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CITY OF CONCORD
New Hampshire's Main Street™
Zoning Board of Adjustment

May 7, 2025
MEETING MINUTES

Attendees: Chair Christopher Carley, Alternate Mark Davie, Member James Monahan, Member Laura Spector-Morgan, Member Nicholas Wallner, and Member Andrew Winters

Absent: Alternate Brenda Perkins

Staff: AnneMarie Skinner, AICP, City Planner
Krista Tremblay, Administrative Technician III

1. Call to order

Chair Carley called the meeting to order at 6:03 p.m.

2. Chairperson's comments

3. Public meetings

4. Public hearings

- 4.1 Kydae Stephan Williamson and Hilary Anne Adams request approval for a special exception from Section 28-2-4 *Allowable Principal and Accessory Uses in Zoning Districts*, to permit a major home occupation for home-based brewing with a non-permanent brewing accessory structure, pursuant to Section 28-5-30(c) *Major Home Occupation*, at Tax Map Lot 6442Z 6, addressed as 21 Auburn St, in the Single-Family Residential (RS) District. Not a development of regional impact. (ZBA 0263-2025)

Member Wallner recused himself from this agenda item because of prior discussion with an abutter regarding the request.

Kydae Stephan Williamson (21 Auburn St, Concord) stated the application is for a special exception to move the current one-barrel brew system out of his basement to the proposed accessory structure in the backyard. Mr. Williamson stated the reason they want to do this is to obtain a health and safety approved location to be able to sell at farmers markets or at breweries. Mr. Williamson noted the drawing shows the proposed accessory structure at a maximum 13 feet by 13 feet and seven feet tall. The plan is to brew no more than twice a month.

Hilary Anne Adams (21 Auburn St, Concord) stated she has strong ties to this community and grew up in Concord around the corner from where they live now. Ms. Adams wanted to address a few concerns from the neighbors because they are her concerns too. Ms. Adams noted the proposed location of the structure is not visible from Forest Street. They also have 40-foot-tall trees that block the side of the

yard on Auburn St, so it will not be visible. Ms. Adams noted smell is a concern. It is in the basement now and she cannot smell it in the house. Ms. Adams stated the community's concerns are their concerns.

Mr. Williamson stated brewing in the basement is with a steam condenser lid on top of the boil kettle. Cold water is shot up, vaporizes, and drips into a bucket. Mr. Williamson noted there is no smell.

Ms. Adams noted a concern was signs. Ms. Adams stated they have small children and they would never advertise a brewery in their home where they live and play outside. Ms. Adams does not want strangers at her house. Ms. Adams noted a thread of concern about the size and that this would be a slippery slope. Ms. Adams stated they love their backyard and that the kids can play. Ms. Adams stated the reason why this is a temporary structure is so that it does not get any bigger. Ms. Adams noted trucks were a concern. Ms. Adams does not want trucks in her backyard. Ms. Adams stated they transport the beer out of their car. They do not want to contribute to the degradation of the roads. They invited neighbors to their house on Monday to ask any questions.

Mr. Williamson stated the picture on the front of the container is to scale.

Ms. Adams stated in some of the concerns they were asking for limitations and they are open to that.

Chair Carley asked the applicants to address the criteria for special exception.

Mr. Williamson read the criteria submitted with the application.

Member Winters asked how much time is spent to get a result twice a month.

Mr. Williamson stated he prepares the yeast the night before, the brew day itself lasts between five and six hours, and there is a 90-minute boil. Mr. Williamson noted that is when any fumes would go out if he did not have the condenser.

Member Winters asked if it is not in use if there is not much activity.

Mr. Williamson stated the only use is unit tanks that are injected with a chiller that give a light hum. That keeps it cold and he has two of these units.

Member Winters asked if it keeps it cold while waiting to deliver it.

Mr. Williamson stated yes, it conditions in the tanks, and is not touched.

Members Winters asked how long has he been doing it inside of the house.

Mr. Williamson stated he has only done one brew inside the house on this system.

Member Monahan asked if the structure will be heated.

Mr. Williamson stated if needed he will get a wood pellet stove in winter and there will be no air conditioning. Mr. Williamson noted the unit tanks have a glycol chiller to keep things cool and there are heating pads inside that are electric.

Member Monahan asked why he wants to move from the basement to outside.

Mr. Williamson stated the basement will not pass a health and safety inspection. If they are able to pass

the inspection, then they can apply for the permits so they can sell at farmers markets. Mr. Williamson stated right now the beer is only for himself and friends to consume.

Member Monahan asked if he is going to can or bottle it.

Mr. Williamson stated it can be either.

Member Monahan asked if the structure would accommodate canning and bottling.

Mr. Williamson said he has a single canning counter top so it is one can at a time.

Member Monahan asked how many gallons.

Mr. Williamson stated a batch is 31 gallons and that is the maximum it can be.

Member Monahan asked how many cans is that.

Mr. Williamson stated 248 16-ounce cans.

Chair Carley asked if there is any member of the audience that would like to speak in favor of this application.

Robert Moses (23 Auburn St, Concord) stated they live across Forest St and their side entrance faces the driveway and garage. Mr. Moses has no objections to this at all. They do not think there will be any impact to character of the neighborhood.

Gena Moses (23 Auburn St, Concord) stated they cannot see into their backyard and are not concerned about the shed.

Tim Robson (23 Ridge Rd, Concord) lives around the corner and has no problem with the shed in the backyard.

Chair Carley asked if there is any member of the audience that would like to speak in opposition to this application.

Teresa Rosenberger (29 Auburn St, Concord) testified in opposition, noting the request is not consistent with the purpose of home occupations and read from her previously-submitted written comments.

Joanie McIntire (10 Auburn St, Concord) asked if a special exception follows the land.

Chair Carley answered yes.

Ms. McIntire is not in support of this application because it could add more traffic and the next person that comes in if the property is sold could have that ability under the approved special exception.

Member Winters noted it follows the land to the specific special exception approval.

Member Spector-Morgan stated if it is approved, the approval is based on the representation submitted with the application and the testimony received tonight.

Maura Weston (16 Auburn St, Concord) stated she lives across street from the applicant. Ms. Weston does not believe the property is an acceptable location for the endeavor and asked the Board to reject

the request.

Lacey Colligan (38 Ridge Rd, Concord) lives down the street and opposes the special exception for a brewery as a home occupation.

Eric Rosenberger (29 Auburn St, Concord) stated they should do it where it can legally be done in a commercial zone.

Carol Durgy Brooks (11 Auburn St, Concord) stated her concern with this application is that it is a business use in a residential zone that could decrease property values.

Chair Carley stated there are letters that came in yesterday and today that are on the record. Patricia Murphy and Robert Blair are opposed to the special exception request. Maura Weston and Jeffrey Bartlett submitted a letter in opposition. Anna Krasinski and Simon Wraight submitted a letter in support of the special exception. Andrew Jenness submitted a letter in support of the special exception. Teresa and Eric Rosenberger submitted a letter in opposition to the special exception.

Ms. Skinner stated there are two other letters that were forwarded to the Board that came in later. Peter Bloom submitted a letter in support of the special exception. George Roussos submitted a letter expressing concern for the special exception and requests conditions.

Ms. Skinner read directly from the Zoning Ordinance the definition of a major home occupation and the criteria for a major home occupation special exception approval.

Member Winters asked if any major home occupation that meets all of those criteria is eligible for a special exception.

Ms. Skinner answered yes.

Member Winters stated if it does not, then it would need a variance.

Ms. Skinner answered correct.

Chair Carley stated the criteria for special exception also apply.

Ms. Skinner answered correct. Ms. Skinner noted if it does not meet any of those, then it is not a major home occupation and they would then apply for a variance for a commercial use.

Member Winters noted a couple of the speakers tonight stated that in their review of the code the major home occupation is primarily designed for telecommuters or technology workers to allow people to work from home and the intent is more office type of work. Member Winters asked if there is anything in the code that speaks to that.

Ms. Skinner stated Section 28-5-30 *Home Occupations* item (a) lists the purpose; however, the definition of a major home occupation defies the purpose. Ms. Skinner noted there is a disconnect between the verbiage of the purpose and the definition of a major home occupation.

Chair Carley asked applicant back to discuss anything they have heard tonight.

Mr. Williamson noted the math on quantity is slightly off. Mr. Williamson stated there would be a maximum of two batches a month, which would be 62 gallons a month.

Ms. Adams stated there will not be a sign or trucks. Ms. Adams noted they have small kids and concerns about kids having access to alcohol.

Mr. Williamson stated this is showing kids you can have a passion and is not a negative.

Ms. Adams stated they will not be advertising beer on their house.

Mr. Williamson noted they can fit three cars in their driveway and will not be loading on Forest Street.

Member Monahan asked if it would matter if it was not a detached activity.

Ms. Skinner stated what triggers this as a major home occupation versus a minor home occupation is the use an accessory structure. Ms. Skinner noted they could continue what they are doing in the attached garage or the basement and it would be permitted by right.

Member Monahan asked if they had this set up in garage they would not need to be there tonight.

Ms. Skinner answered correct as long as the garage it attached to the house.

Ms. Adams noted it still needs to be health and safety approved.

Chair Carley closed the public testimony.

Member Spector-Morgan does not have any problem with the special exception, noting that it is a permitted use as long as the conditions are met and it does not set any precedent. Member Spector-Morgan noted there is nothing in the ordinance that limits home occupations to electronic or telecommunication. The ordinance specifically lists items that cannot be approved as home occupation. Member Spector-Morgan noted if this was being done in the garage and if not selling they would not need to be here. Member Spector-Morgan stated she thinks they meet all the criteria for a special exception. Member Spector-Morgan noted she would impose conditions of approval that they have offered no non-owner employee, no sales on the site, and no signs, but only because the applicants offered those as conditions.

Alternate Davie had no further comment.

Member Winters essentially agrees and the only criteria that might be borderline is whether this use is appropriate for this location. Member Winters noted for this location if there was a sign, sales on premises, or multiple trucks coming he would be more concerned. Member Winters noted the applicants provided testimony to no signs, no sales or trucks coming and going, and just use of their car. Member Winters noted it does run with the land.

Member Monahan noted he is not rushing to yes on this, and while it is well intended, it is not in keeping with the character of neighborhood.

Chair Carley noted the question is not the use, but the special exception. Chair Carley stated he feels the request meets the requirements for a special exception and would support.

On a motion made by Member Spector-Morgan, seconded by Alternate Davie, the Board voted 4 in favor (Carley, Davie, Spector-Morgan, Winters) to 1 opposed (Monahan), to approve the special exception request for a major home occupation for a home-based brewing business with a non-permanent brewing accessory structure, per Section 28-2-4 *Allowable Principal and Accessory Uses in Zoning Districts*, pursuant to Section 28-5-30(c) *Major Home Occupation*, on Tax Map Lot

6442Z 6, at 21 Auburn St, because all of the criteria under Section 28-9-3(b)(2) *Requisite Findings* of the Zoning Ordinance have been met based on the record before the Board, the Board adopted the applicant's findings as the Board's findings of fact, and approved with the following conditions of approval:

- The approval is limited to the restrictions identified in the application and the representations made by the applicants here tonight, including but not limited to:
 - There shall be no non-owner employees;
 - There shall be no sales of beer on the site; and
 - There shall be no business signs associated with the home occupation.

Adopted Findings of Fact:

1. *The requested use is specifically authorized in this ordinance.* "Requesting Zoning Board of Adjustments to grant a special exception to allow the accessory use of a major home occupation."
2. *The requested use will not create undue traffic congestion or unduly impair pedestrian safety.* "It will be a container no larger than 13'x13' located in my backyard out of the view from the public and inaccessible by the public."
3. *The requested use will not overload any public or private water, drainage, or sewer system or any other municipal system, nor will there be any significant increase in storm water runoff onto adjacent property or streets.* "I only intend to brew (1) 1bbl batch twice a month so there will be no significant increase to any municipal systems."
4. *The requested use will not create excessive demand for municipal police, fire protection, schools, or solid waste disposal services.* "I will hand deliver the 20 lbs of spent barley to a local farmer twice a month."
5. *Any requirements and standards for the use as set forth in Article 28-5, Supplemental Standards, of this ordinance are fulfilled.* "5-30-C Major Home Occupation. (1) The use is subordinated to a single-family detached dwelling, and is primarily a non-retail use - confirmed (2) I will be well under 25% of the habitable floor area of the dwelling unit. The brewery site will be max 169 square feet. (3) I am the owner-occupant of the property. (4) I will be the only employee and am the homeowner. (5) We have 0.39 acres and the brewing container is only max 13ftx13ft (169 square feet) and 7ft tall. (6) Cans and kegs of beer produced by the major home occupation will be hand delivered to client. No sales on site. (7) I will use a condenser stack so there will be no fumes. Nor will there be excessive traffic, noise, odor, dust or vibration. (8) No parking will be required. (9) No signage is planned (10) The use is not boarding of animals, does not involve parking or storage of commercial vehicles, engine repair or maintenance nor does the use involve warehousing and distribution uses or uses which generate more than 20 vehicle trips per day."
6. *Where the special exception is related to a nonconforming use or structure, the requirements and standards as set forth in Section 28-8-4(b), Change from One Nonconforming Use to Another by Special Exception, or Section 28-8-5(c), Replacement of Nonconforming Structures That Have Been Destroyed, or Section 28-8-5(d), Removal and Replacement of Certain Nonconforming Residential Structures, of this ordinance, are fulfilled.* (No response noted on the applicant's findings)

7. *The required use will not create hazards to the health, safety, or general welfare of the public, nor be detrimental to the use of or out of character with the adjacent neighborhood.* “The brewing container will not be visible, nor heard, nor will you even be able to smell the brewing process.”
8. *The proposed location is appropriate for the requested use.* “The non-permanent brewing container will be positioned as far away from Auburn St. as possible, out of sight and out of mind to all neighbors.”
9. *The requested use is consistent with the spirit and intent of this ordinance and the Master Plan.* “The proposed non-permanent brewing facility aligns with the zoning ordinances and master plan purposes by maintaining public safety, aesthetics, and neighborhood character. It will be a small-scale operation (max 13x13), ensuring no undue congestion, pollution, or noxious fumes. The structure will not affect light, air privacy, or property values, as it will be discreet and well-maintained. Non on-site sales prevent traffic increases or overcrowding. Water and electricity connections will comply with regulations, and the facility will operate responsibly, minimizing environmental impact. The use is compatible with the intent of orderly growth and sustainable economic activity.”

Member Wallner entered the room.

- 4.2 Laura Smart requests approval for a variance from Section 28-2-4(h) *Multiple Principal Uses on a Single Lot*, to permit two single-family detached dwellings on the same lot, at Tax Map Lot 201P 111, addressed as 4 Village St, Penacook, in the Urban Transitional (UT) District. Not a development of regional impact. (ZBA 0264-2025)

Lawrence Greenmore (4 Village Rd) stated the reason why they are asking for the variance is to provide housing for their elderly mother. The house was built in 1992, and with the roof line and driveway access there is no way to attach the additional dwelling unit to the house. They are asking for a variance to have a detached 26-by-28 dwelling off to the side of the existing house.

Member Winters asked if they are building a new structure.

Mr. Greenmore answered yes.

Member Winters asked the location.

Mr. Greenmore said it will be in the corner and will meet all setbacks, noting again that there is no way to attach it to the house with the roof line.

Member Winters asked about parking.

Mr. Greenmore stated the same driveway will be used for both and there is parking on the site.

Member Spector-Morgan asked why they cannot attach it in the back of the house.

Mr. Greenmore stated there is not enough room.

Member Winters asked if there is a builder contracted.

Mr. Greenmore not yet, they were waiting on the variance.

Member Monahan asked for dimensions.

Mr. Greenmore said the new structure will be 26 feet by 28 feet.

Member Monahan asked if it will be one level.

Mr. Greenmore answered it will be two levels with a garage underneath and the dwelling unit above the garage.

Chair Carley asked if it is larger than an accessory dwelling unit.

Ms. Skinner stated the minimum is 600 square feet and the maximum is 750 square feet, but state statute does not allow a minimum of less than 750 square feet.

Chair Carley asked if it were attached it would be a regular accessory dwelling unit.

Ms. Skinner said to be attached it has to have a common wall and a door between the two habitable spaces.

Member Spector-Morgan asked if it can be attached to a breezeway.

Ms. Skinner stated as long as there is a common wall with a door between the habitable areas.

Chair Carley asked if there is any member of the audience that would like to testify in favor of this application, if there is any member of the audience that would like to testify in opposition, or any comments from Planning. With none, Chair Carley closed the public testimony.

Member Winters would love to see this as allowed by right. Member Winters noted under the current code he does not feel there is any uniqueness to this lot that would allow a second unit.

Member Monahan sees uniqueness because of the structure and the inability to attach a dwelling.

Member Wallner raised the question about a garage and if that is a reasonable use.

Member Spector-Morgan is not convinced that it cannot be attached, which hangs her up on the hardship. Member Spector-Morgan is stunned it meets the setbacks. Member Spector-Morgan would not have a problem if they approved it with the same conditions that they normally approve with the accessory dwelling unit requirement for the property owner to occupy one of the units.

Chair Carley is struggling, noting that the materials presented are not enough information for him to conclude that the reasons why they do not want to attach it are justifiable. Chair Carley suggested the conditions Member Spector-Morgan mentioned for granting.

On a motion made by Member Wallner, seconded by Member Monahan, and with a vote of 4 in favor (Carley, Spector-Morgan, Monahan, Wallner) to 1 opposed (Winters), the Board granted the variance from Section 28-2-4(h) *Multiple Principal Uses on a Single Lot*, to permit two single-family detached dwellings on the same lot at 4 Village St, Penacook, because all of the criteria under RSA 674:33 have been met based on the record before the Board, the Board adopted the applicant's findings as the Board's findings of fact, and with the following conditions of approval:

- That at least one of the dwellings must be occupied by the owner of the property;
- The new unit that is being created may only be occupied as a principal place of residence; and

- Neither of the units shall be converted to a condominium form of ownership.

Adopted Findings of Fact:

1. *The variance will not be contrary to the public interest.* “It is not affecting anyone around our property by adding the building. It will look more pleasing aesthetically since it is on a main road versus having to be attached. There is no way to make this building look nice or work well with the current roof line if had to be attached.”
 2. *The spirit of the ordinance is observed by granting the variance.* “The building will look nice where proposed as well as providing living quarters for my elderly mother. I would like to have her close to care for her without having the same living quarters due to her independence.”
 3. *Substantial justice will be done by granting the variance.* “It would allow me to have my mother close to care for her without her giving up her total independence by having her own space. I feel one person living in those quarters would not impact the neighborhood in a negative way.”
 4. *The values of surrounding properties will not be diminished.* “It will be aesthetically pleasing versus having to be attached to current dwelling. In order for proposed building to be attached would not look nice and since the property is on the main road I would think the city would like the property to appear nice.”
 5. *Denial of the variance would result in unnecessary hardship because:* “This should not affect the public or surrounding neighbors by building. I am requesting in order to look nice and at the same time care for my mom and let her have her independence. I would rather have my mom here and independent so I can be here for her. I do not want her somewhere that I can not care for her. I do not think it will negatively impact the area property by us building this for her. It will not be a hardship for anyone to have this except for my mom if we can not build for her.”
- 4.3 Cheryl-Ann C. Wright requests approval for a variance from Section 28-4-1(d) *Minimum Yard Requirements*/(h) *Table of Dimensional Regulations*, to permit a minimum 11-foot front setback and a minimum 6-foot west side setback where 25 feet and 15 feet are the minimum front and side setbacks required, respectively, to allow for the expansion of the west unit of an existing duplex, at Tax Map Lot 053P 38, addressed as 104-106 Merrimack St, Penacook, in the Medium Density Residential (RM) District. Not a development of regional impact. (ZBA 0265-2025)

Cheryl Wright (90 Merrimack St, Penacook) and Brad Kappolski (90 Merrimack St, Penacook) are present to represent this application. Ms. Wright owns the duplex. Ms. Wright’s parents are 84 and 85. Instead of them going to a nursing home they want to take them in. Ms. Wright lives two houses up. They will all move into this apartment that is small, and they cannot use stairs. The foundation person they hired is concerned with the existing foundation and is recommending to redo the foundation with a little larger addition to make the living quarters for all. Ms. Wright stated it is about 1,000 square feet total. They will be able to move around the kitchen and the existing living room. The house was built in 1865 and does not meet the 25-foot front setback. They want to attach the addition to the west duplex unit with a detached two-car garage.

Chair Carley asked if the garage is a new structure.

Ms. Wright answered yes.

Chair Carley asked why they cannot reconfigure the garage so it is within the setbacks.

Mr. Kappolski stated if the garage was moved forward there would be no parking in the driveway for the cars.

Chair Carley was thinking of moving it away from the street to meet the front setback.

Mr. Kappolski stated that would be too close to the neighbor's property. Mr. Kappolski noted they left an eight-foot span in case in the future they need an ADA accessible ramp.

Member Wallner asked for the size of the garage.

Mr. Kappolski noted the proposed garage is 26 feet by 30 feet.

Member Wallner asked if that is larger than a normal garage.

Mr. Kappolski stated they are putting an inside stairway for the hobby room upstairs.

Member Winters asked for the amount of total living space they are adding.

Mr. Kappolski noted approximately 700 square feet.

Chair Carley asked if there is a vacant lot to the right.

Ms. Wright stated it owned by someone else, and there is a foundation slab that used to be a warehouse.

Chair Carley asked if there is anyone in audience that would like to speak in favor of this application, and there was no response. Chair Carley asked if there is anyone in the audience that would like to speak in opposition to this application.

Eli Leino (670 N Commercial St Suite 108, Manchester) is representing 77 Merrimack Street LLC, the owner of 82 Merrimack St and 77 Merrimack St. Mr. Leino stated the applicant needs to meet the criteria of RSA 674:33 to receive a variance. Mr. Leino noted that, based on the materials submitted by the applicant, the use as a duplex is reasonable. Mr. Leino stated he is not sure if he heard any evidence supporting the other criteria. Mr. Leino noted in terms of the public interest and in terms of safety and welfare, there is a possibility that their sight lines will be reduced and impacted. Mr. Leino noted in spirit of the ordinance, preventing overcrowding is in the public interest. Mr. Leino noted in the application there is an overhead shot. Mr. Leino noted you can see in the application his client's property is not developed. Mr. Leino stated the applicant is not respecting the lot lines based on the fence at the bottom left. Mr. Leino stated there is a recreational vehicle on the applicant's property that is encroaching onto his client's property. Mr. Leino stated in terms of balancing the rights of abutters with the goals of the property owner, they are encroaching on his client's rights. Mr. Leino noted they have provided nothing to show there will not be any property value being diminished. Mr. Leino noted it is a duplex that looks like other duplexes in the neighborhood. The fact it was built in the 1880s is the reason why there is no issue with them already being in the front setback, and they are pre-existing non-conformities. Mr. Leino noted that is not a reason to go into other setbacks. Mr. Leino stated Chair Carley asked the right question if there is a way to see if this can be conforming. Mr. Leino noted there is room in the back. Mr. Leino asked if they are now proposing to make this a three-family dwelling, rather than a duplex.

Chair Carley stated their testimony was that it will remain a two-family dwelling.

Mr. Leino stated again that the request does not meet any of the criteria for granting a variance.

Chair Carley asked about his first remark and obscuring his client's property.

Mr. Leino stated his client's property is 3.5 acres of developable land, and the existing barn was knocked down in a snow storm. The access way will be to the right of his client's property. If that is the street access for a new driveway, with the addition to the duplex and the added garage, the sight lines will decrease for his client. Mr. Leino also stated it is a safety issue.

Chair Carley asked if this will be a commercial development.

Mr. Leino stated it is a residential zone and imagines a residence.

Member Winters noted if you look at the request it is for both the front and the side setback. Member Winters wondered if the objection primarily was with the side setback variance, or did the objection also include the front setback variance request.

Mr. Leino stated the objection is the same if you put a building in that corner where the sight line is located.

Member Winters asked if there are multiple points of access.

Mr. Leino noted there is an abutting property with an access easement. Mr. Leino stated it is unclear who has rights to the access easement and noted that his client's best point of access is the driveway they are discussing.

Member Winters asked if were to be developed how access would be situated.

Mr. Leino noted you would come off the main driveway to the building.

Member Monahan asked how much frontage they would need for residential structure.

Ms. Skinner stated it is an existing nonconforming lot and they are allowed to develop a house as long as the site has at least 22 feet of frontage on an accepted City street, which it does.

Member Winters asked even if the prior use was not residential.

Ms. Skinner answered correct, you can build a house.

Member Monahan asked about the reference to 82 Merrimack Street.

Mr. Leino stated it is because of the frontage down at the corner on Rolph Street.

Member Winters asked for an explanation on the sight line.

Mr. Leino stated if they are coming out of the driveway from where the building was removed, there are sight line issues and there are setbacks for a reason in the Zoning Ordinance. Mr. Leino noted his client has room to approach the street and look to see what is there, whereas if you build directly to the property line there is a vision cone for sight line.

Chair Carley asked if there is any other member of the audience that would like to speak on this application. With no response, asked staff for any comments. With none, Chair Carley asked if the

applicant wanted to offer factual clarification.

Ms. Wright stated the reason why the motor home is slightly over the property line is that they are doing some work on the land. They took down a tree and had to move it out of the way. They have no problem backing it up two more feet. Ms. Wright noted they have three access points to the land. Ms. Wright stated they are not asking for big changes to this lot.

Mr. Kappolski stated the garage is setback 22 feet from the road.

Member Spector-Morgan asked why they cannot move the garage closer to the house or make it smaller.

Ms. Wright stated they are going out from the house 19 feet.

Mr. Kappolski stated they can make it smaller.

Chair Carley asked for the dimensions for the garage.

Mr. Kappolski stated 28 feet by 30 feet. Mr. Kappolski noted they can reduce it to 28 feet by 28 feet, or 28 feet by 26 feet, but he does not know if that will take it out of the 15-foot side setback.

Member Spector-Morgan asked if there is a deck in between the garage and the duplex expansion.

Ms. Wright noted it is something the architect drew but they did not ask him to.

Chair Carley closed the public testimony.

Member Wallner is not persuaded about the sight line issue. The duplex itself has more of an encroachment than the intended garage. Pushing it back will make it worse. The hardship is the angle of lot. Member Wallner is not persuaded by the applicant needing an eight-foot separation between the duplex and the garage.

Member Monahan noted they try to be as accommodating as they can with multigenerational housing. Member Monahan stated he thinks the application needs more work.

Member Winters stated the duplex is already in the front setback and they are extending it for a reasonable use. Member Winters noted he is not sure how necessary it really is for the garage to be pushing that far into the side setback. Member Winters understands the desire to leave room for an ADA accessible ramp access and not sure how much they will need. Member Winters noted they could make the garage smaller. Member Winters asked if the Board should give them time to come up with another plan.

Member Spector-Morgan would be willing to grant the variance for the addition to the duplex but not the garage. Member Spector-Morgan noted the garage can be constructed outside of the front and side setbacks.

Alternate Davie is not voting; however, he pointed out the side setback violations for 86, 88, and 90 Merrimack Street.

Chair Carley asked if the garage is 28 feet by 36 feet.

Member Wallner stated it is 28 feet by 30 feet.

Chair Carley stated a typical two-car garage is about 24 by 24 feet. Chair Carley noted they did put a stairway in the back and that could be an argument for 24 by 27. Chair Carley stated the garage is bigger than it needs to be. Chair Carley noted they could contrive a workable accessible ramp with less than eight feet. Chair Carley noted he would be inclined to deny and have them come back with another design, or they can table it and ask the applicant to adjust the plan. Chair Carley has no issue with the front yard setback.

Chair Carley allowed Ms. Wright to come back to discuss even though the public hearing has been closed.

Ms. Wright asked if they can agree that the garage will not go over, they will no longer need the variance.

Chair Carley stated they have to have a drawing because they would still be talking about a variance for the other part of the duplex.

Ms. Spector-Morgan noted she thinks that Ms. Wright is withdrawing her variance request for the garage.

Ms. Wright stated they will make the garage fit within the lot.

Member Winters asked if they mean within the side setback.

Ms. Wright answered yes, and they will make the garage smaller.

Ms. Skinner stated they can approve the 11-foot setback and deny the 15-foot setback.

Member Winters asked Chair Carley if they should hear from the abutter's representative.

Chair Carley answered yes, because they are still asking for a variance.

Member Morgan-Spector stated she is happy to grant the variance for the addition to the duplex, but not the garage.

Chair Carley asked Mr. Leino if he wanted to comment.

Mr. Leino stated if the variance is only for the duplex and does not relate to the garage, if the garage is in the front setback that would require another variance application.

Member Spector-Morgan stated they would have to come back for another application.

Chair Carley noted if the garage was in any setback they would have to come back with another application.

On a motion made by Member Spector-Morgan, seconded by Member Winters, the Board with a vote of 5 in favor (Carley, Monahan, Spector-Morgan, Wallner, Winters) to 0 opposed, granted the variance from Section 28-4-1(d) *Minimum Yard Requirements*/(h) *Table of Dimensional Regulations*, to permit a minimum 11-foot front setback where a 25-foot front setback is otherwise required to allow for the expansion of the west unit of an existing duplex, at 104-106 Merrimack St, because all of the criteria under RSA 674:33 have been met based on the record before the Board, and the Board adopts the applicant's findings as the Board's findings of fact, and because the applicant has withdrawn the request for a variance to construct a garage.

Adopted Findings of Fact:

1. *The variance will not be contrary to the public interest.* “This variance will cause no harm, such as alerting the essential character of the locality and or thretaning the health, safety, or general welfare of the public. It’s already an existing duplex and we are expanding the foot print for my parents to move in with me and so they can have their own bedroom. By adding the garage it would allow off street parking for me, my parents, and husband (three vehicles) to park one in the driveway and two in the garage.”
 2. *The spirit of the ordinance is observed by granting the variance.* “The variance will not undermine the goals of the zoning ordinance. It will not effect the abutting neighbors or the public. The proposal will provide no harm. The proposal will be an improvement to the current conditions.”
 3. *Substantial justice will be done by granting the variance.* “The variance would allow us to have my parents move in. We are making room for them so I can care for them. This will not impact/ or out weigh the general public. Theres property on three sides close by with no buildings.”
 4. *The values of surrounding properties will not be diminished.* “The variance will not decrease the values of abutters.The proposal will be an improvement to the site and the proposal will not interfere with the use of the surrounding properties.”
 5. *Denial of the variance would result in unnecessary hardship because:* “The house was built in 1865 so the house is already at 11 feet and not 25 feet set back. So we are asking for the garage to be at 20 feet instead of the 25 feet because if we built it further then we would be imposing on the abutting more than 6 feet. The proposed variance will not impact the general purposed of the variance ordiance. It will provide needed housing for my partents this variance would not burden the property.”
- 4.4 Great Dane Construction, LLC, on behalf of Melissa and David Fancher, requests approval for a variance from Section 28-5-2 *Duplex or Two-Family Dwelling*, to allow the conversion of an existing house into a duplex on a lot with 165 feet of frontage where 300 feet is required for a duplex, at Tax Map Lot 192P 32, addressed as 37 Borough Rd, Penacook, in the Medium Density Residential (RM) District. Not a development of regional impact. (ZBA 0266-2025)

Peter Rojas (56 Tremont St, Concord) stated they want to build a 24 by 28 672-square-foot dwelling unit on the property for the mother of his wife. It would be built on grade with a three-foot crawl space and a standard roof to match the rest of the building.

Member Spector-Morgan asked if the only issue is there is not enough frontage for the lot. Mr. Rojas believes they need 300 feet of frontage and there is 168 feet of frontage.

Chair Carley asked for the proposed drawing.

Mr. Rojas stated it the units would be connected with a breezeway.

Member Winters asked why this is a variance instead of an accessory dwelling unit.

Member Spector-Morgan stated there is not enough frontage and for an accessory dwelling unit the lot needs to be compliant.

Ms. Skinner stated it has to have the common wall and door between habitable space for an accessory dwelling unit.

Member Winters asked if the breezeway is not a common wall.

Ms. Skinner answered no a breezeway is not a common wall. There needs to be a common wall with a door in between and the size of it is 750 square feet.

Mr. Rojas stated he asked someone in zoning at the time if he could connect without a breezeway and was told it would not work. Mr. Rojas can make it work with or without a breezeway. Mr. Rojas stated he can make a connected wall.

Ms. Skinner asked how big would it be.

Mr. Rojas answered 24 feet by 28 feet.

Ms. Skinner stated they would need a special exception for an accessory dwelling unit.

Chair Carley noted or they can leave it as is with the requested variance for lot frontage.

Ms. Skinner answered yes.

Member Winters asked if the applicant would have an issue with it being owner occupied.

Mr. Rojas stated it does not matter because it will be owner occupied.

Member Winters suggested they condition the variance as an ADU.

Chair Carley stated that would make sense and that way they do not need to come back.

Ms. Skinner asked if they wanted to grant it as an ADU.

Member Winters does not think they can grant it as an ADU. They can approve the variance now and if they want to connect the wall they would not need to come back.

Mr. Rojas noted the applicant likes the idea of the breezeway now.

Member Spector-Morgan suggested they do it based on the submitted application.

Chair Carley asked if there is any member of the audience that would like to speak in favor of this application, anyone opposed, or any staff comments. With no response, Chair Carley closed the public testimony.

Member Spector-Morgan has no issue approving, subject to ADU conditions of approval.

Member Winters agreed. The main one that distinguishes the ADU is that one unit is owner occupied.

Chair Carley asked about the question of frontage.

Member Spector-Morgan stated that does not concern her given that the house already exists.

Member Winters agreed.

Member Monahan stated he had nothing to add.

Member Wallner noted it is a two-acre lot that is long and skinny and has no issue.

Chair Carley agrees with his colleagues.

On a motion made by Member Winters, seconded by Member Spector-Morgan, the Board with a vote of 5 in favor (Carley, Monahan, Spector-Morgan, Wallner, Winters) to 0 opposed granted the variance from Section 28-5-2 *Duplex or Two-Family Dwelling*, to allow for the conversion of an existing house into a duplex on a lot with 165 feet of frontage where 300 feet is required for a duplex at the address of 37 Borough Rd, because all of the criteria under RSA 674:33 have been met based on the record before the Board, and the Board adopted the applicant's findings as the Board's findings of fact, with the condition of approval that at least one of the dwelling units shall be occupied by the owner of the property.

Adopted Findings of Fact:

1. *The variance will not be contrary to the public interest.* "Expansion of the property at 37 Borough Rd is intended to be used as an in-law apartment for aging family members. The proposed addition is 24 x28 and will be located behind the existing structure. It will have minimal impact on the surrounding area and no impact on the character as it will be minimally visible from the street. The lot at 37 Borough Rd is 1.8 acres and is much narrower than is wide. The lot has 165 feet of frontage on Borough Rd however for the construction of a duplex or a two-family dwelling, the dwelling shall be placed on a lot that shall be of a minimum size and have a minimum frontage that is at least one and one half (1 ½) times the minimum frontage as specified in Section 28-4-1(h). As requirement must be obtained. Here the variance is not contrary to the public interest. There is a minimal to no impact to the convenience, comfort, aesthetics, prosperity, health, general welfare, and quality of life of the inhabitants of the City of Concord. There is adequate space for the proposed addition and sufficient space from abutting properties. Adding an in-law apartment with two additional inhabitants does not create overcrowding or strain in services or natural resources. For all of these reasons the requested variance from the frontage requirement is not contrary to the public interest."
2. *The spirit of the ordinance is observed by granting the variance.* "The Ordinance is designed to promote the public interest. Convenience comfort aesthetics health safety and general welfare should be considered. In the spirit of the ordinance the purpose is observed in allowing a variance from the frontage requirement because there will be minimal impact on the aesthetics, minimal impact on the overall population and will not create undue impact on the abutters or character of the neighborhood. The 37 Borough Rd is close to the intersection of Borough Rd and Route 3. Within a block there are commercial properties and a commercial zone. Adding a two-occupant in-law apartment will not meaningfully contribute to congestion, noise or traffic in any meaningful way. There is sufficient space on the property at 37 Borough Rd on the 1.8 acre lot to have adequate setback from abutting lots. Additionally other properties in the same neighborhood on Borough Rd have similar in-law additions done in recent time. For these reasons the spirit of the ordinance is observed and the request for the variance should be approved."
3. *Substantial justice will be done by granting the variance.* "Substantial justice requires balancing of the interests of the public. In this particular case the landowner/ applicant is requesting a variance to construct an addition to allow them to provide an in-law apartment on

their property to care for family. Alternatively, the interest of the public in denying the variance requested is minimal. There is minimal adverse impact on the public interest in granting of this variance and allowing the construction of the addition of 37 Borough Rd. As outlined this addition will result in 2 additional people living on the property will create minimal congestion and result in no change to the overall character of the neighborhood principally to the fact that similar additions have been constructed in the same neighborhood. Ultimately the balance of substantial justice should weigh significantly in favor of the landowner/ applicant and the variance should be granted.”

4. *The values of surrounding properties will not be diminished.* “The property values of surrounding properties would undoubtedly be increased by the grant of this requested variance. As is commonly known in real estate an increase in value of one property in the neighborhood will raise the value of the surrounding properties. Here the construction of this addition will increase the value of 37 Borough Rd. It stands to reason that it will also increase the value of other properties in the neighborhood and for the reasons previously presented will not adversely impact the other properties such that there should be no offset in value from any diminution as a result of this construction.”
5. *Denial of the variance would result in unnecessary hardship because:* “Here the property is on a lot that is narrow and deep. The frontage requirement is designed to ensure that a lot is not overcrowded or too dense. Here the addition will not be next to the existing structure it will be located behind. Given the proposed use as an in-law apartment 2 additional persons occupying the property there is minimal overcrowding on a 1.8 acre lot. Given the lot is one of the largest in the neighborhood and the location of the proposed addition does not impact the aesthetic character or lend itself to the appearance of overcrowding there is no fair and substantial relationship between the general public purposes of the frontage requirements to this property when there is substantial space sufficient for the proposed uses and such use will not impact the abutters or neighborhood as proposed therefore the proposed use by the applicant is reasonable and literal enforcement of the frontage requirements as outlined in the ordinance would result in an unnecessary hardship to the applicant. On balance the total factors the board is required to consider by statute weigh in favor of granting the proposed variance from the frontage requirement and as such applicant respectfully requests the ZBA grant the applicant’s request for a variance.”

- 4.5 Daryelle Puzzanghera, on behalf of the Labrake Family Living Trust, requests approval for a variance from Section 28-2-4(h) *Multiple Principal Uses on a Single Lot*, to permit two single-family detached dwellings on the same lot, at Tax Map Lot 18Z 3, addressed as 65 Weir Rd, in the Open Space Residential (RO) District. Not a development of regional impact. (ZBA 0267-2025)

Daryelle Puzzanghera (65 Weir Rd, Concord) and Kris LaBrake (65 Weir Rd, Concord) are present to represent this application. Ms. Puzzanghera noted they want to take the detached barn/garage and make it into livable space for her kids. Ms. Puzzanghera then read from the submitted application criteria to the Board.

Member Winters asked if they are taking an existing barn and converting it into a residential structure.

Ms. Puzzanghera answered yes.

Member Winters asked if the current barn has utilities.

Ms. LaBrake stated it already has electric and water. It has not been connected to sewage.

Member Winters asked historically if it has been used as a residence.

Ms. LaBrake stated not that she is aware of. Ms. LaBrake thinks the former owners used it for their business.

Member Winters asked the age of the structure.

Ms. LaBrake answered it was constructed in the 1990s.

Carley asked if it would be a two-family with two different tenants.

Ms. LaBrake stated that is not her intention. Ms. LaBrake lives in the main house. Ms. LaBrake would like to have one of her three kids live in the converted structure so she can feel safer at home. Ms. LaBrake envisions eventually moving into the converted structure and the kids moving into the main house.

Member Monahan asked the square footage of the barn.

Ms. LaBrake stated there is a one-car garage and the whole thing is 1,400 square feet.

Chair Carley asked for the applicant to speak on the hardship.

Ms. LaBrake cannot see if there are people coming up the driveway and would like a family member to live on the property.

Chair Carley asked the minimum lot size for this zone to see if a subdivision is feasible.

Member Monahan asked if it is a flat piece of property.

Ms. LaBrake said it is not flat and has hills.

Ms. Skinner stated it is in the Open Space Residential District. The minimum lot size is 2 acres, and the lot frontage minimum is 200 feet.

Chair Carley noted they do not have acreage or frontage to create a new lot with just the barn.

Chair Carley asked if there is any member of the audience that would like to speak in favor of this application, anyone opposed, or any staff comments. With no response, Chair Carley closed the public testimony.

Member Spector-Morgan is struggling with the hardship. Member Spector-Morgan stated when they allow such a conversion there is no way to build an ADU and that is not the situation in this case. Member Spector-Morgan noted the hardship has to arise from the land and she does not see it here.

Member Winters noted if they were coming with no permanent additional structure and they were building from scratch that would be different, but since there is already a barn with no other functional use to them it makes sense. If they cannot attach the current barn, it is a reasonable use of the current barn. Member Winters stated they also do not just look at the land but the configuration of the structures on the land. Member Winters noted it is a large lot and can support two structures.

Member Monahan noted in other meetings they have had other people come forward to deal with this multigenerational issue. Member Monahan stated accessory dwelling units are one tool in the tool box

and this evening they have approved detached secondary structures. Member Monahan thinks this meets the spirit of the ordinance, and he is inclined to support the application.

Member Wallner agrees with Member Monahan.

Chair Carley stated he takes seriously whether there is or is not a hardship created by the configuration of the lot. On the other hand, they have been creating defacto accessory dwelling units and have considered a number of things to represent a hardship. Chair Carley asked if the Board can grant this with provision that the property owner has to live in one of the houses.

Member Winters stated that makes sense to him.

Chair Carley stated it is clearly able to be subdivided.

Member Winters is inclined to support.

On a motion made by Member Winters, seconded by Member Monahan, the Board with a vote of 4 in favor (Carley, Monahan, Wallner, Winters) to 1 opposed (Spector-Morgan), granted the variance from Section 28-2-4(h) *Multiple Principal Uses on a Single Lot* to allow for two single-family detached dwellings on the same lot at the address of 65 Weir Rd, because all of the criteria under RSA 674:33 have been met based on the record before the Board, and the Board adopted the applicant's findings as the Board's findings of fact, and with the condition of approval that one of the dwelling units shall be occupied by the owner of the property.

Adopted Findings of Fact:

1. *The variance will not be contrary to the public interest.* "Converting the detached barn/ garage into a livable area would cause no threat to the health, safety or general welfare of the public."
2. *The spirit of the ordinance is observed by granting the variance.* "Goals of the Zoning Ordinances would not be undermined in this conversion. This conversion would not cause congestion/ overcrowding in the area. It would improve the current situation by making beneficial use of the extra space and improve the integrity of the building."
3. *Substantial justice will be done by granting the variance.* "Currently this structure is being used as storage. Granting the variance would allow a greater use of this structure than its current use. The requested use would greatly benefit the owner without having a negative impact on the general public."
4. *The values of surrounding properties will not be diminished.* "The variance would allow for this home to upgrade the detached garage/barn, which would enhance the overall appeal/ desirability of the property, this would subsequently lead to higher values for surrounding properties."
5. *Denial of the variance would result in unnecessary hardship because:* "If the variance was not granted it would cause unnecessary hardship because the current structure isn't providing a beneficial purpose. I feel as though the proposed use would be beneficial, reasonable and would have a positive impact for home owner/public. This would provide needed housing/enhance the current structure. It will not cause overcrowding as the property has 12.11 acres of land/plenty of space."

5. Linda Lank and Orr & Reno, on behalf of MOR Real Estate Holdings, LLC and Allison Street Holdings, LLC, request a determination that the proposed change in use from a mixed-use building (two apartment units and one office space) to a triplex does not require a variance to continue the existing lot coverage to the extent that it exceeds 80%, and request approval for variances from Section 28-4-1(c) *Minimum Lot Frontage*, Section 28-4-1(e) *Maximum Lot Coverage*, and Section 28-4-1(h) *Table of Dimensional Regulations*, to permit 53 feet of frontage where 80 feet is the minimum requirement and lot coverage that exceeds the maximum of 80%, at Tax Map Lot 6444Z 54, addressed as 63 School St, in the Civic Performance (CVP) District. Not a development of regional impact. (ZBA 0268-2025)

John Arnold (45 S Main St, Concord) is present to represent this application. Mr. Arnold noted that the application has been simplified since it was filed. Mr. Arnold stated the only issue for tonight is the frontage variance. Mr. Arnold stated the lot coverage was resolved.

Ms. Skinner stated at the time they submitted, staff did not have the numbers showing the existing lot coverage. Subsequently, the applicant submitted a plan showing that the site is below the maximum lot coverage requirement, so the lot coverage variance is not needed.

Mr. Arnold stated his client bought the property a year ago. At the time of purchase there were two residential apartments and one office unit. Historically, the building dates back to the 1800s and was a residential building. Mr. Arnold noted they are not sure when one of the units was converted into an office. When they bought the property, they wanted to convert the office back to a residential apartment. Mr. Arnold stated they applied with the City for a building permit, they did all the work to convert it, and on the final inspection the City said they made a mistake on the application and it should have been site plan approval instead of a building permit. Mr. Arnold stated his client submitted a site plan application. In the review of the site plan application, staff identified that it is on a nonconforming lot with only 53 feet of frontage. Mr. Arnold stated that is why he is here tonight. Mr. Arnold noted there are no exterior changes, the house is existing, the frontage is existing, and the changes are interior.

Member Winters asked if three units are allow here as a matter of right.

Ms. Skinner answered yes.

Member Winters noted all they need for a variance now is for frontage.

Mr. Arnold answered yes.

Ms. Skinner stated she would reiterate what Mr. Arnold said that it is an extremely unfortunate set of circumstances that his clients experienced with the building permit being issued.

Member Wallner stated he is fine with a mistake being made and now let's fix it.

Member Monahan stated he has nothing to add.

Member Winters would approve because it has the lot has always been 53 feet and that is not going to change.

Member Spector-Morgan is a yes.

Chair Carley is a yes.

On a motion made by Member Wallner, seconded by Member Spector-Morgan, the Board with a vote of 5 in favor (Carley, Monahan, Spector-Morgan, Wallner, Winters) to 0 opposed, granted the variance from Section 28-4-1(c) *Minimum Lot Frontage* (h) *Table of Dimensional Regulations*, to permit 53 feet of frontage where 80 feet is the minimum requirement at 63 School St, because all of the criteria under RSA 674:33 have been met based on the record before the Board, and the Board adopted the applicant's findings as the Board's findings of fact.

Adopted Findings of Fact:

1. *The variance will not be contrary to the public interest.* "A variance is contrary to the public interest if "it unduly and in a marked degree conflicts with an ordinance such that it violates the ordinance's basic zoning objectives." Farrar v. City of Keene, 158 N.H. 684, 691 (2009) (internal quotations omitted). In determining whether a variance would violate basic zoning objectives, the board should examine whether the variance would alter the essential character of the locality, or whether the granting of the variance would threaten public health, safety or welfare. Id. Here, the variance will not alter the essential character of the locality. There are no exterior changes proposed to the Property. All renovations have been interior. Nor would the variances threaten public safety, health or welfare. The frontage is existing, and has caused any public harm over the years. "
2. *The spirit of the ordinance is observed by granting the variance.* "The New Hampshire Supreme Court has determined that this criteria overlaps with the public interest requirement. See Chester Rod & Gun Club v. Town of Chester, 152 NH 577, 580 (2005). The spirit of the ordinance seeks to ensure that there will be certain minimum frontage to provide safe and adequate access to the Property, and to prevent overcrowding of the streetscape. But none of that is changing under this request. The Property has existed and functioned adequately for an extended period of time. The interior renovations will have no impact whatsoever on the adequacy of access, or the appearance of the streetscape. "
3. *Substantial justice will be done by granting the variance.* "Substantial justice is done where granting a variance will not cause harm to the general public that outweighs the benefit to the applicant. See Malachy Glen Associates v. Town of Chichester, 155 N.H. 102, 109 (2007). That is the case here. The restoration of the residential use within the house with less than 80' of frontage will not harm the public in any way. The creation of housing serves the public interest, as the City has recognized there is a housing shortage. The variance would greatly benefit the applicant because it would allow the use of the recently renovated space as a residential unit. Without the variance, the applicant would be required to change the space back to office space, which would mean the loss of the substantial investment already made in the renovations, and the additional costs of converting the space back to office."
4. *The values of surrounding properties will not be diminished.* "The variance will not impact surrounding property values, as it relates solely to continuation of existing conditions, and the only changes to the Property will be interior. Many other lots in the area have similar, or less frontage than here."
5. *Denial of the variance would result in unnecessary hardship because:* "The Property is unique in that it has an existing residential structure built around 1900, and is currently configured for three residential apartment units. The latest renovations to restore the third unit were done under a building permit issued by the City, at considerable expense. The Property's frontage has existed for many years, and whether the Property is used as 2 apartments and one office, or as 3 apartments, is immaterial for purposes of lot frontage. Restoring the office to a residential unit with less than 80' of frontage does not pose any harm to the public, and as such, there is no

public purpose that would be served by strictly enforcing the frontage requirement to this Property. The proposed use is reasonable because the structure was originally intended as a residential structure, and has historically been used as a residential structure, until recent years when an accounting office opened. Residential uses, including multifamily, are permitted by right in the CVP District.”

6. Friedrich Moeckel and Tarbell & Brodich, P.A., on behalf of Ian Flanagan, request an administrative appeal to reverse the administrative decision wherein it was determined that a lot is not nonconforming as it pertains to lot size and lot frontage and that variances are needed from those minimum lot size and lot frontage requirements to develop, at Tax Map Lot 7943Z 75, addressed as 5 Broad Ave, in the Medium Density Residential (RM) District. Not a development of regional impact. (ZBA 0271-2025)

Member Winters and Member Monahan recused themselves for this agenda item because of a conflict of interest.

Alternate Davie will sit in on this agenda item.

Friedrich Moeckel (45 Center St, Concord) and Ian Flanagan (5 Broad Ave, Concord) are present to represent this application. Mr. Moeckel stated his client disagrees with the City’s position that the provisions of Section 28-8-3(c) are not preempted by the 2010 amendment to RSA 674:39(a) and (aa). Mr. Moeckel stated the City and his client are firm in their position. Mr. Moeckel noted for the record that the 2010 amendment preempts the City’s ordinance and why it was not corrected by the City is beyond him. Mr. Moeckel stated even though it is in the ordinance does not mean it is legal. Mr. Moeckel is asking for the Board overturn the staff decision.

Chair Carley understands why the decision was made, and asked about the jurisdiction of the Zoning Board. If they believe as Mr. Moeckel has stated that the law is invalid because of subsequent state laws that have been passed, does the Board have the power to make a judgement based on that.

Ms. Skinner stated according to the City Solicitor yes.

Chair Carley asked for testimony from the audience.

Nikki Carbone (3 Broad Ave, Concord) stated she disagrees with the applicant’s statement. Ms. Carbone asked for the Board to uphold Ms. Skinner’s position. Ms. Carbone noted the lots, 8 Wood Ave and 5 Broad Ave, have been owned by same owner for the past 60 years.

With no further comments from the audience or staff, Chair Carley closed the public hearing.

Member Spector-Morgan stated her understanding of the City’s ordinance is that it does not deem these lots as nonconforming or voluntarily merged. It says if non-confirming lots are under common ownership, then you are not permitted to develop them without meeting the requirements of the Zoning Ordinance or getting a variance. Member Spector-Morgan stated that while it seems that is a distinction without a difference, it is a distinction with a difference. Member Spector-Morgan does not think it violates state law. Member Spector-Morgan would vote to deny appeal of the administrative decision.

Alternate Davie has no comment and will defer to Ms. Skinner and Member Spector-Morgan. Alternate Davie stated he believes a variance is required.

Member Wallner stated the same.

Chair Carley does as well. Chair Carley stated maybe the ordinance needs an amendment, but the ordinance did not seem to be directly requiring the joining of the lots.

On a motion made by Member Spector-Morgan, seconded by Member Wallner, the Board with a vote of 4 (Carley, Davie, Spector-Morgan, Wallner) to 0, denied the request to reverse the administrative decision wherein it was determined that a lot is not nonconforming as it pertains to lot size and lot frontage and that variances are needed from the minimum lot size and lot frontage requirements to develop, because the City's ordinance does not deem the lots to not be nonconforming lots or that they must be voluntarily merged; rather, the City's ordinance provides that if nonconforming lots are held in common ownership, the owner is not permitted to develop them without meeting the requirements of the zoning ordinance or getting a variance, and that while it seems like a distinction without a difference, it is in fact a distinction with a difference and it does not violate State law.

7. Friedrich Moeckel and Tarbell & Brodich, P.A., on behalf of Ian Flanagan, request approval for variances from Section 28-4-1(b) *Minimum Lot Size*, Section 28-4-1(c) *Minimum Lot Frontage*, and Section 28-4-1(h) *Table of Dimensional Regulations*, to allow development of a lot with 5,227.2 square feet in area, where 6,250 square feet is the minimum requirement, and 50.1 feet of frontage, where 100 feet is the minimum requirement, at Tax Map Lot 7943Z 75, addressed as 5 Broad Ave, in the Medium Density Residential (RM) District. Not a development of regional impact. (ZBA 0269-2025)

Member Winters and Member Monahan recused themselves for this agenda item because of conflicts of interest.

Alternate Davie will sit in on this agenda item.

Friedrich Moeckel (45 Center St, Concord) and Ian Flanagan (5 Broad Ave, Concord) are present to represent this application. Mr. Moeckel stated 5 Broad Ave is a vacant lot and has been vacant for as long as he can tell. Mr. Moeckel stated it is a product of a 1901 subdivision and there it sits undeveloped until this day. Mr. Moeckel stated beginning in the 1940s, but not in deeds until the 1980s, the property conveyed with 8 Wood Ave. Mr. Moeckel noted it is nonconforming in size and frontage. The applicant has determined that a single-family dwelling can be placed on that lot without violating any setbacks. The neighborhood is densely settled. These houses are not large because they are on small lots. With the dimensional size requirement in this neighborhood, only three lots meet the 12,500-square-foot lot size requirement. Mr. Moeckel noted there are 50 plus houses in this neighborhood. Mr. Moeckel noted the other thing about this neighborhood is where 100 feet of frontage is required, only one-third of the lots have that, which is to say characteristics of this neighborhood are substandard size lots with insufficient frontage. Mr. Moeckel stated there is no intent to build within the setbacks. Mr. Moeckel noted putting a single-family home will not diminish property values. Mr. Moeckel stated the handout that was provided to the Board is an appraisal and read the information to the Board.

Chair Carley asked to go back to the appraisal and the adjustment of values based on the density.

Mr. Moeckel stated what appears on page two of the statement is that 7 Bow St sold in June of 2024 for \$620,000. Mr. Moeckel stated that translates based on square footage of the house to equate to \$342.92 per square foot. Mr. Moeckel noted then he went and looked at property sales for the area subsequent to June 2024 to determine what the creation of a single-family home did to surrounding property values. Mr. Moeckel noted this is not a question an appraiser would be asked every day. Mr. Moeckel stated what he found is that of the three lots that were sold in that area, the sale price averaged to \$316.33 per square foot. Mr. Moeckel stated the creation of a new house will not reduce the existing property values.

Chair Carley asked if there is any member of the audience that would like to speak in favor of this application.

Connor O'Keefe (15 Wood Ave, Concord) stated as a resident of the south end for the last eight years and knowing Mr. Flanagan personally, his roots are deep in the community. Mr. O'Keefe stated it is a densely populated neighborhood. Mr. O'Keefe stated he is in favor of this application.

Chair Carley asked if there is any member of the audience that would like to speak in opposition of this application.

Larry Linden Jr (1 Broad Ave, Concord) is opposed to this application. Mr. Linden noted he is not opposed to construction but that the lot is too small for house, and three stories will make the house stick out.

Nikki Carbone (3 Broad Ave, Concord) is opposed to this application as the lot does not meet zoning requirements. Ms. Carbone stated having a home like this would encroach on her property with the machine for construction needing to maneuver on her property. There is an impact to neighborhood. In the front of the house, there is a natural a gas line that runs from the front of the home along the front line of the lot. There could be damage to the gas line while building this new home. Ms. Carbone stated there could be public risk and damage.

Jim Harvey (2 Wood Ave, Concord) abuts the corner. Mr. Harvey stated there are a lot of homes with a second lot. Mr. Harvey noted the 100 feet of frontage versus 50 feet of frontage is huge. There are negative consequences with an inadequate driveway and parking on the street. There are no sidewalks on those three streets. Mr. Harvey asked the Board to deny this variance.

Martha Mitchell (3 Wood Ave, Concord) stated she does not have a problem with them building a house; however, she does have a problem with a three-story house. Ms. Mitchell suggested building an 800-square-foot house. Ms. Mitchell noted with a three-story house there will be no privacy.

Chair Carley asked for additional testimony, or comments from staff. Hearing none, Chair Carley asked the applicant to offer factual clarification.

Mr. Flanagan stated no plans have been submitted. Mr. Flanagan noted it is a level lot. Mr. Flanagan heard the concern with the gas line. Mr. Flanagan had dig safe out to the property to get a sense of what is there. Mr. Flanagan stated things could be mitigated to lessen concerns.

Mr. Moeckel wanted to point out it was said that this lot is too small for any house. Mr. Moeckel noted there are five houses in that neighborhood with a smaller lot size than 5 Broad Ave. Mr. Moeckel stated there is nothing to support an increase in on-street parking.

Mr. Flanagan stated he heard the concerns of the people and has deep roots in the community.

Chair Carley closed the public hearing.

Alternate Davie does not have an issue, can see the hardship, and feels it fits within the neighborhood. They did due diligence with the market analysis for the surrounding property values.

Member Wallner agrees.

Member Spector-Morgan agrees and hears the concerns of the neighbors. However, they are largely things the Board has no control over, such as the height of the house and the gas line. Those have nothing to do with the variance. It is a substandard lot that exists.

Chair Carley agrees.

On a motion made by Member Spector-Morgan, seconded by Member Wallner, the Board with a vote of 4 in favor (Carley, Davie, Spector-Morgan, Wallner) to 0 opposed, the granted the variances from Section 28-4-1(b) *Minimum Lot Size*, Section 28-4-1 (c) *Minimum Lot Frontage*, and Section 28-4-1(h) *Table of Dimensional Regulations*, to allow development of a lot with 5,227.2 square feet in area, where 6,250 square feet is the minimum requirement, and 50.1 feet of frontage, where 100 feet is the minimum requirement, at the address of 5 Broad Ave, because all of the criteria under RSA 674:33 have been met based on the record before the Board, and the Board adopted the applicant's findings as the Board's findings of fact.

Adopted Findings of Fact:

1. *The variance will not be contrary to the public interest.* "The legal inquiry into the public interest and the spirit of the ordinance elements are related and coextensive. *Malachy Glen Assocs., Inc. v. Town of Chichester*, 155 N.H. 102, 105 (2007); *Chester Rod & Gun Club, Inc. v. Town of Chester*, 152 N.H. 577, 580 (2005). "The first step in analyzing whether granting a variance would be contrary to the public interest or injurious to the public rights of others is to examine the applicable zoning ordinance." *Chester Rod & Gun Club, Inc.*, 152 N.H. at 581. "[T]o be contrary to the public interest or injurious to the public rights of others, the variance must unduly, and in a marked degree conflict with the ordinance such that it violates the ordinance's basic zoning objectives." *Id.* (internal quotations omitted). There are two ways to determine whether a variance violates an ordinance's basic zoning objectives. One way is to examine whether granting the variance would alter the essential character of the locality or neighborhood. *Id.* The other way is to examine whether granting the variance would threaten the public health, safety, or welfare. *Id.* The essential character of the locality of the Property is marked by existing tightly-sitting single-family residences along Broad Avenue and its nearby adjacent streets: One of the essential characteristics of the neighborhood are lots with less than 100 feet of frontage and less than 12,500 square feet of total space. Indeed, of the 51 lots in the Broad Avenue/Wood Avenue neighborhood, 34 have less than 100 feet of frontage. Importantly, only 3 of those 51 lots meet the minimum 12,500 square foot size requirement. Thus, granting the requested variances will not threaten the public health, safety, or welfare. The proposed use of the Property envisions a single-family home on a lot size consistent with the area and with frontage consistent with the area."
2. *The spirit of the ordinance is observed by granting the variance.* "The spirit of the ordinance analysis is the same as the public interest analysis."
3. *Substantial justice will be done by granting the variance.* "'Perhaps the only guiding rule on this factor is that any loss to the individual that is not outweighed by a gain to the general public is an injustice.'" *Malachy Glen Assocs.*, 155 N.H. at 109. The court also looks "at whether the proposed development is consistent with the area's present use." *Harborside Assocs., L.P.*, 162 N.H. at 515 (quoting *Malachy Glen Assocs.*, 155 N.H. at 109) (internal brackets omitted). Without the requested variances, and due to its size the Property cannot be used for any use other than –and anomalously for the neighborhood– agriculture. Additionally, this case is not one where the Property owner proposes something out of place for the locality. This is not a pig in the parlor type of case. Importantly, the Property is the product of a subdivision that contemplated access from a city street. Understanding that the entire purpose

of the subdivision was to make the Property a buildable lot, not granting the requested variances serves no useful purpose.”

4. *The values of surrounding properties will not be diminished.* “Granting the variance will not diminish surrounding property values. The proposal contemplates a single-family residence consistent with the locality. A single-family residence will not diminish the surrounding property values. Indeed, a single-family residence completes the locality.”
5. *Denial of the variance would result in unnecessary hardship because:* “The first requirement of the unnecessary hardship test requires the applicant to prove, and the ZBA to find, that there are “special conditions of the property that distinguish it from other properties in the area.” RSA 674:33, I(b)(1); *Garrison v. Town of Henniker*, 154 N.H. 26, 35 (2006); and compare with *Rancourt v. City of Manchester*, 149 N.H. 51, 54 (2003) (the size, configuration, location and buffer made the property unique, as compared to the surrounding lots). Special conditions of the Property distinguish it from other properties in the area. One of the first things one sees about the Property is that unlike its neighboring properties, the Property has no single family home on it. To be sure, there is no other vacant lot in the neighborhood –or for the locality. Under the second prong of unnecessary hardship the question is “[n]o fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the Property. RSA 674:33, I(b)(1)(A). Concord’s area and frontage requirements generally reflect the historical building development pattern in a particular neighborhood. With respect to the Property’s neighborhood, the 100 foot frontage and 12,500 square foot lot size minimum are an aberration. In such circumstances there is no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the Property. The third prong of the unnecessary hardship inquiry asks whether the proposed use is a reasonable use. Here the proposed use of a single-family residence is a reasonable use for the Property. True, a single-family residence is permitted by right in the RM district. So, the better question is whether single-family home on the Property is a reasonable use, and not anomalous to the neighborhood. The answer to that question, in this case, is of course, the proposed use is reasonable. Here’s why: the area around the Property as whole shows heavy residential uses, and tightly-spaced residential uses. Thus, the existing single-family residences compliment the use of the Property as proposed.”
8. **Review and acceptance of minutes from April 2, 2025**
Member Wallner moved, seconded by Member Spector-Morgan, to approve the meeting minutes from April 2, 2025, as written. The Board voted 3 in favor (Davie, Spector-Morgan, Wallner) to 1 abstained (Carley). The motion passed unanimously.
9. **Any other business that may legally come before the Zoning Board**
10. **Adjourn**
On a motion made by Member Wallner, seconded by Member Winters, the Board unanimously voted 6 in favor (Carley, Davie, Monahan, Spector-Morgan, Wallner, and Winters) to 0 opposed to adjourn at 9:10 p.m.

Respectfully submitted,

Krista Tremblay

Krista Tremblay

Administrative Technician III