

**ZONING BOARD OF ADJUSTMENT
JUNE 5, 2013 MEETING
DRAFT MINUTES**

Board members present included Chairman Christopher Carley (conflict with Case 28-13), Nicholas Wallner, Robert Harrison Jr., David Parker and James Monahan. Also present was Zoning Administrator Craig Walker and Clerk of the Board Rose Fife.

17-13 WBIN Media, Inc.: (Request for Rehearing) Applicant wishes to re-develop the former Walker School property from an elementary school to a radio/television media facility (use K-10) and requests the following:
1) Variance to Article 28-6-9(c)(1), Permitted Freestanding Signs, to permit 3 freestanding signs totaling 65 s.f. when 1 freestanding sign of 40 s.f. is permitted,
For property located at 4 Church Street in a IS Institutional District with an HI Historic District overlay.

A motion to recess this case to the July 10, 2013 hearing was made by Monahan, seconded by Harrison and passed by a unanimous vote.

24-13 Timothy Golde for MRT Investment and Development LLC: Applicant wishes to construct 10 attached dwelling units and requests the following:
1) Variance to Article 28-4-5, Development of Attached and Multi-family Dwellings, Section (d)(5), Perimeter Buffers Required, to permit buildings not less than 20 feet from the property lines and to allow parking facilities to be constructed not less than 10 feet from the property lines when a 50 foot perimeter buffer is required,
2) Variance to Article 28-4-5, Development of Attached and Multi-family Dwellings, Section (d)(5), Perimeter Buffers Required, to permit a dumpster pad within the required 50 foot perimeter buffer,
3) Variance to Article 28-4-5, Development of Attached and Multi-family Dwellings, Section (d)(3), Building Dimensions and Separation, to permit parking spaces with no separation from the building where a 15 foot separation is required,
For property located at 95 Loudon Road in an RH Residential High Density District.

A motion to recess this case to the July 10, 2013 hearing was made by Wallner, seconded by Harrison and passed by a unanimous vote.

27-13 William Luneau & Debra J. Sartwell: Applicants wish to legitimize an existing pergola & roof and requests a variance to Article 28-4-1(h), The Table of Dimensional Regulations, to permit a structure with no front and side setbacks where 15 foot front setbacks and 10 foot side setbacks are required for property located at 11 Lyndon Street in an RN Residential Neighborhood District.

Debra Sartwell testified. They built this pergola months ago. They didn't realize that they needed a Building Permit for a pergola. They do not have adequate setbacks to the road or to their neighbors the Dickinson's. This structure would add to the value of the property. They spoke with their neighbors and they do not have a problem with the structure. She submitted a letter signed by abutters on Celtic Street. There are no safety concerns. The properties are tight in the neighborhood. There is not a lot of room.

Parker asked if the deck existed prior to the pergola. (Yes.) Carley asked if they have been through a winter with this yet. (Yes.)

In favor: A letter read into the record signed by Theodore Dickinson of 3 Celtic Street, Jason & Chrissy Rose of 6 Celtic Street and the Hartwell's of Celtic Street.

In opposition: none.

Comments from Code Administration: none.

DECISION: A motion to approve the request was made by Wallner, seconded by Harrison and passed by a unanimous vote. Wallner felt that the layout of the home is unique and creates a hardship.

28-13 Bindery Redevelopment, LLC.: Applicant wishes to allow upper floor tenants to display signage at the ground floor level requiring the following variances:

- 1) to Article 28-6-9(b), Permitted Building Signs, to permit up to 9 building signs where a maximum of 3 building signs per tenant frontage is permitted as well as 1 tenant sign for upper floor tenants at an entry that serves the upper floor tenants,
- 2) to Article 28-6-9(b)(1)(a) and (b)(4), Permitted Building Signs, to permit 5 building signs totaling 20.75 square feet to be placed on the ground floor wall and building spaces for upper floor tenancies, where the Ordinance permits 1 directory sign of 6 square feet at the entry door when an entry serves more than one use or tenant on upper or lower floors with no building frontage,
- 3) to Article 28-6-7(i), Signs Prohibited Under Ordinance, and Article 28-6-9(b)(4), Permitted Building Signs, to permit a wall sign consisting of 13.5 square feet, to be placed above the sills of the first level of windows, where the Ordinance require that signs not be placed above the sills of the second floor windows and where the Ordinance permits 1 directory sign of 6 square feet at the entry door when an entry serves more than one use or tenant on upper or lower floors with no building frontage,

For property located at 43 South Main Street in a CBP Central Business Performance District.

The Board for this case only consisted of Acting Chair Wallner, Parker, Harrison and Monahan.

Attorney Richard Uchida of Hinkley Allen & Snyder testified. Steve Duprey, Manager of Bindery Redevelopment LLC also testified.

This is a 5 level building. One level is below the grade of Main Street. The 3rd and 4th floors are being occupied by Orr & Reno. The Ordinance requires a lot of ground floor transparency or windows. This makes it difficult for signage placement. They are allowed 3 signs totaling 150 s.f. They are asking for 9 signs equaling 126 s.f. They are asking for less square footage. He described each sign and its size and placement. The uniqueness to the building is that 60% of the building is required by Ordinance to be windows. Building signs should not go on glass. Orr & Reno fits best above the doorway and window corridor. The building is very large. Street tree landscaping makes visibility an issue so they need to put signs up a tad higher.

Steve Duprey stated that if you look at the Capital Commons building, what they are requesting tonight is less than that. There will be awnings on this building. Orr & Reno fit best on the stone archway. They will not put the name of the building on the building as he normally does. He will re-brick it instead.

Parker doesn't agree that signs create the building. Orr and Reno sign is not tasteful. The applicant has created his own hardship by their approach. Uchida stated that they knew for sure that due to the size of the building a 2x3 directory sign that they are allowed would be way less than what would work with the building. Attorney Uchida is hoping that the Board will take into consideration the size and mass of the building. The courts have ruled that the size of a building can be a contributing factor when considering hardship.

Harrison asked if the design standards (for the CBP) changed in 2011. (Yes.) If there were more tenants would they need more signage than requested? (Yes.) Duprey stated that the building is twice as long as the Capital Commons Building.

Wallner stated that he counted 11 signs, not 9. Was this included in the square footage calculation? (Yes.) Monahan questioned the hardship. Is part of the hardship that they are required to have more windows? Duprey stated that by setting the building back to create more sidewalk space, it has created visibility issues. Monahan asked what the hardship was associated to the Orr and Reno sign. Attorney Uchida stated that Orr and Reno has no ground floor present and the Ordinance only allows a 2x3 directory sign for such (upper story) use. There is no opportunity to put on a ground floor sign due to the tenants and signage that will be there. Monahan asked what floor AARP would be on. (Duprey stated they would be on the 2nd floor.) Parker asked if Orr and Reno moved out of the building, would the signage still be there. Duprey stated that Orr and Reno have a 20 year least with options to take over ownership of the building.

In favor: Peter Burger who has been a resident of Concord since 1988 and is currently the President of Orr and Reno. Orr and Reno believe in the revitalization of the downtown area. This is an opportunity for their firm to contribute to the revitalization. He feels that the sign is aesthetically pleasing. They are a business that services clients. Without signage, it does affect them. Their lease gives them approximately 50% of the building and they have an option to purchase this building.

In opposition: none.

Comments from Code Administration: none.

DECISION: A motion to approve all 3 requests was made by Monahan, seconded by Harrison and passed by a 3-1 vote with Parker in the minority.

Monahan stated that the total square footage that they are asking for is less than if they strictly complied with the Ordinance. The building was built under the new Ordinance and requires more glazing and the setback of the building contributes also. He has concerns with the height of the Orr and Reno sign. But he is willing to grant this because the tenant is taking more than 40% of the building. Parker is concerned with height of the sign. Wallner felt that the hardship was the size of the sign and it is a reasonable use.

29-13 Castor Housing Associates, LP: Applicant wishes to modify an existing multi-family development and requests the following:

- 1) Variance to Article 28-4-5, (c)(2), Uses Accessory to a Principal Residential Use, to permit private storage sheds accessory to the primary residential use,
- 2) Variances to Article 28-4-5(d)(5), Perimeter Buffer Required, to permit the following within the required 50 foot perimeter buffer:
 - a) Exterior landings and second floor egress stairs for buildings 11, 16 & 17 as shown on submitted plans,
 - b) Private storage sheds and privacy screens as shown on submitted plans,
 - c) Expanded parking facilities as shown on submitted plans,
- 3) Variances to Article 28-7-1 (Access, Circulation, Parking and Loading Requirements) General Provisions, Section (a), Applicability, to only upgrade parking for the new community building while maintaining existing non-conforming parking and loading layouts where the Ordinance requires the entire site to be brought into compliance, for properties on Christian Avenue, Map/Block/Lot, 114D1/2/2 & 114E/3/1 in an RH Residential High Density District.

David Mele, an Architect from Portland Maine and Mark Brooks of Castor Housing testified.

Mr. Mele stated that they would like to add storages sheds for each unit. The old development already has buildings in the buffer zone. Mark Brooks that they are rehabilitating all the units. It will cost them \$12,000,000 for the renovation work. They would like to build a community building with a Police substation. They are proposing storage units for each tenant. This is a Section 8 property so they have to consider HUD standards.

Harrison asked if any of the buildings were being taken down. (Mr. Brooks said no.) Carley asked if it would remain subsidized housing. (Mr. Brooks said yes.) Carley asked what the proposed changes are. Mr. Mele stated that they will be building a community building for the residents which will require more parking. Storage buildings will be within the buffer zone. They will be improving the sewer lines and plumbing. There will be a good deal of civil site work. The screening of the dumpsters will be improved. Energy upgrades to all units, kitchen cabinets, plumbing, electrical, windows and exterior stairs for egress for second floor units. They have 4x4 decks but no exit to the ground floor. They will fix that.

Carley asked how many existing parking space they have per unit? (1.3) Mr. Brooks stated that as of tonight when he drove by they had 200 empty parking spaces. The Ordinance requires 2 parking spaces per unit. Harrison asked how large the community building was going to be. (Mr. Mele stated that it will be 3,000 s.f.) The decks on the buildings

currently exit. They will make them one big deck with egress stairs. Harrison asked what the sheds look like. The applicant described them. Monahan asked if the solar panels will be rooftop units. (Yes.)

In favor: Diane Donor-Salice an abutter on East Side Drive. She is in favor of improving that location. She has a single family rental so she would like to know how the tenants would be impacted.

In opposition: none.

Comments from Code Administration: none.

Rebuttal by Mr. Brooks. He doesn't believe East Side Drive will see any difference.

Monahan asked how old the complex was. (He believes it was built in 1969 and then another phase in 1970. They had some work done in 1995.)

Walker stated that they are required to have a 50 foot buffer as of the 2001 Ordinance update.

DECISION: A motion to approve all 3 requests was made by Wallner, seconded by Monahan and passed by a unanimous vote.

Wallner felt that they are creating improvements in terms of safety issues. The footprint is not changing.

30-13 Tina Baril: Applicant wishes to build an attached garage and deck and requests the following:

- 1) For the garage; variances to Article 28-4-1(h), The Table of Dimensional Regulations, to permit a garage with a 7 foot +/- setback from the southerly side property line and 5.5 feet +/- from the rear where 10 foot side and 25 foot rear setbacks are required,
- 2) For the deck; variances to Article 28-4-1(h), The Table of Dimensional Regulations, to permit a garage with a 5 foot +/- setback from the northerly side property line and 11 feet +/- from the rear where 10 foot side and 25 foot rear setbacks are required,

For property located at 16 Perkins Court in a UT Urban Transitional Neighborhood.

Tina Baril testified. She wants to build a 12x12 deck on the rear of her house and an exit door on the back along with a garage. Her brother Pat will be helping her.

The front access to Perkins Court is unbearable. There is a stone wall across from her (house). She will get rid of her Perkins Court driveway. The City plows snow and piles it up. She wants to have an attached garage. The garage door will face Prospect Street. Harrison asked who owns the road. Walker stated that the road is a right-of-way. They have the right to pass and repass. Carley asked about the deck. She stated she is putting the deck on the furthest side of the property.

Her brother Pat O'Brien testified. The deck is 12x12. Most all homes have a deck on the rear of the house. They will use a 9 lite door to exit the garage onto the deck and then enter the home. Ms. Baril submitted a drawing. Carley asked Walker about setbacks. Monahan asked when the addition had been put on her home. She stated that it was there prior to her purchasing the house. Carley asked if there were woods to the rear of her yard. She stated yes. Walker stated that the passage way continues through and it is City property across the passageway from her property. Harrison asked of the rear setback is from the City. Walker stated it was from the passageway.

In favor: none.

In opposition: Elizabeth Jean Cote-Motes. Ms. Baril already has a patio outside her slider. Carley asked what the impact to her property would be. She stated that the garage would be used to repair diesel trucks or cars as she has done in the past. Ms. Cote-Motes has COPD and Asthma and the fumes are detrimental. Carley stated that that would be an enforcement issue with Code Administration, not anything the Board could do as it is not part of the request before them. She stated that the dimensions were an issue. Her shed still hasn't been taken down that is on City property.

Nance Iam, 14 Perkins Court. This request far exceeds the dimensional requirements. She submitted photographs. The snow issue that Ms. Baril spoke of does not exist. The snow, when coming down Prospect Street, is pushed to the right nowhere near her fence. She has a driveway with no permit within the setback. She has 2 trucks and she parks another vehicle on the neighbor's property. She is running an illegal business.

Comments from Code Administration: Walker stated that there are other violations on the property that are being worked on with the prosecutor's office.

Rebuttal by Tina Baril. Baril Transport has been dissolved. There are no car parts around the property. The garage is a necessity with the quality of her life. She's lived there since 2005.

DECISION: Monahan asked about her prior application. Walker stated that the front porch was built without a permit encroaching into the setback. Zoning Board granted relief. The garage variance application was denied. The fence? Went into City property but has been removed. The shed is on City property. They are still working on the removal of it. Parker had a problem with the garage going through the right of way and being placed on a non-maintained road. Harrison was concerned that it would change the whole traffic pattern. Carley stated that the garage and deck don't impinge on the passageway. Monahan stated that the shed is still there that isn't supposed to be. There is also a temporary structure in the photos submitted. Walker stated that if that is not on her property, then it should not be there.

A motion to approve the request with the stipulation that a Building Permit will not be granted prior to the removal of the shed along with any and all obstructions from the right-of-way and that the City Surveyor revisit the property to identify the passageway was made by Harrison, seconded by Wallner and passed by a unanimous vote.

31-13 Cinde Warmington: Applicant wishes to remove and replace an existing garage and a connecting addition to the house and replace in-kind and requests variances to Article 28-4-1(h), The Table of Dimensional Regulations, to maintain existing side yard setbacks ranging from 6'3" +/- to 9'8" +/- where a 10' side setback is required for property located at 77 School Street in an RD Residential Downtown District.

Cinde Warmington testified. She purchased the property in November 2012 with the intent to convert it from a two family to a single family and do some renovation work. The addition is structurally unsound and the wooden garage floor won't bear the weight of a vehicle. She would like to tear down the addition and garage and build a new breezeway and garage. The cellar stairs are steep and narrow. There is now no fire barrier between the house and garage. The foundation is cracked. She will be rebuilding on the same footprint but the breezeway that replaces the addition will be narrower. She submitted photographs. The house is 3 to 4 feet from the setbacks.

In favor: none.

In opposition: none.

Comments from Code Administration: The structure has been reviewed by the Demolition Review Committee and found not to be historically significant.

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

32-13 Carolyn A. Parker for VSH Realty, Cumberland Farms: Applicant wishes to install a scroller type sign and requests variances to Article 28-7-7, Signs Prohibited Under this Ordinance:

- 1) Section (a), to permit a sign which has parts and surfaces that physically or visually move when signs that have parts or surfaces that physically move are prohibited,
- 2) Section (r), to permit an electronically activated changeable message sign (EMC) when EMC signs are prohibited in the City of Concord,

for property at 417 South Main Street in a CG General Commercial District.

Case was withdrawn by applicant.

33-13 H. Bobby Silvestiadis: Applicant wishes to construct a mudroom and foyer with an attached 2 car garage and requests a variance to Article 28-4-1(h), The Table of Dimensional Regulations, to permit a 33 foot side yard setback where a 40 foot side setback is required for property located at 101 Hoit Road in an RO Residential Open-space District.

H. Bobby Silvestiadis and Attorney Maria Dolder testified. She submitted colored photographs. He would like to build a 2 car garage with a mudroom and foyer. They are requesting a 33.6' side setback vs. 40'. Most other residential zones have less setback requirements. When the house was built the required side setback was 25' that change with the adoption of the current ordinance in 2001 to 50' setback. Due to the change he longer meets that. This is a 1993 subdivision. He bought his lot in 1995 and built his house in 1999. This is the only location on the lot to put his addition due to the well and septic. It is unique as it is a RO zone but the property cannot be used with the RO intent. They cannot create a cluster development. It is a 2.66 acre lot. There is plenty of room. There is undeveloped land next to him so no neighbor will be impacted. There is no adverse impact. The majority of the neighbors have 2 car garages. They need more storage space and want a more traditional entry way on the home. Nothing to be gained by the general public if he puts on the addition to balance the loss to the property owner if he is prevented from building the addition.

Carley stated that they have a 7 foot problem. Most 2 car garages are 24' square and you are proposing 30' square. If the breezeway was reduced to 11 feet then they would no longer need to be before the ZBA as they would comply. Attorney Dolder stated that the foyer is a moderate size and he expected to be able to do this when he purchased the property. Monahan asked if his neighbor's garage were the same size. (They are not sure but the 40 foot setback is clearly not met.) Will the garage have a finished 2nd floor? (Mr. Silvestiadis stated that it will be a gym above until the storage space is needed.) Monahan asked about the other side of the house. Is the septic tank in the way? (Yes.) Parker follows the argument, but an oversize garage creates the problem. Harrison asked if the cluster has 40 foot setbacks. (Yes.) Walker stated that clusters can have a 40' separation between buildings and also have 100' perimeter buffers.

In favor: none.

In opposition: none.

Comments from Code Administration: none.

DECISION: A motion to grant the request was made by Monahan, seconded by Harrison and passed by a 4-1 vote with Carley in the minority. Monahan stated that the other garages they've granted this evening put this request into perspective. The problem is created by the Ordinance change and the other option for placement there is a septic tank in the way.

34-13 Oasis Christian Church for Whittmore Holdings, LLC: Applicant wishes to establish a Place of Religious Worship (use B-7) with accessory facilities and requests a variance to Article 28-2-4(j), Table of Principal Uses, to permit the establishment of a Place of Religious Worship and accessory facilities (Use B-7) in a portion of an existing building for property located at 45 Chenell Drive in an IN Industrial District.

Kevin Weber, Gail Renek and Rob Howard testified. The church's lease at its current location is up and they need to find a new home. They would be utilizing 8,556 feet of the building and the other occupant there is NH Court systems. There is plenty of parking. Mr. Howard submitted an updated drawing. They want to use as a church with Sunday school and offices. The primary times will be when the court is not in use. Improvements will be made to the interior. This portion of the property has not been used since 2009. Churches are not allowed in any zone.

Monahan asked about the total square footage of the building and the portion they would like to lease. (The building is 39,856 s.f. and they will be occupying 8,556 s.f.) Parker asked about the overall use and how often it will be used. (Mr. Weber stated that there will be 2 services on Sunday, Sunday School, Easter services, Christmas Services, Wednesday

evening youth group, etc. They have no intent to have any formal school.) Monahan asked when their lease expired. (It expires the end of June.)

In favor: None.

In opposition: None.

Comments from Code Administration: none.

DECISION: A motion to grant the request was made by Wallner, seconded by Parker, and passed by a 3-2 vote with Harrison and Carley in the minority. Parker felt that it was open, vacant space. A big discrepancy in use. Monahan has similar hesitations. Limited use of larger building.

MINUTES: A motion to approve the May 2013 Minutes was made by Wallner, seconded by Harrison and passed by a 3-0 vote.

A TRUE RECORD ATTEST,

Rose M. Fife, CLERK
ZONING BOARD OF ADJUSTMENT