

**ZONING BOARD OF ADJUSTMENT  
APRIL 2, 2014 MEETING  
DRAFT MINUTES**

Board members present included Chairman Christopher Carley, Nicholas Wallner, Rob Harrison Jr., Stephen Norton and James Marshall. Also present was Zoning Administrator Craig Walker and Clerk of the Board Rose Fife.

**21-13**     **Carolyn A. Parker for VSH Realty, Cumberland Farms:** (Request for Rehearing) **(Recessed to April 2, 2014)**  
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.

**40-13**     **Barlo Signs for Carlsons Motorcorp:** **(Recessed to April 2, 2014)** 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:** **(Recessed to April 2, 2014)** 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.

A motion to recess case numbers 21-13, 40-13 and 41-13 until the May 7, 2014 meeting was made by Norton, seconded by Wallner and passed by a unanimous vote.

Note: A copy of the 3/18/14 Staff report to the Planning Board regarding amendments proposed to Article 28-7-7, Signs of the City of Concord, was given to the ZBA members present for their information.

**7-14**     **James Breen (owner) Storage Station:** Applicant wishes to use subject property for the display and sales of motor vehicles (use J-1) and requests the following:

- 1)     Variance to Article 28-2-4(j), to permit automotive sales (use J-1), in a CG General Commercial District where such use is not permitted;
- 2)     Variance to Article 28-7-2(e), Table of Off-street Parking, to provide 4 parking spaces when 5 spaces are required;
- 3)     Variance to 28-7-5, Requirements for Handicapped Accessible Parking Spaces, to provide no accessible spaces when 1 accessible space would be required;
- 4)     Variance to Article 28-7-1, General Provisions, to permit the addition of a new use, auto sales, while maintaining existing parking configurations and not be required to bring the site up to current standards;

all for property at 220 Loudon Road in a CG General Commercial District.

James Breen, owner of the Storage Station testified. He would like to go to auctions, pick up cars and resell them one at a time on this property. There may even be times when there are no vehicles for sale there. He cannot go to auctions without a car dealer's license and he can't get a car dealer's license without a variance being granted. They only have 5 parking spaces that are lined currently on the site, but they do have room for 7 vehicles. They currently have 2 handicapped spots. So they have room for 7 vehicles plus 2 handicapped spots. The vehicles for sale will be parked in the space closest to the property line in the front. This will not affect the businesses, or neighbors. It will not burden the City with any extra City services.

Craig Walker advised Mr. Breen that there is not room for the extra parking spaces due to the 24' aisle width requirement.

Carley asked about the vehicles parked in the rear area. Mr. Breen stated that behind those cars is a drainage ditch. The extra land there they have never built on. Some folks from Town Fair Tire rent parking spaces there.

Marshall asked if any of that area could be used for the required parking. Walker stated that they could not use that area as is. It would need to be paved and marked. He is not sure if the aisle width would qualify. Marshall felt that if a variance is asked to reduce parking and there is space on the property to add parking, the Board should discuss that.

In favor: none.

In opposition: none.

Comments from Code: none.

DECISION: Carley asked Walker if he complied with parking requirements as is. Walker stated that he does, as it is. Norton asked if the variance would change if it were 1 space vs. 10. Walker stated that it would not. It is not a use permitted in the district. Norton asked if it changed the off-street parking question. Walker stated that it does. Marshall stated that he doesn't see any hardship for the use of the property. There are other uses allowed and permitted for that property. He understands that Mr. Breen would like to do it but there are other uses allowed. Norton asked if there were any way the Board could limit it to one car. Walker stated that the variance criteria remained the same whether it was one vehicle or more, they would be granting the use. Norton asked if it were discovered that there were 10 cars there when the property were visited would you revisit the question? Walker stated that the hardship is the same whether it is 1 vehicle vs. 10. It is hard to put condition on it that it could only be 1 vehicle.

A motion to deny request #1 was made by Marshall. He felt that there was no hardship and the property was already being used in a reasonable manner. This was seconded by Harrison, and passed by a unanimous vote. Requests #2, #3, #4, a motion was made to deny all by Marshall, seconded by Harrison and passed by a unanimous vote for the same reasons.

**8-14** [Linda P. Barrett](#): Applicant wishes to build an addition onto an existing single family dwelling and create a duplex/two-family dwelling (use A-2) and requests the following:

1. Variance to Article 28-5-2, Duplex or Two-Family Dwelling, to permit the development on a lot with 92 +/- feet of frontage when 120 feet of frontage is required;
2. Variance to Article 28-4-1(h), Table of Dimensional Regulations, to permit a building setback of 13 feet +/- where a 25 foot setback is required,

for property at 10 Brandy Lane in an RH Residential High Density District.

Carley asked Walker about definition of in-law apartment vs. two family dwelling. Walker explained that there is no legal differentiation. If a structure contains two self-contained separate dwelling units it is a two-family dwelling and the law would prohibit an occupancy restriction based on familial status.

Linda Barrett testified. She is preparing for "old age" and wants to continue to be independent as long as she can and doesn't want to go to a nursing home. So she thought if she built an apartment then she could live in that and her son and his family could live in the main house. Then her son will be there to help with yard work and with health care. She thought it would be an ideal situation.

Carley asked if the setback was for front yard. Walker stated that by definition it was for the rear property line along northerly side. Carley asked about why they didn't design it so that they would not have to extend into the setback. Ms. Barrett stated that she wants it to look nice and doesn't want it visible. She'd like it so that she could enjoy the view of her gnome garden; for aesthetics. If she turned the addition around the view would be apartments and she wouldn't like that. She thought there would be enough room to put a septic tank in the back yard (A design consideration before she realized that connecting to municipal sewer was required). Bartlett's Surveying tried to survey her property since '98 and '99 and the lines were just difficult to run. Her deed says she has more frontage than the surveyors have found. She visited Mr. Bartlett to see if they could check again and he said they could not finish their surveying with the current snow on the ground.

Walker stated that the 13 feet requested was a conservative number in this case. He is not a surveyor but he has looked at adjacent plans and he would guess that the GIS line is not 100% accurate. If it is incorrect, it is so on the conservative side. Norton asked why she couldn't move it (the addition) in. She stated that it will be attached to the (other side of the) garage. Carley asked if there were no City sewer out there. She said no. Walker asked Ms. Barrett if she would be connecting to the City sewer. Ms. Barrett stated that she would be. Carley asked if the septic would not be part of the project. Ms. Barrett stated that was correct.

In favor: David Mahaychek, speaking for his Aunt. She is in a multi-family zoned area. She is on ¾ of an acre of land. The buildings are 15% of the use of the property. They scaled out the addition to design it. That is how they came out to the length of the house. His Aunt is also going to run the sewer line down to her property. She will be attaching the addition to it and also the main house. She is going above and beyond to make this work. The setbacks unfortunately show her to be 12 feet short. She is on a dead end road so it will not affect anyone. She is surrounded by a few multi-family buildings. She tried to get Bartlett to do lot line adjustments; they could not find the property lines.

In opposition: none.

Comments from Code: none. Norton asked if there were any way to subdivide the old Johnny Prescott site. Walker said no. Carley: asked about the surrounding uses.

DECISION: Marshall felt that request #1 (frontage) was a technicality. If the entire frontage and not just the straight line of unbroken frontage was counted then they would have enough frontage. The hardship is that they cannot get more frontage. The spirit and intent of density and preventing overcrowding of land will be met. The 2<sup>nd</sup> request, he'd feel more comfortable if they had a real good survey, but that may not be feasible. Other homes are right up on the line. He would be in favor of granting. Carley commented that there was not much likelihood that the land adjacent to the proposed addition would be developed therefore the encroachment into the setbacks would not injure the abutter.

Motion to approve both variance requests was made by Marshall, seconded by Wallner and passed by a unanimous vote.

Carley agrees with the frontage question.

**10-14** **Dale T. & Robyn H. Grant:** Applicant wishes to open a privately owned indoor health and fitness center / gymnasium (use C-4) and requests a variance to Article 28-7-2, Table of Off-street Parking, to permit the provision of 27 parking spaces when 57 spaces would be required for property at 14 Chenell Drive in an IN Industrial District.

Dale Grant and Attorney David LeFebvre testified. Mr. Grant owns Flips Gymnasium which is now located on Hall Street. It is a private gymnasium where they offer instruction. They would like to buy 14 Chenell Drive to use for Flips Gymnasium. They have an issue with parking. They need 57 parking spaces. As the property has been developed as a warehouse, it has 23 parking spaces. They think they can add 4 more parking spaces for a total of 27 parking spaces. At their current situation on Hall Street, they have 10000 s.f. of space. This new location will be 8,000 s.f., a smaller location. Also, currently on Hall Street they have 11 spaces and have available to share with other businesses another 12 spaces. They do not need even 22 parking spaces. They have roughly 350 students. They have classes, ages 18 months to 18 years. They hold morning, afternoon and evening classes. The morning classes are mostly for younger kids – 8 to 10 students. Classes run for about an hour. The vast majority of classes are from 4-8 pm and as many as 35 to 40 students at that time. The young kids that are there in the morning and afternoon, the parents tend to stay and watch. They may need, at that time, 10 to 15 parking spaces. In the evening it's mostly all drop offs. They just don't need a lot of parking. They stagger the start and stop time of classes. They do not need 57 spaces. They only need 15 to 20 spaces. The use is a reasonable one. The gymnasium use is an allowed use. It is not contrary to the public interest. They will not be altering the character of the neighborhood. There are no public safety concerns. They are providing more than ample parking for their use. There is no benefit to denying the request. There will be no negative effects on property values.

Norton asked if they had a desire for growth. Mr. Grant stated that no, they do not. The first year or year and a half you peak in the number of enrollees. Then it dips down. They currently have 350 students. They draw from about a 20 mile radius. They have maintained 300-350 for the last 8 years. So unless surrounding area grows, they won't grow. Wallner asked how many staff members they have at their busiest time. Mr. Grant stated that at their busiest time they have 5-6 employees. Marshall asked if they would be having gymnastic meets. Mr. Grant stated that they would not as it takes a toll on your gym. Their team travels to other gyms.

In favor: none.

In opposition: Ken Koornneef who owns 18 Chenell Drive. He is not really opposed but concerned with overflow parking onto Chenell Drive. He has been there for about 14 year. He's just looking at the site plan for this property and it does appear there is room on the property towards the back for additional parking. His only other concern is traffic congestion at the intersection of Chenell and Regional Drive around 4 to 6 pm is high. Norton asked if there were any reason to think that there will be more cars there with this use. Mr. Koornneef stated that no, there was no reason. He just wanted to go on record with his concerns.

Comments from Code: If the variance is granted it is granted based on the representations of fact presented to the Board by the applicant. If in the future there were significant changes they would need to come back to the Board.

Rebuttal: Attorney LeFebvre. There are no expectations that they will exceed on-site parking. If there is a significant change in the future they will come back to the Board. They would agree to a condition of approval. They would suggest putting a number on it such as 45. If there is regularly 15 cars parked in the street they know they would need to fix it. Mr. Grant wanted to add that if they think they need more parking, they will be responsible and take care of that.

DECISION: Marshall asked Walker if variance is granted and a new owner comes in or a different use is this just for this particular use. Walker explained the variance is specific to the use as presented to the Board. If there was a significant

change in the circumstance surrounding the upon which the variance was based then it would need to come back to the Board. Carley is reluctant to place a number on the overflow.

A motion to approve the request was made by Wallner, as he felt they met all 5 criteria, seconded by Norton, passed by a unanimous vote. (Note: The conditions for meeting the criteria are explained in the application and were fully reviewed by Mr. LeFevre during testimony.)

**11-14** [Anthony DiLorenzo for W&E Realty, LLC.](#): Applicant wishes to use an 11.08 acre +/- parcel of land transected by an OFP Office Park Performance and CH Highway Commercial District boundary in its entirety for automotive sales (use J-1), automotive service (use J-4) & automotive repair including bodywork (use J-5) and requests the following:

- 1) Variance to Article 28-2-4(j), Table of Principal Uses, to permit that portion of the subject property within the OFP District to be used for automobile sales (use J-1);
  - 2) Variance to Article 28-2-4(j), Table of Principal Uses, to permit that portion of the subject property within the OFP District to be used for automobile repair service and towing, excluding body work (use J-4);
  - 3) Variance to Article 28-2-4(j), Table of Principal Uses, to permit that portion of the subject property within the OFP District to be used for automobile repair service and towing, including body work (use J-5);
  - 4) Variance to Article 28-2-4(h), Multiple Principal Uses on a Single Lot, to permit the establishment of multiple principal uses on a single lot within a district where such uses are not otherwise permitted,
- For property transected by a zoning district boundary at 94 Manchester Street with a portion in the CH Highway Commercial and a portion in the OFP Office Park Performance Districts.

Erin Lambert of Nobis Engineering testified along with Attorney Steve Patterson, who is Key Auto Group's attorney, the Principal of which is Anthony DiLorenzo. Steve Patterson testified. This is the former Kia automobile dealership. Their core business is sales and service industry. The proposed use for the site is a used car superstore, a collision center/body shop and a quick lube service center. They operate this type of business throughout NH. They operate Concord Collision Center and Key Towing at 14 Hall Street in Concord NH. The collision center and towing will move to this site if the variance are approved.

Erin Lambert testified. There will be 1 common driveway for the entire development. The building will be on the west side and there would be the quick lube and collision center in the back. They have adequate space on site to meet all other conditions of zoning. They abut residential zone to the west and would like to enhance the 30 foot buffer requirement to 40 or 60 feet. They comply with the East side setback which provides 80 foot buffer to residential property to the west. They would like to reserve the rear area for snow storage or storm water control.

Much discussion ensued by the Board about zoning districts, boundaries and how the location of the district boundary was set and how the OFP district was anticipated for future roadway and development and uses. Carley asked about the elements of variances. Three of the four requests relate to the OFP zone. Walker explained the write ups. Norton felt that the 4<sup>th</sup> request is contingent on the other requests. Carley stated that they are not asking for rezoning.

Attorney Patterson testified and went through the criteria of the variance requests. The lot is transected by the OFP and CG zone and it is a unique parcel partly because the uses allowed on one portion of the parcel are not complimented by the uses allowed on the other portion of the parcel thus making it difficult to reasonably use the entire parcel. The requirements are not consistent. Granting of the variances will not be contrary to the Ordinance as the development standards will still be adhered to. Freedom Cycle's property at 110 Manchester Street was rezoned. They have chosen to ask for a variance vs. a rezoning request. The authorization of the variances will not be contrary to the public interest. They will be adding an automobile and repair center consistent with other uses on Manchester Street. It will add 40 to

45 jobs by the time the business matures. This will not diminish the values of surrounding properties. If anything, it will enhance their values. The buffers to the residential area are substantial in nature. They will be sure that lighting and noise will be properly addressed.

In favor: none.

In opposition: Steven Foley, 53 Garvins Falls Road. He is opposite the power lines. He is concerned about the removal of trees from that property. It is already very noisy. Anymore removal of trees and extension of their property will make that worse. He is concerned with the value of his home and quality of life. There are not as many trees there as is shown on the map. He can see lights and hear noise from Manchester Street.

Ms. Lambert explained to the neighbors what is on the plans and what they are requesting.

Dennis Miniutti. He lives at 55 Garvins Falls Road. He would like to know how late they will be operating their business. In the summer time the noise travels. He hears noise from the motorcycle shop. He is okay if they work until 7 or 8 pm, but that is it. The lights, he can see off Manchester Street and the motorcycle shop. Carley stated that lighting is not typically a Zoning Board issue, but a Planning Board issue. The hours of operation they can ask of the applicants.

Marcel Nadeau, 47 Garvins Falls Road. He has questions regarding the buffer zone. Ms. Lambert showed him on the plans. He also has questions regarding the buffer. There is a power line that runs down the property line. There are no trees there. Ms. Lambert showed him where the buffer line was being measured from. Norton explained site. The lighting issues the ZBA doesn't deal with, but the hours of operation they do deal with. Tree removal they cannot deal with. Mr. Nadeau's other concern is noise and hours of operation. Does the Board think that there is adequate frontage to accommodate the request? Carley stated that that was not up for debate as it is not a request needed.

Comments from Code: none.

Rebuttal by Attorney Patterson. The hours of operation for collision center will be 8 am to 5 pm Monday through Friday. Quick lube is 7:30 am to 5:30 pm. Normal sales hours are 8 am to 8 pm Monday through Friday, 8 am to 6 pm on Saturdays and 10 am to 5 pm on Sunday. The only night time work would relate to their towing service. They are staffed 8 am to 8 pm Monday through Friday, but there are occasional deliveries during the night time hours as they are on call. He doesn't believe by pushing the collision center back into the OFP district there will not be a significant change in noise.

Marshall asked Walker if the Public is invited to the Planning Board meetings. Walker stated that they were.

DECISION: Marshall is in favor on the basis that the hardship is created by the zoning line only. What they are asking for is a reasonable use for the majority of the parcel.

Norton pointed out that commercial development would be permitted in the OFP district and removal of trees and other site work as proposed for this development would be permitted by right for other uses permitted in the OFP district and that the applicant is not requesting relief relating to those issues. Therefore he did not see this a contrary to the spirit and intent of the ordinance or as having any greater impact than other permitted uses as long as hours of operation were within reasonable times.

A motion to approve all 4 requests was made by Marshall, seconded by Harrison and passed by a unanimous vote.

Carley stated that they still need to go through Planning for their design. What they are asking is not really an incursion for the neighbors. The buffer would be required and it is being provided. The purpose of creating the OFP zone was not to protect the neighbors from having commercial uses next door. It was to control the type of commercial use. This

type of development would not frustrate the purpose of the ordinance or future plans for development of the rest of the land in the surrounding area.

Other Business

Minutes from March 2014. A motion to approve was made by Harrison, seconded by Marshall and passed by a unanimous vote. Wallner and Norton abstaining.

A TRUE RECORD ATTEST,

Rose M. Fife, CLERK  
ZONING BOARD OF ADJUSTMENT