

RICHARD D. BARTLETT & ASSOCIATES, LLC

LICENSED LAND SURVEYORS

EST. 1973

Tel: (603)225-6770

214 NORTH STATE STREET
CONCORD, NH 03301

info@richarddbartlett.com
www.richarddbartlett.com

Mark C. Sargent, LLS - Manager
Daniel J. Mullen, LLS

November 15, 2024
City of Concord
41 Green Street
Concord, NH 03301
Attn: AnneMarie Skinner, Planner

Project: Lot line adjustment 115 & 119 River Road, Map 32Z, Lots 56 & 58- Estates of Helen & Jesse Murray

Dear Ms. Skinner and members of the Planning Board,

The application being presented to the board is for a Lot Line Adjustment between 115 & 119 River Road, Lot 56 and Lot 58, respectively. Both lots are owned by the Murray family by separate trusts in the name of each Estate listed above. Lot 56 is a 76+ acre parcel that is the location of Murray Farms Greenhouses. Lot 58 is an existing non-conforming lot of just over 1 acre and contains a single-family dwelling and small sliver of land between River Road and the Contoocook River.

The current lot configuration poses a hardship whereas the property line surrounding the dwelling runs directly through portions of the greenhouse used by the family business and the main access to the farm operation runs directly across the south side of the residential lot. The applicant wishes to separate the business and the residence by adjusting the lot lines between the existing residential dwelling (Lot 58) and the commercial greenhouses (Lot 56) associated with Murray Farms.

The proposed configuration revises the lot lines to run between the greenhouse and the dwelling and moves the current southerly line of Lot 58 to a point northerly of the farm access drive so it be included as a part of Lot 56, and not require an access easement.

To achieve this configuration, the applicant applied for, and received several variances on June 5, 2024 to allow for reduced setbacks between the buildings and to allow for a smaller lot size than required by the zoning ordinance, which are noted on the included plan. The land abutting the Contoocook River on the west side of River Road will remain a part of Lot 58. The plan, as submitted, is based upon those variances and allows the entities to be separated for insurance and estate planning purposes. (ZBA cases 0173-2024 & 0188-2024)

Respectively submitted,



Daniel J. Mullen, LLS

Site Pictures



119 River Road West Face (Lot 58)



119 River Road East Face (Lot 58)



115 River Road South Face (Lot 56)



View west to Contoocok River (Lot 58)



115 River Road West face of Greenhouses



RICHARD D. BARTLETT & ASSOCIATES, LLC

LICENSED LAND SURVEYORS

EST. 1973

Tel: (603)225-6770

214 NORTH STATE STREET
CONCORD, NH 03301

info@richarddbartlett.com
www.richarddbartlett.com

Mark C. Sargent, LLS - Manager
Daniel J. Mullen, LLS

November 18, 2024
City of Concord
41 Green Street
Concord, NH 03301
Attn: AnneMarie Skinner, Planner

Re: Waiver requests

Project: Lot line adjustment 115 & 119 River Road, Map 32Z, Lots 56 & 58- Estates of Helen & Jesse Murray

Dear Ms. Skinner and members of the Planning Board,

Our firm prepared the Lot Line Adjustment plan for the above noted project.

Whereas, given the nature of the circumstances which prompted the reasons for said plan, and no improvements are anticipated, and we are hereby requesting waivers to several Subdivision Regulations which we believe would be irrelevant, and/or provide little or no informational benefit to the Planning Board and the general public. Granting the waivers would not change the character of the neighborhood, nor diminish surrounding property values and would not be contrary to the spirit of the ordinances.

Specifically, we hereby request waivers of the following Subdivision requirements:

- Section 12.08(3) Topography
- Section 12.08(10) Municipal Utilities
- 12.08(18) Lighting
- 12.08(23)(c)(d) & portion of Appendix B-Partial request, for coverage calculations on Lot 56-not surveyed, Lot 58-Useable land cannot be shown due to smaller lot size allowed by variance
- 15.01(3) Wetlands
- 15.03(11) Municipal Sewer (Not available at site)
- 15.03(13) Municipal Water Supply (Not Available at site)
- 15.03(15) Other utilities

Justifications

1. The granting of the waivers will not be detrimental to the public safety, health, welfare or injurious to other property.

Omitting the above listed items will have no impact to surrounding properties, whereas, there will be no material site changes.

2. The conditions upon which the request for a waiver is based are unique to the property for which the waiver is sought and are not applicable generally to other property.

The current lot configuration is such that the property line for the residential lot runs through a commercial greenhouse. This condition does not appear on surrounding properties.

3. Because of the particular physical surroundings, shape or topographical conditions of the specific property involved, an unnecessary hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of these regulations are carried out.

Due to the current residential lot line bisecting a commercial building it presents a hardship to both properties for marketability, estate planning, and insurance purposes. To include all items being requested would not provide any relevant information to achieve the end result and would be an unnecessary burden to the applicants.

4. Specific circumstances relative to the subdivision or conditions of the land in such subdivision indicate that the waiver will properly carry out, or not be contrary to, the spirit and intent of these regulations.

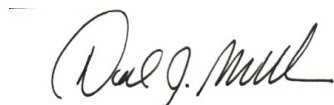
For the waivers being requested, the information required would not provide any relevant or useful information in order to allow the applicants to enjoy reasonable use of the properties and would not be contrary to the intent and spirit of the ordinance.

5. The waivers will not in any manner vary the provisions of the Zoning Ordinance, Master Plan Reports or Official Map.

The proposed waivers will not in any manner vary the provisions of the Zoning Ordinance, Master Plan or Official Map.

Thank you for your attention to this matter.

Sincerely,



Daniel J. Mullen, LLS



CITY OF CONCORD

New Hampshire's Main Street™
Zoning Board of Adjustment

SEE PAGES 7
THROUGH 9 FOR
RELEVANT
CASES 0173-2024
AND 0188-2024

June 5, 2024
MEETING MINUTES

Attendees: Chair Carley, Nick Wallner, James Monahan, Laura Spector-Morgan, Brenda Perkins,

Absent: Tedd Evans, Andrew Winters, Mark Davie

Staff: David Hall, Code Administrator
Deborah Tuite, Board Secretary

Meeting commenced at 6:00 pm.

- 1) Call meeting to order
- 2) Chairperson's comments
- 3) Public Meeting
- 4) Public Hearings
- 5) Review and acceptance of Findings of Fact
- 6) Review and acceptance of Minutes
- 7) Any other business that may legally come before the Board

PUBLIC MEETING

Case 032-22 132 Warren St; RN - *Neighborhood Residential*, Owner:
CHRISTOPHER HIGMAN

Owner requests an extension of a variance granted to allow for a wider driveway width and separation.

Chair Carley stated that the Board does not need to hold a hearing in this case.

Christopher Higman testified. He stated that nothing has changed since he came before the Board two years ago. Mr. Higman stated that it was an ongoing project and due to the rainy weather last year it was difficult to schedule.

DECISION: The Board agreed to move to approval.

A motion was made to approve a one-year extension on the variance by Mr. Wallner, seconded by Ms. Perkins; passing unanimously.

PUBLIC HEARINGS

0169-2024

24 Pierce St; RD – *Residential District*, Owners: MOMENTUM PROPERTIES LLC

The owners are requesting a Special Exemption according to article 28-2-4 (A) 15 to operate a Rooming House (Sober Living Facility) in a Residential District.

Article 28-5-6 allows for up to 10 individuals, applicant is proposing max of 6 individuals.

Attorney Joseph Prieto, testified, on behalf of Momentum Properties. He stated that the appellant is asking for a Special Exception to operate a rooming house, and mentioned that he had submitted a supplement to the application asking for reasonable accommodations under HSA Housing guidelines.

Ms. Spector-Morgan asked if there is a variance request as well.

CODE: Mr. Hall explained that they need a Special Exception and not a variance.

Mr. Monahan inquired as to the duration of the stay of the residents.

Attorney Prieto stated that it is a sober living facility, where residents go through programs and attend meetings. It is not intended to be a lifetime stay, possibly a year or two to get on their feet, look for housing and work. He mentioned that it is a four-bedroom house with six people who are looking to move forward with their lives.

Ms. Spector-Morgan asked if the property was on City sewer and water?

Attorney Prieto stated he was uncertain.

Ms. Perkins asked the Board for clarification as to why they needed the Special Exception.

Chair Carley stated that all rooming houses require a Special Exception.

Attorney Prieto mentioned that he had the opportunity to speak with a neighbor, and that the intent is to have a house manager living there to be able to handle any problems in the neighborhood. The sober living facility will be a certified facility. He had reached out to the Concord Police Department and mentioned that there are a few rooming houses in the area, with some issues, but nothing to do with his client. He also asked if there had been any police contact for this property; there were two calls in 2023, and none in 2024.

Ms. Spector-Morgan asked how long the facility had been there.

Attorney Prieto stated that he was not sure, but believes about a year.

Chair Carley asked Code if there are any zoning related requirements other than the use.

CODE: Mr. Hall stated other than the Special Exception, there cannot be any more than 10 individuals, and it does not require site plan approvals.

Ms. Spector-Morgan asked Attorney Prieto if they were under contract with the State to provide the services.

Attorney Prieto stated they were not.

In Favor: None.

In Opposition:

Joe and Brenna Scully testified. Mr. Scully stated that they are neighbors on 34 Laurel Street. They are concerned about the potential drug use and violence that could creep into the neighborhood. They had a meth addict approach their property, threatening him and his daughter, which resulted in the police being called. They did some research on Momentum Properties, stating it was incorporated in 2021, and is described as lessors of residential buildings, rather than being a residential mental health and substance abuse facility or a drug addiction rehabilitation facility. The principal address is Bedford NH, which is a million-dollar residential property. He stated that they feel that they are getting an appeal from someone from a different town who is trying to open a facility in Concord, and why not open this facility in Bedford. This is a small 1200 sq. ft. home with four bedrooms for six adults. He stated that he does not see a reason why this should be granted. Mrs. Scully stated that they are hoping the request is denied, as this is more transient in nature and it would not be their preference as this is a small neighborhood with children. They mentioned that if Momentum wants to rent this house out, why not rent it to a family to generate some rental income.

Ms. Spector-Morgan asked if the person who approached their property was from this house.

Mr. Scully stated that he was not sure. He had contacted the police and they mentioned that he would need to submit a records request to glean more information, which he had not done.

Ms. Perkins asked Code what the square footage was.

Code: Mr. Hall stated that it is 1284 sq. ft.

Tony and Maggie Keane, 9 Pearce Street, testified. Mrs. Keane prefaced her testimony stating that she works with the very demographic that ends up in sober living facilities. She stated that working in criminal defense, it is not uncommon to acquire housing for people in her line of work. She stated that she has a unique perspective on sober living facilities, which are highly unregulated with an immense amount of turnover. She stated that most of them are money grabs, charging hundreds of dollars a week per person in rent. They live in a neighborhood with many children who will grow up and become very impressionable. She felt this was not the place for a sober living facility, and that it is not a supervised family unit. It is a transient location typically for people exiting drug treatment, with minimal periods of sobriety under their belt. People in drug recovery often relapse which can result in other crimes spilling into the neighborhood. Momentum Properties is a landlord. The Special Exemption application indicates nothing about this facility being certified or how it is regulated. They have stated that they have been operating for a year without a license. There were additional calls for service according to the FOIA request, including a criminal threatening in Dec 2022, an overdose in 2022, and a building check in 2021. Before that there were no calls for service in 10 years. She felt it was a mischaracterization that if the Board were to deny this application that it would be contradicting the ADA, or discriminatory, as it does not apply to requesting to turn a residential house into a sober facility. She stated that she respectfully disagrees that this would not affect the values of surrounding properties, as no one would want to buy a house next to a sober house. She asked that the Special Exception be denied and that they cease business immediately.

Chair Carley clarified that the Board has limited power constrained by the ordinance, and that the Board can only base their decision on the nine criteria for a Special Exception for a rooming house and not the actual use itself, or who is in the building.

Bethany and Michael McKilen, 31 Laurel Street, testified. Mrs. McKilen spoke about the importance of sober living and addiction recovery. She reviewed the Special Exception criteria for rooming houses, and the spirit and intent of the ordinance in residential districts. She felt that the problem is that the concerns only need to be addressed once by the original owner, and then the next owner might not have the same intentions, with no clear process to rescind moving forward. Unregulated, poorly run sober living facilities have begun to show up in cities across the country, and they are run by greed rather than a true desire to help those in need and to the detriment of the area residents. She mentioned 115 Pearce Street as an example of a poorly run facility, stating that there are ambulances called often, raised noise levels, refuse thrown about, 8-10 people frequently smoking on the backdoor landing, as well as a police cruiser regularly parked across the street. She is concerned about the future of their neighborhood and urged the Board to consider that there is a Special Exception for a reason.

Mr. Monahan asked about the nine criteria, mentioning the use, asking for clarification.

Ms. Spector-Morgan stated that the use is the rooming house.

Chair Carley mentioned that the Special Exception requirement includes the determination that the use is a rooming house.

Dave Palmer, 22 Pearce Street, direct abutter, testified. He mentioned that since 2020 there have been people that have walked into their home from this property and they have had to call the police. There has been no one to contact to help them with the issues. He is very concerned.

Mark Warren Redman Jr., 41 Perley Street, testified. He stated that he has the same concerns as the others. He is concerned that they are asking permission in hind sight, as it has been operating for over a year. Once this is changed to a rooming house, he asked what the process is to undo that.

Chair Carley stated that once they are granted a Special Exception, it is forever.

Mr. Redman stated that he is not in favor of the Board granting the Special Exception.

Barbara Bell, 45-47 Perley Street, testified. She stated that she understands that people with addictions need support. Her question is what program or organization will be running the facility and where is the oversight. She stated that the property owner probably figured out that it is more lucrative to rent out to this client base instead of a family. She discussed the spirit and intent and asked if the master plan addresses this type of facility. She stated that she is in opposition. This house only has one bathroom, and not sure how that would be inspected.

Code: Mr. Hall mentioned that if it were approved, Code Administration would issue a City license, which requires an annual inspection from Code and the Fire Marshall.

Ms. Bell stated that last summer 115 Pearce Street was operating as a sober living facility and she is unsure if it is licensed. This means that there could be two in a neighborhood, on a narrow street in a residential neighborhood. She also stated that she became sober 37 years ago and that it was hard work. Her heart is with those that want to get sober, but sometimes there are too many programs and concerned with the success rate.

Attorney Prieto stated that he understands the nature of sober living and the challenges it presents. The City of Manchester has been sued for denying reasonable accommodations. They are not packing this in for a money grab and it is a reasonable accommodation. They had laid out the criteria as far as the police and utilities, with only two or three incidents per year. He asked that this applicant not be held accountable for the boarding house issues across the street. They have done everything that they could to be a good neighbor, including renovations.

Ms. Perkins asked Code if they are bound to a maximum of six residents. She asked when they purchased the property was this their intent and why didn't they come to the Board at that time.

Code: Mr. Hall stated it was presented as six and would be conditioned to six.

Attorney Prieto stated that he was unsure of their overall goal initially. He stated that this was not about profitability, as they could have up to ten and are asking for six.

Ms. Spector-Morgan asked who the certification is from.

Attorney Prieto stated that it was in the package, but he was unsure.

Ms. Spector-Morgan stated that she did not have anything in the packet, as it was a rather small packet.

Code: Mr. Hall clarified that the State has been offering some approvals, regardless of where it is being located, and sometimes the City hears about these certifications. When the City hears, they reach out and inform the property owners of the City of Concord requirements, which happened in this case. The City is also aware of 115 Pearce.

Mr. Monahan asked for clarification, in that the Board is looking at this as a rooming house, and that they should be indifferent that this is a sober living facility. However, the application seems to rely on that aspect, and Attorney Prieto is suggesting that because they are relying on that there are federal accommodations that the Board is supposed to be mindful of. He stated that it strikes him that if there is a case for a Special Exception that the Board should have received more information about the nature of a sober living facility and what the criteria are.

Attorney Prieto stated that sober living individuals have been determined to have a disability under the Fair Housing Act, and federal law requires that there should be a reasonable accommodation, and that process is separate and distinct than the special criteria. There are two scenarios: The Special Exception; and a reasonable accommodation scenario for people with disabilities. The issue is whether six people in the facility is a reasonable accommodation.

Mr. Monahan felt that there was not enough of a record given around the accommodations.

Attorney Prieto stated that it can be approved with the Special Exceptions, and that it meets all nine aspects of the criteria. In addition, it has to have reasonable accommodations, and under FHA and the Federal Housing Act, they believe that having six people in a four-bedroom house is a reasonable accommodation.

Mr. Monahan asked what relief they would look for if Attorney Prieto believed the Board did not consider reasonable accommodations enough, knowing that Mr. Monahan does not believe the Board has enough of a record.

Attorney Prieto stated that if the Board were to deny, they would file a federal law suit.

Mr. Monahan asked what happens to the operations of the facility while it is being litigated.

Attorney Prieto stated that they would get an injunction, as has been done in Manchester.

Ms. Spector-Morgan asked if Attorney Prieto's ADA claim is a claim that they really don't need a Special Exception, that it is a single-family home.

Attorney Prieto agreed, stating that he went through the criteria, and as far as the ADA it is a reasonable accommodation, and if the Board didn't find it as a reasonable accommodation it would result in a significant lawsuit. Six people in a four-bedroom situation is reasonable when

it could be ten, which is allowed by right.

Ms. Spector-Morgan pointed out that they didn't apply for an Administrative Appeal.

Attorney Prieto stated that they have not been denied.

Ms. Spector-Morgan reiterated that they did not apply for an Administrative Appeal in case the decision needed a Special Exception.

Attorney Prieto again stated that they had not been denied anything to file an Appeal.

Ms. Spector-Morgan stated that if someone decided that they needed a Special Exception, that he did not file an Appeal of that decision.

Attorney Prieto stated that he was not sure he was following, and that they didn't apply for Appeal.

Code: Mr. Hall agreed that Ms. Spector-Morgan was correct, and that it was identified that it needed a Special Exception and that was not contested.

Mr. Monahan asked if the appellant had been operating a sober living facility under the presumption that they didn't need a Special Exception.

Attorney Prieto stated he was not sure of the exact history, and that he was recently retained. He mentioned that there is pending state-wide litigation around what a rooming house is, and that laws might change in the next 60 days. The State is trying to define what a rooming house is and what a sober living facility is.

DECISION:

Chair Carley stated that there was extensive testimony about the concerns around the use of the Special Exception, and what the use means in the context of the request.

Mr. Monahan stated he is struggling, as he did not see a strong record created as to why it was necessary, balanced with the nature of the neighborhood.

Ms. Spector-Morgan stated that it would have been a much cleaner application if there was no mention of a sober living house, or if an Administrative Appeal of the Special Exception had been filed. Recovering addicts are protected under ADA, and there is a line of cases that talk about facilities that would otherwise be provided by the State. If this were certified with the State and providing services for the State, they would not be here. She mentioned that she did not hear any evidence of that, and in her opinion that the Board needed to look at it as a rooming house and that they needed to look at it as if it were occupied by anyone in the future. She pointed out to remember that Special Exceptions are for a use that is permitted if the criteria of the Special Exceptions are met. In this situation, the Board heard a lot of concerns from the abutters around three of the criteria; Whether it will create an excessive demand on the police. What the Board heard was that there were two or three calls to this property every year, which in her opinion is not excessive; Whether it will create a hazard to the health, safety, or general welfare of the public; And not be out of the character of the adjacent neighborhood; and if the location is appropriate for the requested use. She stated that the concerns the Board heard were largely speculative, and in her opinion, there would be six people and it would be a residential use, and that it is appropriate. She stated that she felt that the SE criteria has been met.

Mr. Wallner stated that he was concerned around the criteria of number seven, being out of the character of the adjacent neighborhood. However, he also stated that they could have six college students instead. He understands the pain of the neighborhood, but as far as the criteria of the

Special Exception there is not much wiggle room.

Ms. Perkins stated that she is concerned with criteria four and seven, specifically around the concern for additional calls with this property compared to having no calls previously. She stated that in her opinion that the Board is being strong armed with a threat of a lawsuit, but they need to look at the merits of the application. The rooming house is allowed. The neighborhood concerns are valid.

Mr. Monahan stated that he is struggling as far as Ms. Spector-Morgan's interpretation around the scenario of friends living in a home.

Ms. Spector-Morgan asked Code if she had a house and had a few friends living there, would it be classified as a rooming house?

Code: Mr. Hall stated that if there are four to six separate checks coming in it would be classified as a rooming house.

Mr. Monahan stated that he wanted to better understand the ADA issues, and suggested to table the case to hear from the City Solicitor.

Chair Carley stated that just because the appellant raises a question in the application, doesn't make it germane. In this case, he does not feel the ADA component is germane. He feels the Board has to look at whether a rooming house is appropriate for this location, and it doesn't say anything in the definition about who lives in a rooming house. He reiterated that the ADA component is not germane, and that he is not concerned with what risk he is running under the ADA requirements. He feels that the anxiety of the abutters arises from a possible gap in the ordinance in that the specific use proposed for this rooming house is not regulated. He feels the Board can act on the case with the information at hand.

A motion was made to table the case by Mr. Monahan, seconded by Ms. Perkins; failing by a vote of 2-3.

A motion was made to approve the Special Exception by Ms. Spector-Morgan, seconded by Mr. Wallner; passing with a vote of 3-2, with Mr. Monahan and Ms. Perkins in the minority.

The following two cases were heard together.

0173-2024

119 River Rd. RO – *Open Space Residential*, Owners: MURRAY HELEN B REVOCABLE TRUST 1991

Applicant is requesting a Lot Line Adjustment in order to separate the residence from the business use of the lot and is requesting a variance from:

Article 28-4-1(h) for a setback of 8' where 40' is required.

Article 28-4-1(h) for a lot size of approximately .6 acres where 2.0 acres is required.

0188-2024

115 River Rd, RO – *Open Space Residential*, Owners: MURRAY HELEN B REVOCABLE TRUST 1991

Applicant is requesting a Lot Line Adjustment in order to separate the residence from the business use of the lot and is requesting a variance from:

Article 28-4-1(h) for a setback of 15' where 40' is required.

Grady Crews testified for cases 0173-2024 and 0188-2024. He stated he is the trustee for both trusts of the two properties. He is trying to untangle the two properties. He stated that when his mother-in-law and father-in-law set up their estate plan, they divided it into two trusts in order to divide assets, and subdivided the property right through the greenhouses, with no clear understanding as to why. He stated that the farm operation driveway runs through the residential property for access to the farm and greenhouses, and discussed his proposal for the new property lines. The very narrow river frontage piece would stay with the residential lot, and the lot would still be just over an acre in the proposed configuration.

Mr. Wallner asked what the proposed lot lines would look like.

Mr. Crews pointed out the proposed lots. He stated if he were to convey the farm or the house, that he would have no way of doing that in the current configuration because of the lot lines.

Ms. Perkins asked if there was a right-of-way.

Mr. Grady stated that there is no right-of-way, as the Murray family had been farming for over 100 years. The issue was created because they were trying to divide the estate.

Mr. Monahan asked if the green houses were built after the lot lines were established.

Mr. Crews stated that the greenhouses were already there.

In Favor: David Murray, testified, who is the 4th generation of the family to be farming at the location. He stated that the residence was built 80 years ago, and the green houses were built 40 years ago, before regulations and setbacks. Family farms worked differently back then, which leaves issues now. He operates the business and is a beneficiary of the trusts, and agrees with making the residence a separate lot. He mentioned that they may not be within the guidelines today, but many of the lots on the street were formerly cottages with very small lots, so it would not be out of character. 60 years ago, this was a small operation and it morphed into a larger operation about 40 years ago.

Leon LaFreniere, 141 River Road, testified. He mentioned that he has had a long career as a Planner, stating that this is the very reason why ZBA processes were designed by State statute. He stated that the unique circumstances of this property warrants the Boards consideration. He supports the request.

In Opposition: None.

Code: Mr. Hall stated that the City agrees with the application, as it frees up the residence from the farm.

DECISION:

Mr. Wallner would move to approval.

Mr. Monahan agreed.

Ms. Spector-Morgan stated that special circumstances exist, and that a necessary hardship would be imposed by a literal application as they would not be able to convey a portion of a greenhouse. There would be no justice in enforcing the ordinance in this case, it will not change the character of the neighborhood, and it will not diminish surrounding properties values. She would be in favor of granting the variances.

Ms. Perkins agreed.

Chair Carley agreed.

A motion was made to approve all the variances for both cases by Mr. Wallner, seconded by Ms. Spector-Morgan; passing unanimously.

0178-2024

309 Sheep Davis Rd, GWP – *Gateway Performance*, Owners:
PLUMMER ROBERT B & BARBARA M

Applicant is looking to install a 3rd sign on front of building and requests a variance from:

Article 28-6-9 (a) Table of Maximum Sign Dimensions for Non-residential Districts to allow a total of 125 sq. ft where 65 sq. ft is allowed.

Kendra Price testified, stating that W. D. Matthew Corporation needs to put up a sign to advertise. The sign was sent to them by the corporation and they would like to install it.

Ms. Spector-Morgan asked why the sign needed to be that size.

Ms. Price stated that it was already made, and sent by the corporation.

Mr. Monahan mentioned that there have been other similar cases, and asked if it this like other franchises with sign requirements.

Chair Carley asked if she understands the requirements of the variance.

Ms. Price stated that she is still learning.

Chair Carley stated that the characteristics of the lot or building are part of the criteria that affect whether there is a hardship. He mentioned that the building is on Sheep Davis Road, and asked if the building is all by itself, and set back. He also asked if it would be difficult to see a smaller sign, driving along the road.

Ms. Price stated that the building was all by itself, and that it would be hard to see a smaller sign.

Mr. Monahan asked if there is a sign on the left and a sign in the middle.

Ms. Price confirmed.

Mr. Monahan asked if there will be customers that are trying to find the location, and a smaller sign would be more difficult.

Ms. Price stated that the sign is required, and that it would be more difficult to see.

In Favor: None.

In Opposition: None.

Code: None.

DECISION:

Ms. Perkins stated that she does not have an issue as it sits back quite a bit from the road, and considering the speed on the road.

Ms. Spector-Morgan was fine with approving the variance.

Mr. Monahan stated that public safety is important and he would be in support.

Mr. Wallner stated that although it wasn't stated, the hardship was evident in terms of visibility.

Chair Carley agreed. He noted that Ms. Price mentioned that she was new to the business. Since she may well come back in the future with similar requests, he strongly recommended that she look at the criteria for a variance and the rationale for approval and present that to the Board rather than saying this is what her client would like to do and leaving it to the Board to find a reason for approval. He pointed out that the Board would have been well within its boundaries to deny the case based on the application alone.

A motion was made to approve the variance by Mr. Monahan, seconded by Mr. Wallner; passing unanimously.

0180-2024

36 Franklin St, RN – *Neighborhood Residential*, Owners: BERGER DAVID REVOCABLE TRUST

Owners are requesting to add a garage per the attached plans and request a variance from:

Article 28-4-1 (d) (2) Rear Yard to have 15' where 25' is required.

Article 28-4-1 (d) (3) Side Yard to have 5' where 10' is required.

Brian Beach, from Sheepdog Enterprises, testified. The client is proposing a detached garage on the property, which would accomplish a few things. Street parking is very congested. The property is a two-family structure, with fencing on all sides. As to the spirit of the neighborhood, there are seven houses in the neighborhood having similar structures within setbacks, and would conform to the existing neighborhood. It would raise property values, and it would reduce street congestion with the parking. They believe it is good for the City.

Chair Carley asked if there was a structure there now.
Ms. Perkins mentioned that 18 feet wide seems narrow.

Mr. Beach stated that it is narrow, but deeper. They wanted to stay off the right side of the lot line, with a five-foot buffer. They also wanted 11 feet of clearance to get to the backyard.

Ms. Spector-Morgan asked why it can't be closer to the driveway.

Mr. Beach stated that they were trying to keep it with the back corner of the house, so that it looked more appealing. If the garage was brought forward it would narrow the channel between the house and the proposed garage, and the second-floor stairwell entrance is on that side.

In Favor: None.

In Opposition: None.

Code: None.

DECISION:

Ms. Perkins stated that she does not see an issue with the setback variances that are needed, and understands the placement. She would be inclined to support the variance.

Ms. Spector Morgan stated that a garage is a reasonable use, particularly with a two-family house. There are special circumstances, given the configuration of the existing house and the narrow lot, as far as the hardship. It would not alter the essential character of the neighborhood, it will not diminish surrounding property values, and there would be not justice in denying the variance.

Mr. Monahan agreed with Ms. Spector-Morgan, adding it would reduce on-street parking.

Mr. Wallner agreed.

Chair Carley agreed.

A **motion** was made to approve the variances by Mr. Wallner, seconded by Ms. Spector-Morgan; passing unanimously.

0182-2024

1 Humphrey St, RN – *Neighborhood Residential*, Owners: EMMONS MARK W & KIM HWAJA

Owners are requesting to replace the current garage with a larger one and request a variance from:

Article 28-4-1(h) Table of Dimensions to allow a zero setback from the side property line where 10' is required.

Mark Emmons and Hwaja Kim testified. Mr. Emmons stated that they are hoping to demolish their current one car garage and build a slightly larger one and a half car garage, that is one foot from the property line where it sits now. They are looking to stay within the same footprint on the setback side, and build closer to the house. They had an email in support from the abutting neighbor, and provided a copy to the Board. The garage is in rough condition, and probably a liability. He stated that he does not park in the garage at this time.

In Favor: None.

In Opposition: None.

Code: None.

Chair Carley mentioned that there was an email from the neighbor in support.

DECISION:

Mr. Wallner stated that anytime someone replaces a garage in the same footprint, the Board typically approves the variances needed. There is not much difference as it would stay on the current footprint on the setback side. This would be an improvement.

Mr. Monahan stated that aligning it with the current driveway makes sense for the property use and the character of the neighborhood.

Ms. Spector-Morgan agreed.

Ms. Perkins agreed.

Chair Carley agreed that the configuration of the lot creates the hardship.

A **motion** was made to approve the variance by Ms. Spector-Morgan, with a one-foot side setback variance, seconded by Mr. Monahan; passing unanimously.

0186-2024

82 N Main St, CBP – *Central Business Performance*, Owners:
BANGOR SAVINGS BANK

Owners are requesting to install a non-illuminated wall sign above the second story windows on brick façade and are requesting a variance from:

Article 28-6-7 (i) Wall signs will not be located over existing windows or more than 25' above grade.

Article 28-6-9 (a & b) requesting a total of 37 sq. ft. where 26 sq. ft. is authorized.

Glen Schadlick testified, mentioning that the Board had heard a similar case in 2018, case #06-2018, for Bangor Savings Bank. In the previous case, the Board approved a sign that was oversized and above the second story sill because there was a hardship with no area to install a sign due to the uniqueness of the façade. It is the only area that they can place a sign. The proposed sign is similar in shape to Bangor's sign. The dimensions are 2' x 14'6", with letter heights of 12 inches tall. They have a permitted stick out sign that is only 22" x 4', which does not do a good job at advertising. This will increase property values of the surrounding businesses by bringing more attention to the area. It is in the spirit of the ordinance since Bangor Savings was in the same situation.

In Favor: None.

In Opposition: None.

Code: None.

Chair Carley asked Code if it would go to the Architectural Design Review.

Code: Mr. Hall stated that it would.

DECISION:

Mr. Monahan stated that there is something unique about the façade that creates the hardship.

Ms. Spector-Morgan agreed, and further stated that it will not change the character of the neighborhood.

Ms. Perkins agreed.

Mr. Wallner agreed.

Chair Carley agreed, due to the configuration of the facade and that the size is consistent with the nearby buildings.

A **motion** to approve the variances was made by Mr. Monahan, seconded by Ms. Spector-Morgan; passing unanimously.

0187-2024

72 Manchester St, CH – *Highway Commercial*, Owners: SARP REALTY LLC

Owners are expanding the current building (Red Blazer) and are requesting a variance from:

Article 28-7-2 (e) (I) Parking requirements for restaurant with no drive through where 292 spaces are required and the applicant will continue to provide 166 existing spaces.

Attorney Ari Pollack and Chris Nadeau testified. Attorney Pollack stated that SARP is the owner of the Red Blazer Restaurant and they are proposing a three-story addition, for a total of a 970 sq. ft. footprint, and a total of 2,090 sq ft. addition spread over three floors. It will provide upgrades for more efficient food storage and preparation, management offices, utility room space, and employee restrooms. The original building dates to the 1920's. There will not be any additional customer seating areas. It is all back of the house, with no changes to general or accessible parking, and the existing 166 parking spaces will remain. It is in the CH District where restaurant uses are permitted. The traffic pattern would remain the same and there would not be any access to Garvins Falls Road. He mentioned the application includes a conceptual site plan, along with an architectural plan. Due to the proposed addition, the ordinance would require additional parking spaces, however, the existing parking has served the existing facility and customer seating area with no violations. Other aspects of the addition comply with the ordinance. There will be an amendment to the Site Plan review by the Planning Board. There will be no additional restaurant seating, with no additional parking needs, with parking that is already supporting both back office and patrons alike. The ordinance bases parking requirements on the gross square footage of the restaurant and does not distinguish the actual usage. The parking demands have not changed. The property is unique at 2.5 acres, but not quite large enough to meet the ordinance. They tried to keep the number at 166 and not come in and ask for a variance to go under. He stated that they feel it is a reasonable use because it allows an expansion of an existing popular restaurant. The public interest supports a reinvestment in the community, with an important upgrade in the delivery of goods and services, and a better work space for their employees. It is a landmark, and a forum of many events, meetings, and a loyal customer base, with an expansive parking lot.

The spirit and intent would be consistent because the restaurant parking requirements do not distinguish the restaurant from the back office uses, where there will be no additional customers or employees. The values of surrounding properties would not be impacted as the expansion is behind the existing structure, with some new green space. Nothing about this proposal that suggests that the surrounding properties would be treated any differently by the expansion. The same could be said for the parking variance, where the parking demand is unchanged.

In Favor: None.

In Favor: None.

Code: None.

DECISION:

Mr. Wallner stated that the persuasive argument is that the addition does not create any additional customer space and would not affect the current parking arrangement.

Mr. Monahan asked if the non-conformity was because it had been approved for fewer spaces, or because it predates the ordinance.

Attorney Pollack stated it was both.

Mr. Monahan stated he was in favor.

Ms. Spector-Morgan stated that there are no additional customers or employees and she has no problem with the variance.

Ms. Perkins asked if they would approve it subject to that space not being restaurant space.

Ms. Spector-Morgan stated that it was an implied condition of an approval.

Chair Carley agreed.

A motion to approve the variance was made by Mr. Wallner, seconded by Ms. Spector-Morgan; passing unanimously.

0189-2024

21 Jennifer Dr, RM – *Medium Density Residential*, Owners: ALLEYNE BRUCE M

Owner are requesting to add a second driveway on a lot that does not have 250' of frontage and are requesting a variance from:

Article 28-7-8 Access and Driveway Standards – to allow a second driveway without the required frontage of 250'.

Bruce Alleyne testified. Mr. Alleyne provided additional photos to the Board. He stated that he has a hardship, as he lives on the corner of Jennifer Drive. He pointed out the area where he would like to place the additional driveway. He was quoted \$50,000 to build up the area behind his home in order to park the RV on the side of the house. Another option was to build a structure to house the RV which is too much of an expense. The other option was to put in a new driveway to house the RV. He mentioned that the abutters have signed off on the agreement. He pointed out underground utilities on the left of the proposed driveway. On the right of the house sits the septic, the water, and other utilities. The hardship is where to park

the RV because of those placements, as well as the sloping nature of the property. He has 220 feet of frontage, instead of 250.

Chair Carley asked why he can't expand his driveway; was it because of the topography?

Mr. Alleyne stated he would need a variance either way.

In Favor: None.

In Opposition: Christopher Flynn, 18 Jennifer Drive, testified. He stated that he has lived there for over 21 years. There are rules and regulations between the side neighbors of condexes There is no group association, but each condex is supposed to follow the rules and he felt that the residents are not following the rules. There are ordinances with regards to the parking of cars. He mentioned that Mr. Alleyne parked a different motor home on the road, and now he had a bigger RV parked there, which is not allowed in Concord. He stated that Mr. Alleyne has a propensity to buy and sell cars that often are not registered.

Chair Carley asked him to clarify on the addition of the driveway around the frontage issue. He asked if there is any issue that would cause injury to Mr. Flynn.

Mr. Flynn stated that it would be unsightly and is worried that there could be other cars parked there. Lastly, he is worried that it would harm his property value.

Ms. Spector-Morgan asked Code how many of the lots lack the required 250 sq. ft. of frontage.

Code: Mr. Hall mentioned that many of the lots lack the required frontage, pointing out several on the map.

Ms. Perkins stated that each building is an association on its own, and technically they only need approval from the other unit attached to the building.

Mr. Flynn asked for clarification if Mr. Alleyne states that everyone was in favor, is that based on his word.

Chair Carley stated that it does not actually matter because the Board is looking for information and not necessarily how many people are in favor.

Code: Mr. Hall stated that the abutter has signed off.

Code: None.

Mr. Alleyne stated that cars are his hobby and that he owns the other cars on his lot.

DECISION:

Ms. Spector-Morgan stated that she sympathizes with his hobby. She stated that she does not see the hardship. She is concerned about the cumulative impact as far as other lots with the same frontage potentially asking for the same variance. She is not sure if it would diminish the surround property values, but she is also concerned about the substantial justice prong. She stated that she would want to hear from her fellow Board members.

Mr. Monahan stated that this case was not an easy one, but the applicant is trying to address some of those concerns, and there are places by right to put an RV that could be more destructive to the neighborhood. He also felt that in that effort there were hardships by trying to be mindful of the utilities and the grade of the property. He is also concerned that it is just for the storage of the RV and no other vehicles.

Mr. Wallner stated that if they are going to approve the driveway that there is only one place to put it. He is concerned that more vehicles could be a problem and would consider adding a condition for one RV.

Ms. Perkins asked if it would still go to the Planning Board for the size. She feels that getting the vehicle off the road, on the only level spot, would be a more appealing for the community. She can go either way, as the openings were constructed to allow for a four-car garage. The only other way would be to widen the driveway which would also require a variance. She does not feel it would be detriment to the appearance of the neighborhood.

Chair Carley stated that the use is reasonable, and the appellant's desire to park his vehicle where he is proposing is reasonable. The configuration of the property in terms of the topography makes it very difficult if not impossible to create a parking area off to the side of his driveway, which in theory he could do if he didn't face that issue. He feels the criteria for hardship are met due to the configuration of the land and the use is reasonable. He does not feel it would do any damage or diminish the values of his neighbors' properties. He would agree with a limitation on the size of the driveway.

A motion was made to grant the variance, with a condition that it be no wider than 14 feet and that only one RV would be allowed to be parked there, seconded by Mr. Monahan; passing by a vote of 4-1, with Ms. Spector-Morgan in the minority.

0190-2024

66 Warren St, RD – *Downtown Residential*, Owners: EKSTROM HAROLD E

Owners are requesting to convert an existing apartment to two additional rooms for an existing rooming house and are requesting a Special Exception to allow for a 7-person rooming house.

Article 28-2-4 A (15) Section 28-5-6, and a variance to allow for fewer parking spaces than required.

Chair Carley asked Code how much parking is required and how much are they providing.

Code: Mr. Hall mentioned that one space per person is required, and the appellant has three parking spaces.

Harold Ekstrom testified, mentioning that when he bought the property 37 years ago it was a rooming house, and has been for over 50 years. The first floor has one room and a one-bedroom apartment. On the second floor there are four rooms and a shared bathroom and kitchen. He wants to convert a room on the first floor by adding a wall, making two bedrooms. The kitchen and bathroom could then be shared. He mentioned that attached there is an addendum for the Special Exception and the variance request.

Ms. Spector-Morgan and Chair Carley mentioned that there was nothing in the application for the parking variance.

Code: Mr. Hall mentioned to the appellant that he was thinking of doing off street parking.

Mr. Ekstrom stated that he has two people on the first floor now, and a room on the first floor. They currently have seven residents, and there will be seven bedrooms with no real expansion. By making the kitchen and the bathroom on the first floor shared, there would be three people with a shared kitchen and bathroom, and four people sharing on the second floor. There has been a maintenance issues and the house needs renovations. By converting the one room to two rooms, it could help considerably to address maintenance issues, and it helps to create an extra

egress for all seven tenants. He handed in a floor plan.

Chair Carley stated that they would have to table the parking portion because there is no formal application in front of the Board.

Code: Mr. Hall stated that this is a unique case because Mr. Ekstrom has a licensed rooming house for over 30 years. When he came to Code to ask for the variance, it was realized that there was no formal paperwork and that he needed the Special Exception to legalize the rooming house. He had a brief conversation about the variance and was concerned that there may have been some miscommunication.

Ms. Spector-Morgan asked if it was a non-conforming use.

Code: Mr. Hall stated that it may be, but that he would need to read through the ordinance.

Chair Carley asked Mr. Ekstrom for his permission to postpone the consideration of the variance.

Mr. Ekstrom stated that there would be no further demand as far as parking.

Chair Carley stated that they do not expect an issue, but they do need the paperwork.

Mr. Ekstrom mentioned that prior to the ordinance, he was the owner of the rooming house, so it should be grandfathered in.

In Favor: No one in attendance.

In Opposition: No one in attendance.

Code: None.

DECISION:

Chair Carley addressed the Board, explaining that in his opinion it would make sense to address the Special Exception, and table the variance pending further information from Code Enforcement, perhaps to the effect that a variance is not needed. The Board agreed.

Ms. Perkins asked Code for clarification if they were still allowed up to ten individuals.

Code: Mr. Hall stated that was true.

Ms. Spector-Morgan stated that not much is changing with the property, with seven inhabitants now, and seven afterwards. She feels that all criteria are met, and she would be in favor of granting the Special Exception.

Ms. Perkins agreed.

Mr. Monahan agreed.

Mr. Wallner agreed.

Chair Carley also agreed.

A **motion** to approve the Special Exception was made by Mr. Wallner, seconded by Ms. Spector-Morgan; passing unanimously.

A **motion** to table the variance was made by Mr. Wallner, seconded by Mr. Monahan; passing

unanimously.

0191-2024 3 Lincoln St, RD – *Downtown Residential*, Owners: BOMBACI
KASSANDRA CAROLINE

Owners are requesting remove and add a new garage and are requesting a variance from:

Article 28-4-1(h) to allow a rear setback of 5' where 20' is required and a side setback of 4' where 10' is required.

Withdrawn.

OTHER BUSINESS

0155-2024 7 Lyndon St, RN – *Neighborhood Residential*, Owners: MDR REHAB &
DEVELOPMENT LLC

Owners were granted relief in April 2024 from the following to convert their single-family home to a duplex.

Section 28-5-2 to allow 3,920 square feet of lot area where 15,000 are required; Section 28-5-2 to allow Section 47.6 feet of lot frontage where 160 feet are required;

At the time they presented that they had parking for 1 where 4 are required and their variance was denied. They have since been granted a driveway permit and code has verified they have off street parking for four vehicles.

Code: Mr. Hall explained that he wanted to inform the Board that Mr. Hanna was before the Board previously, and that Mr. Hanna made improvements and now can park four cars legally. This has been reviewed by Code. At this time, he no longer needs a parking variance.

A **motion** was made to approve the May 1, 2024, and the May 8, 2024, Minutes by Mr. Wallner, seconded by Ms. Spector-Morgan; passing unanimously.

A **motion** was made to approve the May 1, 2024, and the May 8, 2024, Findings of Fact by Mr. Wallner, seconded by Ms. Spector-Morgan; passing unanimously.

A **motion** to adjourn the meeting was made at 8:42 pm by Ms. Spector-Morgan, seconded by Ms. Perkins; passing unanimously.

Respectfully Submitted by
Deborah Tuite