



AnneMarie Skinner, AICP
City Planner

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

November 6, 2024
MEETING MINUTES

Attendees: Chair Christopher Carley, Alternate Mark Davie, James Monahan, Nicholas Wallner, Andrew Winters

Absent: Laura Spector-Morgan, Brenda Perkins

Staff: AnneMarie Skinner, AICP, City Planner
David Hall, Code Administrator
Alec Bass, Assistant City Planner – Community Planning
Deborah Tuite, Board Secretary

Meeting commenced at 6:00 PM.

1. Call to order

2. Chairperson's comments

3. Public meetings – none

4. Public hearings

4.1 Tracy A. Szanto requests approvals for variances from Section 28-4-1(h) *Table of Dimensional Regulations – Minimum Lot Size and Minimum Lot Frontage* and Section 28-5-2 *Duplex or Two-Family Dwelling*, to allow a duplex on a lot area of 17,424 square feet and 120 feet of lot frontage, where 18,750 square feet of lot area and 150 feet of lot frontage are required, at 15 Fowler St, in the Medium Residential (RM) District. (ZBA-0227-2024)

Tracy A. Szanto, owner (15 Fowler St, Concord, NH 03301), testified. George Sanderson, friend of the owner (15 Fowler St, Concord, NH 03301), testified on her behalf. Mr. Sanderson explained that they are requesting variances. However, he pointed out that in Section 28-5-3 of the Zoning Ordinance, it speaks to houses built prior to 1945 and waives the 1.5 requirement for individual lot sizes. This house was built prior to 1880. He stated that in light of that ordinance, he felt that the age of the house exempted them from requiring the two variances, and that the lot meets the requirements for a single-family residence.

Chair Carley explained that the Board will check in with Code/Planning for clarification. He also explained that if they wished to contest a ruling from Planning, that has to be a part of the hearing and that the Board has the power to vote on that. Ms. Skinner explained that they were not presented any evidence of non-conformity. In reviewing an application for a land use change, from a single family to a duplex, City staff has to determine the existence of a non-conformity. The applicant bears the burden to present evidence sufficient to allow for City staff to make findings for that. Ms. Skinner stated that she was not presented any evidence or was asked.

Chair Carley asked if Ms. Skinner could review the ordinance for evidence of the applicant's rationale, stating that he interpreted the ordinance to mean that it would allow for a smaller lot in that zone if the house had access to water and sewer and built before 1945. He further stated that it did not say anything about conversions.

Ms. Skinner read the ordinance aloud. She explained that the established lot area for a duplex is 1.5 times that of the lot area requirement for a single-family dwelling.

Chair Carley explained that he read it to infer that lots could be 1.5 times smaller if it had water and sewer. He asked where it was mentioned about houses built prior to 1945.

Ms. Skinner then read Section 28-5-3(b), and asked the applicant to explain their rationale.

Mr. Sanderson expounded on the argument that in light of Section 28-5-3, which waives the 1.5 factor that is applied to Section 28-4-1(h) *Table of Dimensional Regulations*, which is the 12,500-square-foot lot size and 100 feet of frontage, stating that the factor does not apply in this case and that the only aspect that is considered in a house of that age is the frontage.

Mr. Winters asked if they still needed a variance for the frontage.

Mr. Sanderson stated that he believed the required frontage was 100 feet and this house has 120 feet of frontage and did not feel it was applicable to houses built prior to 1945, so they would be exempt.

Chair Carley mentioned that he thought the provision concerning the 1945 date references back to the minimum lot size and the table references back to 1.5 times the lot size.

Mr. Sanderson agreed that there was some ambiguity there.

Ms. Skinner asked if the conversion is all internal to the house.

Ms. Szanto agreed that the conversion was entirely internal, and explained that it's already one big house with two kitchens and two bathrooms.

Mr. Sanderson stated that functionally it is already a duplex, just not legally a duplex.

Ms. Skinner asked if they just want to legally use it as a duplex.

Ms. Szanto agreed.

Ms. Skinner stated that she was inclined to agree, and she believes in this case that Section 28-5-3 applies.

Chair Carley discussed the case with the Board and decided to move forward with hearing the rest of the case.

On a motion made by Andrew Winters, seconded by Nicholas Wallner, the **Board voted 5-0 to affirm** the City Planner's determination that the lot area and lot frontage variances are not needed for the conversion of the single-family house built prior to 1945 to a duplex, that meets the lot area and lot frontage requirements for a single-family house, based on Section 28-5-3 of the Zoning Ordinance.

4.2 Ari Pollack with Gallagher, Callahan, & Gartrell, on behalf of St. Paul's School, requests approvals for variances from Section 28-7-2(e)(B) *Table of Off-Street Parking Requirements*, to allow 96 parking spaces where 1,334 parking spaces are required; Section 28-7-5 *Requirements for Handicapped Accessible Parking Spaces*, to allow 5 accessible parking spaces where 24 accessible parking spaces are required; and Section 28-4-3(c)(1) *Wetland Buffers and Setbacks – Certain Uses Prohibited in Buffers*, to allow construction of a building or structure in 8,200 square feet of wetland buffer where construction of a building in a wetland buffer is prohibited, at Tax Map Lot 724Z 1 and Tax Map Lot 811Z 1, generally located at 87 Dunbarton Rd, in the Institutional (IS) District and the Open Space Residential (OS) District. (ZBA-0230-2024)

Ari Pollack, attorney with Gallagher, Callahan & Gartrell (214 N Main St, Concord, NH 03301) testified on behalf of the applicant. Also testifying were: Bill Massey, senior director of facilities, St. Paul's School (325 Pleasant St, Concord, NH 03301); Zinat Yusufzai, architect, KieranTimberlake (841 N American St, Philadelphia, PA 19123); Christopher Danforth,

Danforth Environmental Consulting, LLC (654 New Boston Rd, Franconia, NH 03043); and Morgan Dunson, project engineer, Nobis Group, (18 Chenell Dr, Concord, NH 03301). Mr. Pollack explained that the applicant owns and operates St. Paul's School, which is a private school in Concord since 1856. The applicant is proposing a redevelopment of the existing athletic field house and fitness center, which is located on the campus. The redevelopment includes the addition of several indoor squash courts, and ancillary facilities. Mr. Pollack pointed to a conceptual rendering on display on the screen. He explained that they are requesting three variances: 1) a variance from the table of off-street parking requirements to allow the existing 96 parking spaces to serve the existing and expanded athletic facility; 2) a variance from accessible parking spaces allowing 5 spaces where 24 are required; and, 3) a variance from wetland and buffer setbacks, to allow permanent occupation of 8,200 square feet of buffer for the expansion of an existing structure.

Mr. Pollack discussed the parking variance, pointing out that this is a unique circumstance in that it is a secondary educational institution that has no day students, and the school does not allow student vehicles on campus, which does away with a vast majority of the parking demand. Additionally, faculty and staff use designated campus parking. The campus is very walkable. The existing athletic facility is served with sufficient parking of 96 spaces, which accommodates daily parking. When a larger event happens, the school has designated overflow parking, and at times uses shuttle buses. The uniqueness is the applicant's population, the age of the buildings and campus, and the supplemental parking nearby. The use is reasonable because it would allow for the expansion of an existing and allowed use, along with the unique circumstance of the campus scenario without requiring unnecessary construction, maintenance, impervious lot coverage associated with the type of parking required. He pointed out that if the Board went by the ordinance, the site would need 1,334 parking spaces, which does not meet the needs. Public interest supports the application because of the applicant's interest in reinvesting and upgrading the facilities for its students. The upgrade is not intended to increase the enrollment of the school, they are just looking to offer the best facilities that they can. The request arises from a largely self-contained private campus where the applicant has incentive to have best management practices for safe and well-organized parking. The spirit and intent of the ordinance and substantial justice are served because it would be consistent with what is allowed and a permitted use. There is nothing to suggest that surrounding property values would have any impact.

Mr. Pollack stated that the justifications for accessible parking are very similar, recognizing that this institution has no day students, and no students are allowed to bring their vehicles. The applicant currently manages their parking load from the field house facility. A reasonable use variance would allow the expansion of what exists without unnecessary construction for lot coverage. It is in the public's interest to allow this upgrade in order for the school to have the best facilities for their students and staff. There is nothing to suggest a negative impact on surrounding property values.

Mr. Pollack then discussed the variance for the permanent incursion into the wetland buffer, pointing out that this request is not to impair the wetland itself, and they do not anticipate the need to file a wetland fill permit with New Hampshire Department of Environmental Services. This is only an excursion into the buffer that is created by the City's ordinance, and the footprint of the building would only incur into a portion of the 50-foot buffer and not the wetlands themselves. They have considered a few other placements; however, this is a relatively small encroachment and is a reasonable compromise.

Bill Massey explained that there are a couple of factors driving the need for the facility. The current squash building was built in 1925, with 10 courts. It does not function well for a building of that vintage. There is a shortage of utilitarian spaces for locker rooms, changing rooms, etc. Interestingly enough, the first squash courts in the country were built on St. Paul's campus in the 1800s. It is a heritage sport for the campus and it means a lot, both for St. Paul's and their alumni, but also for their ability to recruit and stay competitive. The new facility replaces the former facility. This is a winter sport and currently the students change in the existing athletic fitness center locker rooms, walk over to the squash facility, and then return to the athletic fitness center. Another driver for the project was for easier access and connections. A program like squash does generate a lot of enthusiasm from alumni and donors and it does impact donations. The main driver is the functionality and use of the facility.

Mr. Winters asked what would happen to the existing facility.

Mr. Massey stated that it would remain a secondary facility for squash, when needed. Long term it could be converted for other uses. It is an older building and there is an appeal to keep it for historical purposes.

Zinat Yusufzai explained that when looking for a location that was connected to the athletic fitness center, they concluded

attaching it to the rear of the fitness center would be best. There is an atrium, which is a central hub of the building, from where everything is easily accessed. The addition would connect that lobby to the new addition. It would also be connected to the second floor of the existing fitness center, so it would be adjacent to other sports venues. Some of the alternate locations that they considered were to the side or front of the fitness center. She explained the downsides of the other locations, which were that they would displace some of the current parking spaces, and they would still encroach into the wetland buffer or even the shoreland buffer of Turkey River. It would also move the accessibility away from the central lobby and reduce the connectivity of the other spaces. It would also require building more building to make the connections. It was for those reasons they landed on this proposal as the least impact.

Chris Danforth, wetlands scientist, testified, discussing the functional assessment he performed due to the wetland buffer on campus. He explained the three parts of the wetland area, which has an intermittent stream channel that discharges toward the Turkey River. He determined that the primary functions that were present were the sediment and shoreline stabilization of the stream channel, and due to the proximity of the school and the variety of wetland types in the area, the educational value is also very important and another principal function.

Mr. Winters asked if he could explain the primary function further in layman terms.

Mr. Danforth further explained the makeup of wetlands, and the high value of the vegetation buffers and impact and erosion. He explained that this channel stream has a very complex root system, is very narrow with a lot of boulders, and very stable. The banks are not impacted very much.

Mr. Winters asked if by stable he meant minimal erosion.

Mr. Danforth agreed, stating that it withstands flood events and high flow events. It protects the downstream wetland from sedimentation. The impacts based on the proposed project, at around 200 square feet into buffer, would not impact the wetlands themselves. It would affect the 50-foot buffer; however, with best management practices they could control any denigration or impacts to the stream channel.

Mr. Winters asked what the purpose is of the rule against building in the buffer.

Mr. Danforth stated that New Hampshire does not have a buffer requirement, but the Concord's Zoning Ordinance does have a buffer requirement, which is to protect the water quality. However, with best management practices, they can avoid any impacts to water quality, even if it impacts the buffer.

Chair Carley asked for clarification of the body of water.

Mr. Danforth mentioned that it is an isolated wetland that is forested. In the spring if there is any discharge, it probably runs through the channel stream. During the summer, there would most likely not be any flow. It is basically a dry, intermittent ephemeral stream, which is subject to seasonal flow. It is almost a boulder field, being quite rocky.

Mr. Monahan asked for clarification on the report's mention of mitigation.

Mr. Danforth explained that the report mentioned they could mitigate the impacts by using best management impacts.

Mr. Pollack stated that this application would go through Planning and they would look at storm water management. What is unique is that it is more of a channel between wetland areas, which happens intermittently. There are only two principal uses that are relevant, out of a total of 14 identified uses by the Army Corps test. The boulders really shape the channel.

Mr. Winters asked if the unique element is that it doesn't need as an extensive buffer that you would typically find.

Mr. Pollack agreed. This particular wetland has a low function and value and therefore does not need to full protection of a full buffer.

Mr. Monahan asked if the application to the Planning Board would include a stormwater management plan.

Mr. Pollack agreed. He concluded his presentation stating that the unique circumstance is trying to exist and expand existing facilities that predate the buffer ordinance. Even though the field house is a newer building, it is the physical proximity that they are trying to add onto that puts them into the buffer. The applicant has gone through an alternative and minimization process and it all weighs in favor of the proposed area. The use is reasonable and the impact on the buffer would be negligible. The public interest is served in protecting the wetland. The spirit and intent would support the expansion where it won't have a negative impact. Again, there would be no impact to the surrounding property values, as they are quite a distance away.

Mr. Monahan asked if the handicap ratio is the same if it was the five spaces compared to the 97, as well as the parking space of 1,300 spaces.

Attorney Pollack stated that by the ordinance they would need 24 accessible spaces and 1,334 parking spaces.

Mr. Monahan stated that it seems that St. Paul's is offering more accessible parking than needed.

Mr. Wallner stated that in terms of the parking, the increased use of the squash courts will not increase the demand on parking. They have addressed the issue of overflow parking. He felt that there would be no impact.

Mr. Monahan felt the parking proposal was completely reasonable.

Mr. Winters agreed with the parking proposal.

Mr. Davie concurred.

Mr. Monahan discussed the wetland buffer variance, but mentioned that he did not hear anything around the hardships. Mr. Wallner mentioned that they offered alternate plans for the location that would impact the parking which would address the hardship issue in his opinion.

Mr. Winters stated that they could build it where it is now, but that would defeat the purpose of attaching it to the athletic fitness center in order for the students to have better access to the changing rooms, etc. He was concerned about the argument that the buffer can be mitigated, which could be true for any buffer case. It was mentioned that the stream is intermittent and was a minimal wetland issue; therefore, the buffer doesn't need to be as extensive. He stated that could be persuasive; however, why wouldn't the City have addressed that in the code for wetlands that are not as extensive.

Mr. Davie mentioned that the other proposals also impacted the buffer and he also finds a problem with hardship.

Mr. Monahan expressed that part of the hardship could be a safety issue for crossing the road in the winter.

Mr. Winters agreed.

Chair Carley stated that he felt there was an overall hardship issue, as the campus itself is unique. He felt that the ordinance was most likely created to act as a preserver of the Master Plan, and also a referee between property owners. In this case, the requests only impact St. Paul's School, with the possible exception of the wetland buffer. Ultimately, he believes they do have a unique piece of property and considers the request reasonable. He felt the parking was reasonable, and he would agree with the variances for parking and the accessible spaces, adding that any problem their parking creates is only a problem for them. On the subject of the wetlands, he felt that not being able to build because of the wetlands could be construed as a hardship, partly because of the presentation they made that no other places were viable, even from the point of view of the violations of the ordinance. Secondly, because the City set this up as a zoning provision as opposed to an environmental regulation, they made it possible to appeal for a variance. If the applicant can satisfy the protection of all the reasons why the buffer would be there, you can make a reasonable case for a variance. The engineer was quite clear that the effect would be nil, which would make a strong case given all the other reasons of why it is reasonable to put an addition there. The hardship question does not fold neatly, but he could make a case for it.

On a motion made by Mark Davie, seconded by Nicholas Wallner, the **Board voted 5-0 to grant** the variances under Section 28-7-2(e)(B) *Table of Off-Street Parking Requirements*, to allow 96 parking spaces where 1,334 parking spaces are required and Section 28-7-5 *Requirements for Handicapped Accessible Parking Spaces*, to allow 5 accessible parking spaces where 24 accessible parking spaces are required, based on the sufficient contingency plan for hosting events, the inherent hardship of the property, the fact that students don't drive and they live on campus, there would be no impact on the character of the neighborhood or neighboring property values, and that the spirit and intent of the ordinance is still met, and to adopt the applicant's findings of fact as the Board's findings of fact.

Findings of Fact:

1. **Unnecessary hardship: Owing to the following special conditions of the property that distinguish it from other properties in the area, explain how no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property.** A variance would recognize the unique circumstance of a secondary education institution with no "day students" and where boarding students are not permitted to bring/use personal vehicles, and where faculty and staff utilize other designated campus parking areas. The campus is walkable in all material respects, and the existing facility is served with sufficient parking for the limited number of daily visitors and vendors arriving by vehicle. Additionally, in the event larger and occasional events are held, Applicant manages overflow parking by using its various additional campus parking areas, all of which are in proximity to the fieldhouse facilities and/or are served by parking shuttles. See Sheet C-4.
2. **The proposed use is a reasonable one because:** The variance would allow expansion of an existing and ancillary permitted use to be redeveloped in a manner that allows for appropriate parking opportunities, without unnecessarily requiring the additional construction, maintenance and lot coverage often associated with impervious and excessive parking.
3. **Granting the variance would not be contrary to the public interest because:** The public interest supports applicant's reinvestment in, and upgrade to, facilities that continue to offer quality education opportunities for its present and future students. Applicant's upgrade is not intended to increase capacity for enrollment, but is instead intended to continue to offer the best facilities to students, faculty and staff. Further, within its largely self-contained private campus environment, applicant has every incentive to utilize best management practices in its safe and well-organized handling of its parking arrangements.
4. **The spirit of the ordinance is observed and granting the variance would do substantial justice because:** The requested variance would be consistent with the spirit and intent of the ordinance in that educational institutions are "permitted" in the district, and that not all educational institutions have similar parking needs. Simply put, the applicant has options to provide additional and adequate parking areas and parking management strategies to manage daily and occasional parking demand without constructing an excessive supply of spaces.
5. **Granting the variance would not diminish the values of surrounding properties because:** There is no evidence to suggest that the immediately surrounding properties, many of which are owned by the applicant and all of which are a substantial distance from the immediate project area, will suffer any material devaluation as a result of constructing fewer on-site and immediately proximate parking spaces.

On a motion made by James Monahan, seconded by Nicholas Wallner, the **Board voted 5-0 to grant** the variance under Section 28-4-3(c)(1) *Wetland Buffers and Setbacks – Certain Uses Prohibited in Buffers*, to allow construction of a building or structure in 8,200 square feet of wetland buffer where construction of a building in a wetland buffer is prohibited, based on the fact that the criteria under New Hampshire RSA 674:33 are met based upon the record before the Board, and to adopt the applicant's findings of fact as the Board's findings of fact, noting that the issues of hardship are satisfied due to the uniqueness of the property, there are de minimis impacts on the buffer, and the Board recognizes some safety issues associated with students needing to cross the street to use the locker rooms and other facilities, which would be offset by the construction of the proposed facility, and that this particular stream is not as an extensive wetland as the code had envisioned, but a unique wetland given its modesty.

Findings of Fact:

1. **Unnecessary hardship: Owing to the following special conditions of the property that would distinguish it from other properties in the area, explain how no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property.** Buffer impacts are illustrated on Sheet C-1. A variance would recognize the unique circumstance of having to expand existing facilities around physical and environmental constraints. Applicant has examined various alternative layouts for expansion, each of which would produce greater environmental impacts or compromise existing parking and maintenance access areas.
2. **The proposed use is a reasonable one because:** The variance would allow expansion of an existing and ancillary permitted use to be redeveloped in a manner that allows for improved facilities, preservation of existing parking areas, and perpetual access for maintenance, without having an unreasonable impact to nearby wetlands. Applicant has retained the services of Chris Danforth, a licensed New Hampshire wetlands scientist, to evaluate the functions and values of the nearby wetlands and the loss of adjacent buffers. Mr. Danforth's opinion entitled "Wetland Functional Assessment, St. Paul's School, Squash Court Addition," dated October 2, 2024, is submitted herewith. Mr. Danforth concludes that the effect of the proposed buffer impacts is de minimis.
3. **Granting the variance would not be contrary to the public interest because:** The public interest supports applicant's reinvestment in, and upgrade to, facilities that continue to offer quality secondary education opportunities for its present and future students. Applicant's upgrade is not intended to increase capacity for enrollment, but is instead intended to continue to offer the best facilities to students, faculty and staff. Additionally, applicant's proposal will not alter the essential character of the neighborhood, which will continue to serve the needs of an educational institution located in a rural setting.
4. **The spirit of the ordinance is observed and granting the variance would do substantial justice because:** The requested variance would be consistent with the spirit and intent of the ordinance in that educational institutions are "permitted" in the district. Further, buffers are intended to protect the functions and values of adjacent wetland areas. In this case, the subject wetland has limited function and value, which is largely unimpaired by the proposed expansion. See Danforth Assessment Report, submitted herewith.
5. **Granting the variance would not diminish the values of surrounding properties because:** There is no evidence to suggest that the immediately surrounding properties, many of which are owned by the applicant and all of which are a substantial distance from the immediate project area, will suffer any material devaluation as a result of construction into the wetlands buffer.

4.3 Ryan M. Dyer and Sara Dyer request approvals for a special exception for a child day care facility, per Section 28-2-4(j)(B) Table of Principal Uses – Educational and Institutional, and a variance from Section 28-7-2(e)(B) Table of Off-Street Parking Requirements, to allow 9 off-street parking spaces where 15 (9 for the child day care facility and 6 for the existing apartment units) are required, at 76-78 S State St, in the Urban Transitional (UT) District. (ZBA-0231-2024)

Ryan Dyer and Sara Dyer (76-78 S State St, Concord, NH 03301) testified. Ms. Dyer explained that the current building is a multi-use building, with residential apartments on the second and third floor, and an office space on the first floor that is currently in use. They are asking for a special exception to convert the first floor from an office use to a child care facility. The second request is a variance for parking.

Chair Carley asked Ms. Dyer to speak about the criteria for the special exception.

Ms. Dyer explained that they have multiple office spaces that they feel would benefit the community if they switched it over to a child care facility. Ms. Dyer discussed how difficult it is to find daycare and they have a decent spot that they would like to utilize for this purpose so they could serve their community.

Chair Carley asked if the use would create undue traffic.

Ms. Dyer stated it would not because it is an office space now, and the childcare would be more of a drop off/pick up scenario. There is a fence that partially goes around the property.

Chair Carley asked if there would be any additional storm runoff or taxing of the utilities.

Ms. Dyer did not feel that there would be any of those issues. She added that she does not feel that they need to add anymore restrooms and that there would not be anymore uses to city water or sewer.

Chair Carley asked if the City fire or police would need to be called regularly.

Ms. Dyer stated that fire or police would not need to be called.

Mr. Wallner asked how many kids would be there, their ages, and how many staff members.

Ms. Dyer stated that she was not sure, as she wanted to see if she would be approved before she could assess the numbers and ages of children and staff through New Hampshire's licensing process.

Mr. Winters asked how many square feet the child care facility would be.

Mr. Dyer stated it was approximately 2,100 square feet.

Mr. Wallner asked how many kids they are hoping for.

Ms. Dyer mentioned that it would depend on how many they are able to have, and that they would start with one or two.

Mr. Wallner asked what the maximum number of kids might they be allowed on that premise.

Mr. Monahan stated they are trying to get a feel for how many students and staff as far as parking for staff.

Ms. Dyer stated that they would probably need two or three staff.

Mr. Winters asked if she were to maximize the space, what would the possible number of kids be.

Ms. Dyer stated that possibly she could have between 20 to 25, with a maximum of 5 staff members.

Mr. Monahan asked about pick up and drop off.

Mr. Dyer stated that there is room in the parking lot to drop off students. There is one way in, but room to turn around to leave. There should not be congestion on the street due to the factor of turning around in the parking lot.

Mr. Winters queried if it was unusual to have a daycare in the same building as an apartment building. He asked if they had any concerns about the safety of the kids.

Ms. Dyer stated that there would be no shared entrances, and there would be minimal interaction. The residents have completely separate entrances.

Mr. Winters asked if the parking would be separate too.

Ms. Dyer stated that it was all one parking lot, but there would be designated parking spots.

Mr. Wallner asked about an outdoor area for the kids.

Ms. Dyer stated that there was an opportunity to take a portion of the parking lot in the back to create an outdoor area.

Mr. Dyer mentioned that they would like to add a fenced in area.

Mr. Winters asked how many bedrooms in each of the residential units.

Mr. Dyer stated that there are two one-bedroom units, and one unit with two bedrooms, with six parking spots for residents.

Mr. Monahan asked if they would be looking for this to be a state-licensed facility and if these issues would be addressed through that licensure.

Ms. Dyer stated they would be licensed by the state and those issues will be addressed by that licensure.

Mr. Winters asked about the entrance that the residents use versus the proposed daycare.

Mr. Dyer explained the access for each unit, pointing out on the site map each access point.

Mr. Winters asked if there would be brief interaction with residents and daycare access.

Mr. Dyer explained that there could be briefly.

Mr. Winters mentioned that it might be awkward and better to have a separate entrance.

Chair Carley asked about the hardship for the parking, with regards to the characteristics of the property.

Ms. Dyer explained that if they were not allowed to have the spots they would not be able to grow their business, and they would not be able to have a daycare.

Mr. Davie expressed that he is struggling with the hardship aspect, noting, though, that there is a childcare crisis. He mentioned that he realizes that there is the availability of parking on State St, and that possibly some of the staff and families could be in walking distance. He stated that on the whole, he would support the variance, but still struggling with the hardship.

Mr. Winters mentioned that he does wonder how this would all work, but it would be a creative use of the space, and there would most likely not be a huge demand for office space. He also mentioned that there is ample parking on State St, and that it would be unlikely that there would be two cars for each tenant given the setup of the units. He felt it could work.

Mr. Monahan stated that he would be inclined to support both requests, as many of the issues would be addressed through the State licensing process. There are two issues before the Board, one being the change of use to a childcare facility and the other being the parking. He felt his colleagues created enough of an explanation around the parking.

Mr. Wallner stated that he was generally in favor of the daycare request, and he too felt the questions he had would be addressed through the State licensing process. He is concerned about the shared access with tenants, as well as the parking lot and the issue that cars would need to be turning around. Most daycares have parents dropping off at the same time, so he is concerned that there could be a multitude of cars arriving at the same time.

Chair Carley agreed with his colleagues. He felt the criteria for a special exception were easily met. He would accept the findings of fact in their application. As far as parking, the ordinance has never been a good fit in that part of town, and just residing there creates a hardship. He mentioned that he was not unmindful of the fact that this is an extremely important service that they want to provide. He realizes that many of the issues would be dealt with outside of zoning. He felt the consideration of the lot and the building in that neighborhood does create a hardship.

Mr. Davie asked if they are specifying the parking spaces for the facility versus those for the apartment units.

Ms. Skinner stated that they did not need to specify which space is for which use.

On a motion made by Andrew Winters, seconded by James Monahan, the **Board voted 5-0 to grant** the special exception for a child day care facility, per Section 28-2-4(j)(B) *Table of Principal Uses – Educational and Institutional*, stating that there was minimal risk of additional burden on the services which is outweighed by the benefit of the daycare, and to adopt the applicant’s findings of fact as the Board’s findings of fact, including the adoption of the criteria.

Findings of Fact:

1. **The requested use is specifically authorized in this ordinance:** As the owners of the property on South State Street, we are submitting a request for permission to convert the ground floor of this mixed-use building into a childcare center. We are committed to adhering to the Zoning Ordinance for this property while aiming to establish a business that is oriented towards serving the community.
2. **The requested use will not create undue traffic congestion or unduly impair pedestrian safety.** The proposed daycare location features a generous parking lot adjacent to the building, which will help reduce street congestion and enhance pedestrian safety on the sidewalks.
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.** The property is currently utilized as an office for business purposes. Establishing a daycare at this location will not overburden the existing sewer drainage systems. The property is on town water and sewer and the daycare center will unlikely need additional restrooms. Additionally, there will be no major increase in water usage that could adversely impact neighboring properties or roadways. There will be no additional nonporous surfaces created for the childcare center. No increase in stormwater runoff is anticipated.
4. **The requested use will not create excessive demand for municipal police, fire protection, schools, or solid waste disposal services.** We are committed to ensuring the safety and security of our facility while minimizing the demand placed on our firefighters and police officers. We will adhere to all guidelines to mitigate the risk of fire emergencies as well as any emergencies that need the presence of law enforcement officers. We have designated outdoor trash receptacles for any waste generated at this facility.
5. **Any requirements and standards for the use as set forth in Article 28-5, Supplemental Standards, of this ordinance are fulfilled.** The property where we are considering establishing a child care facility is situated on a side street adjacent to North Main Street in Concord. The proposed property is currently connected to municipal water and sewer services. The site features a secure area at the rear of the building, enclosed by fencing, which can be developed into a playground. Additional fencing will be added as required. There is parking available for both family members and staff in the enclosed on-site parking lot.
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.** The building we plan to utilize will remain free of any additional structures. I consulted with Anne-Marie at the planning board, and she indicated that, based on the existing building and our intention not to add any new structures, we do not foresee a site plan review being required when submitting our application for the zoning permit.
7. **The requested 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.** We believe that establishing a daycare in this neighborhood would positively contribute to the community. We are confident that the presence of this business at this location will not pose any safety risks to our building, our neighboring residents, or the broader community.
8. **The proposed location is appropriate for the requested use.** The suggested location is highly suitable for a childcare center. It offers ample parking and the possibility for a playground at the rear of the building, in addition to

plenty of interior space to accommodate educational needs specific to children. Furthermore, our facility is fully accessible for individuals requiring assistance.

9. **The requested use is consistent with the spirit and intent of this ordinance and the Master Plan.** As outlined in the document above, we are committed to adhering to all rules and regulations in accordance with this Master Plan.

On a motion made by James Monahan, seconded by Nicholas Wallner, the **Board voted 5-0 to grant** the variance from Section 28-7-2(e)(B) *Table of Off-Street Parking Requirements*, to allow 9 off-street parking spaces where 15 (9 for the child day care facility and 6 for the existing apartment units) are required, based on the five criteria and to adopt the applicant's findings of fact as the Board's findings of fact, while making note of the discussion around New Hampshire's licensing requirements and the parking lot drop off.

Findings of Fact:

1. **Granting the variance would not be contrary to the public interest because:** The requested parking variance aligns with the public interest, as the existing parking lot is currently utilized by a business without adversely affecting the surrounding neighborhood. A partial fence surrounds the lot, providing a visual barrier for neighboring properties. Granting this variance would not alter or encroach upon any adjacent properties. The intended use of this variance supports a business initiative that we believe will contribute positively to the community's development.
2. **The spirit of the ordinance is observed because:** If the variance is granted, the intent of the ordinance will be upheld as it aligns with the original use of the property as a mixed-use commercial/residential building. This request does not change the fundamental character of the neighborhood. It would serve the community positively by providing a space for a small business to flourish. There is a consistent demand for daycare centers, and this location would help meet the childcare needs of families in the area.
3. **Granting the variance would do substantial justice because:** Granting the variance would provide considerable advantages for both the applicant and the community by facilitating the establishment of a daycare, thereby addressing the current demand for child care services. The requested variance aligns with the current zoning of the area as mixed-use. It is anticipated that most vehicles accessing the business will be utilized primarily for temporary drop-off rather than long-term parking. Additionally, there are nearby on-street parking options that can adequately accommodate any potential overflow.
4. **Granting the variance would not diminish the values of surrounding properties because:** If the variance is granted, the neighboring properties would remain unaffected, as the existing fence on the property serves to mitigate the visibility of vehicles from these areas. The parking arrangements do not impede the neighboring properties' access to their parking spaces or buildings, nor do they contribute to the deterioration of existing lots owned by other properties. The exterior of the building and the landscaping are regularly maintained to reflect the professionalism of the business operating at the location, benefiting both the property itself and the views of the surrounding neighbors.
5. **Unnecessary hardship:**
 - a. **Owing to the following special conditions of the property that distinguish it from other properties in the area, explain how no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property.**
 - b. **The proposed use is a reasonable one because:** The property stands out in the neighborhood by providing residential housing alongside an opportunity for a small business on the ground floor, both of which contribute positively to our community. We believe that establishing a daycare in this space would significantly enhance our community, as accessing quality childcare is a priority for families in need. We are confident that the approval of this variance will create a beneficial space within the city. We anticipate that this initiative will not place undue strain on the existing property or adversely affect neighboring residents.

5. Review and acceptance of Findings of Fact from October 2, 2024

On a motion made by Andrew Winters, seconded by James Monahan, the **Board voted 4-0 to approve** the findings of fact from October 2, 2024, with Nicholas Wallner abstaining.

6. Review and acceptance of Minutes from October 2, 2024

On a motion made by James Monahan, seconded by Andrew Winters, the **Board voted 4-0 to approve** the minutes from October 2, 2024, with Nicholas Wallner abstaining.

7. Any other business that may legally come before the Board

7.1 Review and acceptance of draft 2025 calendar – note January date and discussion on July 2025 date.

The calendar as presented was agreed upon by the Board.

8. Adjourn

On a motion made by Nicholas Wallner, seconded by Andrew Winters, the **Board voted 5-0 to adjourn** at 7:32 PM.

*Respectfully Submitted,
Deborah Tuite*