## ZONING BOARD OF ADJUSTMENT May 1, 2013 MEETING DRAFT MINUTES

Board members present included Acting Nicholas Wallner, Steven Norton, Robert Harrison Jr., Jim Marshall and James Monahan. Also present was Zoning Administrator Craig Walker and Clerk of the Board Rose Fife.

**O6-13** <u>Concord-Merrimack County SPCA</u>: Applicant requests the Board make a determination if proposed changes to the site plan presented to the Board and upon which the Board based their approvals constitute a material change significant enough to require a new hearing.

**(Original request)** Applicant wishes to establish an animal shelter (Commercial Kennel, Principal Use M-8) with associated activities requiring:

- 1) A Special Exception under Article 28-2-4(j), Table of Principal Uses and in compliance with Supplemental Standards Article 28-5-29, Commercial Kennels;
- 2) And a Variance to Article 28-4-1(h), Table of Dimensional Regulations, to permit a total lot coverage of up to 22% where a 10% maximum lot coverage is permitted;

For property at 254 Clinton Street in an RO Residential Open Space District.

The Zoning Administrator explained that the applicant was in in March 2013 and since then they have had to make a minor modification to the site plan. He showed the Board the changes. Harrison asked if the building was larger. (No it isn't.)

A motion that there was not a significant change from the original approved plan was made by Norton, seconded by Harrison and passed by a unanimous vote.

**10-13** Attorney Mark Puffer for T&L Investments, LLC: (Rehearing Request) Applicant appeals the Zoning Administrator's (ZA) decision that the 5<sup>th</sup> unit in the subject multi-family dwelling was not legally created and requests the Board overturn the ZA's decision that (1) the 5<sup>th</sup> unit was not legally created; and (2) failing to find the City estopped from denying the right to the 5<sup>th</sup> unit.

If the Board denies a rehearing on the ZA's decisions applicant requests the Board consider a Request for Rehearing for the following:

- 1) Variance to Article 28-5-3, Conversion of a Residential Building Section (b)(1), Minimum Lot Size, to permit a 5 unit conversion on a lot of 2,968 SF +/- when 12,500 SF of lot area is required,
- 2) Variance to Article 28-5-3, Conversion of a Residential Building Section (b)(2), Other Dimensional Requirements, to permit the conversion on a lot with 43' +/- of frontage where 75' is required and total lot coverage of 68% where a maximum of 60% is allowed,

3) Variance to Article 28-7, Access, Circulation, Parking and Loading, Section (1)(a), Applicability, to permit the conversion while maintaining the existing non-conforming parking configuration and to maintain the Variances granted under case #54-2001, For property located at 21 – 21A Federal Street in an RD Residential Downtown District.

Wallner asked the Board if they had received and read over their information packets that were sent to them. Does the Board feel that there was any error of law or new information?

A motion to deny the rehearing request was made by Norton, seconded by Harrison and passed by a unanimous vote. The Board felt that there was no error in law or new information.

The question of municipal estopple was not taken up by the Board as it is a question of law.

**19-13** Peter Webster, for Webster Peter Realty, LLC: Applicant requests a Special Exception under Article 28-8-4(c)(2) to permit an expansion of a non-conforming steel manufacturing, fabrication and warehouse facility (uses K-7 & L-1) to add a 2 story 674 s.f. foot print addition which equals a 2.9% expansion of the existing building when a maximum expansion of 10% is permissible by Special Exception, for property located at 10 Basin Street in an OCP Opportunity Corridor Performance District in an F-1 Flood Hazard Overlay District.

Web Stout, Licensed Land Survey and Peter Webster, property owner testified.

Web Stout showed the Board on the map where the expansion would be taking place. They basically need a little more office space.

Harrison asked if this is for the front office area. (Yes.) Is it going to look the same? (Yes.) The building is one story? (Two story.) Are they adding 1 story? (Adding two stories.) Norton asked if there were any safety reasons or any other reasons that would persuade them to grant this request. Web State stated that this is strictly for the office. There is no increase of pavement or impervious surfaces. Norton asked why just a 2.9% increase? Mr. Webster stated that this was for the sales staff as they are all in one room and it is too noisy. Marshall asked if the parking spaces would be changing. (Five spaces by Basin Street would be added to bring it into compliance.) Monahan asked where the handicapped spaces were located. (Web Stout pointed them out.) You are not changing them? (No.) Mr. Webster stated that the building was originally constructed in 1989.

In favor: none.

In opposition: none.

Comments from Code Administration: none.

DECISION: A motion to approve the request was made by Harrison, seconded by Monahan and passed by a unanimous vote. Harrison felt it was a reasonable use.

- **21-13** <u>Carolyn A. Parker for VSH Realty, Cumberland Farms</u>: 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.

Carolyn Parker testified for Cumberland Farms. The price sign will be changed to a scroller sign. They are changing out all of their signs and would like to do this type of sign here. The only part that will be illuminated will be the word "Regular" and the numbers. The light pole sign will be removed and replaced by a 6x8 sign. She explained the installation. The sign will enhance the look. It will be set up so that someone from inside can push a button and change the price 1 or 2 times a day at most. It is strictly for prices. There are times when there is only one employee at the store and manually changing the prices can be difficult and dangerous.

Harrison asked if only the numbers will change. (Yes.) Carolyn Parker explained that each number is a box with a scroll of numbers. The gas station has been there for 31 years. The use is allowed by right. There will be a dark background. Wallner asked what the hardship was. She stated that the spirit of the Ordinance will be observed. The public interest will be observed, this sign is not as bright and not as high. Cumberland Farms will be revamping all of their gas stations. This is minimal impact on the neighborhood. This won't diminish the value. The sign there is approximately 20 years old.

Monahan asked if the cigarette price sign will be gone. (Yes.)

Walker stated that the hardship test is unique to the site and environment. What is unique about this site vs. every other site dealing with the same situation? If it is a hardship that is experienced by everyone in the same situation then it might be something for Council to consider amending the ordinance. Norton asked why this would not be a distraction. (The scroller would look just like a manual sign until they changed it.) Harrison asked how long it (scroller) took to change. (A couple of seconds.) Monahan stated that Code felt the sign was prohibited (yes, that was the subject of the previous appeal to overturn the ZA's interpretation). Walker explained that the reason behind the bans was for aesthetic and safety purposes. Harrison asked if this sign would be in the same category as the Carlson's sign. Walker stated that others have pixilated lights (LEDs). Ms. Parker stated that the sign moves once a day but doesn't blink or flash or be animated. It is not an EMC at all. It is strictly for price changes once or twice a day. Monahan asked what the existing sign was now. Walker stated that it is a manually changed sign.

In favor: none.

In opposition: Louise Bono who lives behind Cumberland Farms. It is a 24 hour store. It is commercial property but really a residential area. Marshall showed her the new design. She stated that if it is lit like what is there now she wouldn't object to it. It is noisy there into the night. Glenn Wasp who owns 46 Fisherville Road has quality of life issues. They moved into this property in 1980

and moved 6 years later but kept the property as a rental property. Cumberland Farms went from closing at 10 pm to being open 24 hours a day. There are bright lights in their window has been his tenant's complaints. If there is less light or it is dimmer he wouldn't have an issue with it. Traffic congestion and additional distraction is a concern.

Comments from Code: Biggest question is the hardship and uniqueness of the property.

Rebuttal by Ms. Parker – the abutters didn't seem to have an issue with her request. They can't control what others (public visiting the property) do.

DECISION: A motion to grant the requests was made by Marshall with a maximum change of 2 allowed per day, seconded by Harrison and passed by a unanimous vote.

Marshall felt the hardship is an issue. This reduces visual distraction. It increases the safety. Technology has changed and he doesn't think it's not in the spirit of the Ordinance.

- **22-13 David & Cynthia Caron:** Applicant wishes to remove a seasonal camp located within a Flood Hazard (FH) district and the Shoreland Protection (SP) District and replace it with a year round residential structure and requests the following:
  - 1) Variance to Article 28-3-2(d)(2), Uses Prohibited in the 100 Year Floodplains, Section a., to permit a year round dwelling within the 100 year floodplain,
  - 2) Variance to Article 28-3-2(d)(2), Uses Prohibited in the 100 Year Floodplains, Section d., to permit the installation of a well-intended as a source of potable water within the 100 year floodplain,
  - 3) Variance to Article 28-3-2(f), Development Standards in the Flood Hazard District, to permit the construction of a building in a FH District where it cannot connect to municipal water and sewage when all structures in the FH District must connect to municipal water and sewage,
  - 4) Variance to Article 28-3-3(g), Development Design Standards in the Shoreland Protection District, to permit the construction of a building within 25 feet of the reference line of the river when no structure may be built within 75 feet of the shore line,
  - 5) Variance to Article 28-4-1(h), Table of Dimensional Regulations, to permit the construction of a dwelling with a setback of 3 feet +/- from the front property line and 25 feet from the rear property line when a 50 foot front and rear setback is required,

For property located at 74 Broad Cove Drive in a RO Residential Open-space District within the 100 year flood hazard zone and Shoreland protection.

David Caron testified. He would like to take out the existing building and replace it with the same size building. It has been there since the 1940's. He has approval from Wetlands (DES). It has an outhouse that they don't use and they will be removing.

Harrison asked what was wrong with the building. (It is in bad shape. He has to bend to walk into it and stand between beams to stand up.) How long have you owned it? (7 years.) Is it camp style? (Yes, a wood stove and it is on sonotubes, no foundation. He would like a solid foundation and raise

it up.) Monahan asked if it is an existing single family. (It is a 12′x40′ and will be replaced by a 12′x40′ on a foundation, but he is going up 2 stories. He would also like to move it back a foot.) Harrison asked Walker if the RO Zone requires 2 acres. (Yes.) Harrison asked Mr. Caron how large the lot is. (It is 200′ road frontage by 75′ deep.) Non-conforming lot? (Walker stated that it was an extremely non-conforming lot.) Board asked Walker about the well issues. He explained them. Norton asked if there were no foundation there and it was 1 story would the same variances be required. (Walker stated that they would.) Marshall asked if they would have a new well. (Mr. Caron stated that yes and that they have permission from the State of NH.) Monahan asked if there were similar camps in that area. (At some point in time there have been similar ones.)

In favor: Harold Harasko, 75 Broad Cove Drive, across the street. This camp has been there since the 1940's. They are trying to improve the building and the site and the neighborhood. He has lived there 37 years. Harrison asked him if the property was used as a camp or year round dwelling by the previous owners. Mr. Harasko stated that it was used as a camp and recently Mr. Caron's son lived there year round.

In opposition: none.

Comments from Code: none.

DECISION: Harrison stated that it is on a corner lot and they are building a bigger home. Wallner pointed out that foot print wise they are the same. Harrison stated that it is still closer to the road and bigger by 2 stories. It was strictly a camp prior. They need more parking. Wallner felt it was a unique property. Marshall felt it was the perfect test of hardship as it was a non-conforming lot with a home on it. There is no way he could conform on such a small lot. It is a reasonable use. Harrison felt that a reasonable use is as a camp as he purchased it. Monahan stated that it was used as a camp but it could be used for year round. The septic is being upgraded which is good. It would improve the neighborhood. Reasonable request. Norton asked if there were a way to build that wouldn't require a variance. (No.) It is an odd lot. Walker stated that the Ordinance does not differentiate between year round or seasonal dwelling units.

A motion to deny all requests was made by Harrison, seconded by Norton and did NOT pass by a 2-3 vote with Monahan, Marshall and Wallner in the oposition.

A motion to grant all the requests was made by Marshall, seconded by Monahan and passed by a 3-2 vote with Harrison and Norton in the minority.

**Matthew Turant:** Applicant wishes to construct a 2 car garage and requests a variance to Article 28-4-1(h), Table of Dimensional Regulations to permit a 5 foot side setback where a 15 foot setback is required for property at 95 Pembroke Road in an RS Residential Single-family District.

Matthew Turant testified. He would like to build a garage with a 5' setback vs. 15' required He would like to put the garage near his home next to the tar. He can't push the garage back due to the placement of his septic tank and garden and kids play area.

Norton asked where the property line was on the other side. (There are trees and a gas line that run on that side.)

Mr. Turant stated that this is not the first non-conformity in the neighborhood. There are several garages right to the property line and a variance for an abutting property for the same reason. If the garage were placed on the other side of the property it would still require a variance.

Monahan asked when they purchased the property. (Approximately 8 years ago.) Mr. Turant went on to state that a variance had previously been granted to this property in 1988 for the same reason.

In favor: Sam Benton, abutter. His house is on the left. He is okay with him building it. On the other side of his property that house has a garage that is 3 feet from his property line.

In opposition: none.

Comments from Code: none.

DECISION: A motion to approve the request was made by Monahan, seconded by Harrison and passed by a unanimous vote. Monahan felt that the hardship was the placement of the septic tank.

- **25-13 Swenson Granite Company, LLC:** Applicant wishes to construct a building to be used for manufacturing and fabrication (Use L-1) and requests the following:
  - 1) Variance to Article 28-2-4(j), Table of Principal Uses, to permit a manufacturing & fabrication use (use L-1),
  - 2) Variance to Article 28-7-2(e), Table of Off-street Parking, to permit the provision of 18 designated parking spaces when 44 spaces are required,
  - 3) Variance to 28-7-7(h), Surfacing and Drainage, to permit gravel parking spaces, loading spaces and access aisle in lieu of pavement,
  - 4) Variance to Article 28-7-13(d), Surfacing and Drainage of Loading Areas, to permit gravel surfacing for the loading space in lieu of pavement,

for property at 369 - 371 North State Street on the portion of the property located in a RO Residential Open-space District.

Jeff Lewis, Engineer and Scott Herrick of Swenson Granite testified.

Mr. Lewis stated that this was a 187 acre parcel. They have an office and retail store on North State Street and a ¾ mile paved drive that goes to the top of the quarry. The quarry has been operational since the late 1800's. There are 15-16 open acres. They are currently stockpiling finished, raw and Building Inspector products. They would like to build a 32,175 s.f. This will, over time, replace the current operations. They need more space and more modernization. This building will not be for additional staff. The property is a split zone. Most is in the RO Zone. The use is already occurring on the site. There is parking and drive access around the building. There is no pavement existing now. It has an already paved access and then open crushed rock, etc. No public comes up there. Just the shift of employees. A small part would be 2,000 s.f. for an office and bathroom up there.

Norton asked what happened up at the top of the quarry. (Manufactured road curbing.) Difference? (Difference in the processing.) Norton asked if there would be an increase in trucks coming to the site. (The curb market has decreased so he does not foresee it.) How many employees are in the building? (9 total, maybe 10. The office would add 3.) Harrison asked if they all drove up to the site. (Some drive up and some are dropped off.) Marshall asked if there would be new employees there. (No.) Monahan asked if the building were to be at the top of the hill or built into the hill. (It will be on top of the hill.)

In favor: none.

In opposition: George Chapman, 10 Abbottville Road. He was concerned with noise and the operation hours. His house shakes from time to time due to the explosions they set off. John Clement, 356 North State Street. He is south of Swenson's entrance. There are quality of life issues, noise, and the steep road to the facility. There are trucks going to the site 24 hours of day. The gravel area square footage is the concern with water coming down.

Comments from Code Administration: This requires site plan review. The drainage issue will be looked at then.

Rebuttal by Mr. Herrick. There will be no increase in noise and the noise will be further away by 100' +/-. They do a lot less blasting in the quarry. Norton asked who checks their environmental safety issues. (Internal monitoring and outside testing.) Marshall asked if the building encloses the operation. (Yes.) Hours of operation? (7 am to 3:30 pm) Monahan asked if they let the neighbors know when an explosion will happen. (No, they haven't historically either.)

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

- **17-13 WBIN Media, Inc.**: Applicant wishes to re-develop the former Walker School property from an elementary school to a radio/television media facility (use K-10) and requests the following:
  - 1) Amend a previously granted Variance to Article 28-7-2(e), Table of Off-Street Parking, to provide 58 parking spaces where 119 are required (previously garneted as providing 58 spaces where 97 would be required),

For property located at 4 Church Street in a IS Institutional District with an HI Historic District overlay.

Attorney Uchida testified. They still want 58 spaces that were approved at last month's meeting. They found that the required number changed from what they originally believed; 97 to 119. A week after the approval they found that the building was 35,790 s.f. not smaller. This bumped up the parking requirement from 97 to 119 spaces needed. The parking layout and design will be the same as it was when approved last month. The Heritage Commission wanted the front parking area to be retained. They have maxed out the parking elsewhere on the site. The stone walls in the building are 2 foot thick. 3500 s.f. of the area are taken up by these walls. The hallways are double wide. There are extra wide stairwells on the 4 corners of the building. They are preserving the 2<sup>nd</sup> floor

auditorium for the broadcast area which is 2500 s.f. area. They have a daily need of 40-45 spaces. Any reuse would require similar variances. The neighborhood is protected by a "no parking" zone. The building and site is unique.

In favor: none.

In opposition: Attorney Phil Hastings of Cleveland Waters and Bass for Concord Group Insurance. The overflow parking is a problem in the neighborhood. They are concerned with the design of the site where most parking is in the back of the property near Bouton Street. They would like an agreement with regard to overflow parking. He reviewed the Heritage Committee Minutes with regard to Church Street parking and he cannot find any affirmative notations regarding the front parking. Historic needs need to be balanced out with safety needs.

Comments from Code Administration: none.

Rebuttal: Attorney Uchida was concerned with the safety and congestion to so they've proposed that when large groups come they keep them off the site. They have a history of managing these things. The numbers of employees and staff justify the number of parking spaces request. The site preservation has been a topic that has been returned to on a number of occasions during the process.

DECISION: A motion to approve the request was made by Harrison, seconded by Norton and passed by a unanimous vote. Harrison felt that this request was no different than last time. It is a unique site.

MINUTES: A motion to grant Minutes from April 2013 was made by Norton, seconded by Harrison and passed by a unanimous vote.

A TRUE RECORD ATTEST,

<u>Rose M. Fife</u>, CLERK ZONING BOARD OF ADJUSTMENT