

**ZONING BOARD OF ADJUSTMENT
JUNE 3, 2015 MEETING
DRAFT MINUTES**

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

10-15 Doug and Katrina Magee: (Recessed case) Applicants wish to install a solar array with an overall dimension of 70 feet by 13 feet and request a variance to Article 28-4-1(h), The Table of Dimensional Regulations, to permit a structure to be placed with no less than a 5 foot setback from the northerly side property line where a 40 foot side setback is required for property located at 15 Reserve Place in an RO Residential Open Space District.

Doug Magee testified. He submitted information to the Board as well as a power point presentation. He went over the site plan. There are terrain issues on the southerly side of the property such as sloping, and also placement of the well and foundation drains, etc. His neighbor's house is 80 feet from the property line. He showed photographs indicating how tall the trees were. He showed information on the solar angle of the sun in the City of Concord. He showed calculations that reinforced his placement of the solar panels. There are wetlands to also consider. Mr. Walker explained that the wetlands have a 50' buffer and he cannot clear trees in that buffer. Eric Shifflett of Granite State Solar was also available to testify. Winters asked how high the solar array was. Mr. Magee said 13 feet high. He showed the view that the neighbors would see if they were looking in onto his property. He feels it is barely visible. Winters asked if there were evergreens that would block it in the winter time. Mr. Magee said possibly arborvitae.

Wallner asked about repositioning the solar panels closer to the home and further up into the property. Mr. Magee said that the driveway was in the way. Monahan asked if it were 36 panels. Magee stated it was 52 panels. Monahan asked if they could be arranged as a square, not a triangle. Eric Shifflett said that they could not be arranged in the square – it is engineered to handle 100 mph wind loads at that height. This is the only solution for an array of this magnitude.

In favor: none.

In opposition: Rebecca Biss, next door neighbor. Light – the shrubs are planted for screening as the Magee's leave their exterior lights on all day and all night. She feels that they make no conservation effort. They submitted photographs to the Board. She feels the Magees have an above average usage. Dave Biss also testified. He asked where the hardship is. He feels that it is a self-created hardship putting something this large on his property. They use large amounts of power. Mr. Magee already has power supplied to the property. There is no hardship as they do not need to install the solar panels, they have power without the panels. Rebecca Biss said that you can't see it from the road when there are leaves. She displayed photos with a balloon to show what 13 feet from the ground would look like. It shows how very tall the solar array will be. Winters asked if they could put in landscaping that could cover it, how she would feel. Rebecca said she already planted forsythia to block their outdoor lights and it's not working. Natural borders always change. David Biss said it's a very large structure very close to the property line. It's a fabricated need as he has electrical service to his property. Rebecca stated that it is not a unique property and the Magees experience the same property conditions that everyone in the neighborhood experience. It's a subdivision created about 15 years ago. They feel it's in contrary to the Spirit and Intent of the Ordinance.

Code: none.

Rebuttal. Doug Magee stated that $\frac{3}{4}$ of his yard is wetlands. That is his hardship. There is no other place on his property to place this. He believes he should have a choice and create green energy. The amount of energy he uses is not an issue. Winters asked about the picture the neighbors submitted with the balloon – what is your response to the natural buffer? Mr. Magee said that if the tree is sick, they have to take it down. Winters – can you guarantee that they won't see it year round for the next 10 years? Magee: said that they have offered to put in arborvitae. Carley asked how they sized the panel. Eric Shifflett said they looked at annual usage and use it to design the array to produce the same amount of kWh. Granite State Solar can contribute \$500 to the abutters if they would like to purchase arborvitae. He can't imagine they wouldn't need more than 1 or 2.

DECISION: Carley gave an overview that this is a request for a 400 s.f. (900 s.f. +) solar array within the side yard setback. Winters made the statement that the existing Code does not address solar. Carley confirmed, and commented that it is not distinct from any other kind of structure. Winters asked what is reasonable to put in the setback. Is solar a reasonable expectation? Is it a hardship? Carley said that they made a convincing case about the terrain of the land. But is there anything that requires it be that large. Wallner said it would still be outside the setback if it were smaller. Carley said that the question is at what point does this become unreasonable? Winter said that the burden (encumbrance) is on the neighbors; there is no safety or danger concern. The neighbors don't want an unsightly view. Wallner said that there was an offer to provide sufficient shielding. Winters asked if they grant the variance can it be conditional on what they said they would do. Carley said that the Board assumes within reason what is proposed is what they will do. Winters asked Wallner if the view was not a concern. Wallner said not quite as much as he had first thought.

Carley, they could grant, deny, or grant with a condition that a yearlong buffer would be placed on the neighbor's side to obscure the view from the neighbor's property.

A motion to approval the request was made by Wallner with the condition that a vegetative buffer be placed to obscure the view from the Biss's home, seconded by Harrison and passed by a unanimous vote.

12-15 Penacook Community Center, Inc.: Applicant wishes to merge 3 parcels of land and develop the property for a community center and requests the following:

1. Special Exception under Article 28-2-4(j), the Table of Principal Use, to permit the development of a community center on a parcel of land currently known as Assessing Department Parcel 143-P-31 (the parcel is located to the north and east of 97 Village Street) in an RM Residential Medium Density District.
2. Variances to apply to entire parcel as follows:
 - a. Variance to Article 28-2-4(j), Table of Principal Uses, to permit a community center in a CG General Commercial District where such use is not permitted,
 - b. Variance to Article 28-4-1(h), Dimensional Standards, to permit a lot coverage of approximately 61% for that portion of the lot in the RM District where a lot coverage of 40% is permitted,
 - c. Variance to Article 28-7-7(g)(3), Parking Area Design Standards, to permit parking to be located between the building and the street,
 - d. Variance to Article 28-4-2(1) & (2), Buffer Requirements for Residential District Boundaries, to eliminate the buffers which would otherwise be required immediately adjacent to those locations on the property where the CG and RM Districts transect the property

The Variances pertain to properties currently known as 95 Village Street, 97 Village Street and an adjacent lot known as Assessor's number, Map 143P Lot 31 the lots when merged shall be known as 99 Village Street and be in both a CG General Commercial District and RM Residential Medium Density District.

Attorney Richard Uchida of Hinckley Allen testified. Gerry Blanchette of HL Turner and Deb Cuddahey, Executive Director of PCC also testified.

Attorney Uchida gave an overview of the maps and property. There are three existing parcels to be merged into one. The parcel to the rear is in the RM District and the two adjacent to Village Street are in the CG District. The cemetery is to the north and Beede Electric is across the street to the east. Merrimack Valley High School is behind Beede Electric. There is a zoning line that cuts through the merged parcels. They need a Special Exception to put the community center in the residential part of the parcel and a use variance to put the community center in the CG zone. The variance for 61% lot coverage is in the RM Zone. The variance is to permit parking in the front. A vegetative buffer is required along the property lines and they need a variance to eliminate the buffers. This property is about 4 acres in size.

Deb Cuddahey spoke. The existing Center on Community Drive was built in 1948. The center has grown immensely in the past 61 years. They are serving a broader demographic of people. There are 50 programs for children, youth and seniors. Over the last decade they have grown from 3,200 participants to serving 11,000 participants. They have been searching since 2011 for space or a building to meet their needs. The Village Street property is the best place for the center. They can create 30 jobs. They can increase their program capacity. Village Street is on the public transportation route for seniors to utilize. They created a design to have efficient use of space. There will be a burial policy so that

when there is a burial in the cemetery next door the children will not be outside during that time. They have a maximum capacity of 223 students. 7 am to 9 am arrival time. School age students are gone to school by 8:30 a.m. 3:30 pm and 4:00 pm children begin leaving the facility. They close at 5:30 pm but they may be extending their hours to 6:30 pm in the new facility. Playground hours are staggered between 9:30 am and 11:30 am. They have 35 full time staff and 25 part time staff. Seniors come in throughout the day and there could be between 15 and 60 of them. Adult fitness classes are in the evening between 5:45 to 6:45 pm and 7-8 pm. They have professional development classes from 6 to 9 pm in the evening. The facility is not open on Sunday.

Gerry Blanchette of HL Turner Group testified. He went through the site plans. When creating the layout they paid attention to the buffers, lighting and parking. Parking is in the front primarily due to toddlers and infants safety issue. Playgrounds are to the west. They are reviewing a traffic report. They have a solid fence that starts along the southerly property line and goes around the entire site. There will be no lighting in the rear playground area. There will be lighting by exterior doors per code. They will be sure that the lighting does not extend out.

Attorney Uchida spoke about the special exception and variances. The special exception is for the community center in the rear portion of property and parking in the front. The Community Centers need to be on an arterial or collector highway and this is on one of the larger collector highways. They will have certified municipal water and sewer. This is an appropriate/ideal location. The Penacook vision plan and Master Plan both encourages these types of uses. It's near the Penacook Schools and Rolf Park and near the current center that they will continue to use in the summer time. It is near the fire station. They are not creating new traffic as a lot of their users come through that way now. The Planning Board will also review the site plan. They have designed security to the building. They have created a pedestrian walk way within the property. They feel these requests meet the requirements. They need a use Variance for the portion of the center that is in the CG District. They could have a much more intense use there. This use is a more appropriate use than a retail center. The current Community Center is in a Residential zone now and the property values there have not been harmed and they feel that they will not be harmed in the new location. Attorney Uchida said that there is a packet of information submitted from Matt Walsh of the City of Concord in the application folder. They have committed to additional neighborhood meetings for the design. Parking in the rear they felt would be more intrusive to the neighbors with lights, fumes, etc. than what they are proposing. The lot coverage is met in commercial district, but not in the residential district. The lot current proposed coverage has been reduced to approximately 52% but they would like a little flexibility. Overall lot coverage is about 65 or 67%.

Monahan asked if the building were one level. Attorney Uchida said it was. Monahan asked if there were no structure on the property now. Attorney Uchida stated that there is a house on 95 Village Street that needs to be removed. Monahan asked what process they have taken to meet with the neighbors/abutters. Attorney Uchida held a meeting last Wednesday night for a couple of hours. Monahan asked if they had made any adjustments to the presentation due to that meeting. Attorney Uchida said that they have tried to enhance the landscape buffers along cemetery and residential sides.

In favor: Cathleen St.Louis, Penacook residents for 14 years. Supportive of the new center. The location is ideal. This new center will go a long way in revitalization of Penacook. There is no added burden to the City's budget.

Eric Crane representing Board of Directors of PCC, he is a baseball coach and a retired Concord Police Officer. He lives in Penacook. This is a good project. This space will fit PCC. This property suits their needs the best. It sits on Rt. 3 which is being reconstructed with new sidewalks. This puts traffic out on the main road and takes it out of the community roads. The playground will be safer. This property is on the bus route. They utilize a "walking school bus" and they will be closer to the schools and use the sidewalks. They are on the safe walk to school route. It will create a beautiful gateway to Penacook. They have not had any noise complaints at the existing facility that he knows of.

Allen Johnson, Hodges Development Corp. He is a managing member of 97 Village Street. They had some intent to do commercial development on that property. They were approached by PCC who made a presentation to Hodges. They were moved by the effectiveness of this center. They strongly recommend that this development is approved.

In opposition: Pat Peick who has lived at 9 Tower Circle, Penacook for 24 years, Bruce Davis who has lived at 11 Tower Circle, Penacook for 21 years. Mr. Peick stated that this is about zoning and variances. Their description was a massive child care center and a school, not a Community Center. His home is in an isolated area. If the land value doesn't increase he is stuck. He is concerned that once they thin the trees the wind will come from the north and the pines will

fall on his house. The value of the homes and neighborhood will be devalued due to building size and use. RSA 674:33 was noted. This will be 55 to 60 feet from his back window. Winters asked him to point out his home. Bruce Davis said they did meet with PCC and he asked what the building was going to look like. The building will be right behind his house. PCC did not have building elevations available. Monahan asked how old the neighborhood was (early 1990's).

Glenn Rogers of 105 Lilac Street testified. His property runs behind the project. They are behind (north) Tower Circle. Their home is setback about 130 feet off of Lilac Street. PCC has already marked trees behind with orange ribbons; that's their view. The property value will go down. They have a pool back there to enjoy and they will not be able to do so. Their privacy will be gone. Their resale value will be gone. Sheila Rogers testified and said it will be intrusive to their back yard. How high will the building be? It may be a balcony to their back yard. The buffer zone they are talking about is in between Village Street property but have no mention at all as to what they would do for a buffer to their property. She has medical issues and the noise will be impossible for her. She has had a brain injury. They feel it would be too much.

Gena Rogers whose parents are Glenn and Sheila Rogers. Her parents purchased their home when she was a senior in high school. Her brothers who live there are 4, 7 and 9 years old. The project is 90 feet from their property line. They have owned the home 16 years. Burials are not the only time people go to the cemetery to grieve. Monahan asked if they attend a Community meeting. They didn't know about it.

Code: none.

Rebuttal: Attorney Uchida said that they sent notice to those they thought they were affected. A notice also went to the Roger's and a notice was stuffed in the mailbox. They did try to reach out to all of the neighbors. They are sensitive that this is a different use than the water tower. They will do landscaping and put up a solid fence that will go around and cut down the sound. The west buffer that they are creating (against the Roger's property) to the South and next to Mr. Davis' home is being built. They are open to suggestions to the fence, how high it is, etc. They will work with the neighbors as much as possible. Gerry Blanchette stated that the façade of the building will be clapboard. They haven't finalized the design yet. Fencing will be a solid fence and there will be another neighborhood meeting to get their input. Vegetative buffer: there is a larger area of trees behind the kid's playground. Winters asked Mr. Blanchette what his thoughts are on the diminution of the value of surround properties. Attorney Uchida said that the existing facility is now in the middle of a residential neighborhood and they are not aware that those property values have gone down. Monahan asked why it wasn't categorized as a school. Attorney Uchida thought that it may have been due to the senior programming as well as child care center and night programs. Monahan said the lot coverage is about 50% larger than allowed. What efforts were made to bring that number down? Attorney Uchida said the building was moved forward into the commercial zone where 80% lot coverage is allowed. The building has been sized based on the programming needs. Monahan asked if they still wanted 61%. Attorney Uchida said he would be fine with 55% or 54% or so. Wallner asked about noise abatement and possibly extending fencing all along the south end? Blanchette said that the fence will start on south side and go all around.

Carley asked Walker if someone were to put a school in here would it be allowed by right here. Walker: In the Residential zone it would be allowed by right – child care center would be by SE. CG Zone is not allowed.

Letters submitted from the City of Concord which could be summarized by the testimony heard by Attorney Uchida.

DECISION: Special Exception: Carley said in his mind is that it is something that would be allowed in this zone as long as it meets certain criteria. Winters asked if it was consistent with the current use and the neighbors. Harrison said there is commercial property across the street and commercial use next to it. Monahan asked if the City Council informs the abutters. Walker said he doesn't believe so. Carley asked if there were adequate and proper facility. Wallner had concern only with the noise, but testimony was made that they would deal with it. Will the use be compatible with neighboring land uses? The cemetery is on one side, and there are commercial buildings across the street. Winters' biggest concern is Tower Circle and Lilac Street abutters and their use. Winters stated that if this wasn't built there a developer could put in a school. Walker clarified that the back lot (City lot) does have direct access to Village Street. Carley asked if it would create a hazard. Winters doesn't believe so. Carley asked if it would be detrimental to pedestrian/vehicular traffic. Carley said they do have a parking lot. Carley asked if the use were compatible with the intent of Zoning Ordinance. Harrison said that with commercial property across the street already he thinks it's a good use in this area. The Board reviewed and discussed the criteria for a special exception further.

A motion to approve the special exception was made by Winters, seconded by Harrison passed by a unanimous vote.

Variations: (a) Community Center use: A motion to grant the request was made by Monahan and seconded by Harrison. Winters is concerned with the diminution of value. He's not convinced this use won't diminish property values. Carley countered that they were discussing the use as it applied in the commercial district. The motion was passed by a 4-1 vote with Winters in the minority.

(b) Lot coverage: Carley was uneasy with Attorney Uchida's suggestion that they approve a lesser percent. Monahan said that he saw on the plans where they had mentioned future parking places so he doesn't feel they should reduce that number in case they wanted to expand. (Walker explained that the "future parking" was required parking based on today's requirements that they planned to request a deferment for constructing at this time.) Carley asked if the plan was drawn at 61% or lesser. It was stated that the plan submitted with the original application showed the 61% coverage. A motion to approve the request with the condition that if the percentage changes to a greater percentage they need to come back to the Board was made by Monahan, and the buffers and fencing that were represented are conditioned seconded by Harrison. Walker asked for verification if the buffer was a single 15' buffer or double 15' buffer. Uchida verified that it was a 15 foot buffer. Motion was approved by a unanimous vote.

(c) Parking between the building and the street: A motion to approve the request was made by Wallner, seconded by Harrison and passed by a unanimous vote. It was decided that due to the reasons stated, safety, layout, impact on abutters, access etc. That the variance was reasonable and necessary.

(d) Buffers: A motion to grant the request to not require the buffers at the district boundaries was made by Harrison, seconded by Monahan and passed by a unanimous vote. It was determined that this would be an impractical application of the ordinance.

14-15 Richard F. Lank: Applicant wishes to remove a portion of the existing residential structure and replace with a new structure and requests the following:

a) Variance from Article 28-4-1(h), Table of Dimensional Regulations, to permit the removal and replacement of a residential structure with a minimum front setback on the north west corner of 10.75' +/- where a 25' setback is required

b) Equitable Waiver of Dimensional Regulations under RSA 674:33a to grant legal status to a front setback for an addition constructed in 2007 with setbacks ranging from 13.27' to 17' +/- where a 25' setback is required per Article 28-4-1(h), The Table of Dimensional Regulations

For property at 102 Sewalls Falls Road in a RS Residential Single Family District.

Richard Lank testified. He noted that his name is Richard A. Lank not Richard F. Lank. He purchased his home in 2001. He has tried to upgrade the property over the past 14 years. The home was built in 1830. When he purchased it, he was not aware of the setbacks. He put on an addition in 2007. The City came out and ran water and sewer to the new addition. Walker stated that Mr. Lank went through the proper procedure and it seems that there was an error or oversight and the structure was built in the setbacks. Mr. Lank would like to stay on the same lot line and he would like to keep the front as it is right now. It is not close to the lot lines. Carley asked if he was going to tear down the 1800's house. Richard said yes. The property is not safe. All hand hewed beams and rotting sills. A contractor came out and looked at it. His cost to remodel would be close to tearing it down and putting a full foundation and rebuild. He spoke with abutters. Doing this the right way will increase the value later on down the road.

Harrison asked if it was close to the golf course. Mr. Lank said yes. He had engineering come out and look at the water and sewer and that is all set. He spoke to Keyspan. The hardship is that he has tried to make his property a more beautiful property and he feels the structure is unsafe and it is difficult or impossible to relocate the structure anywhere else.

In favor: none.

In opposition: none.

Code: none.

DECISION: A motion to grant the variance was made by Harrison, seconded by Winters and passed by a unanimous vote.

Harrison felt it was a reasonable use of the property. Not an increasing it forward. There would be no change in existing conditions.

Equitable Waiver: Walker reviewed the criteria for an Equitable Waiver. A motion to grant the request was made by Harrison, seconded by Wallner and passed by a unanimous vote.

MINUTES OF MAY 6, 2015: A motion to approve 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