

**CITY OF CONCORD, NH
ZONING BOARD OF ADJUSTMENT
FEBRUARY 2, 2022 MEETING
DRAFT MINUTES**

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

Absent: Andrew Winters

Staff: Ernest Cartier-Creveling, Zoning Administrator
Rose Fife, Clerk of the Board

Meeting commenced at 7:00 pm.

Chairman Carley explained that there would only be a 4 member Board this evening. A of 3 people is necessary for the motion to carry. If the case is denied, it will not be grounds for a rehearing. The applicants also have an option to defer their case until such time as a 5 member Board is available. He asked if anyone would prefer to defer their case. Seeing or hearing none, the meeting moved forward.

04-22 10 Ferry Street; OCP-Opportunity Corridor Performance District; Property Owner - Flatley Concord Center, LLC: Applicant is seeking variances to:

- 1) **Article 28-6-9(a), Table of Maximum Sign Dimensions**, to allow a freestanding sign with an area of 220 sf, where a maximum area of 100 sf is allowed; and to
- 2) **Article 28-6-9(c)(3), Permitted Freestanding Signs**, to allow a freestanding sign to have a horizontal dimension of 22 feet, when a maximum horizontal dimension of 16 feet is allowed.

A motion to recess this case was made by Wallner, seconded by Monahan and passed by a unanimous vote. A motion to recess this case to the March 2, 2022 meeting was made by Wallner, seconded by Scott and passed by a unanimous.

05-22 35 Timberline Drive; RO-Open Space Residential District; Property Owners - Sean & Elizabeth Reese: Applicants wish to create a 684 square foot accessory dwelling unit (ADU) within an existing single-family dwelling, with no expansion of the existing footprint of the structure, to include adding cooking facilities, along with a family room, bedroom and bathroom and requests a special exception from Article 28-2-4(k), Table of Accessory Uses, (Accessory Use A-13), to construct in accordance with the Supplemental Standards contained in Article 28-5-52, Single-Family Detached Dwellings with One (1) Accessory Dwelling Unit (ADU).

Testified: Bryan Larson of Black Dog Builders. Also available to testify: Sean and Elizabeth Reese. Mr. Larson explained that they had already applied and received a building permit to build out the basement. Mrs. Reese's mom would like to have a kitchen to be able to cook in that unit. They would like a 'full kitchen'. They believe they meet the criteria.

Monahan asked if this were an ADU. Mr. Larson explained that once they add in the stove, it is an ADU. Monahan asked for clarification. When they pulled the permit, it was not for an ADU, but now, due to the addition of the kitchen/stove, it is. Mr. Larson confirmed that was correct. Right now, the plans approved were for a snack bar area. He further testified that it is a full walk out area with an egress area in the bedroom. Monahan asked where the access to unit is located. Mr. Larson pointed out that there was a slider in the walkout and a legal egress window that fire rescue may utilize as well as another walk out door. There is also egress into the second floor via a stair way. Carley asked if they were eliminating the stairs going to the basement. Mr. Larson answered that they were not.

In favor: none.

In opposition: none.

Code: none.

DECISION:

Wallner: The special exception prerequisite findings A-I were met.

Monahan: Agrees.

Scott: Has no concerns.

Carley: Agrees.

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

06-22 8 Heather Lane; RS-Single Family Residential District; Property Owner – Dale Vincent: Applicant wishes to create a 745 square foot accessory dwelling unit (ADU) within an existing single-family dwelling, with no expansion of the existing footprint of the structure, to include a kitchen, main living room, bedroom and bathroom and requests a special exception from Article 28-2-4(k), Table of Accessory Uses, (Accessory Use A-13), to construct in accordance with the Supplemental Standards contained in Article 28-5-52, Single-Family Detached Dwellings with One (1) Accessory Dwelling Unit (ADU).

Testified: Dale Vincent. Her son lives with her. Her home was not built with the expectation of housing more people. Half her basement she would like to have a bedroom, bathroom, living room and kitchen. The kitchen area was her plant room. She would like him to have a full kitchen including a stove, as he does cook. It doesn't change the size of the house. He has outside access, sliding doors as well as appropriate sized windows and a stair case to come upstairs to her home.

No questions from the Board.

In favor: Jay Shumaker who lives across the street at 7 Heather Lane. They have been there since 2013. They have no concerns.

Letter of support of the use via email from Greg & Lisa Marceau. They live at 10 Heather Lane.

In opposition: none.

Code: none.

DECISION:

Scott: The request meets all the criteria for a special exception. She has no concerns. Monahan, Wallner, and Carley agreed. A motion to approve the request was made by Scott, seconded by Monahan and passed by a unanimous vote.

07-22 10 Integra Dive (undeveloped lot); IN-Industrial District; Property Owner – Barbara Mariano, LLC: Applicants are seeking variances to:

- 1. Article 28-2-7(j),** Table of Principal Uses, Use J1, to allow the Sale or Rental of Motor Vehicles other than Construction Equipment where such use is prohibited;
- 2. Article 28-5-37(d),** Outside Storage of Materials and Inventory - Performance Standards; Section (d) limits the amount of inventory based on the size of a building and because NO building is contemplated, this section would not allow any inventory storage.
- 3. Article 28-5-19,** Motor Vehicle & Recreational Equipment Sales – To allow outdoor display for the sale or leasing of motor vehicles on a lot in the CH Highway Commercial District which abuts the principal use located at 146 Manchester Street.
- 4. Article 28-7-16,** Parking and Storage of Unregistered Vehicles - To allow the parking and storage of unregistered vehicles (inventory) where such use is prohibited.

Testified: Attorney Amy Manzelli of BCM Environmental & Land Law as well as Jeff Lewis, Northpoint Engineering.

Barbara Mariano is the sole owner of this property. Barbara is the widow of Bob Mariano. She is not the owner of the Mariano dealership, that is owned and operated by someone else. But she does still own the property it is on. She owns 10 Integra Drive. She is selling 10 Integra Drive to 3 existing business owners that are adjacent to 10 Integra Drive so they can all expand their own businesses. There will be a lot line adjustment application they filed with the Planning Board for 2.16.22.

Specific application: The Subaru Dealership, now known as Capital City Subaru Dealership is purchasing this portion of 10 Integra Drive. The zoning line goes through the lot. The dealership use is not allowed in the section they wish to purchase.

Jeff Lewis: The Mariano Dealership had been using a portion of 10 Integra Drive for their parking lot. That portion will be annexed. He gave an explanation as to how that would happen. The site plan was brought up for viewing which showed what portion of the lot was going to the Subaru Dealership. The lot would be used as accessory to their dealership. They will likely have a connection to go from one property to the other property. They will need to go back to Planning for that. The request right now is for the allowable use. The use will be a parking lot.

Wallner asked who is to the left of the property. Jeff Lewis answered that Mark LeFebvre owns that parcel. It used to be John's Wrecker Service. Pitco is also going on the property at the end of the Road. Attorney Manzelli explained that the dealerships are now challenged to stay in compliance with their franchise agreements. They need this little bit of space to expand.

Carley asked if they were consolidating the lots. Mr. Lewis answered that the Manchester Street lot will not be consolidated to the Integra Drive lot. This remaining lot will not be consolidated right now. Attorney Manzelli confirmed that they will not be merged. It will remain its own lot with frontage only on Integra Drive.

Carley asked what the peculiarity of the lot is. Attorney Manzelli answered that the peculiarity of the lot is that the zoning district boundary line is unique. There seems to be no reason why an auto dealership is permissible on Manchester Street, but not on 10 Integra

Drive. It is one of the primary distinctions why it makes sense for a variance to be granted in this case. This is just an extremely sensible, compatible and logical use of this lot, given the development in this area. They feel that justifies the variances they are looking for. Attorney Manzelli also reported that the purpose of some of the restrictions don't apply to what they are trying to create. This will not be a junk yard. That is not the kind of dealership that Mariano's operates. It is a legitimate business.

Carley asked what zone the Subaru Dealership was locate in. Attorney Manzelli answered it is the CH Commercial Highway Zone. Monahan spoke; it looks like 2 of the new lots will front Integra Drive, but the 3rd lot does not seem to have frontage. Mr. Lewis explained that it is not two new lots. A sliver of this lot will be merged with LeFebvre's lot on Integra Drive. The property at 146 Manchester Street will have a section merged with it as well. Attorney Manzelli and Mr. Lewis explained that all the lots are conforming, even after the annexing of pieces to other property. It is just the use in question.

Wallner spoke. Where the lot is not merged and it is a stand-alone lot, it is conceivable that it could be used as a junk yard. Scott agreed with that assessment. If they sold it that could happen. Attorney Manzelli believes Planning would have more control over that in terms of traffic and circulation. They would entertain conditions of 'so long as it is operated as a dealership'. The real estate is not cheap. It is extremely expensive. Technically the Board is correct, but suggests a condition of approval. Wallner thought perhaps all unregistered vehicles have to be less than 10 years old would be a condition of approval. Monahan noted that the nature of the problem is the way the franchise agreements are evolving. The Board had to deal with this for Banks Chevrolet and in that instance the ZBA declined to issue the variances but rather the City Council acted to change the zoning to allow for it. Wallner and Carley concurred. Monahan stated that if this property were zoned the same way as the lots on Manchester Street, that would resolve the problem. Attorney Manzelli noted case #43-13 for Daval Realty where the ZBA granted a variance for storage of unregistered vehicles. Mr. Lewis thought that case was for property on Airport Road for Banks Collision Center. Scott gave her concerns. Manzelli thinks they could come up with some agreement. Something where they could be operated under common ownership. Carley doesn't believe they have the power to do that as the variance goes with the land. Carley believes that the reason this parcel is in this situation is that when Integra Drive was developed, it was thought it would be a certain type of industrial zone. They had to decide whether or not it is appropriate to exclude certain things from that zone. The property does face Integra Drive and was intended to be part of that development. Attorney Manzelli spoke regarding the test for the variance being what other use could be placed on this property. Is this use reasonable, which is one part of the test. Carley noted that was only one part of the test for a variance. Attorney Manzelli went on to say that the history of this lot is that it has been vacant for a very long time. This would be the highest and best use for this property. They believe they justified approval for this variance.

Monahan thought perhaps the zone should change as the industry is changing. Wallner had no questions.

Attorney Manzelli took a moment to conferred with Mr. Lewis. She then spoke to the Board about wanting to take a little more time to look into the Banks Chevrolet case and see about the merger possibility and see what else they could bring to the Board next month.

Carley explained that if they adjourn the case and the applicant changes the application, they will need to re-notice case. Zoning Administrator Cartier-Creveling agreed.

Scott suggested they continue the case. Carley questioned if they continue it and the applicant come back with a different presentation.

Attorney Manzelli spoke. If they are seeking the same relief and they supply additional information and the Board continues it to a date and time certain, it shouldn't need to be re-noticed. Scott and Zoning Administrator Cartier-Creveling concurred that if they are not changing the variance request that is fine.

Carley suggested they Table the whole case. Attorney Manzelli explained that they will be back before the Board next month anyway for another case.

Scott asked if she could make a motion to continue the case. Carley wanted to poll the audience before they moved on to a decision.

In favor: none.

In opposition: none.

Code: none.

DECISION: A motion to Table the case was made by Scott, seconded by Monahan and passed by a unanimous vote. Carley noted that the case was Tabled until such time as the Board elects to takes it up off the table, which they will do at the request of the appellants.

MINUTES: A motion to approve the January 2022 Minutes was made by Wallner, seconded by Scott and passed by a 4-0 vote.

ADJOURN: A motion to adjourn the meeting was made by Wallner, seconded by Scott and passed by a unanimous vote.

*Respectfully submitted,
Rose Fife, Clerk*