

**ZONING BOARD OF ADJUSTMENT  
JANUARY 7, 2015 MEETING  
DRAFT MINUTES**

Board members present included Chairman Christopher Carley, Rob Harrison Jr., James Monahan, Nicholas Wallner (conflict with Case #40-14), Stephen Norton (Conflict with Case #40-14), Andrew Winters (for Case #40-14) and Jim Marshall (for Case #40-14 & 21-13). 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 until January 7, 2015**) 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.

The Board for this case consisted of Wallner, Acting Chair, Norton, Monahan, Harrison and Marshall.

The Chair reviewed the information from prior hearings. He questioned if there was there a technical error or new evidence from what they heard originally? Marshall asked if there was a statement in the file that explained what the new information was. Monahan asked if there were reference to any Supreme Court cases. Norton remembered that the Board had wanted the Planning Board and City Council to weigh in on scrolling signs. Walker said that they did not support the idea. Walker explained that the underlying reason is that the way the Ordinance is written it has been very effective, and they didn't see any reason to change it. Any changes to the Ordinance, as it was written, would open up the door to new issues. Walker provided to the Board a copy of the Ordinance passed by City Council. Norton said that the reason, he remembers, that the request created problems was that the location was unusual. The sign was low and they had promised not to do anything flashy or crazy which gave the Board pause. The Board needs to decide if there is anything new or different. Marshall also said that the Board could also find for a technical error. He said page two of their submittal seems to say that the Board made an error. Walker affirmed that scrolling signs are still not permitted. Monahan wondered if it would be helpful to Table this and have the City Solicitor come back and speak to the issue of deficiencies. Walker questioned if that would be beneficial at this point. Monahan said that the series of items from #19 through #28 seem to be questions of legal process and that it might be useful to have the Solicitor's opinion on the statements made in those items. Monahan asked if the City Solicitor reviewed the document before them. Walker said that it was reviewed by the City Solicitor 2 years ago (when it had been submitted). Norton felt it made sense to rehear the case with the City Council and others weighing in. Monahan suggested that the Board could also deny it and the applicant can come back based on the Ordinance changes.

Wallner said they had three options before them; deny, table or grant the rehearing. He felt that there were several issues and he leaned towards a rehearing. Marshall agreed.

**DECISION:** A motion to rehear the request was made by Norton, seconded by Marshall and passed by a unanimous vote.

**40-14 City of Concord:** Applicant wishes to install a new freestanding sign at Everett Arena and requests a variance to Article 28-6-9(a), Table of Maximum Sign Dimensions for Non-Residential Districts, to

permit a 15' 7" tall, 106.5 s.f. freestanding sign where a maximum 12' tall, 40 s.f. freestanding sign would be permitted for property at 15 Loudon Road in an IS Institutional District.

The Board for this case consisted of Carley, Monahan, Harrison, Winters & Marshall.

Mark Vella testified. The larger sign requested would allow the facility to communicate better to the community about the events that they hold. It would give the Arena much better visibility coming off of I93. It would promote traffic safety. It would also be comparable to other signs in the area. There are 2 other large freestanding signs at 8 Loudon Road. In the gateway area a much larger sign is allowed. The larger sign would blend in more, give them better visibility, be safer and promote their business better.

Monahan: Is it illuminated? (Yes it is internally lit.) Winters: What else is there other than the arena on that property? (Walker stated that the old fire training grounds are there, the boat house for Concord Crew and the skateboard park are there as well as river front park area.) Winters: Are there any other institutional districts in the area? (Walker stated that those districts are normally around the hospital area, etc.) Monahan: Odd Fellows home was institutional district, correct? (Walker: Yes it is.) Marshall: Do they have changeable letters? (Mark stated that they are small pieces of plastic with letters on it that are removable by hand.) Monahan: What are your other options? Have you maximized your opportunity for building signage? (Yes. There is a large sign on the building. The way the building sits on the property it is not visible coming down Loudon Road.)

In favor: none.

In opposition: none.

Code: none.

Decision: Marshall wanted to see the other signage in the area. Walker provided a google map showing those signs. The GWP zones (on other side of the street) allows up to 150 s.f. freestanding sign up to 20 feet high.

Harrison felt it was a reasonable use.

A motion to grant the request was made by Harrison, seconded by Marshall and passed by a 4-1 vote with Monahan in the minority. Marshall felt that public safety was a concern. Marshall felt that it was smaller than gateway signs. Monahan is against it as the hardship is based upon the zone. Carley felt that the building is so large and the property is so large and it is out of scale with the area.

**36-14 Foxfire Property Management:** Applicant wishes to expand an existing parking lot and requests a variance to Article 28-4-1(h), Table of Dimensional Regulations to permit total lot coverage of 84% where maximum lot coverage of 80% is permitted for properties to be merged at 37 Pleasant Street and 12 Wall Street in a CVP Civic Performance District.

Testified: Nicole Duquette & Paul Cole. Nicole submitted a smaller version of a sight plan. NH Charitable Foundation (NHCF) property. Chesley Street and Wall Street are both one way streets. There are two driveways in the existing parking lot. They are removing the head in parking spaces. Parking is inadequate as per today's Ordinance requirements. They do not currently meet the parking calculations. There are no additions to the building. They did have a proposal before the Planning Board that did not require variances and the Planning Board did not feel comfortable granting an additional driveway on this one way street. They are not adding another driveway so they need to add more space to turn around. 80% lot coverage is allowed and they are asking for 83% to allow for maneuvering in and out of this lot. The spaces that are added are all

compact spaces. They meet all setbacks to the property line. The hardship is that NHCF needs the parking and they are utilizing off street parking right now. By adding 6 parking spaces that would leave 6 on street parking spaces freed up for others to use. There will be no change to the use and no change to the building. They have tried to look at alternatives. Paul Cole said that the lot was a residential house that burned down several years ago so it is a vacant lot.

Monahan asked who owned the vacant lot. (NHCF owns the lot.)

In favor: none.

In opposition: Gregory Banks, 10 Wall Street; across the street. The lot is a very small lot and it will be difficult for NHCF to put cars on the lot and be able to come in and come out. They back into his driveway as it is now. All the trees will be gone. The entire lot will be paved. Carley asked if he had seen their plan. He was told he couldn't see it. Carley invited him to take a lot at it. Carley asked what the problem on the street would be. Mr. Banks said that there was no issue with off street parking. There are 18 cars a day in the parking lot and they only overflow onto the street once a month. When they park on the street they are parked legally. Monahan asked if he was concerned with the loss of green space. Mr. Banks said that he was and also with the increased traffic. He asked why they were adding parking spaces if they are not adding people into the office. Monahan asked him if NHCF approached him about this. He said they did not.

Code: Walker stated that the most recent case is one that goes back to 1992 which may have been when NHCF took ownership of the property. Special Exceptions were applied for at that time and a re-subdivision of the property took place. A special exception was granted to permit off lot parking within 500 feet of an adjacent lot to allow 1 handicapped space off lot. And a variance was granted to permit office use with 26 parking spaces vs. 32 parking spaces required. Three compact spaces were also requested as well as parking within 5 feet of a property line. Those were incorporated into their deeds as part of a declaration of easements at Merrimack County Registry of Deeds.

Rebuttal: Ms. Dukette said that went to the Planning Board and proposed one additional driveway which they did not allow. There is going to be green space between the side walk and the parking lot. They need the additional parking spaces for their meetings. Paul Cole stated that there are other meetings other than their once a month meeting that takes place there. Staff parks off site. NHCF also owns 1 and 3 South Street. He hasn't seen anyone back into Mr. Banks parking lot. Ms. Dukette said that they walked the site with Nancy Larson and there were no parking spaces available there as they were having a Board meeting. Norton asked what the guarantee was that this is the end of their requests. How is this hardship different from the previous hardships? Ms. Dukette said that basically they have a vacant lot and they are trying to make the parking more conforming. Mr. Cole said that there was a house there then and now there isn't.

DECISION: A motion to approve the request was made by Monahan, seconded by Wallner and passed by a unanimous vote. Monahan felt that they are becoming more compliant.

**37-14 Patricia Connolly:** Applicant wishes to expand a single-family dwelling and requests a variance to Article 28-4-1(h), Table of Dimensional Regulations, to permit an addition with a minimum setback of 5' 8" +/- for property at 5 Orchard Street in an RN Residential Neighborhood District.

Harry Sidel testified. He owns a design company and was hired by the Connolly's to do a design for a handicapped accessible bathroom. This is a situation where an accessible bathroom is required to allow the family to stay in their home. Mr. Connolly is very sick. The Connolly's have lived in this home for a very long time. This is a property that is 50 feet wide and bordered on two sides by the Centennial Inn and their parking lot area. It is a nonconforming house and to create the accessible bathroom they have tried to use as

little land as possible that encroaches to make this work. This is the only way that they can do it. It does require 33 s.f. of space. An effort was made to make it as modest as possible. The expansion of 7'4" by 4'6" sets back and steps away from the setback line. The setback guideline is 10 feet. By allowing this minor relief it is not affecting any of the surrounding properties.

Wallner asked what the setback is and how far into the setbacks they are encroaching. Mr. Sidel said that the setback is 10 feet and they are encroaching by 5'8". The property line and house line are not parallel. Norton asked how far they were from the Centennial Inn fence with the addition. Mr. Sidel said that the Centennial Inn fence is 2.5 feet beyond the property line and it is a high fence. Norton asked if they had spoken with the Centennial Inn. Mr. Sidel said that they had not.

In favor: Roger Phillips who is a neighbor who lives at the corner of Orchard and Pine Streets. Gene Connolly suffers from ALS and under NH Law this Board is able to grant a variance due to this situation; RSA 674:33V. Due to the nature of the property and the setbacks that were created after the building was built, he feels that this request is reasonable. He circulated a petition in the neighborhood and they have 28 or 30 people who were in favor and signed the petition. He submitted it to the Board.

In opposition: none.

Code: Walker stated that under RSA 674:33 there is a provision that allows the Zoning Board of Adjustment to grant variances in relationship to disabilities without finding a hardship. The Zoning Board may do so but the variance shall survive only so long as the person that has the particular need is still on the premises. This is a permanent addition to the property therefor he felt he was not able to apply the provision in this case.

DECISION: Norton stated that Mr. Connolly has done amazing things for the community and he feels there are characteristics to the lot that create a hardship. A motion to grant the request was made by Norton, seconded by Harrison and passed by a unanimous vote. Wallner felt it met all 5 prongs of a variance.

**38-14 Anthony Tenczar & Pamela Power:** Applicant wishes to remove an existing attached shed and carport with a non-conforming 6" setback and replace with a new addition and request a variance to Article 28-4-1(h), Table of Dimensional Regulations, to permit an addition with no less than a 6.5' side setback where a 15 foot side setback is required for property at 33 Rockingham Street in an RS Residential Single Family District.

Anthony Tenczar and Pamela Power testified. Mr. Tenczar stated that they have lived at the property since 2002. This is a historical property that is bordered by a subdivision on the side. The house is constructed on the westerly property boundary. The main part of the house sits about 2.5 feet from the property line and the attached shed sits 6 inches from the property line. The lot has an extreme angle. It makes situating an addition on the property nearly impossible. They would like an attached addition including a garage and living space. They have worked with a design build firm and the best thing they could come up with to improve the situation is by taking the shed and car port off and replacing it with an addition that they move further east and having a 6.5 foot setback. They would be taking off 512 s.f. coverage and replacing it with 830 s.f. foot print. The unusual nature of the lot is one of his major hardships as well as the way the property was subdivided. The main part of the home has a farmer's porch on it and they are seeking to attach the addition to the rear of the property to keep the historical value of the property.

In favor: none.

In opposition: none.

Comments: none.

Decision: Norton asked Walker about the property lines as shown on the City's GIS maps and why they were different from the surveyed plans. Walker explained the GIS property lines are approximate locations and only a licensed surveyor can legally determine the actual location. Wallner felt that they were reducing the setback. Motion to approve the request was made by Wallner, seconded by Harrison and passed by a unanimous vote. Harrison felt the lot was unique and they are decreasing the non-conformity of the structure and the amount of square footage within the setback.

**39-14 Calamar Enterprises, Inc.:** Applicant wishes to develop a multi-family dwelling project for the elderly and requests the following:

- 1) A variance to Article 28-2-4, Table of Uses, to permit a multi-family dwelling project for the elderly, where the Ordinance does not permit such a use in the GWP or OFP Zoning Districts
- 2) A variance to Article 28-4-1(h), Dimensional Standards, to permit the creation of a lot fronting in the GWP Zoning District with 240 feet of frontage, where the Ordinance requires 300 feet of frontage.
- 3) A variance to Article 28-4-5(d)(3), Building Dimensions and Separation, to permit a building with horizontal dimensions of approximately 254 feet, 395 feet and 345 feet, respectively, where the Ordinance prohibits multi-family dwelling buildings with horizontal dimensions in excess of 160 feet.

for a proposed lot to be known as 23 Triangle Park Drive proposed to be created from properties located at 19 Triangle Park Drive in a GWP, Gateway Performance District, 177 – 181 Pembroke Road located in an OFP Office Park Performance District and 25 Triangle Park Drive which property is transected by the GWP & OFP District boundary.

Attorney Richard Uchida of Hinckley Allen testified: Also testifying were Chris Trabasani, Director of Development for Calamar Enterprises and George Chadwick, their engineer. Attorney Uchida stated that the development will be age restricted to 62 years old and up. It will be an independent living facility. They will be market rate apartments, not subsidized. Attorney Uchida passed out information packets and explained the material. He explained that the current parcel (#1) has frontage on Pembroke Road and none on Triangle Park Drive. Parcel 2 is the Local Government Center parcel. Parcel 3 is the Goodale Cycle parcel. They are shaving 1.5 acres from Parcel 3 to provide frontage on Triangle Park Drive and taking a little bit of land from Parcel 2 at the back side to provide additional acreage on the back side and they are trading some land to the Local Government Center to provide a buffer. Lastly they are going to cut away the rectangular parcel that gives you access to Parcel 1 to create the parcel that the Board sees in the site plan of the application. A 10.2 acre parcel will be what is reassembled in the OFP/GWP zone and 4+ acres will remain in the OFP zone. They have a PSNH 225 volt easement to the west of the property. That whole power line and property to the west is zoned RM. The westerly property line abuts the McKenna's Purchase development.

Chris Trabasani spoke and described their experience in this market place and the housing type. They are based in the Buffalo NY area and have developed medical office buildings for 20+ years. There is a large segment of the population that is in need for this type of housing. They have 10 communities that they have developed. They have developments in NY and NE and a third office in MA. In November 2013 they explored this area for this market. They have spoken to City staff about locations. He explained their services. The apartments will be 1-2 bedroom apartments. This will create jobs in the area.

George Chadwick with Bedford Design testified. The parcel is made up of 3 different parcels of land. They have 146 feet of frontage on Pembroke Road for one parcel. The Goodale Bike parcel has 590 feet of frontage on Triangle Park Drive. This will create 300 foot of frontage that is required for the Goodale lot and leave a proposed 240 feet of frontage on Triangle Park Drive for the proposed project. They will be giving back

additional frontage and adjusting a lot between the Local Government Center and their parcel to give an additional buffer and to obtain additional land in the back for emergency access and for fire lanes in the back area connected to the LGC parking lot. He showed a plan showing the proposed conceptual plan. It is a split zone parcel. The bulk is in the OFP zone and the entrance area is in the GWP zone. Utilities are located on Triangle Park Drive. It will be a three story structure with 140 units. The dumpsters will be in the bottom corner which will be fully screened. Norton asked how many stories the Local Government Center building was. Mr. Chadwick believes it is 2 stories. He showed his building in relationship to the properties in the surrounding areas. He also showed an elevation. There will be bump outs between units which he also showed on a plan.

Attorney Uchida said that they approached McKenna's Purchase and they are in support of this project. He submitted a letter from the Condo Association of McKenna's Purchase in support. A letter was also delivered from Attorney Ray D'Amante in favor of this request. This land is unique. This property is a back lot as it has no frontage on Triangle Park Drive and it sits behind the Gateway zoning district and the only way to get to it is through a strip of land on Pembroke Road. It was logical to link this property to Triangle Park Drive but there is not enough land on Triangle Park Drive to create frontage to make a standard lot. The Local Government Center has about 270 feet of frontage and Goodale's Cycle has about 550 feet of frontage so there is not enough land to borrow from everyone to get a full frontage. They have been able to get 240 feet. To the west is the PSNH easement and the RM Zone. In the RM zone multi-family housing is allowed by right. The project is reasonable as they do not need to be right upon the street. It is great buffer use between the retail area and the residential area. The power line easement is okay. This abuts a residential district that they would be allowed in. They are near services that this population needs. It would be 140 units. This will be a productive use. They would have a net fiscal impact of \$215,000 in revenue to the City. This request meets the spirit of the Ordinance. It would be compliant under the OFP zoning for frontage vs. the GWP zone. They have no issues with the smaller frontage. It is not noticeably different from the other parcels in the area. They are asking for long buildings. Only multifamily buildings cannot have an excess of 160 feet in length. The property is not wide enough or long enough to situate the buildings on the property differently. The average age in their population is about 72 years old. The building will be fully sprinkled. Hydrants will be placed there. The building will sit about 350 feet back from Triangle Park Drive.

Norton said that the proposal strikes him as out of proportion with the neighborhoods. How is it proportionate? Attorney Uchida said that they are fine under the Ordinance with the height but not length wise. He showed and explained it on the site plan comparing the building to others in the vicinity such as the LGC building, Target, Home Depot, The Mall etc.

Harrison asked why they couldn't bring the driveway in through Pembroke Road. Attorney Uchida said that they could but the parcel is really oriented to Triangle Park Drive and the distance is considerably longer to Pembroke Road.. Harrison stated that his concern is that it is oriented to commercial buildings. Attorney Uchida said that there is not enough land out front to develop an additional building on parcel 3.

Norton asked why they chose this horizontal size. Attorney Uchida said that it was their attempt to put it all under one roof so residents don't have to go outside to get to programs. The land won't support anything otherwise.

Monahan asked whose property has the utility easement. Attorney Uchida said that it belongs to McKenna's Purchase. He asked about the buffer in between them and McKenna's Purchase.

Carley asked if Parcel B is the buffer between them and the Local Government Center. Attorney Uchida said that it was.

In favor: Peter Bragdon, Triangle Park Center Secretary. The LGC and Local Government Center no longer exists. Center of Triangle Park owns the real estate. They are in support of the proposal. It works well as it is a responsible development that they will abut. It will not be disruptive to their operations nor will it reduce their property value.

Mark LaRosa, 175 Pembroke Road. He has owned his property since 2000. Back then it was zoned industrial and then it was rezoned as OFP. There is no residential use permitted. Carley explained that the Board does not change the zoning districts. Mark stated that Hodges bought property all around this. There is a difficult access to the property. They are asking for a lot to put that development in there. He is not totally against it.

Code: none.

Letter read into the record from Attorney Ray D'Amante in favor stating how it is an appropriate use of the property and that a variance would be reasonable in this case.

Rebuttal: none.

Norton has no problems with 1 and 2 but #3 gives him pause. Critical mass question.

Carley said that the Board has heard that the Zoning does not work on this lot. Is the Board crossing the line between changing the zoning and granting the variances. Are they before the wrong committee asking for the changes? Should the zoning be changed by action of Council, is this lot an orphan surrounded by other uses? He felt it was a totally different use than what was otherwise permitted in the district. The reason that they were given by the applicant to permit it is that this lot is in the wrong zone.

Norton said there is no access to this lot via Triangle Park Drive. Harrison felt it may be an orphan lot. Monahan said that if they came in to reconfigure the lot to put in an office building it would be less of a change. This is not a residential part of Concord. Harrison said that if the driveway came off of Pembroke Road the building would be in the same place anyway. Monahan asked Walker about Planning's perspective. What's the harm of having apartment buildings in an OFP area? (Walker, possibility of incompatible uses, there needs to be a unique circumstance related to the lot itself that makes it necessary or compelling to grant a variance to allow a reasonable use of the property) Harrison feels it is a unique piece of land. Monahan feels the decision belong with this Board. After deliberation the board determined that the applicant had present sufficient information that the hardship was with the location of the land and with the land itself and the proposed use was reasonable considering that the location of the land was not well suited for other uses permitted in the district and that this type of use would be compatible with the adjacent residential uses in the RM District.

#3 Norton felt the use was large. Harrison said they provided the 75 foot buffer around the property. Carley feels that they haven't explored all their architectural options yet. Norton feels that from the road it looks like it will be hard to see but it is 3 stories tall. It will be seen from Pembroke Rd. not Triangle Park Drive.

Attorney Uchida stated that this property will be covenanted and restricted to age restricted housing. Under RSA354:15. They are applying for the use category under elderly housing.

DECISION: A motion to approve request #1 and #2 by Norton, seconded by Harrison and passed by a unanimous vote.

A motion to approve request #3 made by Norton, seconded by Harrison and passed by a unanimous vote.

**41-14 Frank DePinto:** Applicant wishes to display a 6 s.f. freestanding sign for a minor home occupation and requests a variance to Article 28-5-30, Home Occupations, Section (b), Minor Home Occupation, to permit a freestanding sign of up to 6 s.f. to be displayed identifying the home occupation when no external evidence of the minor home occupation is permitted, for property at 183 Hoit Road in an RO Residential Open Space District.

Frank DePinto testified. He submitted photographs. He has a computer repair business that he operates from home. He moved to Concord from Chichester 2.5 months ago and has operated this business about 5 years in Chichester. The sign is 6 s.f. which was done by Sign-a-Rama. He will have his street number on the top of the sign. He explained the site distance. He needs that signage as people that come around the curves on Hoit Road slow down and break at reasonable speeds. There is a safety hazard without it. The hardship for him is that it is how he makes a living. In his old location he only had maybe 1 walk in client to his business. Mr. DePinto show photos of other signs in the area for Apple Hill Farm and the Montessori school.

Walker explained that Mr. DePinto is operating a minor home occupation that is permitted by right. It is an owner occupied operated use within a home. Apple Hill Farm sign is about the same size. Montessori school is about the same size. The plumber has about the same sign (the plumber sign may not be associated with a business location but with work being done at the property).

Norton asked Walker what size sign is allowed. Walker stated that none is allowed for a Minor Home Occupation (20SF would be permitted for Major Home Occupation).

Mr. DePinto stated that there is no noise associated with his business. He has 4 customers on a good day.

In favor: none.

In opposition: none.

Code: none.

DECISION: A motion to approve the request was made by approval Wallner, seconded by Harrison and passed with a 3-2 vote. Monahan, Carley were in minority.

Monahan has hesitation if everyone who has a minor business in town wanted a sign, this would be a problem. Walker explained the difference between Major and Minor Home Occupations. Wallner asked what if he considered or had applied for a Major Home Occupation (would they have allowed that? Are we just splitting hairs?).

OTHER BUSINESS: A motion to approve the December 2014 Minutes was made by Wallner, seconded by Monahan and passed by a unanimous vote.

A TRUE RECORD ATTEST,

Rose M. Fife, CLERK  
ZONING BOARD OF ADJUSTMENT