ZONING BOARD OF ADJUSTMENT JULY 10, 2013 MEETING DRAFT MINUTES

Board members present included Chairman Christopher Carley, Nicholas Wallner, David Parker, Stephen Norton and Ben Kelley. Also present was Zoning Administrator Craig Walker and Clerk of the Board Rose Fife.

WBIN Media, Inc.: (Request for Rehearing) (recessed from June) 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 a 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 and situated in a IS Institutional District with an HI Historic District overlay.

A motion to open and recess this case to August 7, 2013 was made by Wallner, seconded by Norton and passed by a unanimous vote.

- **24-13** <u>Timothy Golde for MRT Investment and Development LLC</u>: (recessed from June) Applicant wishes to construct 10 attached dwelling units and requests the following Variances:
 - 1) 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) 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; and
 - 3) 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 and situated in an RH Residential High Density District.

Case withdrawn.

- **Executive Health & Sports Center for The Racquet Club of Concord:** Applicant wishes to renovate and expand an existing health and fitness center (use C-4) and add offices for healthcare practitioners (use E-1) and requests the following Variances:
 - 1) to Article 28-4-1(h), Table of Dimensional Regulations, to permit a front yard setback of 41.2 feet to 44.3 feet for the proposed southerly building addition and front setbacks ranging from 26.8 feet to 29.7 feet for the proposed northerly building where 50 foot setbacks are required;
 - 2) to Article 28-4-2(b)(1), Buffer Width Standards, to allow the required 30 foot buffer between the CH & RM Zone to be moved to the southerly property line of the proposed merged lot when such buffer is required within the CH Zone adjacent to where the residential district boundary transects the lot;
 - 3) to Article 28-4-2(b)(2), Buffer Width Standards, to allow the required 20 foot buffer between the RM & CH Zone to be eliminated when such buffer is required within the RM Zone adjacent to where the CH district boundary transects the lot;
 - 4) to Article 28-4-2(e), Buffers for District Boundaries in Collector or Local Streets, to allow a 9 foot buffer where a 15 foot buffer is required;
 - 5) to Article 28-7-2(e), Table of Off-Street Parking Requirements, to provide not less than 160 parking spaces where 750 parking spaces would be required;
 - 6) to Article 28-7-7(e), to allow a minimum drive aisle width of 18 feet for one way traffic where a 24 foot aisle width is required adjacent to parking spaces that are perpendicular to the drive aisle;

- 7) to Article 28-7-7(g)(1), Parking Restrictions in the Required Front Yard, to allow parking within the required front yard setbacks on the portion of the lot that is within the RM Zone;
- 8) to Article 28-7-13(a), Table of Off-Street Loading Requirements, to provide 1 loading space where 3 loading spaces are required; and
- 9) to Article 28-7-13(e), To allow a loading space within 50 feet of a residential district boundary, all for property located at 10 Garvins Falls Road and the adjacent lot (M/B/L 110I-2-4) which when merged will be transected by an RM Residential Medium Density district boundary and a CH Highway Commercial District Boundary.

Mr. Rice of T.F. Moran testified. There are 2 pieces of property. One parcel is in the RM Zone and one is in the CH Zone. They would like to merge the lots. The need relief from the front setbacks as they want to add onto the building but they will not encroach any more than what is there now. They want to move the buffer vs. putting it in the middle of the lot. The parking is not less than 160 parking spaces. The proposed facility is like the one they have in Manchester where they have 6,000 members. That facility only uses 172 parking spaces. They will use less here as they have less members. Relief for an 18 foot isle width is for the front parking lot area. There is not enough area for 2 way traffic. The front parking lot is existing and they want to keep it. They only need 1 loading spaces as they do not have very many deliveries.

Carley asked if it were single isle parking or one way. Why didn't they put in angled parking? (They would lose a few spaces.) Are the tennis courts here? (Yes, the tennis domes are proposed.) Carley asked if the building existed in the setback now. (Yes.) Wallner asked where they would put additional parking if it were needed. (They would put it in the green space if it were needed.)

Mr. Rice stated that they have 2 lots and would merge them into 1. Mike Benton, owner of Executive Health & Sports Center testified. This would create jobs and bring the facility back to its "Glory Years".

In favor: Walter Cremin of 54 Garvin Falls Road. He abuts the property on the south. He has no objections. He is looking forward to the rejuvenation of the property.

In opposition: Marcel Nadeau, 47 Garvins Falls Road – across the street. He is not for or against. He has concerns with traffic as it is hard to get out onto Manchester Street; overflow lighting for the parking lot; and noise control – if they were to cut the trees it would be noisier.

Gail Matson, 7 Garvins Falls Road, directly across the street has concerns with traffic; noise and lighting.

Ralph Norman, 5 Garvins Falls Road – the place is in disrepair. He is happy to hear greenery will be increased. His front window overlooks the parking lot. He is in favor of improvements.

Tom Harrison, 45 Garvins Falls Road – across the street. He now estimates that there are 1,000 members – if that increases in the future does the City have any intention of putting a light at the end of Garvins Falls Road? The traffic generated by 3,000 members would be a big problem.

Comments from Code Administration: This application will go through a major site plan review. A traffic study may be done. Impact fees for increases. Possible light at the end of the road.

Rebuttal: Mr. Rice of T.F. Moran stated that a traffic study will be done. They have proposed that no trees be removed on the southerly side. The facility is closed by 10 pm. They will minimize lighting glare.

DECISION: Norton asked Walker about lot merger in CH/RM zone. Walker stated that they would eliminate the lot line. The zoning district stays the same. Carley asked about no use variance to be in this zone? Walker stated that no the use was allowed there. Carley stated that the reduction in parking is a sensible thing if it is not needed.

Motion to approve the requests #1 through #5 and #7 through #9 was made by Parker, seconded by Wallner and passed by a 4-1 vote with Norton in the minority. A motion to deny request #6 was made by Parker, seconded by Norton and passed by a 4-1 vote with Kelley in the minority.

- **36-13 <u>Duprey Acquisitions, LLC</u>**: Applicant wishes to remove an existing single-family residential structure to construct a parking lot and requests the following:
 - 1) Variance to Article 28-2-4(j), Table of Principal Uses, to permit a "Public or Commercial Parking Lot," (use K-1) where such use is not permitted;
 - 2) Variance to Article 28-4-1(h), Table of Dimensional Regulations, to permit a lot coverage of 69% where a maximum of 50% is allowed,

All for property located at 46 Pillsbury Road and situated in an RN Residential Neighborhood District.

Prior to hearing this appeal, the Board must determine whether the request differs materially in nature or degree, or whether the circumstances affecting the property have changed significantly when compared with the circumstances existing under the request in Case #41-09, 2 Pillsbury Street, LLC for Patricia & Karen Martin-Brown, December 2, 2009.

Attorney Richard Uchida and Stephen Duprey testified. Attorney Uchida stated that they are requesting a parking lot. It is the same variance that came before the Board in 2009. The material changes were that they did not own the lot in 2009. It was too speculative of a request at the time. They now own the property and the parking demand are at an acute level on Pillsbury Street. The property laws around variances have also changed. Carley confirmed what he heard that they now own the land, that they now know they need parking and that the law has changed. Attorney Uchida agreed.

A motion that the case was sufficiently different to be a new case was made by Norton, seconded by Parker and passed by a unanimous vote.

Attorney Uchida testified about the variances. The RN Zone is unique as it is surrounded on 3 sides by parking lots. The grade of the parcel is the same grade as the other parking lots. The current variance for parking is 462 spaces on the Pillsbury street lot. They have a Conditional Use permit for 60 spaces, which is considered shared parking. Plymouth State use was a night time use so shared parking was approved by Planning. Since 2009 the parking has gotten more acute. They passed around a parking survey. There is 87% usage in the afternoon. The demand has increased. They promised the neighbors that they wouldn't have parking spilling onto the street. They tried to rent 1 Pillsbury Street but only 8 spaces were available. This parking lot would have 34 spaces. The strict application of the Ordinance wouldn't allow parking, but given the location, zoning lines, etc., makes more sense as it goes with the main campus. They are looking for 69% lot coverage, which is similar to the other parking lots there. There is a brick sewer line that runs under the house which was built in the 1800's.

Steve Duprey testified. In 2009 the house was for sale due to foreclosure. They bought it 'just in case'. If they do not use it for parking it will be used in another way. In 2009 ACS tenant was in but not at their capacity. They have 60 more people employed there now. Foxfire Management has increased. Other offices have increased their number of employees. Plymouth State University wants to do daytime classes. No one in the neighborhood is excited about new parking spaces. They have at least 60 more vehicles a day. The neighbors asked about making Allison Street a one-way street. He spoke with Carlos Baia about it. The City has no interested in that. Duprey Acquisitions are willing to build a stone way to grade and not have vehicles entered onto Pillsbury Street. They are designed to have the minimal impact.

In favor: none.

In opposition: Linda Rost, 52 Pillsbury Street. She also submitted a note for a neighbor. There has been only 1 time that she has seen the parking lot at 2 Pillsbury Street in full use. She passes through the parking lot and never seen it totally full. There are also 2 hour parking spaces never used on the side streets. The people will have a long walk to the building from this lot. Her property will diminish in value if the parking lot is built. Her house was built in 1885. She hears cell phones, car alarms, etc. from her home. The parking lot has no human value to the neighborhood. Mr. Duprey has been an excellent neighbor, but if his projections are correct, he has other options. Carley understands her concern that the parking lot is not needed. She went on to state that this will no increase the salability of her property. The Spirit of the Ordinance is not observed.

Comments from Code Administration: none.

Rebuttal by Mr. Duprey – they will work with the neighbor regarding screening. They will need 100 more spaces if Plymouth State goes to days.

DECISION: Norton asked Walker when the property was rezoned. (Approximately 2001.) Kelley stated that there was an unnatural break in the zoning boundaries. Parker asked Walker if landscaping were required. (Yes.) Norton asked Walker if a buffer were required. (No.) Parker couldn't find the hardship for 69% lot coverage. Wallner was struggling with the hardship. Will this alter the character of the neighborhood? Kelley felt it was a compatible use. Carley was curious if when the neighbors bought their house if it was a residential zone. Value of neighbor's property will diminish. He is inclined to vote to deny.

A motion to deny both requests was made by Wallner, seconded by Parker and passed by a 3-2 vote (Kelley and Norton in the minority.)

- **37-13 John Hoyt, Jr. for Concord Housing & Redevelopment:** Applicant wishes to replace former office space and unused theater space on first floor with 6 one 1 bedroom 500 S.F. residential units and requests:
 - 1) A Variance to Article 28-4-5(e), (Multi-family) Development Standards in Performance Districts, Section (4), Locational Restrictions, to permit dwellings units within the Central Business Performance District to be located on the first floor level; and a
 - 2) Variance to Article 28-5-48, Central Business Performance (CBP) District Standards, Section(i), Ground Floor Occupancy and Transparency, to waive the requirement that at least 60% of the length of a building at ground level be glazed or transparent to the interior and that at least 60% of the ground floor level be comprised of uses which include the sales of goods and provision of services,

All for property at 40 South Main Street and situated in a CBP Central Business Performance District.

John Hoyt of Concord Housing & Redevelopment and Attorney Dan Luker testified. The building houses the Kennedy apartments which have been there for 49 years. They house the elderly and disabled people. They would like to add 6 small units behind the offices at the front of the building. The space us to be theatre space. This will be in the public interested as it will provide sorely needed housing. They will go from 82 to 88 occupants. It will be consistent with the general purpose. It will have zero impact on surrounding properties. The hardship is that the property is unique in that it is residential housing, fully occupied. They have 300 people on a waiting list. The proposed use is reasonable. The building is setback from the sidewalk. The building is 50% glass front. They want to leave the building as is.

Parker asked if the space was currently office space and they want to change it to residential use. (Yes.) Mr. Hoyt stated that CBP zone cannot have residential units on the first floor. In 2007 the theatre closed. It has been gutted. There are no seats or lighting in there.

In favor: none.

In opposition: none.

Comments from Code Administration: none.

DECISION: A motion to approve both requests was made by Wallner, seconded by Kelley and passed by a unanimous vote. Carley felt that the building is unique as it was constructed for low income housing. Kelley stated that it was not a viable retail setting.

Service Center for Christian Science church members who cannot or wish not to live alone with an associated on-premises dwelling for the business manager and requests a Variance to Article 28-2-4(j), Table of Principal Uses, to permit a Residential Social Service Center in a district where such use is not permitted for property located at 23 Rundlett Street and situated in an RS Residential Single-Family District. (Note: This facility will not be a medical facility.)

Kerry Reed and George Reed testified. They own 23 Rundlett Street. It was a girl's home since the 1800's. It closed several years ago. It was a former group home. The building itself lends itself to a group home setting. They plan to have it for church members who cannot or wish not to live alone. There will only be 9 members. They are located behind the school. It is not a medical or nursing home facility. They will be adding landscaping. The existing parking meets the requirements. They sit on 5.38 acres. It is mostly woods. They are doing extensive renovations to the wing right now. They are hoping to enhance the building.

Carley asked if they would be subdividing the interior. Ms. Reeds stated that they are. They are joining 2 rooms together. There will be a common living room, dining room, etc. Norton asked who would be there. She stated that there will be a live in manager and a small staff of 2 to 3 people and up to 9 residents. Walker stated that as they are Christian Science, they do not want a licensed medical care person.

In favor: none.

In opposition: Lawrence Byer, 17 Rundlett Street. He has lived there 22 years. The girl's home was there then. The home was abandoned. They did tolerate a lot of traffic when the girl's home was there. He is concerned with the traffic and the kind of people that would be there. Is afraid of what a "Social Center" is or can become.

Janet McQueeny, 15 Rundlett Street. She lives next door to Mr. Byer. She was familiar with the Rolf & Rumford Home. There were lots of problems with that home. She is concerned with the types of people. Will there be meetings there, etc. What are the ages of the people and what type of people will be there?

Rorie Hollenberg, 20 Rundlett Street. She has a 12 year old and a 7 year old. She is concerned with traffic. The road is in disrepair. Will these people drive or have vehicles? How much will the traffic increase? Parker asked her how long she had lived there. She has been at this house a little over a year but has lived in this neighborhood longer.

Comments from Code Administration: none. Kelley asked Walker if the special exception was granted in years past. Walker stated that in 1955 a special exception was granted for a Girls Home. It was an agricultural district back then and it was granted for the living, eating, and sleeping for 15 girls with staff of 4.

Rebuttal by Ms. Reed. The individuals will be mostly older folks who can't drive or cook for themselves. They cannot handle people with disabilities, physically or mentally. Because it is a church building it doesn't meet

the requirements for Assisted Living as they do not have medical staff. Carley asked about meeting spaces. Ms. Reed stated that this is not a meeting house.

DECISION: A motion to approve the request was made by Parker, seconded by Wallner and passed by a 4-1 vote with Kelley in the minority.

Parker felt that the property was unique. There is a significant amount of land surrounding this property. It is a less obtrusive option. It wouldn't create that much of an impact to the community. It has a large buffer.

East Concord Cooperative Preschool: Applicant requests a Special Exception under Article 28-2-4(j), Table of Principal Uses, to permit a child day care facility (use B-4) in the Heights Community center, former Dame School, and a Variance to Article 28-5-9(a)(1), Child Day Care Centers, As a Principal Use, to permit driveway access to and from a local street where direct driveway access to and from a collector or arterial street is required, for property located at 14 Canterbury Road and situated in an RS Residential Single-Family District.

David Gill, City of Concord Parks and Recreation Director and Heather Tiberi, member of the Board of Directors for East Concord Cooperative Preschool testified.

David stated that the City took over the Dame School. In 1959 East Concord cooperative Preschool was at a different location. The City is only using half the school space and have more than enough parking. The preschool has to be a State licensed facility. This use is in line with the past use of a school. They have the capacity of 20 students, $\frac{1}{2}$ days, Monday, Wednesday, Friday program. They were founded in 1959 by the City of Concord Recreation Department.

In favor: none.

In opposition: none.

Comments from Code Administration: This property was used as a school for years. It is a change of use, public school to private.

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

MINUTES: A motion to approve the Minutes was made by Wallner, seconded by Parker and passed by a 4-0 vote with Norton abstaining.

Mr. Walker passed out an informational email that he received regarding RTT Associates, 2 ½ Beacon Street.

A TRUE RECORD ATTEST,

