ZONING BOARD OF ADJUSTMENT JUNE 1, 2011 MEETING DRAFT MINUTES

Board members present included Chairman Christopher Carley, David Parker, Nicholas Wallner, Rob Harrison, and Stephen Norton. Board members substituting for Case #10-11 were James Monahan and Bob Boley. Also present Zoning Administrator Craig Walker and Rose Fife, Clerk of the Board.

10-11 Banks Chevrolet-Cadillac: (Tabled Case) Applicant requests a Variance to Article 28-3-6, Aquifer Protection District, section (d), Community Water Systems Protection Area, (3) Prohibited Uses (j), to install 2 underground storage tanks (UST), one 25,000 gallon UST for waste oil and one 12,000 gallon UST for gasoline (Note: per applicant's request the 12,000 gallon UST for gasoline request has been withdrawn), where subsurface storage of petroleum products, except for propane is prohibited, for property located at 137 Manchester Street in a CG General Commercial District.

The Board for this case consisted of Carley, Parker, Norton, Boley and Monahan.

Attorney Richard Uchida of Orr and Reno, Peter Holden of Holden Engineering and Fred Booth of Banks Chevrolet testified.

Attorney Uchida stated that they have eliminated a 12,000 gallon gas tank. He explained 3 site plans, the pre-existing conditions plan, a plan proposing the tank outside the APD and a plan with the UST adjacent to the building. He proposed a site plan that locates the 25,000 gallon oil tank outside of the Aquifer Protection District and would pipe the oil approximately 200 feet into the building, which is permissible. They have a permit from the State of NH for an underground storage tank as it was originally located and then they applied for another permit for the tank being outside the Aquifer Protection District. The Town of Pembroke sent a letter stating that of the two location options proposed the option of locating the tank adjacent to the building appeared to be less of a risk however the preference would be if a tank is to be permitted within the APD that a tertiary containment system be required.

Boley asked if the Town of Pembroke's recommendations (for tertiary containment) were reasonable? Are they okay with the last suggestion? Attorney Uchida stated that no, as the contractor has said the cost would be extreme. Monahan asked what they are doing with the waste oil as it exists today. Attorney Uchida stated that they have a waste oil tank on the corner of the property. Monahan asked how large the tank is. Fred Booth stated that it is a 2,000 gallon tank. Monahan asked if it was piped. Mr. Booth stated that it was not. Monahan asked if they heated with waste oil now. Peter Holden stated that they do. Parker asked what it meant when they said it would be cost prohibitive. Mr. Booth stated that the general contractor stated that it would cost approximately \$100,000.00 for a vaulted tank. Walker explained the cost differences for the different types of tanks and that cost would vary with \$100,000 being the high end of the range. Walker continued to explain that his understanding from talking with City engineering staff is the main expense with a tertiary containment system is the monitoring system and since the system already exists with the proposed tank the extension of the system would not be that significant. Attorney Uchida stated that the mapping they used came directly from Geoinsite.

In favor: Michael Jurante, PE who works for the State of NH DES. They regulate above ground/underground storage tanks. Plan 1 & 2 were reviewed by his department and were approved by the State. The plan with the 200 feet of piping run was a greater risk for leakage because the

pipes are pressurized and there are more seams that present a greater potential for leaks than the plan putting the tank near the building. He explained the difference. All new tanks are required to be double walled. Carley asked questions. Monahan asked if they have permitted other dealerships for the same tank. He was not sure. Norton asked why the State did not do a more precise measurement. Mr. Jurante's hunch is that it is too difficult to do.

Walker stated that he is not aware of other underground storage tanks in Concord in the Aquifer Protection District.

In opposition: none.

Comments by Code Administration: Walker showed the Board a map her received that Geoinsite used to show the delineation of the well head protection area (WHPA) for the Pembroke well fields. Walker explained the City of Concord adopted the 4,000FT radius WHPA line for the APD which coincided with the Geoinsite propose refined Pembroke WHPA

Chairman Carley read into the record a letter from Pembroke Water Department.

Rebuttal by Attorney Uchida – the 4,000 foot regulation is a State regulation, not a City regulation.

DECISION: A motion to approve the request was made by Boley, seconded by Monahan and passed by a unanimous vote. Boley feel that the testimony was that that the preference was to put the tank in the original location. Parker agrees with Bob that a double wall tank seems adequate containment and they removed the gas tank so he is in favor. Monahan is not sure if concrete containment is cost prohibitive.

- **14-11** Paul Cote & Janet Maher Cote: Applicant wishes to construct a 510.5 +/- square foot deck and a 128 +/- square foot pool house/shed and requests:
 - 1) A Variance from Article 28-5-32, Accessory Buildings and Facilities, to permit no setback for an accessory detached building where a 5 foot setback is required, and
 - 2) A Variance from Article 28-5-32, Accessory Buildings and Facilities, to permit a deck with a 3 foot +/- setback where a 5 foot setback is required

for property at 7 Profile Avenue in an RS Single Family Residential District.

The Board for this case and the completion of the agenda consisted of: Chairman Carley, Parker, Norton, Wallner and Harrison.

Paul Cote and Janet Maher Cote testified. Mr. Cote stated that he had put in a pool and is unable to fence it on the back side as they have a rock retaining wall. He wants to drill into the rock and pin in a platform and fence. He also needs a 16 foot wide shed for pool storage. It is all wooded area in the back owned by Unitil and it is conservation land. They have contacted Unitil and they have no objection to the proposal. They have a 3 foot concrete patio around the pool now. He wants to close it off so that the kids do not get hurt by the 6' drop off on the back side.

In favor: none.

In opposition: none.

Comments from Code Administration: The request falls under supplemental standards which require only a 5 foot setback vs. a 25 foot setback.

DECISION: A motion to approve both requests was made by Norton, seconded by Harrison and passed by a unanimous vote.

15-11 Wayne Frost for Kresara Realty Trust: Applicant wishes to have an existing self contained "living suite" in a single family home recognized as a separate, second dwelling unit thus converting the dwelling to a two-family dwelling and requests a variance to Article 28-5-3, Conversion of a Residential Building, to allow a 2 family conversion on a lot with an area of 7,000 square feet, based on deed description, where a lot size of 10,000 square feet is required for property at 82 Community Drive, Penacook in an RN Residential Neighborhood District.

Wayne Frost testified. In 1971 his father put an addition on the house that was an apartment for his grandmother. The property has always been used as a two family; approximately 40 years. He feels it predates this variance request.

Carley asked Walker why this was not grandfathered. Walker explained that the property was used as an in-law suite for his grandmother. After she passed on they started renting it out to non-family members and it did not gain status as a legal two family home. He is now an absentee landlord and the property is being rented as two separate units. Carley asked if it were legal for a two family in 1970. Walker stated that a variance was never granted. He also noted that this request is for a variance for a two-family home. It is not being heard as a challenge to the Zoning Administrator's interpretation of the Ordinance. Frost stated that the property has been used continuously as a two family home.

Harrison asked how long it had been since a family member had lived there. Frost stated that it had been 20 or 30 years. Harrison asked if it had been used as a two-family for approximately 20 years. Frost answered yes.

In favor/opposition: James Maher, who does not object to a two-family but he has had problems with their renters. He would like them to put a fence up as he has found their tenants on his property using his outdoor swing, etc.

Sharon Pearson, 80 Community Drive, lives along side of the property. She thought she purchased a home in a single family district. She wants it to stay single family. Harrison asked when she looked at the property. She stated approximately 20 years ago. Harrison asked if there were two driveways there. She said no, that it was dirt.

Audrey Carter, 86 Community Drive, she has lived there since 1991. The second driveway was paved when hers was. She has two young teenagers that play in the yard. Their renters have been less than stellar. There is lots of screaming and swearing. One tenant was smashing plates in the street. One of the tenants stopped traffic there for 45 minutes this week. She wants to see another single family home there. Harrison asked if she knew it was single family. She stated that the suite was separate for a while as there was a young couple renting there when she moved into the neighborhood.

Rebecca Gauthier testified that the driveway has been there for a very long time. It was dirt. She is in favor. The property has been used that way for years. Wallner asked for how many years. She stated 35-40 years. Her grandmother was living there. Carley asked if she lived in the neighborhood and she stated that she did not.

Comments from Code Administration: Walker stated that a second type of kitchenette was put in for a family member but the property was a single family home with a living suite for a family member, not an apartment. Over the years it has separated into its own apartment or second dwelling unit. It has become an absentee landlord situation. Easter Seals has rented. They have caretakers in the main unit with two residents and one person in the second unit. The neighborhood's complaints were forwarded to Code Administration to investigate. Upon investigation it was determined the second unit had not been legally established. The property is 7,000 s.f. and they need 10,000 s.f. for a 1 bedroom apartment and a two bedroom apartment.

Rebuttal by Wayne Frost. Code has been working with them. The units were inspected by the Fire Department and approved. He wrote a letter to the Council saying that he was available to help rectify any situation as it comes up. He visits the site often.

DECISION: Norton asked if it were a permitted use. Walker stated that it would be if they had 10,000 s.f. of land. They have adequate parking and frontage. Carley wanted the history of how this evolved from 1970. Walker stated he investigated and was not able to verify. The record does not show a vested right. Parker felt that an in-law situation morphed into a two-family situation. The Board has to look at the impact on the neighborhood. Harrison asked Walker about Code requirements. Wallner stated that the abutters requested a fence. The Board would not put a condition on the approval if approved.

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

- **16-11 Banks Chevrolet-Cadillac:** Applicant wishes to install 8 building signs covering 260 square feet along the Manchester Street frontage and requests:
 - 1) A variance to Article 28-6-9(1), Permitted Building Signs, to permit 8 building signs on one side of a building when a maximum of 3 signs are permitted, and
 - 2) A variance to Article 28-6-9(1)(b) to permit a combined square footage of all signage on one side of a building to be 260 square feet when 150 square feet is the maximum permitted

for property at 137 Manchester Street in a CG General Commercial District.

Attorney Richard Uchida of Orr and Reno, Peter Holden of Holden Engineering and Fred Booth of Banks Chevrolet testified.

Attorney Uchida stated that the property has frontage on both Manchester Street and Old Suncook Road. They would like 8 signs totaling approximately 260 s.f. affixed to the building. GM is requiring that they have "Buick", "GMC", "Chevrolet" and "Cadillac" on the building. The new building is setback 120 to 125 feet from the road. The signs are appropriate for the scale of the building. Two of the signs, if boxed together, would bring them back to 6, not 8 signs. This is a much cleaner/better sign package than exists. The signs have been approved by ADR. All signs are facing Manchester Street. None face Old Suncook Road. Mr. Booth stated that all public access will be from Manchester Street. Attorney Uchida stated that there will be no signage on the back of the building.

Norton asked about the sign formula. What amount of signage is required by GM? Attorney Uchida stated that 5 or 6 of the signs are required. Parker asked about their ground signs. Attorney Uchida stated that they are moving their freestanding signs back to accommodate the future widening of the road. They have 2 large freestanding signs and they will remain. This is an oversized parcel that allows for more than one freestanding sign.

In favor: none.

In opposition: none.

Comments from Code Administration: none.

DECISION: Parker felt that where they have 2 pylon signs that advertise he sees no necessity or hardship particularly when it comes to the directional signs for the service bay entrances. Harrison stated that the public will need some direction. He feels that the hardship is that the building is big and the public need direction. Norton felt that GM's requirements are met as the brands are on the freestanding sign.

A motion to deny the requests was made by Parker, seconded by Norton and passed by a 3-2 vote with Harrison and Wallner in the minority.

17-11 Florida Tower Partners: Applicant requests a modification of material facts and representations related to the granting of a height variance for Case #27-10 permitting construction of a 170 foot tall "mono-pine" telecommunication tower where height limitations would only permit a 97 foot tall tower and wishes to replace the "mono-pine" tower with a 150 foot tall "low profile monopole design" for property located at 117 Dunbarton Road in an RO Residential Open-space District.

Attorney Springer testified along with Randy Howser, PE and Kevin from AT&T. Attorney Springer stated that they were before the Board in 2010 and the request was approved for a 170 foot monopine, but the Planning Board has recommended approval of a low profile mono-pole design with a reduced height of 150 feet. Since the Zoning Board and the Planning Board have conflicting approvals they need approval of the lower height and mono-pole vs. the fake tree.

Walker stated that the height is not the issue. They can reduce the height without ZBA approval because it is less than the variance as granted. They issue before the Board is the material facts of the design relating to the changing of the architectural design of the pole.

Kevin stated that Concord Hospital would allow smaller non-commercial antennae on the hospital grounds to boast the signal for some of the buildings on the hospital grounds but that would not necessarily be enough to for AT&T to serve the buildings outside the hospital property.

Norton stated that if Concord Hospital would allow an antenna on the building - that is new information and should be treated as a new case. Walker stated that what is before the Board at this time is the style of the pole. Harrison asked Walker for clarification of what the Planning Board asked for. Walker stated that ADR did recommend dropping the mono-pine and going with the traditional design cell tower and the Planning Board further refined the plan to the low profile stealth mono-pole.

In favor: none.

In opposition: none.

Comments from Code Administration: none.

DECISION: A motion to grant the request was made by Wallner, seconded by Harrison and passed by a 3-2 vote with Parker and Norton in the minority.

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A TRUE RECORD ATTEST,	
ZONING BOARD OF ADJUSTMENT	, CLERK