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

January 8, 2025
MEETING MINUTES

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

Absent: Alternate Brenda Perkins

Staff: AnneMarie Skinner, AICP, City Planner
Alec Bass, Assistant City Planner – Community Planning
Matt Walsh, Deputy City Manager – Development
John Conforti, Deputy City Solicitor

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

Item 4.4 was moved ahead of item 4.1 on the agenda and heard as the first public hearing item.

- 4.1 Andrew J. Tine, on behalf of 11-15 Pierce St LLC, requests approval for a special exception for a rooming house, per Section 28-2-4(j)(B) *Table of Principal Uses – Residential*, at Tax Map Lot 7441Z 59, addressed as 11-15 Pierce St, in the Downtown Residential (RD) District. (ZBA 0236-2024)

Andrew Tine (18 Maple Ave, Ste 267, Barrington, RI 02806)) and Justin Etling (11-15 Pierce St, Concord, NH) presented the application.

Mr. Tine shared that they are requesting a special exception for a rooming house, though given the nature of the particular request, federal law for reasonable accommodation should be considered. Mr. Tine stated it will not impose a burden upon the City, and that he does not believe that there is an inconsistency for this use to continue to exist at this property.

Chair Carley asked for clarification if the applicant is seeking a reasonable accommodation, and that the special exception is not necessary, or seeking a special exception.

Mr. Tine responded that the applicant is asking for a reasonable accommodation, and if the Board

determines that is not appropriate, then they will proceed with the special exception.

Mr. Conforti (Deputy City Solicitor), shared that before the Board tonight is an application for a special exception. Mr. Conforti thinks that the material before the Board is not sufficient to consider a reasonable accommodation as it pertains to the Americans with Disabilities Act and Fair Housing Act, and the Board should act on the application before the Board which is the special exception for a rooming house, and permitted in the zone with special exception approval.

Ms. Skinner added that the application does not provide for on-site parking and this will be required for a subsequent site plan application before the Planning Board, or the applicant may need to seek future zoning relief for the on-site parking requirement.

The Board discussed and determined that they do not have enough information to provide an analysis to determine a reasonable accommodation..

Mr. Monahan asked if the special exception was not granted, if the applicant could then, on behalf of the persons with disabilities, seek reasonable accommodations.

Mr. Conforti responded that they would engaged with the applicant at that point in time.

Mr. Tine stated he understood the Board's determination; however felt the materials provided in their application clearly outlined the request for the reasonable accommodation.

Maggie Keene (9 Pierce St, Concord, NH) spoke in opposition.. Ms. Keene shared that she is a direct abutter to the property being considered. Ms. Keene stated that the applicant has knowingly been operating a rooming house for over a year without following compliance with City regulations, with the knowledge of City Code Enforcement, which never took enforcement action. Ms. Keene stated that since the current property owners assumed ownership of 11-15 Pierce Street in 2023, constant vehicle and foot traffic, police interaction, late night noise, and litter on abutting properties has occurred. In the fall of 2023, she called the City to complain and never received a response. In the spring of 2024, she and other citizens submitted a written complaint via the City's portal. Ms. Keene went on to read the submitted complaint filed on March 14, 2024, which referenced the increase police and fire calls, noise, and litter caused by the rooming house use. Ms. Keene went on to state that this application was submitted in April 2024 and questioned why it is now being heard on January 8, 2025, for a rooming house to allow for residence of 16 individuals. Ms. Keene added there is no yard, and the site has minimal parking. Constant traffic congestion around the house all day, including parking on sidewalks, and around the clock traffic is being experience by abutters. Ms. Keene went on to ask if there is any background check conducted on those individuals who will be living at the site. Finally, Ms. Keene stated that allowing this special exception would be detrimental to the neighborhood and impact property values, which consists of single-family homes and duplexes. Allowing this use would not be keeping the spirit of the neighborhood, they are not a family, nor do they function that way. Allowing this would be similar to living next to a crowded apartment building.

Roy Schweiker (12 Chapel St, Concord, NH) spoke in opposition.. Mr. Schweiker shared that he is in support of rooming housesand sober living; however he is in opposition of this particular application at this site. 16 individuals is too much for this building with 5 bedrooms. The site and location are too small to support this amount of people, and the number of people should be limited to 10, if not less.

Ms. Skinner shared that the Zoning Code only allows a maximum of 10 people in a rooming house.

Mr. Tine responded that there are currently 13 individuals living in the home with 4 bedrooms per duplex, and they are seeking 16. Mr. Tine believes that due to the duplex nature and their

understanding of the Zoning Code, they may have up to 10 individuals living in each unit, and they are only proposing 8.

Member Spector-Morgan asked if the applicant could speak to the allegation that the fire and police are frequently called to the site.

Mr. Etling did reply that there was a period of time when the fire and police calls were more frequent. They do screen individuals, drug test, and expect the individuals to conduct themselves in a certain manner. He is hopeful that recent measures are improving the situation and plans to reach out to the abutters to continue to meet their needs.

Member Monahan asked if the rooming house is currently registered with the State.

Mr. Tine responded that you are not required to be registered or certified with the State; however you would need to be registered to be eligible to receive certain accommodations from the State relating to fire suppression requirements.

Mr. Etling stated there are currently 3 managers living at the property, an increase from what it was previously.

Member Spector-Morgan stated that the Board looks at the criteria for a special exception for a rooming house, not the individuals living there.

Member Monahan stated this is not the first time the sober living/rooming house item has come forward and the City should consider creating a clarification to the Zoning Code.

Chair Carley stated he believes the reasonable accommodation may not apply to this circumstance and that would warrant additional consideration.

Member Winters made a motion to table the application to February 5, 2025, to allow for the Board to solicit legal consultation. Member Monahan seconded.

Discussion:

Member Monahan stated he would like to see the applicant provide additional supporting information for the special exception and police logs for the property.

Chair Carley stated there will be another public hearing on this item.

The Board voted 4-1 in favor of the motion, with Chair Carley in opposition.

- 4.2 Ryan A. Martin and Kelly L. Martin request approval for a variance from Section 28-4-1 *Dimensional Standards* and Section 28-5-32 *Accessory Buildings and Facilities*, to allow a 13-foot-tall shed to be placed 5 feet from the side property line where a 15-foot setback is required for an accessory building greater than 12 feet in height, at Tax Map Lot 193P 10, addressed as 43 Alice Dr, Penacook, in the Medium Density Residential (RM) District. (ZBA 0237-2024)

Member Monahan left the meeting and Alternate Member Davie stepped in.

Ryan A Martin (43 Alice Dr, Concord, NH) was present to represent the application. Mr. Martin shared that his property sits on the cul-de-sac creating a difficult distinction between yard setback lines. Mr. Martin shared he used to have a play structure of similar height at this location and has no opposition from the immediate abutter.

Chair Carley asked if the shed has already been constructed.

Mr. Martin shared that he has a building permit and did not realize they constructed the shed too tall in violation of the zoning ordinance. At the time of the building permit application, he did not provide a plan indicating the height. During construction they used larger timber than anticipated, which increased the height.

Member Winters asked for clarification if the height of the shed is 13 feet according to the agenda or 13 feet 10 inches based on the applicant's submission.

Member Spector-Morgan asked if the shed can be relocated outside of the setback.

Member Winters responded that since the structure is already built, and a privacy fence has been constructed, relocating it would be very difficult.

Chair Carley asked if the code ordinance measures the height of a structure to the top of the ridge or not.

Ms. Skinner read Section 28-4-1(f)(1) of the Zoning Ordinance to assist in understanding the definition of the maximum height allowed.

Member Wallner made a motion to recess this item to February 5, 2025, to allow staff to provide a determination as to how the height is calculated and the application be re-noticed to the correct height sought prior to the start of the meeting. Seconded by Member Spector-Morgan.

All in favor on a vote of 5-0. The motion passed.

- 4.3 Cronin Bisson & Zalinsky P.C. and North 40, LLC, on behalf of Concord Regional Solid Waste/Resource Recovery Coop, request approval for a variance from Section 28-2-4(a) *Uses Permitted by Right*, to permit by right residential use where residential use is not permitted, at Tax Map Lot 06P 8, unaddressed Whitney Rd in Penacook, in the Industrial (IN) District. (ZBA 0238-2024)

John Cronin (722 Chestnut St, Manchester, NH), Kevin Lacasse (368 NH Route 104, New Hampton, NH), Tom Fratato (28 Grindel St, Moultonboro, NH - CATCH Neighborhood Housing), Deane Navaroli (23 Silver Lake Rd, Hollis, NH - William and Reeves Commercial Real Estate) and, Ed Roberge (47 New Hampshire Hills Dr, Bow, NH - Stantec) are present to represent the application.

Mr. Cronin shared that the purpose of the application being discussed tonight is a request for a variance to allow multifamily use in an area known as the "North 40" or 0 Whitney, currently zoned as industrial. Mr. Cronin stated that through discussions with City and others, the project has been scaled back from what was originally contemplated. Mr. Cronin shared this particular project does plan to provide sufficient affordable housing desperately needed in the City, currently considering adding 194 units, though recognizes that this is not the venue to discuss number of units.

Mr. Cronin shared concern that the staff report dated December 11, 2024, is different than most staff reports prepared by staff for the Zoning Board, believing it contains opinions and advocacy. Based on conversations with Mr. Walsh (Deputy City Manager) and Ms. Skinner (City Planner), Mr. Cronin is of the understanding that this staff report was a collaborative effort with multiple staff input, and he feels they deserve to know who participated and who authorized the conclusions of the report.

Mr. Cronin went on to read an excerpt from New Hampshire State Statute RSA 672:1, enabling authority granted the legislature to empower communities to adopt Zoning and Planning Regulations.

Mr. Cronin stated that there was a revision to it and that will become effective that has nothing to do with the relevant sections here. Mr. Cronin stated that this has been on the books for quite a while and read subparagraph 3E which reads as follows: "All citizens of the State benefit from a balanced supply of housing which is affordable to persons and families of low and moderate income. Establishment of housing which is decent, safe, sanitary, and affordable to low- and moderate-income persons and families is in the best interest of each community and the State of New Hampshire, and serves a vital public need. Opportunity for development of such housing shall not be prohibited or unreasonably discouraged by the use of Municipal Planning and Zoning powers or unreasonable interpretation of such powers." Mr. Cronin said that he does not believe that this statutory section was given much if any consideration and would like to know who was involved in developing the staff report.

Chair Carley responded that the Board takes the staff report at face value, and is not interested in who prepared it.

Mr. Lacasse added that he has two partners on the project. They are based in New Hampshire, but do have projects in other states. Mr. Lacasse stated that the initial mixed-use development proposed was in line with the vision of City Planner Heather Shank and the Concord NEXT vision at the time. Since then, transitions from both the previous City Planner and departure from Concord NEXT have transpired and the City now is of the position that the industrial use of the land should remain. He believes they have laid out the hardship as to why the industrial use is not feasible on this particular site.

Mr. Lacasse feels as though they meet the public interest criteria, as they have met with many representatives of the public, including the Penacook Village Association, Concord Chamber of Commerce, the Rotary Club, local businesses, residents, and elected officials, including City Council and the Mayor. Throughout all this outreach, the project was met with positive support.

Mr. Lacasse also stated that with a vacancy rate of less than 1%, there is a clear need for this project, even if all the residential unit projects in Concord move forward. Mr. Lacasse stated he has funding and contractors all ready to bring this project forward and would hope to open units as soon as 2026.

Mr. Lacasse stated that the staff comment that this use should wait for the new master planning effort is difficult. When this project started, Concord NEXT was a zoning change which at the time, was to be voted into effect.

Mr. Fratato added that they build and maintain affordable housing and are excited to have the partnership with Mr. Lacasse and his group to contribute affordable housing as part of this project. Mr. Fratato stated that CATCH housing contributes to taxes just like everyone else, and introducing affordable housing will aid in taxes revenue for the City.

Mr. Cronin commented that while the site is 40 acres, due to wetland and other restrictions of the parcel, only about 50,000 square feet of industrial use would remain which would include a small amount of lay down area.

Mr. Navaroli shared that he has 35 years of experience with large-scale commercial, with a focus on industrial and office park development. He has personally transacted well over 21 million square feet of real estate, with most of that being in New Hampshire. Mr. Navaroli clarified that he is a partner of this project with interest at stake, but he is well aware of the industrial use market. Mr. Navaroli stated there is about a 5.9% industrial vacancy rate in the State. He believes the greater Concord area probably has about 250,000 to 300,000 square feet of industrial vacancy. Based on absorption rates in the State, he believes it may take 9-17 years to absorb the total industrial vacancy space. Mr. Navaroli shared that due to the unique characteristics of the parcel, in his opinion the site is not economically viable for industrial development.

Member Spector-Morgan asked if by adding residential to this industrial zone would it adversely impact the other industrial uses in the area.

Mr. Navaroli responded, again clarifying that his answer is as an expert in the industry and not because he happens to have a vested interest in the development. He does not see an adverse impact to the surrounding industrial uses due to the unique characteristics of this site.

Member Winters asked if Mr. Navaroli has any knowledge of industrial uses which may have been able to fit in this site.

Mr. Navaroli responded that he has not researched this, but is not aware of any. Mr. Navaroli stated, even if a roadway already existed to the parcel, in his opinion the site would not be economically viable for industrial use, which really needs 100,000 square feet to be viable.

Mr. Roberge added that the project initially considered industrial uses in this zone, which included trying to site a 50,000-square-foot use. However due a variety of factors, the industrial component was not working out. Around the same time, they concentrated efforts in a public outreach, and received an overwhelming interest in a mixed-use concept for the entirety of the project, which also fit into the Concord NEXT vision.

Mr. Roberge stated there is a very good natural barrier between this property and all abutters due to wetlands, bluffs, and the rail line.

Member Winters asked about concern that the site would be accessed by a 4,000-foot dead end.

Mr. Roberge responded that there are a number of cases and research done on that criteria, and some communities have moved away from this requirement due to changes in technologies. Mr. Roberge added some elements of this design have been generated through consultation with City staff around this item.

Mr. Lacasse reiterated that they did seek industrial uses for the site but found no interest.

Mr. Cronin summarized the findings of fact provided within the application materials: The public interest spirit and intent of the ordinance is met, citing the standard *Farrar v. City of Keene*, New Hampshire State Statute RSA 672:1, and *Britton v Town of Chester*, summarizing that New Hampshire recognizes the need for affordable housing, and Concord needs to consider the larger community, and not just impacts to Concord. Mr. Cronin also cited that at the Davis Ridge ribbon cutting, the City Mayor praised CATCH housing, that New Hampshire has a vacancy rate of 1.6%, but Concord is as low as 0.3% and 0.4%, and housing is essential to maintain jobs. The balancing test of harm to the applicant versus harm to the public, the cost to build industrial is more than the cost to sell on this property, and if the variance is not approved, industrial use will not move into this parcel, and referenced the testimony of Mr. Navaroli, concluding that asking an owner to wait 20 to 30 years to have their property developed is harm to the applicant. For value, they have provided testimony and information showing that abutting uses are not impacted by permitting residential use at this property. Pertaining to hardship, the configuration and physical features of the lot prohibit feasible development of industrial use, whereas creating affordable housing is a reasonable use.

Mr. Cronin cited the 2-page letter, dated October 9, 2024, prepared by Thomas P. Farrelly SIOR, included with the application materials, and the 2-page letter, dated December 2, 2024, prepared by Mark H. McKeon, as references of support.

Mr. Cronin additionally stated that Mark Fusherair, an economic analysis expert estimated that this project would generate \$353,964 of tax revenue if approved, but if denied and industrial was to be

developed at some point, it would only provide \$80,000 of tax revenue. He also looked into the school concern, and they would attend Merrimack Valley which is experiencing declining enrollment and would have capacity.

Mr. Cronin cited the 2-page letter prepared by Peter Bartash of Port One Companies that identifies the difficulties in develop the site for an industrial use.

Mr. Cronin referenced the 3-page letter of opposition, dated January 8, 2025, prepared by McLane Middleton, on behalf of Wheelabrator Concord Company, L.P, WIN Waste Innovations Company. Mr. Cronin stated that if the plant operates in compliance with EPA and DES regulations, they should pose no threat or harm to any residential development.

Member Winters asked if the City is able to block the sale.

Mr. Cronin stated they do have a purchase and sale agreement from the cooperative currently owning the property, even though the City of Concord, which is a member voted against the agreement.

Chair Carley opened the floor to those in support. No one present testified in support of this application.

Chair Carley opened the floor to those in opposition.

Roy Schweicker (12 Chapel St, Concord, NH) spoke in opposition. His opinion is that there are other industrial uses which could utilize this site. Additionally, he believes that the proximity to the railroad will be attractive to industrial development in the future, which would be wasted by placing residential uses next to it. Mr. Schweicker added that new railroads cannot be built due to their need to be flat and straight, so they are a rare commodity. Also, the site could be used as a solar or wind farm, which is something that you cannot put anywhere either. The need to preserve land close to the power grid and rail is important, and it is a waste to use it as residential. Nor is the land a large tax burden, as it is in current use. Additionally, he cited that he does not believe the costs provided by the applicant consider all the costs and burdens which will be placed on the tax base. Even if kids were present in 10% of the units, the cost to educate school-aged children will greatly cut into the revenue earned by taxes.

Brennon Borque (66 High St, Penacook, NH) spoke in opposition. Mr. Borque stated that the project went from a 900-unit plan to a 100-unit plan. The applicant has vastly downscaled the project and mixed-use component of the project and now does not serve the community.

Michelle Simard (486 Mountain Rd, Concord, NH) spoke in opposition. Ms. Simard echoed the increased burden on the tax base to add the residential component, including maintenance, school, fire, and police expenses not evaluated against the expected increases to the tax base. Ms. Simard is concerned that Concord has so little industrial use, and adding this number of residential units will adversely impact traffic on Mountain Rd and Hoit Rd.

Chair Carley asked for comment from staff.

Matt Walsh (Deputy City Manager) stated he is speaking to supplement the information in the staff report. Per Article 28-10-4 of the Zoning Ordinance, staff had advised the applicant to go forward with a zoning amendment request. Mr. Walsh referenced the City's current 2030 Master Plan, which envisions industrial development at this location, and does not look at the market needs of today, but long term needs of Concord.

Mr. Walsh added that the City is a former member of the cooperative ownership of the parcel, but does have an ownership interest of this parcel, and would receive about a third of the revenue when

or if the property were to sell.

Mr. Walsh stated the parcel is 42.43 acres, has excellent access to Route 4 and I-93, and is quite large for industrial uses relative for Concord. Mr. Walsh cited other industrial uses of similar or smaller sizes, including 2 Whitney Road, 6 Whitney Road, and the abutting incinerator property to the north. Mr. Walsh added that the current owner, the Regional Solid Waste Cooperative, did propose a 61,000-square-foot industrial use, which included access and utilization of the railroad. Mr. Walsh shared with the Board Sheet C-3 *Site Plan Overview* and C-5 *Proposed Site Plan*, of the 35-sheet plan set titled “New Hampshire Cooperative Recycling Facility”, prepared by CMA Engineers, dated April 2009, revised on September 14, 2011.

Mr. Walsh stated that the city anticipates industrial uses at this site due to proximity to the incinerator. Mr. Walsh noted that Concord will continue to grow, and it is important that Concord reserves industrial opportunities.

Mr. Walsh referenced the staff report provided with the agenda, which stated a portion of the site is zoned as open space residential, to protect the river, which among other setbacks includes a 150-foot setback to protect the river. Mr. Walsh added that Concord is about 64 square miles, with 14 of the 17 zoning districts allowing for residential development, which makes about 94% of the City allowed permitted residential development, with only about 4.0% of available industrial use for the City, with only 221 acres of undeveloped industrial land remaining.

Mr. Walsh went on to cite that currently there are 2,352 residential units either proposed or permitted within the City. In 2024 Concord was identified as a housing champion, showing how friendly we are to residential development.

Mr. Walsh referenced New Hampshire State Statute RSA 36:47-2, which requires Central New Hampshire Regional Planning Commission to do a regional housing needs assessment every five years. There are 20 communities that make up that district and Concord is one of them. Mr. Walsh stated that in 2020, Concord had 36.5% of the total population for the region. Concord was just under 38% of the total housing stock but still contributed 58% of the affordable housing in the region.

Mr. Walsh added that this site makes up about 25% of the remaining industrial land the City has left available. A use variance to allow residential would create an island of residential among industrial uses, separated from other residential uses, while also abutting the incinerator plant. This scenario could create land use conflicts in the future, potentially thwarting additional industrial development abutting the residential use if it were to be permitted. Land use conflicts is something not encouraged by the Zoning Code or Master Plan, and is criteria for reviewing the variance.

Mr. Walsh added that public safety is another consideration. Most of the fire departments calls are medical, ambulatory related, and with a 3,000-foot or longer single ingress/egress point, there is potential for harm to future public safety should that access point be obstructed preventing access to the development. Mr. Walsh noted this is an item which will receive more scrutiny before the Planning Board.

Member Winters asked if the Interchange Development required to be rezoned.

Mr. Walsh stated that the Zoning Board did not provide a use variance because the area was rezoned from industrial to gateway performance. This rezoning was consistent with the 2030 Master Plan, which called for a regional commercial node in that location. The property was rezoned around 2020.

Ms. Skinner commented that it is typical planning practice to have a future land use map wherein segments are not rezoned at the time of the future land use map, but are instead rezoned when a

development is proposed that meets the need of that master plan vision.

Member Winters asked Mr. Walsh about the difference of opinion pertaining to the feasibility of industrial development at this site between staff and the applicant.

Mr. Walsh responded that the City has budgeted to begin revising the master plan. This will include looking at the future of the entire City, and locations within the City, depending on what we want certain areas to be, and what infrastructure will be required to make that happen. Mr. Walsh stated the venue to determine the use of an area and zone is through the master planning process.

Chair Carley asked Mr. Walsh about the procedure for rezoning, and one case to make is that the rezoning is consistent with the master plan. Is there anything stopping a developer from making that request?

Mr. Walsh shared that nothing prohibits someone from requesting a rezone, but there are criteria which need to be satisfied, one of which is how the rezone integrates with the master plan. On October 21, 2024, he provided a letter to the applicant outlining the rezoning procedure.

Member Davie asked why the City supports industrial use on what appears to be an environmentally sensitive site.

Mr. Walsh responded that the property has always been looked as industrial, stating that residential also adversely impacts environmental areas, and adding the site may not be as sensitive as being presented tonight by the applicant. The site also consists of open space residential district which provides a good buffer from the river, and the wetlands on the site would be regulated for either industrial or residential.

Mr. Walsh commented that the Concord NEXT project was initiated around 2017. The scope of that project was to specifically look at residentially zoned properties. This property was never going to be rezoned as part of the Concord NEXT process because the scope of work did not include industrial property. Mr. Walsh stated it did not include the property because it would have been inconsistent with the Master Plan.

Mr. Cronin responded, adding the team did approach the City about a public private partnership and rezoning of the land. At the time, the Council responded that they may reconsider if affordable housing was introduced into the project.

Mr. Cronin added that it makes sense that Concord has a larger percentage of affordable housing, as it is a city, with the resources and needs to warrant that type of development.

Mr. Cronin stated this same Board allowed recent dimensional variance relief for a development at the old Steeplegate Mall, despite an objection stating it was against the master plan.

Mr. Walsh responded that the mall project was a permitted use, and came to the Zoning Board for dimensional variance, not a use variance.

Mr. Walsh also added that the City Council goals are to stop Concord NEXT, conduct an interim zoning amendment, and do no more zoning changes until the master plan is updated.

Member Winters stated that almost by definition, a use variance is inconsistent with the master plan. Often, use variances are granted when it is determined the zoned use of the land makes it undevelopable.

Alternate Member Davie added that the Board had recently heard a use variance for NHSCOT.

Member Wallner notes this property has been idle for a long time. Member Wallner said that in the past they have dealt with idle properties by granting the variance.

Member Spector-Morgan stated this is a difficult case, she recognizes there is need for housing, but also that it is very difficult to meet the criteria to obtain a use variance. She does not believe that this site is undevelopable as industrial just because the demand for industrial use on the site is not currently present.

Member Spector-Morgan stated that granting the variance would be contrary to the public interest, would unduly conflict with the ordinance putting residential uses directly abutting an existing industrial use and, in an area, zoned for industrial use, will conflict with the existing industrial use, will adversely impact the development of additional industrial use on the adjacent industrial zoned properties, and will alter the essential character of the neighborhood. A gain is made to the general public by denying the use variance, preserving it for future industrial use, and denial is consistent with the master plan and the City's goals, and is good planning for the City of Concord. Granting the variance would not diminish surrounding property values, but there are not special conditions of the property that distinguish it from other industrial properties that make the site unique. There are lots of properties in Concord which have no frontage and contain wetlands. Additionally, the site is located in close proximity to Route 4, I-93, and the railroad.

Chair Carley stated it is not the job of the Zoning Board of Adjustment to change the zoning, but at times repair parts of the zoning which do not fit in a built-out area. In this case, Chair Carley believes by granting this use variance, it would be changing the zoning character of this area.

Member Spector-Morgan made a motion to deny the use variance, based on the reasons: that granting the variance would be contrary to the public interest, would unduly conflict with the ordinance putting residential uses directly abutting an existing industrial use and in an area zoned for industrial use, will conflict with the existing industrial use, will adversely impact the development of additional industrial use on the adjacent industrial zoned properties, and will alter the essential character of the neighborhood; and, a gain is made to the general public by denying the use variance, preserving it for future industrial use, and denial is consistent with the master plan and the City's goals, and is good planning for the City of Concord. Granting the variance would not diminish surrounding property values, but there are not special conditions of the property that distinguish it from other industrial properties that make the site unique. There are lots of properties in Concord which have no frontage and contain wetlands. Additionally, the site is located in close proximity to Route 4, I-93, and the railroad.

The motion failed due to lack of a second.

Member Winters moved motion, seconded by Member Wallner, to grant the variance from Section 28-2-4(a) *Uses Permitted by Right*, to permit by right residential use in the Industrial District where residential use is not permitted, at the unaddressed Whitney Road site Tax Map 06P 8, because all of the criteria under RSA 674:33 have been met based on the record before the Board, and to adopt the applicant's proposed findings as the Board's findings of fact.

On a vote of 2-3 (2 in favor Member Wallner and Member Winters) and 3 opposed (Member Spector-Morgan, Alternate Member Davie, and Chair Carley), the motion failed.

Member Spector-Morgan made a motion, seconded by Alternate Member Davie, to deny the variance from Section 28-2-4(a) *Uses Permitted by Right*, to permit by right residential use in the Industrial District where residential use is not permitted, at the unaddressed Whitney Road site Tax Map 06P 8, for the following reasons: The variance is contrary to the public interest. The spirit of the ordinance is not observed. Substantial justice has not been done, and the applicant failed to provide

sufficient findings of hardship. The site is developable as industrial even though the demand for industrial use on the site is not currently present. Granting the variance would be contrary to the public interest, would unduly conflict with the ordinance putting residential uses directly abutting an existing industrial use and, in an area, zoned for industrial use, will conflict with the existing industrial use, will adversely impact the development of additional industrial use on the adjacent industrial zoned properties, and will alter the essential character of the neighborhood. A gain is made to the general public by denying the use variance, preserving it for future industrial use, and denial is consistent with the master plan and the City's goals, and is good planning for the City of Concord. There are no special conditions of the property that distinguish it from other industrial properties that make the site unique. There are lots of properties in Concord which have no frontage and contain wetlands. Additionally, the site is located in close proximity to Route 4, I-93, and the railroad.

Findings of Fact

Granting the variance would be contrary to the public interest because it would unduly and in a marked degree conflict with the zoning ordinance putting residential uses directly abutting an existing industrial use and in an area that is zoned for industrial use. This will conflict with the existing industrial uses and future industrial uses as residential residents will likely object to those uses as incompatible with their residential use.

The spirit of the ordinance would not be observed because it would alter the essential character of the neighborhood that is there now and potentially will be there in the future. It would unduly and in a marked degree conflict with the zoning ordinance by putting residential uses directly abutting an existing industrial use and in an area that is zoned for industrial use.

Substantial justice would not be done where the variance would alter the essential character of the neighborhood that is there now and potentially will be there in the future. It would put conflicting uses directing abutting one another. There is a gain to the general public for denying the variance because the industrial zoned property is preserved for future industrial use and that is consistent with the Master Plan and with the City's goals and good planning for the development of Concord.

Granting the variance would not diminish the surrounding property values based on the evidence presented at the public hearing and in the submitted materials.

There are no special conditions of the property distinguishing it from other properties in the area that make it uniquely burdened by its industrial zoning. The site does contain wetlands and has a lack of frontage, but there are many properties in Concord that do not have frontage and that have wetlands. The property has characteristics that are good for industrial properties, including proximity to Route 4 and immediate proximity to I-93. While there is not a direct connection to the nearby railroad, at least one plan has been presented in the past showing such a connection is possible.

On a vote of 3-2 (3 in favor: Chair Carley, Alternate Member Davie, and Member Spector-Morgan; 2 in opposition: Member Wallner and Member Winters), the motion passed.

- 4.4 Michael G. and Eileen M. Gfroerer request approval for a variance from Section 28-4-1(e) *Dimensional Standards Maximum Lot Coverage*, to allow 78.3% lot coverage where 50% is the maximum allowed, at Tax Map Lot 7322Z 51, addressed as 11 Summit St, in the Neighborhood Residential (RN) District. (ZBA 0241-2024)

This item was moved up on the agenda and heard as the first public hearing ahead of item 4.1 on the agenda.

Chair Carley recused himself due to a conflict of interest related with the applicant. Member Monahan assumed the role of chair during the chair's absence.

Member Wallner recused himself due to a conflict of interest, having had discussions with the

applicant about the case.

Mike Gfroerer (12 Tahanto St, Concord, NH) was present to represent the application.

Mr. Gfroerer shared that he was previously before the Board for variance relief to allow for a lot line adjustment at this location and received relief for setbacks to the rear lot lines. His original filing with the Board at that time sought this variance for lot coverage. However perhaps due to a clerical error, a variance for lot coverage was not considered at that time and has since prevented his lot line adjustment application from continuing with the Planning Board.

Member Spector-Morgan asked why the applicant seeks relief to allow 55.7% lot coverage relief while the agenda item states 78.3%.

Ms. Skinner replied that the 78.3% is what was tabulated as part of the lot line adjustment application submitted with the Planning Board.

Mr. Gfroerer replied that this adjustment is to reflect the use of the properties for the last 40 years.

Member Spector-Morgan moved, seconded by Member Winters, to grant the variance from Section 28-4-1(e) *Maximum Lot Coverage*, to allow 78.3% of lot coverage at 11 Summit St where 50% is the maximum allowed, 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 proposed findings of fact as the Board's finding of fact.

Findings of fact

1. Granting the variance would not be contrary to the public interest because:

This application is intended to clarify variances previously granted in connection with Applicant/Owner's prior application for lot line adjustment between 11 Summit and 12 Tahanto Streets, See ZBA-0200-2024 and ZBA-0207-2024.

An area variance will not be contrary to the public interest, and have no effect whatsoever on abutters or the general neighborhood. This is an old and compact part of Concord where many existing properties vary from set back and area requirements of the modern zoning ordinance.

2. If the variance were granted, the spirit of the ordinance would be observed because:

Granting the variance will be consistent with observing the spirit of the ordinance by reflecting the true functionality and actual usage of the yard area between 11 Summit and 12 Tahanto, and correcting an anomalous boundary line which is functionally of little or no meaning.

3. Granting the variance would do substantial justice because:

Substantial justice is done by granting the variance because adjusting the lot line merely affirms the actual usage of the portion of property to be annexed to 12 Tahanto and corrects an anomaly in the existing boundary between 11 Summit and 12 Tahanto.

4. If the variance were granted, the values of the surrounding properties would not be diminished because:

The granting of this variance and the proposed lot line adjustment in the furtherance of renovating 11 Summit enhances rather than diminishes the values of surrounding properties. A tired 100+ year old house previously converted into two garages and a second floor flat is being restored into a modern and spacious 3BR home.

5. Unnecessary Hardship

- a. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:
 - i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property;
and
 - ii. The proposed use is reasonable

Literal enforcement of the ordinance would result in unnecessary hardship if the variance is not granted. 11 Summit and 12 Tahanto are in common ownership: prior to August 2022 they were separately owned. The existing boundary between the two parcels is six feet or less from the back of the Tahanto house. This does not reflect the historical (at least the past 47 years) and reasonable usage of the area between the two houses, which has always been considered part of the 12 Tahanto yard. This has been reflected in the construction of a sidewalk, placement of flower beds, and continuous maintenance and use of the area by the owners of 12 Tahanto, all with the consent of the owners of 11 Summit.

Not to grant the requested variances to allow a lot line adjustment would work an unnecessary hardship in that the conveyance of the Summit Street parcel would functionally take away the back yard of the Tahanto Street parcel. Other than adding to the Summit Street footprint, the area in back of the house has little or no functional value to 11 Summit. There is no egress from the north (side) or west (Back) of the house, and the back windows on the first floor are all high. In addition to the porch and front entrance on the east (Summit Street) façade, the second door on the south façade faces the yard for 11 Summit at the end of the lot.

The proposed variances relate solely to area and set back requirements as between 11 Summit and 12 Tahanto, both of which are owned by Applicants, and do not affect the use of the property. There is no injury or effect whatsoever to the public or private rights of others, including abutters.

All in favor on a vote of 4-0. The motion passed.

5. **Review and acceptance of Minutes from December 4, 2024**

On a motion made by Member Wallner, seconded by Member Winters, the Board voted 4-0, with Member Spector-Morgan abstaining, to approve the minutes from December 4, 2024.

6. **Any other business that may legally come before the Board**

7. **Adjourn**

On a motion made by Member Wallner, seconded by Member Spector Morgan, the Board voted 5-0 to adjourn at 9:31 PM.

Respectfully Submitted,

Alec Bass

Assistant City Planner – Community Planning