

**ZONING BOARD OF ADJUSTMENT
SEPTEMBER 4, 2013 MEETING
DRAFT MINUTES**

Board members present included Acting Chairman Nicholas Wallner, David Parker, Rob Harrison, James Monahan, James Marshall and Andrew Winters. Also present was Zoning Administrator Craig Walker and Clerk of the Board Rose Fife.

17-13 **WBIN Media, Inc.:** (Request for Rehearing) (Continued from August) 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 dismiss this case per the request of the applicant was made by Parker, seconded by Monahan and passed by a unanimous vote.

21-13 **Carolyn A. Parker for VSH Realty, Cumberland Farms:** (Request for Rehearing) (Continued from August) 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 47 Fisherville Road in a CG General Commercial District.

A motion to recess this case until the November 6, 2013 meeting, per the applicant's request, was made by Marshall, seconded by Harrison and passed by a unanimous vote.

36-13 **Duprey Acquisitions, LLC:** (Request for Rehearing) 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.

A request from Attorney Uchida to postpone this hearing was made by Parker, seconded by Monahan and passed by a unanimous vote.

Public Hearings

40-13 **Barlo Signs for Carlsons Motorcorp:** (Continued from August) Applicant requests the Zoning Board overturn the Zoning Administrator's determination that the use of a remotely programmable electronic message sign for variable background illumination is a use that is not permitted under the City of Concord's Zoning Ordinance for property at 13 Manchester Street in a GWP Gateway Performance District.

41-13 **Barlo Signs for Baron's:** (Continued from August) Applicant requests the Zoning Board overturn the Zoning Administrator's determination that the use of a remotely programmable electronic message sign for variable background illumination is a use that is not permitted under the City of Concord's Zoning Ordinance for property at 350 Loudon Road in a GWP Gateway Performance District.

Case 40-13 & 41-13 were taken together. A motion to Table these requests until the November 6, 2013 meeting, per the applicant, was made by Winters, seconded by Marshall and passed by a unanimous vote.

45-13 **Daniel Estabrook:** Applicant wishes to store a recreational trailer in a front yard and utilize it for housekeeping purposes and requests the following:

- 1) Variance to Article 28-5-34, Outdoor Storage of Recreational Equipment, to permit the parking or storage of a recreational trailer in a front yard area,
- 2) Variance to Article 28-5-34, Outdoor Storage of Recreational Equipment, to permit the use of a recreational trailer parked on a residential property for living, sleeping or housekeeping purposes,
For property at 240 Portsmouth Street in a RS Residential Single Family District.

The Board for this case consisted of Monahan, Acting Chair, Winters, Parker, Harrison and Marshall.

Sharman Estabrook testified. Also available to testify was Daniel Estabrook. Ms. Estabrook stated that she wanted to keep her camper on her property until October. They did have someone living in the camper but he now lives in their home. They cannot put the camper in their backyard as it is inaccessible. It is clean and doesn't look like a junk yard.

Harrison asked how large the camper was. (The camper is 30 feet long.) Is there water hooked up to the camper? (No.) Does the camper have bathroom facilities available for use? (No, it's not useable.) Walker asked if it was still occupied. (No.) #2 variance is no longer needed? (No it is not.) Monahan asked if they could put it in storage now. (She stated that she could.) Parker asked if while it was in storage if they could open it up there to accomplish airing it out as she stated. (Not sure.) Winters asked if they were planning on keeping the camper there next summer. Harrison stated that they cannot set a time limit on a variance request. Walker stated that that was correct. Winters asked if the tree line shielded the camper. (Mostly, yes. There is no way to put it in the rear yard due to the pool, tree line and rock wall.)

In favor: none.

In opposition: James Weigle, 244 Portsmouth Street. He submitted photographs of what they see from their front windows. It is an eye sore. It diminishes their property value. There are one or more people staying in that trailer – day and night. Last evening the lights were on and the trailer was open. His wife is fearful due to the "cast of characters" that come and go. If the trailer stays, the activity will continue. They have to deal with it 24/7. He is also concerned with the gray water too. He submitted a calendar with the activity noted.

Debra Bergschneider, who lives across the street at 247 Portsmouth Street also, submitted photographs of what she sees from her home and what is seen as you come down the road. It is an eyesore. There is activity there all hours of the evening.

Comments from Code Administration: none.

Rebuttal: none.

DECISION: A motion to deny the request was made for both requests by Marshall, seconded by Winters and passed by a unanimous vote. Marshall felt that there was no hardship for the reasonable use of the property. The intent of the Ordinance is not met. Winters felt that property values would be diminished.

46-13 Robert James: Applicant wishes to install a second driveway and requests a Variance from Article 28-7-7, Parking Area Design Standards, Section (g)(2), Setbacks from lot lines, to permit a driveway and off-street parking between the building and the property line on the west side of 7/9 Chapel Street with no setback from the property line when a 5 foot setback is required for property at 7/9 Chapel Street in a CVP Civic Performance District.

The Board from this point forward consisted of Wallner, Acting Chair, Parker, Harrison, Monahan and Winters.

Robert James testified. He owns a side by side duplex and needs a second driveway. There is a driveway on the left of the property and would like to put one on the right. There is plenty of room. There are no trees in the way. He spoke with his neighbor who has no opposition. Chapel Street is narrow and if people park on the road it is hard to maneuver. It is an older neighborhood. It would help the street by getting cars off of it.

Harrison asked if the granite wall was the property line. (It is more or less.) Do you want to pave up to the granite wall? (Yes.) Wallner asked if any other dwellings in the neighborhood have a similar situation. (Yes.) Winter asked if parking were allowed on Chapel Street. (It is allowed in 3 hour increments during the day. But no night time parking is allowed.) Harrison asked if it were a two way street? (Yes.) Parker asked how many cars could be parked in the existing driveway. (They can park 5 but it is not angled parking.) Applicant pointed out the layout on the map.

In favor: June Latti of 10 Court Street. Quartermaster Lloyd of the VFW located at 6 Court Street. A letter from Roiolif Schweiker of 12 Chapel Street.

In opposition: none.

Comments from Code Administration: none.

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

Harrison felt that it was a reasonable use of the property. Wallner felt that the hardship was the street itself.

47-13 Kelly & Jacqueline Brochu: Applicant wishes to keep and raise 2 pigs on their property each year for personal use and requests the following:

- 1) Variance to Article 28-2-4(j), Table of Principal Uses, to permit the Raising and Keeping of Swine (use M-4) where such use is not permitted,
- 2) Variance to Article 28-5-28, Raising or Keeping of Livestock or Poultry, Section (a), to permit the buildings, feedlots and manure storage areas to be approximately 98' from the north, Abbot Road, property line, 118' from the east, Mitchell Street, property line, 93' from the southerly property line and 55' from the westerly, Bean Street property line where a setback of 150' from a property line is required,
- 3) Variance to Article 28-5-28, Raising or Keeping of Livestock or Poultry Section, (b), to waive the requirement of 48 square feet of building area per swine, 100 square feet of exercise yard per swine and 3,100 square feet of pasture area per swine,

All for property at 58 Abbott Road in an RS Residential Single Family District.

Kelly and Jacqueline Brochu testified. Kelly stated that he wants 2 pigs from May to the end of September. Jackie stated that she is not employed and her husband is employed seasonally. The property has been in her family for 70 years and they have kept live stock on the property before. The pigs are fenced off by a chain linked fence, a stockade fence and an electric fence in a 12 x 12 area. They are cleaned out. There is a pit across the street from them where the City puts its leaves (compost) and that smell is worse than the pig smell. The land is still all woods. They own the whole block which consists of 4 pieces of land and one home.

Wallner asked what size the lot was. (A little less than an acre.) They showed where the pig pen is located. Kelly stated that they have chickens. They submitted letters from neighbors and photographs. He stated that he spoke with neighbors and they told him that they hardly knew they had them. Winters asked if they had a variance or needed a variance for the chickens. (It is not needed for chickens.) Jackie stated that in 1985 she took over ownership of the property from her parents. Kelly stated that if the pigs smelled that he would 'fix' it. Winters asked how noisy the pigs were. Kelly stated they were not noisy unless they touched the electric fence. They do not have 'slop' hanging around either.

In favor: David Kohls, 29 N. Spring Street. He is the brother-in-law to Jackie Brochu. They take good care of the animals and keep the area nice. There is never any smell. Steve Porter, 46 Abbott Road, he has no problem with the pigs; they do not smell. John Laroche, 8 Bean Street, he never smells the pigs. He and his kids feed them table scraps. Tracey Bricchi, 63 Snow Street, never smells the pigs. Sean Williams, 54 Abbott Road, he has been there 2 years and has had no problems with the animals. He doesn't smell them. Keith & Debbie Thibeault, 54 Snow Street, has lived there 17 years. He didn't know he had pigs there. They don't smell them. Faith & Mark Wilson, 44 Hobart Street is in favor.

In opposition: Natalie Friedenthal, 6 Bean Street. "Food Source" is not a criterion for a variance. This is her first home. She would not have purchased this home if the pigs were there. The site of pigs doesn't bother her but the smell does. They are 93 feet from her side door to the pigs. It smells when it rains or its moist outside. She submitted photographs of her home outside. She can't use her yard or her outdoors or her kitchen like she'd want to due to the smell. She feels that the spirit and intent of the Ordinance is to allow her to enjoy her property as well. Sally Salmon and Melissa Merrill, 71 Hobart Street. Sally testified that they live directly across from the pigs. In 1991 they moved in. There was never live stock of chickens there. The chickens have been there the last 5 years. The pigs are not cleaned out daily. She works from her home. The entry, kitchen, bedroom are all across the street from the pigs. They have flies constantly due to the pigs. There have been 3 times that the pigs have escaped. They have not been able to enjoy their property. Melissa Merrill testified that her home is 55 feet on the west side of the property. Only Bean Street separates the property. All their gardens are approximately 25 feet from their property. Her herb garden is no longer enjoyable. They cannot enjoy their pool. They have 9 windows on that side of the house and they cannot open them. She is not against the Brochu's providing for themselves. They were never contacted by the Brochu's about these pigs. She is learning more and more about diseases that can be brought on due to pigs. This diminishes her property value. She works 2 jobs to make ends meet. They bought the house in 1991. Winters asked if she were closer than the others. (Yes she is 55 feet from them.)

Comments from Code Administration: none. Parker asked if the Council amended the code for chickens. (Yes, up to 5 fowl.) Nothing regarding swine? (Nothing for livestock.) Parker asked if maybe the Council shouldn't take this up. (Possibly. This use is only allowed by Special Exception in the RO Zone on a minimum 2 acre lot.)

Rebuttal: Kelly stated that there are no diseases. They muck them out. He hasn't contracted anything. Jackie stated that they got them from a farm and researched the raising of them with Phoenix Farm in Boscawen. In 5 months they should be 225 lbs. or so.

Letters in favor: Rich Otis of 6 Bean Street; Bob Demary of 6 Randlett Street; Noreen Shattuck of 66 Abbott Road; Roland Dore, 57 Snow Street; Chuck Mahoney of 67 Hobart Street; and James Roger of 64 Abbott Road.

Letters in opposition: Doranne Brennan, 73 Snow Street.

DECISION: Monahan felt that this is not the right forum. He is afraid that by acting the Board will be creating an Ordinance when they should not be. Parker stated that he is not a farmer and wondered who set the land size requirement per livestock. He also asked what the hardship to the property was. The closest abutters are not happy, this use creates an odor which the owners acknowledge and he wonders about the public health risk, i.e. the aggressiveness of pigs. Winters felt that odors are hard to capture and demonstrate. The two closest abutters have issues. It is not a reasonable use of the property.

A motion to deny all 3 requests was made by Parker, seconded by Monahan and passed by a unanimous vote.

MINUTES: A motion to approve the August 2013 Minutes was made by Parker, seconded by Harrison and passed by a 4-0 vote.

A motion to adjourn the meeting was made by Parker, seconded by Monahan and passed by a unanimous vote.

A TRUE RECORD ATTEST,

Rose M. Fife, CLERK
ZONING BOARD OF ADJUSTMENT