

**ZONING BOARD OF ADJUSTMENT
NOVEMBER 7, 2012 MEETING
DRAFT MINUTES**

Board members present included Chairman Christopher Carley, Nicholas Wallner, David Parker, Robert Harrison Jr., and Ben Kelley. Also present were Zoning Administrator Craig Walker and Clerk of the Board Rose Fife.

40-12 Aaron Constant: Applicant wishes to operate a retail business (Use H-1) and a privately owned outdoor recreational facility (Use C-5) providing sales and rental services of non-motorized water sports equipment and accessory items and requests the following:

- 1) Variance to Article 28-2-4(j), The Table of Principal Uses to permit inside and outside sales and display of merchandise where such retail use is not permitted
- 2) Variance to Article 28-7-7(g)(1), Parking Restrictions in Front Yard, to permit 2 accessible parking spaces for a non-residential use to be located within the required front yard setback in a residential district

for property at 15 Hannah Dustin Drive in a RM Residential Medium District.

Aaron Constant testified. They would like to do a similar business as the Hannah's Paddles business that was operating there in the past for 20 years. His business would differ in that he would like to sell and rent equipment. The business would be seasonal from May to October. They would have retail and rental traffic. The retail use would be inside the barn and include sales of things like lifejackets, etc. and office space. There will be an outdoor merchandise area as weather permits. They will demonstrate Kayaks, canoes, and stand up paddle boards. They will have 12-16 kayaks for the rental division. Hannah's Paddles had 60 rentals. He will have 20-30 retail boats for sale warehoused in the barn. They will be wheeled outside during the day for visibility and wheeled back in at night. Harrison asked about the similar business on Horse Hill Road.

In favor: none.

In opposition: none.

Comments from Code Administration: none.

DECISION: Parker felt that it was an appropriate use of the property. There is a use hardship due to topography. Wallner felt that it was not contrary to the public interest and would not devalue surrounding properties.

A motion to approve both of the requests was made by Parker, seconded by Harrison and passed by a unanimous vote.

34-12 Trinity Christian School: Applicant wishes to erect a second freestanding sign on their lot and requests a variance to Article 28-6-9(c)(1), Permitted Freestanding Signs, to permit two freestanding signs on a lot where only one freestanding sign would be permitted for property at 80 Clinton Street in an IS Institutional District.

Peter Flint, the Administrator of the school testified. The school needs a second freestanding sign of their own to identify the school use that has been there for 30 years. They have never had a sign for the school. They are a Pre-school through grade 12 school. They have approximately 300 students. They chose a v shape sign

due to access on Clinton Street and it will be off the road 20 feet. They have 2 separate non-profit uses at the same location.

Harrison stated that the sign looks like it is directing people to a house that is away from the school. Parker asked what percentage of the students is members of the congregation. (Approximately 50 to 60 %.) Carley asked if the church/school/houses/parking lot is all on one parcel. (Chris Sentor, School Treasurer stated that yes it is. They have 1320 feet of road frontage.) Peter Flint went on to say that across the street from their property at the Wesley Methodist Church; the signage is exactly what they want to do.

In favor: none.

In opposition: none.

Comments from Code Administration: none.

DECISION: A motion to approve the request was made by Wallner, seconded by Harrison and passed by a 4-1 vote with Parker in the minority. Kelley felt it was redundant to have 2 signs not near the building it pertains to. Carley stated that they could subdivide the property and not be here for the request. Wallner felt that there were 2 distinct functions. It was not contrary to the Ordinance and would not diminish surrounding property values.

36-12 Ann & Bo Peterson: Applicants wish to construct a 22' wide by 24' deep attached garage and requests a variance to Article 28-4-1(h), Table of Dimensional Regulations, to permit a side yard building setback of 6 feet +/- when a side setback of 10 feet would be required for property located in a Planned Unit Development (PUD) at 8 Willard Street in a RM Residential Medium Density District.

Bo Peterson testified. He resides at 8 Willard Street. He wants to create an attached 2 car garage to neaten up the yard and have the cars in the garage and for additional storage. The neighbors have garages and are in support of his request.

Wallner asked him to point out, on the map, where the other garages are in the neighborhood. Carley asked if there were no other place to put it. Mr. Peterson stated that there was not any other place.

In favor: none.

In opposition: none.

Comments from Code Administration: This is a PUD and the lot sizes are reduced as they have common area. They have 9,000 s.f. lots and reduced setbacks. Their setbacks are 20 foot front, 20 foot rear and 10 feet on each side. Wallner stated that only part of the garage is encroaching.

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

37-12 Frances Potter: Applicant requests a modification to a variance granted under Case 25-12 to Article 28-2-2, Zoning Districts Established, Section (b)(3) allowing a subdivision of a 12.81 acre lot creating 2 building lots of approximately 9.77 acres and 1.25 acres and retaining a 1.79 acre lot with an existing house where said lots will not be connected to the municipal sanitary sewer utility as required, to also grant a variance to allow the subdivision be granted without connecting to the

municipal water system as required, for property located at 38 Little Pond Road in an RS Residential Single Family District.

Mark Sargent of Richard Bartlett & Associates testified. It is a 12.81 acres with one single family home. It is in an RS/RO zoning district. They were before the Board in September and were granted a variance for relief from connecting to the Municipal sewer system. They now need relief for connecting up to the Municipal water system. They now have an 8" water line that runs up to her home. They would like to put in private wells. The City's water does not meet the 35 psi requirements required by State regulations. The psi is only 25. The grade elevation makes it so that they cannot make the psi required. This request will not diminish property values and it is consistent with other properties in the neighborhood.

In favor: none.

In opposition: John Boehn, 53 Little Pond Road. This is a dead end line and there is a hydrant there. As such there is not much water there.

Comments from Code Administration: Walker explained the rationale behind larger lot sizes in RO & RM zones without sewer is to ensure room for onsite wells and sewage disposal.

DECISION: A motion to grant the request was made by Harrison, seconded by Kelley and passed by a unanimous vote. The uniqueness is the change in the psi calculations and that Mrs. Potter had tried to make the provisions for this subdivision when she built her home in the 90's.

38-12 U.S. Cellular: Applicant requests a variance to Article 28-6-9(b)(1), Permitted Building Signs, to install 1 building sign with a total area of 38.34 square feet where a maximum of 29.75 square feet of signage would be permitted for a retail outlet at 240 – 242 Loudon Road in a GWP Gateway Performance District.

Anita Cala, Area Sales Manager and Michael Privatara of Privatara Signs testified. They are expanding their store front to under 30 feet of frontage. They would like a 38.59 s.f. sign. They are 140 feet off the road and it feels and looks proportionate to the size of the building. It will be an extra 8 s.f. than is allowed. Anita Cala stated that this is a significant investment for their business and she is concerned with visibility.

In favor: none.

In opposition: none.

Comments from Code Administration: none.

DECISION: A motion to approve the request was made by Wallner and failed for lack of a second. Wallner felt it was in balance with the frontage and a smaller sign doesn't give them visibility. Parker understands their concern but he does not see a hardship. They admitted that 8 square feet would not be visibly different. He doesn't want to set a precedent. The Board denied your request due to no finding of unique conditions creating a hardship. Having denied the application based on the hardship test no findings were made on the other four criteria.

A motion to deny the request was made by Parker, seconded by Harrison and passed by a 4-1 vote with Wallner in the minority.

39-12 New Hampshire State Liquor Commission: Applicant requests a variance to Article 28-6-9(b)(1), Permitted Building Signs, to install 2 building signs with a total area of 150 square feet (120 SF front & 30 SF rear) where a maximum of 60 square feet of signage would be permitted for the retail outlet at 80 Storrs Street in an OCP Opportunity Corridor Performance District.

Craig Bulkley, Chief of Administration of NH State Liquor Commission testified. Their unit is 300 feet away from Storrs Street. There is no opportunity for any signage on Storrs Street. It is compatible with the signage on the shopping center now. They are different from other retail facilities on Storrs Street. This request is for the front sign and the logo on the rear to be seen only from I-93. The front sign won't change, only the logo on the rear.

Carley asked how large the front sign is. Walker stated that it was 120 s.f. total. Carley stated that the maximum allowable size is only 60 s.f. so the sign is already twice the size. Mr. Bulkley stated that they typically just put up a sign without permits. The signage typically blends in with other signs in the area. It is typically the same and does not stand out. Wallner asked if he knew what the square footage was for the other stores. Mr. Bulkley is not sure.

In favor: Letter read into the record from Lee Marden of Eagle Square Associates.

In opposition: none.

Comments from Code Administration: Walker gave the Board a breakdown of variances for signage at this shopping mall. JoAnn's Fabrics will be expanding too and the sign package will be for larger signage.

Parker stated that he is sensitive to the fact that this mall abuts the highway. It is a unique property. Front facings signs have tried to live within their allowable sign sizes. The sign should have been checked out with the town prior to installation. Walker stated that the City had told the State that their sign was too large but the State put the sign up anyway.

DECISION: A motion to approve the request was made by Wallner and failed for lack of a second. Wallner stated that in some cases the signage was tripled in square footage in previous cases that the Board had listened to.

A motion to deny the request was made by Parker, second by Harrison and passed by a 4-1 vote with Wallner in the minority. Parker stated that the Board has not always agreed to the requests. He has no problem with the highway sign but he would like to see a better proposal for the front signage. The Board denied the request due to no finding of unique conditions creating a hardship. Having denied the application based on the hardship test no findings were made on the other four criteria.

35-12 Papa Gino's, Inc. (D'Angelo Restaurant): Applicant wishes to use two properties for a "restaurant occupying up to 5,000 square feet with no drive-through service" (Use I-1) and requests the following:

Tract 1 – 87 South Main Street

- 1) Variance to Article 28-7-2 to permit the provision of 22 parking spaces when 48 spaces would be required, (24 spaces for each floor level)
- 2) Variance to Article 28-7-7(g)(2), Setbacks from lot lines, and 28-7-10(a), Perimeter Landscaping Required, to allow parking to be located within 6 feet +/- of the front lot line when a 10 foot landscaped setback is required,

- 3) Variance to Article 28-7-7(g)(2), Setbacks from lot lines, and 28-7-10(a), Perimeter Landscaping Required, to allow parking to be located with no setback from portions of the northerly side lot lines when a 5 foot landscaped setback for parking is required,
- 4) Variance to Article 28-7-7(g)(3), Parking to be located to the side or rear of a building, to allow parking to be located between the building and the street,
- 5) Variances to Article 28-7-7(e). Minimum Aisle Widths, to allow aisle widths of 23 feet in the front parking lot and 20 in the rear parking lot where aisle widths of 24 feet are required,
- 6) Variance to Article 28-7-14(a), to permit the required refuse container to be placed off-site on an adjacent lot where on-site placement is required, and

Tract 2 – Turner Avenue:

- 1) Variance to Article 28-4-1(h) Table of Dimensional Regulations, to permit a total lot coverage of 84.7% when 80% is allowed,
- 2) Variance to Article 28-7-7(f), Driveway Widths, to allow a driveway width of 17 feet +/- along Turner Avenue when a driveway width of 24 feet is required,
- 3) Variance from Article 28-7-14(d), Setbacks for Refuse Containers, to permit the refuse container to be placed within 1 foot +/- of the rear lot line and 6 feet +/- of the side lot line when a 10 foot setback is required and Section (e), Screening for Refuse Containers, for respective screening relief,
- 4) Variance to Article 28-7-10, Parking Lot Landscaping Required, permit no landscaping along the southerly side of Turner Avenue where a 5 foot landscaped strip is required, for property at 87 South Main Street and adjacent property know as Turner Avenue in a CU Commercial Urban District.

Attorney John Arnold of HinkleyAllenSnyder. He first wanted to explain that on Tract 1 request number 7 (5) and 8 (6) are being withdrawn. On Tract 2 request number 1 and 3 are being withdrawn. Mike Rudell, Director of Real Estate for Papa Ginos also testified as well as Naomi Brow of Nobis Engineering.

Attorney Arnold stated that they want to move their restaurant down the street from where it is. They do not need a variance for the use. This is the old Penny Pitou building. The new site plan reflects suggestions made to them by the Planning Department. He explained the site map. This is a 2 story building but D'Angelo's will only be on the first floor. Turner Avenue accesses parking behind the building. There is a steep slope on Turner Avenue side. They have a retaining wall.

Mike Rudell testified that D'Angelo's has been at its present site since 1979. In 1996 Papa Gino's bought out D'Angelo's. The lease for the existing site expires in 2013. They will only use the main level to house the restaurant. The basement will not be used at all, not even for storage. The parking requirement for the single floor use is only 24 spaces and they will be providing 22 spaces.

Ms. Brow testified that they are leaving the front lot as it is. They are making changes to the rear parking area. The lot is 66 feet wide plus 20 feet for Turner Avenue. The building is 50 feet wide. The lot is 190 feet deep. Currently the parking is in the rear. The topography has a change of elevation of 16 to 17 feet. The site has 2 retaining walls and the building is perched between them. Turner Avenue has a grade greater than 10% which does not meet ADA requirements. They are at less than 80% (79.6%) lot coverage on Turner Avenue so they removed request #1 under Tract 2.

Attorney Arnold submitted elevation photographs. They are required to have 24 parking spaces per floor. They could only fit 22 spaces, an increase of 10 spaces. They are only using 1 story of the building. 22

spaces would be consistent with the demand of the current site. There are 18 nose in parking spaces on the street across from this building. The variances are related to the existing conditions on the property right now. The land is consistent with the surrounding properties. The drive aisle width is only 1 foot short in most places. There isn't any way to get that 1 foot. There is no room to widen Turner Avenue.

Parker asked if there was any concern with 2 cars passing in the driveway. What about fire access? Attorney Arnold stated that it is narrow but 2 cars could get by but it would be tight. Walker stated that Fire may not take vehicles back there, but fight it from the street side.

In favor: none.

In opposition: none.

Comments from Code Administration: none.

DECISION: Parker stated that it is going from office use to restaurant use which is more intense. Carley stated that they do not need a "use" variance. The use is more intense though. Kelley stated that they are not using 2 stories so 22 spots vs. 24 spots is not that bad. Harrison felt it was a reasonable use of the property.

A motion to approve all of the requests was made by Harrison, seconded by Kelley and passed by a 4-1 vote with Parker in the minority.

MINUTES: A motion to approve October Minutes was made by Harrison, seconded by Kelley and passed by a unanimous vote.

Correspondence: Walker distributed to the Board a letter from a citizen along with copies of his response to the Deputy City Manager and the DCM's response to the citizen.

A TRUE RECORD ATTEST,

_____, CLERK
ZONING BOARD OF ADJUSTMENT