materials recycling and processing.

Monahan: Is this an industrial use/activity or not. He is sensitive to the fact that there is limited industrial space in the City. He would love to have some direction from the City's Economic Development staff.

Wallner: The hardship is the huge building for a couple of vehicles.

Carley: This strikes him as different from the Locke Road case as this particular use, although allowed by right, was not thought through when the ordinance was written. They are orphaned by the ordinance. The other thing that is different is that the Locke Road case was strictly for storage. Here they have an operational business. He is not sure that the economic plan behind the ordinance, as it was conceived, is exactly within the Board's purview as to whether they should be granting a variance. It is not necessary to be the highest and best use of the land in order to grant a variance.

Scott: The use is allowed. It's the size of the building that is the variance question.

Wallner: Similar to the operation on Fort Eddy Road behind CAVES. Walker explained that is a City facility and has been there for a very long period of time.

A motion to grant variance #1 was made by Monahan and seconded by Wallner. He thought it was reasonable use of property. Scott agrees. Motion carries by a 4-1 vote with Winters in the minority.

**43-21 Michael Foulds:** Applicant wishes to:

- 1) Construct a 16-foot by 16-foot mudroom on the easterly side of their single-family dwelling and requests a variance to Article 28-4-1(h), Table of Dimensional Regulations, to permit a structure to be located 37 feet +/- from the front property line where a 50-foot setback is required
- 2) Construct a 6-foot by 4-foot roof over the front entry stairs and requests a variance to Article 28-4-1(h), Table of Dimensional Regulations, to permit a structure to be located 27 feet +/- from the front property line where a 50-foot setback is required
- 3) Construct two 13-foot by 4-foot pergolas, one on either side of the front entry stairs, and requests a variance to Article 28-4-1(h), Table of Dimensional Regulations, to permit a structure to be located with a closest point of 27 feet +/- from the front property line where a 50-foot setback is required, for property located at 60 West Parish Road in an RO Residential Open Space District.

Testified: Michael Foulds and Dana Foulds. Mr. Foulds testified that they purchased the property in 2018. They did a complete gut and renovation of the interior. It's a 1960's garrison colonial. It is now 100% up to code. They want to match the exterior to be as functional and beautiful as the interior. The front steps are to keep the snow off the steps and keep them safe. The pergola hides an outdated bump out. He didn't understand that the mudroom created a setback issue. He originally applied for it to be 51 feet from the property line, but there is 14 feet that is in the City setback. The mudroom will still be setback 4 feet further than the current structure, but it still encroaches. The other homes built in the same area are ranches, capes, colonials. He is further away from the street than most homes in the neighborhood.

Carley asked if his home were west of Carter Hill Road? Mr. Foulds said it was east of Carter Hill Road. Winters asked if the mudroom and pergola are two independent structures. Mr. Foulds explained the project morphed over time and he has separate permits for all of the projects. They wanted to come before the board with the full picture.

Carley asked if the pergola came out even with the front vestibule he would create. Mr. Foulds said that was correct. Monahan asked if the pergola runs the length of the house. Mr. Foulds said it did. Monahan asked about the height. Mr. Foulds explained that the ceiling of the vestibule would be in line with where the garrison bump out would be. Carley asked if the bottom of pergola would be even with soffit. Mr. Foulds said it would be. Mrs. Foulds explained that without the mudroom addition they will not have a first floor bathroom. That would be a hardship.

Carley wanted it noted for the record that there was no one present to speak for or against this application.

Code: none.

DECISION: Carley reviewed the testimony as given.

Winters: The mudroom is a reasonable use. Clearly it is not significantly into the setback. Roof (request #2) is a reasonable use and modest request. The pergola sounds nice, but it's harder to see the hardship.

Scott: The requests are reasonable. She is not against the setback.

Monahan: Agrees with Scott.

Wallner: Agrees. This house is further back from the setbacks than other homes in area.

Carley: Agrees. Inclined to grant the variance.

A motion to grant all three requests was made by Scott, seconded by Monahan and passed by a unanimous vote.

### **Minutes**

A motion to approve the Minutes from July 7, 2021 was made by Wallner, seconded by Monahan and passed by a 4-0 vote. Carley recused himself.

*Respectfully submitted,  
Rose M. Fife, Clerk of the Board*