

**ZONING BOARD OF ADJUSTMENT
MAY 7, 2014 MEETING
DRAFT MINUTES**

Board members present included Chairman Christopher Carley, Nicholas Wallner, Rob Harrison Jr., Benjamin Kelley 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 from 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 from 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 from 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.

21-13, 40 & 41-13 A motion to recess Case 21-13, 40-13 and 41-13 was made by Monahan, seconded by Harrison and passed by a unanimous vote.

18-14 **Father Richard Roberge for the Roman Catholic Bishop of Manchester:** **(Withdrawn per applicant request)** Applicant wishes to subdivide a property to create two separate lots for each primary structure and requests the following:

- 1) Variance to Article 28-7-7(g)(2), (Parking) Setbacks from lot lines, to permit the new property line to be within 1 foot of the edge of the existing paved parking area where a 5 foot setback is required (52 Pleasant Street),
 - 2) Variance to Article 28-4-1(h), Table of Dimensional Regulations, to permit the new property line with a side yard setback of 4 feet to the building and 2 feet to a stairwell when a 15 foot side setback is required (54 Pleasant Street),
- for a property currently known as 52 – 54 Pleasant Street in a CVP Civic Performance District.

Chairman Carley informed the audience that this case has been withdrawn.

9-14 **Friedrich K. Moeckel, Esq. For Thomas J. Grappone:** Applicant requests the Zoning Board of Adjustment overturn the Code Inspector’s determination that the commercial processing of firewood (use L-1) is not a

permitted use for property located on Fort Eddy Road known by Assessor's Map/Block/Lot 46A/1/14 in a GWP Gateway Performance District.

Attorney Friedrich Moeckel testified. Also available to testify was the property owner Tom Grappone and his brother Dave Grappone.

Atty Moeckel passed information out to Board members and Zoning Administrator. His client's contention is that the use is a preexisting non-conforming use. The property historically sat in the IN zoning district, which back then it was Institutional, not Industrial as IN stands for today. This is a permitted agricultural use in the old, pre 2001, IN zone. He and his clients are before the Board because of an anonymous letter that was mailed to Code Administration. This prompted 2 letters written to his client by Joe LaBontee of Code Administration. The property is less than 5 acres. This property has been in the Grappone family since the 1960's. In those days the Grappone's helped their father to process firewood at this location. Tom Grappone has processed wood at this location since 1989. The mobile home park is also in their ownership. In 1992 this use was permitted by right. He explained the maps and handouts that he submitted at the beginning of the meeting. The use became in permissible in 2001 when the new Ordinance was adopted. This property has always been a vacant lot. There are no buildings on this property. The applicant only wants to process firewood on this parcel as he has always done. As it was permitted prior the 2001 Ordinance, the use cannot be taken away. His client has no intention of expanding the use. The import of logs to process into firewood is limited to one load a year. The property is surrounded by property owned by the City of Concord and is used by someone who rents. RSA 674:19 allows uses to continue if the uses were in effect prior to the change of the Ordinance. His client did not own this property until 1989 when the property was subdivided and conveyed to him.

Carley asked if there had ever been a hiatus. (No. Big loads are brought in once a year and then fire wood during the year.) There is one person that works there? (Yes. It is Mr. Grappone's son.)

Code Administration took the position that the property owner should have requested from Code Administration a grandfathering decision. Attorney Moeckel feels that this is not the case. It is not required by Statute. He reviewed the Zoning Ordinance and he felt that they did not fall into that category.

Monahan clarified that the first part of their request is to recognize the grandfathering and the second part had to do with limitations. (Atty. Moeckel answered yes. The use historically has been used as it has been needed to be used. Once a year a truck load of off-site wood is delivered and handling their own materials as needed.) Harrison asked what is a truck load of wood. How many cord? (Mr. Grappone answered that a grapple load of wood is 10 cord. He also stated that he has a lot of ash trees and there is an insect problem there.) Harrison asked if they processed 15 to 16 cord of wood. How many days a week is there someone down there. (Mr. Grappone answered that they start processing the wood starting in the Spring and finish it off in the Fall.) Harrison asked if there were only one person processing the wood. (He and his son and his nephew take trees down and bring them to the site during the summer and come back in the fall time to process.) Harrison asked if there were there every day. (No.)

In favor: none.

In opposition: none.

Code Administration: Walker stated that there was differing of terminology. What was represented to Code Administration was that this was more of a commercial operation. They bring in grapple loads of wood, cut to length, and then process into firewood. That is a manufacturing, fabricating, processing use. As some of the lumber comes from off-site it brings the use under category L-1 which is not a use allowed in the GWP zone. Mr. Walker read from Mr. LaBontee's notes, Mr. LaBontee spoke with Mr. Grappone. There was no grandfathering issue raised at that time. Mr. Grappone stated that he allowed his son to use the property for a firewood business and bring in grapple loads. So that is what Code Administration addressed. Mr. Walker stated they looked into possible historical uses of the property. Mr.

Walker handed out photos of the property showing current conditions and aerials photos going back to 1960. They looked at photos that were passed out of what is going on at the property today. He looked at historical aerial photos and saw nothing that indicated that there was long term use of this nature that would demonstrate to Code Administration that there was on going consistent use that would demonstrate any commercial use of that site. Commercial use of a pretty large scale is going on there. He suggested that they come to Code Administration first so that they could give a better determination of any vested rights before it came to the Board. The Board should not be put in the position of first appeal.

Carley stated that it appears, looking at these photos, that as far back as 1970 the lot was quite clear back to a line more or less aligning with the fifth house back in the mobile home park. Then in 1980's picture the property appears to have grown in quite a bit. The 1990's picture shows it has grown in even more. The 2000 photo it appears to have been logged. In 2005 there is just a little bit of tree growth around the fringes. He doesn't see anything that appears to be a wood cutting business.

Attorney Moekel agreed that the commercial use of the property under today's ordinance is not a permitted use. Attorney Moeckel stated that the photographs are static. They are a point in time. This is a sporadic use. Sometimes there is no wood; sometimes there is a lot of wood. In 2010, between the adjacent lot to the west, the mobile home park, there is a little notch shown there in the photos that is where the location of the operation takes place.

Mr. Grappone stated that before the barn was put there that notch was never there. When the lot was subdivided that notch came into play. The tail end of the barn also had dumpsters there. (Carley asked if the barn belonged to the park.) Mr. Grappone stated that it did.

Carley stated that in the 2010 photo he sees no evidence of wood or equipment. Not like in 2014. (Mr. Grappone stated that they didn't bring any wood down at that particular time of that year.) When did you log the property from the way it looked in the April 1990 photograph? It was logged in 2005. Carley asked when they brought in wood from the outside. Mr. Grappone stated that there is more this year than in the past. Carley asked if wood from the mobile home park came in continuously. Carley stated that in 2005 there looks to be piles of sand in the middle of the property. Mr. Grappone was not sure what it was; maybe sand.

Monahan wants to follow the historic use of the property. You've always taken trees off the lot for firewood. Historically have you brought logs in for firewood? (Mr. Grappone stated that more so recently.) Prior to 1989 did you do that? (Mr. Grappone stated he was not sure; maybe.) The lot was subdivided in 1989. (Yes.)

Rebuttal: Atty. Moeckel stated that he agrees with Code Administration that if it were a brand new use it would not be permitted but he feels that Code's characterization of the use today is not the proper inquiry and that is why he included the material he did. In the 1990's it was a use allowed by right. By statute the Zoning Ordinance cannot restrict the property owner's ability to log their property.

2001 was when the Ordinance changed to prohibit this use. (Atty Moeckel stated that that was correct.) Did Mr. Grappone bring in logs from off site for processing before 2001; grapple loads of logs. (Yes, maybe once a year.) Starting when? (Starting approximately 1989/1990.) Mr. Grappone stated that the pictures were taken in the Spring and the wood is gone by then. Carley asked if they wouldn't be processing them at that time. Mr. Grappone stated that they would be mainly working on them in the fall.

Carley asked if logging the property is legal for their own use. (Walker stated that the removal of brush and maintenance is not prohibited by the zoning ordinance. A large scale logging operation would require an Intent to Cut permit since timber can be part of the assessed value of a property.) Would the commercial processing of firewood use have been allowed in the past? (Walker, Not to the best of his knowledge.)

Atty Moeckel stated that when Code Administration issues a decision the property owner has 30 days to appeal the decision. Atty Moeckel has made multiple phone calls to Code Administration to no avail. He spoke with Mr. LaBontee. Mr. LaBontee told him that the Zoning Administrator had not made a determination on this case. The grandfathering issue was in front of Code Administration as soon as he got involved. Carley stated that the Board could Table the case and ask Code Administration for more information.

DECISION: A motion to Table the case was made by Monahan, seconded by Harrison with the reason that Code Administration needs to provide more information, specifically, better clarification of commercial operation v. agricultural operation, and passed by a unanimous vote.

Deliberation: Carley stated that the appellant feels that this use is a long standing practice on their property including importing logs from off site since 1990. Kelley stated that the Board could decide that it is agriculture but the City sees it as industrial. Carley stated that under certain circumstances, where the definitions are vague or incomplete, the Board has taken it upon themselves to determine the category into which a use falls. He's not clear on whether the definition of the use is vague or not. He would like to hear about how the Ordinance defines this use as an industrial process. Harrison stated that once they bring in the lumber from another source it becomes more of a commercial use. Monahan feels that the first thing going on is their idea of agricultural use, which was clearing his land but he's troubled by them bringing in a grapple load of lumber. Not sure that is a use that could be grandfathered. Harrison stated that once he sees the conveyor loading trucks, it is a commercial application. Wallner feels it would be a commercial business if it was done with regularity but he doesn't see that here. Kelley is not comfortable with voting as there is no definition. Carley stated that the Board could move to Table the case with possibly a condition that Mr. Walker comes up with more detail as to why he classifies it the way he does. Harrison feels that is fair.

13-14 Raymond Carter: Applicant wishes to construct a one car carport and requests a Variance to Article 28-4-1(h), Table of Dimensional Regulations, to permit a front setback of 13 feet where a 25 foot setback is required for property at 20 Wilson Avenue in an RS Residential Single Family District.

Raymond Carter testified. He lives at 20 Wilson Avenue. He has a one car garage now and he has 2 cars. He is trying to build another garage on the end of the existing house. Approximately 80 to 90% of the houses in the area have a 2 car garage. He wouldn't be building something out of the ordinary or lowering the property values in the area. The house is similar to many retirement type houses. It only has 2 bedrooms. He needs the variance as his lot is a corner lot. They are on Ledge Circle and Wilson Ave. He has 2 front yards and 2 side yards as they are a corner lot and his setbacks are less than if he had a regular lot. It's a cul-de-sac. Carley asked if the carport would go at the end of the existing building where he now parks a car. Is it going to end by the Shrub? (Yes.)

Monahan, what is on the other side of the house? (On the right side it has a 15 foot setback and that is where the bedrooms are located.) Carley how old is the house? (It was built in 1950.)

In favor: none.

In opposition: none.

Code: none.

DECISION: A motion to approve the request was made by Wallner (the hardship is that it is a corner lot, it is unique and most residents enjoy a two car garage), seconded by Harrison and passed by a unanimous vote.

14-14 **Richard F. Askins:** Applicant wishes to allow an existing separate detached building to be used as a second dwelling unit and requests Variances to Article 28-2-4(h), Multiple Principal Uses on a Single Lot, to permit 2 single-family detached dwellings on one lot which is neither a Cluster or Planned Unit Development for property at 24 South Spring Street in an RN Residential Neighborhood District.

Richard Askins testified. He owns the property. This is one of the oldest homes in the City of Concord. There was a carriage house attached to the main house when the home was originally built. The home was moved to this property in 1850. In 1993 the carriage house was in disrepair so he put a foundation under it and made himself a workshop out there, etc. He had separate utilities to the property, its own water, sewer, electric and gas. Over the years he has fixed it up. He bought the house for \$129,000. It was in bad shape and the taxes were bearable. Now his taxes have more than doubled and he thought if he could have this as a separate dwelling unit and rent that out it would pay his taxes and he could stay in Concord. The property does have plenty of parking; it has 2 driveway access points; it is paved parking. He's surrounded by the State Office Park behind his house and then on the left side is a 2 family house and across the street there are multi-family homes and one single family home. The reason that the multi-family is not allowed is that it is in a separate building, not all in one building. The carriage house is detached, which makes the use not allowed.

Carley asked if the carriage house was ever attached to the house. (The house was moved from a different location and when it was moved it was separated.)

Monahan asked if he knew when it was moved. (He believes it was moved in 1859.) What is the square footage of the carriage house? (The ground floor is 650 s.f. and the second story is another 650 s.f. It has a full bath on the 2nd floor and a half bath on the ground floor.)

In favor: none.

In opposition: none.

Code: There was record that a variance was granted in 1988 to allow the structure to be used as an accessory guest dwelling to the main house.

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

Monahan asked that in the past similar things have come in have they been called an in-law apartment? (Walker explained that the City does not recognize "in-law apt." because the City cannot restrict a residential unit by family status. It would have been a full fledged independent living unit.) Wallner asked if the carriage house were connected would it be permitted. (Yes, the lot size and frontage would permit the conversion to at least a 2-family in the district.) Harrison felt it is consisted with what is in the neighborhood. Carley stated that the presence of the house on the property and the fact that it has been there a long time adds to his decision. If they were asking to build new there would be no justification for it. It is a reasonable use for an existing finished unit. (Note: The unit has separate water and sewer connections to the street.)

15-14 **Stephen & Ruth Stanley:** Applicants wish to construct (complete) an addition to an existing structure in an RN Residential Neighborhood District with an F1 Flood District overlay and requests a Variance to Article 28-3-2(f), Development Standards in the Flood Hazard District, to permit substantial improvements of a building in an F1 District without connecting to municipal sewer when all structures in the F1 District are required to connect to municipal sewer, for property located at 30 Portsmouth Street in an RN Residential Neighborhood District with an F1 Flood Hazard overlay.

Stephen & Ruth Stanley testified. They live at 30 Portsmouth Street. Mr. Stanley felt it was an unnecessary hardship because it would be unreasonable to hook up to City sewer. The cost would be prohibitive. The City of Concord's sewer connection is 150 feet from their property. He just signed up for Social Security and will be living on a fixed income in a few weeks. There will be no fair and substantial relationship as they already had a garage and breezeway and they only added 4' to the side and 4'6" to the rear and the porch was added on onto peers. This would not be contrary to the spirit of the Ordinance as this will not displace floodwaters. It is 4/10ths of a foot below the flood stage and the concrete footings are 10 feet above the flood stage. The new structure does not increase the load on the septic system as they took one bedroom out before they added one bedroom back in. They still have almost 90% of the lot even after the addition. It is not contrary to the public interested as it would not result in any harm or encroachment on their abutter's property or their property values. They were issued a Building Permit in August of 2013 and after 90% of the construction was complete they were notified that they needed a variance. The building is 95% complete and has enhanced the neighborhood.

In favor: none.

In opposition: none

Code: (The question was asked why the Building Permit was issued if they need to connect to sewer) Walker stated that it was an oversight as far as issuing the Building Permit. There are 3 properties at the end of the road that are not connected to Municipal sewer which are at the edge of the F1 flood Hazard district. Carley asked if the regulation to connect to the City sewer is a City wide regulation or one just due to flood plain. (Walker stated that this case was flood plain driven.) They don't need to change their septic unless a building permit was pulled. (Walker stated that was correct.) Monahan asked if those 3 houses were connected to Municipal water. (Walker stated that they were.)

DECISION: A motion to approve the request was made by Wallner, seconded by Monahan (Wallner felt the hardship was the cost to connect was prohibitive. Carley added that the impingement on the Ordinance is pretty minor. The garage is a little too low. And the connection to the sewer would not have been required unless the building was improved) and passed by a unanimous vote.

16-14 Joseph Properties for Concord Union School District: Applicant wishes to repurpose a former elementary school building as a multi-tenant use building to be used primarily as a community and arts center and requests the following:

- 1) Variances to Article 28-2-4(j), Table of Principal Uses, and The Glossary, to permit the establishment of a for-profit community and arts center (use B-14) intended to provide space for individual users to use for educational uses, child care (use B-4) and after school care uses, dance and art studios (use C-12) and other uses reasonably related to the same,
- 2) Variance to Article 28-2-4(j), Table of Principal Uses, to permit office use (use F-1),
- 3) Variance to Article 28-6-8, Signs Permitted in Residential Neighborhoods, Section (a)(1), to permit 2 freestanding signs where 1 freestanding sign would be permitted,
- 4) Variance to Article 28-7-2(e), Table of Off-street Parking, to allow for the provision of 50 off-street parking spaces when no more than 125 spaces would be required,
- 5) Variance to Article 28-7-7(g)(1), Parking restrictions in the required front yard, to allow for parking on existing impervious paved areas which are currently within the required front yard setbacks of the property (as shown on plans),
- 6) Variance to Article 28-7-7(g)(2), Setbacks from lot lines, to allow for parking on existing impervious paved areas which are currently located within the required setbacks from the side lot lines (as shown on plans),

- 7) Variance to Article 28-7-7(i), Curbing and guardrails, to waive the curbing and guardrail requirement and to maintain the existing conditions of the property,
- 8) Variance to Article 28-7-10(a), Parking lot landscaping required, to waive the required 5 foot parking lot perimeter landscape requirement,
- 9) Variance to Article 28-7-10(b), Parking lot interior landscaping required, to waive the required 5% interior parking lot landscaping,
- 10) Variance to Article 28-7-10(c), Use of required landscape areas restricted, to waive the landscape are use restrictions and allow the applicant maintain the existing conditions and uses on the property,

for property at 40 Thorndike Street in an RD Residential Downtown District.

Attorney Maria Dolder testified. Also available for testimony: Brian Thibeaux from Joseph Properties.

A lot of these requests are to allow the property to (physically) remain as it is. Atty. Dolder gave a history of the building. This building was the former Rumford School. It was built around 1902 and used as an elementary school until the City consolidated the schools and closed the site. They would like to create a community art center, child care; small office uses as photographers, media consultants. The unique aspect of the request is that the Ordinance allows a community center but it is defined as a non-profit. A for profit community and art center is not addressed as a use in the Ordinance. Another unique aspect is that this community and art center is proposed to contain a variety of varied uses. Some of the uses are permitted by right but other uses are permitted by SE and some are not permitted at all. They felt it was beneficial to ask for variance relief as a whole instead of coming back for every particular use. The uses are consistent with Spirit of Ordinance. They will provide 50 parking spaces on existing paved areas. Some of the paved areas were utilized as parking spaces when it was a school. The parking calculations were difficult as there were many uses. These uses would require 125 parking spaces for the worst case scenario. They are unable to provide that number due to the pre-existing layout and the building layout. They were requested to maintain the existing playground. The applicant does not anticipate all 50 of those parking spaces to be used at one time. They are also purchasing the vacant lot at 48 Thorndike Street which gives them the ability to provide for additional parking. They do not want to pave the lot until they need the extra parking. However, that lot is available if the need for additional parking becomes necessary. They are requesting an additional free standing sign. The applicant will maintain the sign. This sign will be on the Monroe Street frontage. The two frontages of the property is a unique situation thus making it reasonable to have two freestanding signs. It is unique as it was used as a public elementary school, which is a use permitted by right, but not a use reasonably accommodated anymore. The amount of rehab that would have to go into the school to bring it back to public school standards is prohibitive. The uses allowed are limited. Residential housing with less than 14 units would be allowed but no financially viable. The number of units for a reasonable return would be more than allowed and out of character with the area. The School Board set a set of criteria that the new property owner has to meet. She went through that list. The impervious areas are already well established on the property. They would like to maintain that space. April 2, 2014 the applicant attended a neighborhood meeting to allow people to ask questions, etc. The historic character will be maintained. Minor modifications will be made to the building. They have no intention to change outside of building. They would like to put the existing building back into a use that would fit the community and neighborhood. They would like to maintain the current conditions as they exist on property now. Therefor there should be no change in the ipact the building will have on the neighborhood.

Carley how many students were there? (Audience (Jack Dunn): 225 children) What would be the maximum number of people there at one time? (Approx. 25. tenants) Kelley asked how big the building is square footage wise. (The Building is 25,000 s.f.) Carley will there be ADA improvements ie. elevator? (No, they are proposing to widen doorways, etc.) Carley asked if it were a 2 story building. (Yes and annex in the back.) When was the building built? (It was built in approximately 1902.) Monahan asked approximately how many people would be there at one time. (That depends on who goes in there for tenants.)

Atty. Dolder stated that a lot of the people will vary their hours. The entire building is not filled yet, so until they get a better feel for it, they won't know. The school did not utilize all 50 spaces for parking. The lot next door is available for additional parking. Wallner asked how many parking spaces they could accommodate on the separate lot. Attorney Dolder felt that they could accommodate approximately another 50 spaces. Monahan asked what the on street parking situation was like there. Attorney Dolder does believe on street parking is permitted. Walker stated that this space is not to be used for performance type space for dance schools, etc. His understanding is that this is not the intended of the space. Attorney Dolder stated that they have the gymnasium space, which was traditionally used to allow schools to have an art show, etc. They would not anticipate that a recital would coincide with other uses but they do not wish to exclude the possibility that there may be some public events. Monahan asked if it were a non-profit they would they have to be before the Board? Walker explained the community center definition, etc. Monahan asked if the definition in Ordinance was what defines community center? Walker stated that it was and he read it to the Board. Monahan asked about relief on the landscaping. Attorney Dolder stated that they would need that as they have to tear up the impervious surface to meet the landscaping requirements and they would lose the parking.

In favor: Christine Lavalley, 3 Thorndike Street. She feels that it is a great idea. Her one concern is that now parking comes up to the edge of the property and she would like a privacy fence of some sort that is a little higher so that they (have some protection).

Don Derosier, 40 Monroe Street. He is in favor but concerned with on street parking. Is there anything going to prevent folks from parking on the street? The street is always crowded. Winter time is more of a problem. Carley stated that if it is legal to park on the street then it is legal to park there and the Board cannot change that.

In opposition: Dave Paradis, 25 Monroe Street. He is concerned with where people are going to be at what time of day. He lived there when the school was there. Having a sign on Monroe Street only exacerbates the problem. They have not seen a diagram of how the building will be divided up for uses within. He has no idea of the use's time tables. Security is also a concern. If they put a sign on Monroe Street it will draw people to that annex sign. He would like to see more thought put into how the clientele will be chosen, directed and managed before they can dictate any kind of system and any kind of room that can cause an influx of traffic issues and parking issues and noise issues.

Code: none.

Rebuttal: Atty Dolder stated that on street parking is permitted so they cannot control people to tell them they cannot park where the City allows them to. They will ask people to use the parking that is provided. They have created a one way enter and exit. They are changing the parking to be angled parking so it will not face Ms. Lavalley's home any longer. There is no vehicle entrance on Monroe Street. Security: there is an office area right inside and there will be an onsite manager at all times, and the building will be locked in the evenings (tenants will have access).

Wallner asked where the 2nd sign going to be located? (The informational sign will be on Thorndike Street and the sign on Monroe is to identify the building.) Wallner asked if folks would be able to access the building from Monroe Street. (Yes, but it is direct access to the Annex only. The main entrance will be on Thorndike Street.) Monahan asked if there were lighting in the parking area. (There is not and it is not proposed. There is lighting on the building.) Carley asked if they needed to go before the Planning Board. (Atty Dolder, They do not.) Monahan asked about hours of operation? What are their limitations? (There are no limitations. They don't anticipate night time uses.) Monahan asked about a privacy fence for the neighbor. (They haven't proposed any changes to that but they can work with the neighbor.)

DECISION:

Monahan had concern with the parking issues. He likes that the applicant has the extra lot but it would be the applicant's call as to whether they open it up or not. Walker stated that it was a difficult item to monitor as far as how many vehicles are on the street that are related to this use. Carley asked if there were any precedent for requiring

property owners to retain ownership of the adjacent property. (Walker would have to research. They have made representation that their best guess is that it would be adequate parking and if it's incorrect they have this lot as a back-up. So it is a condition they have imposed on themselves. More questions ensued between the Board and Mr. Walker. Monahan thought that maybe some sort of condition that they maintain ownership of the adjacent lot and then in a few years they come back to us and report density. Wallner stated that the Board could deny the parking request and they could come back. Kelley asked Walker, if this was to be permitted as an office use and a dance studio would they need individual zoning approval each time they changed occupants? Walker stated that it all depends on the zoning district and what's permitted there. Kelley asked if it was solely office use and one tenant at a time was different would they all have to come in for relief. Walker stated that it depends on the district, if it was a district where just office use was permitted and a specific variance was granted for the dance studios and they wished to expand the dance studio use beyond what was approved they would need to return for approval for the expansion. They want to avoid coming back to the Board so that is why they are asking for an overall variance. Carley commented there was some risk involved in any use of this building as it is an unusual structure.

Wallner had an issue with request #3 (second freestanding sign). He has concerns with Monroe Street; the traffic and access. This might create issues. **A motion to deny request #3** was made by Wallner, seconded by Monahan, failed by a 1-4 vote with Carley, Harrison, Kelley and Monahan in the majority.

A motion to grant items 1-10 was made by Monahan, seconded by Harrison and passed by a unanimous vote. This approval was made with the conditions that (1) a 6 foot high privacy fence along the easterly property line be constructed (with 4 foot sections) in accordance with code requirements; (2) the adjacent lot will be held by the applicant to be developed for additional parking if deemed necessary and the lot cannot be sold without the approval of the Zoning Board if the variance is to continue after the sale; and (3) the applicant will return to the Board for a full public hearing once each year for the next two years to review the status of the parking and the impact to the neighborhood.

17-14 Lawrence & Cheryl Laughlin: Applicants wish to construct a 330 s.f. "family room" addition and requests a Variance to Article 28-4-1(h), Table of Dimensional Regulations, to permit a front setback of 11' 6" adjacent to McKinley Street where a 25' setback is required for property at 64 Dunklee Street in an RM Residential Medium Density District.

Mr. & Mrs. Laughlin testified. They would like to add a family room. Right now they have a bathroom on the 2nd floor and one in the cellar. The house was built in 1925. The addition would enhance value of their home. The house is non-conforming as it stands and meeting the setback would bring the addition into their living area. They are approximately 10 feet off from the 25 foot setback line. The addition would be aesthetically pleasing. If he pushed it further into the property it would come too close to garage and isolate the back yard. The family room and bathroom would be in the addition. Carley asked if it were a one story addition. (Yes.) Is it a two story home? (Yes.) They have lived there since 1991. There are not a lot of other opportunities to place the addition due to the layout of the property and the layout of the house.

Monahan asked why the addition doesn't line up with the back of the house. (Aesthetically it would look like a block house and that would not add anything to the neighborhood.) Walker clarified that it would still require a setback even if lined up with the house. Harrison asked if the house is currently non-conforming as it stands. Monahan asked what direction the roof would pitch. (It will pitch away from the house.)

In favor: none.

In opposition: none.

Code: none.

DECISION: A motion to approve the request was made by Wallner, seconded by Kelley and passed by a 4-1 with Monahan in the minority. If it were not a corner lot it would be 3.5 feet encroachment into a side setback and it is the usual corner lot issue they face. (reasons cited by applicant)

OTHER ITEMS:

April 2014 Minutes: A motion to approve The Minutes was made by Wallner, seconded by Harrison, and passed by a 4-0 with Kelley abstained.

A TRUE RECORD ATTEST,

Rose M. Fife, CLERK
ZONING BOARD OF ADJUSTMENT