ZONING BOARD OF ADJUSTMENT NOVEMBER 6, 2013 MEETING DRAFT MINUTES

Board members present included Chairman Christopher Carley, Rob Harrison, Stephen Norton, James Monahan and Ben Kelley. Also present was Zoning Administrator Craig Walker and Clerk of the Board Rose Fife.

- **21-13** <u>Carolyn A. Parker for VSH Realty, Cumberland Farms</u>: (Request for Rehearing) (Request to recess until January 8, 2014) 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.

- **40-13** Barlo Signs for Carlsons Motorcorp: (Request to recess until January 8, 2014) Applicant requests the Zoning Board overturn the Zoning Administrator's determination that the use of a remotely programmable electronic message sign for variable background illumination is a use that is not permitted under the City of Concord's Zoning Ordinance for property at 13 Manchester Street in a GWP Gateway Performance District.
- **41-13** Barlo Signs for Baron's: (Request to recess until January 8, 2014) Applicant requests the Zoning Board overturn the Zoning Administrator's determination that the use of a remotely programmable electronic message sign for variable background illumination is a use that is not permitted under the City of Concord's Zoning Ordinance for property at 350 Loudon Road in a GWP Gateway Performance District.

Cases 21-13, 40-13, and 41-13 have all been postponed.

51-13 E. Douglas Ryan: Applicant wishes to legitimize a non-compliant apartment and requests a variance to Article 28-2-4(j), Table of Principal Uses, to permit a two-family dwelling (Use A-2) where such use is not permitted at 151 Oak Hill Road in an RO Residential Open Space District.

Attorney Steve Soloman and E. Douglas Ryan testified. Attorney Soloman doesn't feel that a variance is required. The addition that created the 2 family home was completed in 2000. When the permit was taken out, the zone was RE and a 2 family was allowed. He spoke with Steve Henninger who said that the notice was done in 2001 to change the zone effective November 2001. This was permitted and completed prior to the Zone change from RE to RO. Mr. Ryan is trying to sell the property and the current use doesn't allow for a 2 family home. They would like the Board to agree with them that the use could continue.

Walker stated that if they would like to challenge his interpretation, they could do so, but not this evening as it was not brought up at the time of application nor was it noticed for the public to see. The Building Permit they are referring to was issued on 4/25/01 when the property was in an RE Zone. On the front of the Building Permit it is described as a single family home. There is no reference to a two-family. There were no inspections made or a final inspection done. The Building Permit was closed out on February 8, 2005. Carley asked Walker for the plans to review them. Walker further stated that the structure that was built is not what was submitted on the plans.

Harrison asked if they were on City water and sewer. (No, well and septic.)

Carley stated that the Board could not act on whether or not to uphold the Zoning Administrator's interpretation as it was not on the agenda or legally noticed. The Board has the option of Tabling the case or ruling on the case as it is noticed and included on the agenda. If the Board Tables the case, the appellant can re-apply and include a request that the Zoning Administrator's decision be overturned as well as a request for a variance in the event that the Board upholds the

Administrator. If the Board proceeds with the request as currently noticed, then the appellant would lose the opportunity to challenge the Administrator's ruling

Walker stated that the Building Permit was for a single family home. The applicant has no vested rights.

The Board gave the applicant time to confer with his Attorney to determine the way that they would go forth.

Attorney Soloman stated that his client wants to re-notice the case as a determination of the Zoning Administrator's interpretation and possibly a variance.

DECISION: A motion to TABLE the case was made by Norton, seconded by Harrison and passed by a unanimous vote.

- **52-13 <u>Duprey Acquisitions, LLC</u>**: (Rehearing) Applicant wishes to remove an existing single-family residential structure to construct a parking lot and requests the following:
 - 1) Variance to Article 28-2-4(j), Table of Principal Uses, to permit a "Public or Commercial Parking Lot," (use K-1) where such use is not permitted;
 - 2) Variance to Article 28-4-1(h), Table of Dimensional Regulations, to permit a lot coverage of 69% where a maximum of 50% is allowed,

All for property located at 46 Pillsbury Road and situated in an RN Residential Neighborhood District.

Steve Duprey and Attorney Richard Uchida both testified.

Mr. Duprey stated that he owned the development company that redeveloped the building which is now condo units. Prior to redeveloping the property he did approximately 8 neighborhood meetings. He would not allow on street parking migrating to the neighborhood area. The parking lot is substandard sizing parking for Pillsbury Street. 46 Pillsbury Street became available on short sale. He felt it would be wise to buy the property and maybe add to their parking. As they didn't need parking back then, the Zoning Board said no to parking. He has managed the parking issues very well for this area. One of the condo owners, NH Bar Association, is in charge of traffic management. They coordinate meetings so no excessive parking issues will occur. They did a parking study, which he explained. He submitted photographs and explained their importance. He hired a surveyor, Bartlett & Associates. They will not have any more visual impact on their neighbor than they already do.

Carley asked if they were running out of parking spaces now. (Yes.) Duprey explained that the growth is more than they had anticipated. Monahan asked how the previous variances were represented to the Board. (Duprey explained that they were very frank with the Board.)

Attorney Uchida explained the variances. Access will be through the Dakin Street/Allison Street parking lot only. This parking lot would add 34 parking spaces. He passed out 2 charts for the Board to review. Attorney Uchida went on to state that the property is listed in an RN Zone. There is an early 20th century 36 inch brick storm drain line that runs under this house, which will need to be repaired. Every time a use changes they have come back to the Board for relief. A lot of the uses have grown and weren't expected to grow this fast. They have 462 parking spaces that the Board approved in 2009. In 2011 the City changed the parking requirements and the number needed would be reduced, but would still leave his client needing more spaces. They are renting 20 spaces from 1 Pillsbury Street. They submitted evidence on the 5 elements of the variances and why the property is unique. No harm will befall the general public if the variances were granted.

Carley asked Attorney Uchida why the sewer line helps their case. Attorney Uchida felt that the uniqueness of the property; i.e. the sewer line running "under" the structure, was a unique feature. Harrison asked if the City has an easement. Attorney Uchida stated that not so far as they can tell. Monahan asked if a bus service ran by there. Attorney Uchida doesn't believe so. Carley asked if there were any time limits to on street parking. Attorney Uchida stated that there were none that they know of.

Mr. Louis C. Manias of Capital Appraisal Associates testified. He was asked to research whether or not a diminution of value to the surrounding properties would take place if a parking lot were built. There is no market evidence that the property value would decrease if the variances were granted. Norton asked if the development of the Pillsbury Building

positively impact the neighborhood. Mr. Manias could not answer that as he was not asked to look into that question. Kelley asked how many properties he usually looks at. He stated 2.

In favor: Janine McCoy, Executive Director of NH Bar Association. They occupy quite a bit of the third floor. They have respected the parking constraints. They have a lot more visitors than they anticipated; 9,000 visitors in a years' time. There is not enough parking at the building.

Monahan asked if they owned or leased the space. She stated that they own their condo space. Do they have a parking agreement on file? She stated that there is none that she knows of, only an understanding that staff is asked to park on the rear lot.

Linda Mallon, Office of Public Guardian, they occupy the 4th floor. On august 2nd she submitted a letter to the Board. Their charge is to serve as legal guardianship for 1,000 plus clients. They have been at this location since 2006. She has approximately 30 people on her staff. They have seen an increase in the number of clients visiting their office. There is not enough parking, which creates hazardous conditions. She submitted letters from Plymouth State, Summit Health, Dartmouth Clinic and Dr. Stuart Cunningham, all in agreement.

Scott McPherson of NH Public Radio. He is also on the Board of Directors of 2 Pillsbury Street Condo Association. They are a victim of their own success. Monahan asked of the Condo Association has anything in their agreement dealing with parking. Mr. McPherson stated that the association has no role in leasing spaces.

Ilene Surator, Eye Center of Concord. They have 7 providers and an optical shop. The patient's visits have increased to 23,000 visits per year. They serve a lot of clients over the age of 65. They need convenient, close parking for the majority of their patients. She submitted a petition that the patients signed.

In opposition: Linda Rost, 52 Pillsbury Street. She explained the high volume parking on one of those days that Mr. Duprey submitted as evidence was one of his "experiments". She compiled a chart from 10/28 to 11/5/13 of the parking use. It shows that there is adequate parking on 2 Pillsbury Street's lot. 46 Pillsbury Street is a 20th century small home. The current state of the home lacks curb appeal due to the low maintenance done to it. It is contrary to the public interest. It will not serve the community. There is outdoor access to the storm drain. There is a manhole cover in the back yard. She submitted appraisal information. They purchased their home at 52 Pillsbury Street with a home next door. Neighbors are considered more desirable than a parking lot. 46 Pillsbury Street's value has already been lessened as it is surrounded by 3 parking lots. She submitted a photograph taken from her porch with a 6 foot fence showing what she sees. Harrison asked how long she has lived there. They purchased the property 4 years ago; 1 week before Duprey acquired his property.

Suzanne Smith-Meyer who resides on Shawmut Street. She has been a resident of Concord for 28 years. She is a landscaped Architect. She was involved in the Zoning revisions. She is not an abutter to the property but has watched the proceedings on CCTV. It peaked her interest. Professionally and as a citizen she felt this was a City wide issue. The City is sending a message that our Zoning isn't tough enough. Not just a variance for parking, but it is a variance for lot coverage. This would increase the heat island affect to the abutter. This would be almost impossible to buffer. Approving this type of request would be setting a precedent. Norton asked for specific criteria to this case. Suzanne stated that the criteria should be balanced to the residential zone. Kelley asked if she could high light within the 5 criteria. Suzanne stated that the home owner did a good job refuting the hardship. She feels it is not enough of a hardship and certainly not for the lot coverage question.

Fred Graf of Carter Street. When they placed the Slosser Building on the property, they stated to the Board that they had too much parking. The vacant lot across the street from S&W Bike Shop would be a great addition to their parking with it not being surrounded by homes. It is only 30 steps further than the Allison/Dakin lot. The parking lots are not filled. He rarely sees spaces filled. He would also question the appraiser. Will a variance be required for a fence high enough so that the abutter won't see it? But even if not seen, it will be heard.

Letters were submitted from condo owners. A letter dated 11/5/13 from Pam & Mike Alberici, 12 Morton Street, not in favor.

Comments by Code Administration: none.

Rebuttal: Steve Duprey stated that every bit of snow is removed from the lot in the winter so that they do not lose parking in the winter. He has made inquiries for the property on the east side of South Main Street. Pillsbury Street, east of Dakin is 2 hour parking. On the west there is no time limit. Allison Street, they were asked not to use. Plymouth State is a State entity and doesn't have to follow zoning rules.

Attorney Uchida stated that the lot coverage issue – their first lot is 67% lot coverage; their second lot is 75% lot coverage. He submitted a petition from NH Bar Association and cards. Duprey would also do a retaining wall and then plantings.

Carley asked if the house were occupied. (Duprey stated that it was not as it has asbestos inside and out and that is costly to abate.) Carley asked how old the house was. (Duprey stated that he was not sure. He did a title search and there is no easement.) Monahan asked if Plymouth State was a tenant or an owner. (Duprey stated that 2 Pillsbury Street LLC owns the unit and they lease from them.) Monahan asked for the range of empty parking spaces. (Duprey stated lowest would be 6 and highest would be 21.)

DECISION: Norton asked Walker if there were no house there could you build a house on that property. Walker stated that you could not as the City wouldn't permit a house over a drain line. Kelley commented that the appraisal was straight forward. 52 Pillsbury Street is across from 2 parking lots. He accepts the appraiser's report. Monahan asked Walker if the property assessment was less for parking lots vs. single family homes. Walker said yes. Monahan stated that he heard the term "victim of their own success" quite frequently. He wondered if they were not more a victim of their own making. This request does get parking off the street. Carley felt that the appellant's chief argument for the variance was based on the neighbors' need for more parking rather than the peculiar characteristics of the property. Much discussion ensued. Kelley went through the criteria. #2, the Spirit of the Ordinance, this lessens congestion in the street; Carley felt the sewer line under was a special condition contributing to hardship, Harrison felt that there was a uniqueness to the property.

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

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

A TRUE RECORD ATTEST,

Rose M. Fife , CLERK ZONING BOARD OF ADJUSTMENT