

**ZONING BOARD OF ADJUSTMENT
NOVEMBER 5, 2014 MEETING
DRAFT MINUTES**

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

21-13 Carolyn A. Parker for VSH Realty, Cumberland Farms: (Request for Rehearing) (Tabled until November 5, 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: (Tabled until November 5, 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: (Tabled until November 5, 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.

Case #21-13, 40-13, 41-13 was taken up at all at once. A motion to Table these cases until December 3, 2014 was made by Wallner, seconded by Winters and passed by a unanimous vote.

31-14 Anthony & Kimberly Bailey: Applicants wish to use their property in conjunction with an off-premises occupation and request the following:

- 1) Special Exception as permitted under Article 28-2-4(k), Table of Accessory Uses, Section A., Accessory to a Principal Residential Use, Use category (4) to use a portion of a dwelling or accessory building in conjunction with an off-premise occupation subject to the Supplemental Standards of Article 28-5-31, Use of a Dwelling in Conjunction with an Off-premise Occupation,
 - 2) Special Exception as permitted under Article 28-2-4(k), Table of Accessory Uses, Section A., Accessory to a Principal Residential Use, Use category (10), Parking for 1 commercial vehicle, to be used in conjunction with an off-premise occupation subject to the Supplemental Standards of Article 28-7-17, and
 - 3) A Variance to Supplemental Standards, Article 28-5-31, Use of a Dwelling in Conjunction with an Off-premise Occupation, section (b), Outdoor Storage Not Allowed, to permit the outside storage of equipment (trailers) related to an off-premise occupation,
- for property at 13 Currier Road in an RO Residential Open Space District.

Chair asked Anthony Bailey if they were any objections to them being heard by a 4 member Board. Mr. Bailey said that would be fine.

Anthony Bailey testified. He owns a small asphalt sealing company and the business requires the use of a seal coat trailer, which is similar to a small construction trailer. He would like to be able to park this small trailer on his property along with an enclosed utility trailer. He has created an area on the property, which is a 5.5 acre parcel, well within the acceptable area of setbacks and property lines. The area is virtually nonvisible from the street. He showed the Board, on the maps, where the area was located in the rear part of his yard which is completely concealed from the neighbors. The distance from the front corner of the shed to the nearest corner of his house is 225 feet. Where he would park the trailer is 300-350 feet off the road.

Carley asked if the shed was concealed from the street. Mr. Bailey stated that it was. The house doesn't block it, but the trees, etc. do. He tried to pick a location that couldn't be seen from any other properties. Carley asked him if they take the seal coat tank elsewhere to be refilled. Mr. Bailey said that was correct. There is no other storage of sealer other than what is in the tank, which is self-concealed. It is state of the art equipment for the industry. It's extremely clean. Winters asked where he had been storing the trailer before now. Mr. Bailey said he purchased the yellow trailer at the end of last season, about 13 months ago and has had it on the property. Winters asked if they had an off-site shop or is everything at your home. Mr. Bailey said that everything was at his home.

Carley asked Walker for explanation of some of the requests. Craig Walker explained the Ordinances as they pertained to each request. Carley asked if the truck were the commercial vehicle. Walker said yes. (It was later clarified that the commercial vehicle referred to in the Special Exception application was the yellow seal coat tank and the second commercial vehicle referred to in the Variance request was the equipment trailer. The pickup trucks were not part of the application as they are used for domestic purposes and do not meet the definition of commercial vehicle under the Ordinance.)

Mr. Bailey said that the trailer was the commercial vehicles and the trucks were okay. He said that what was explained to him in the Code Administration office. Wallner asked if he had advertising on the vehicles. Mr. Bailey said there is no advertisement on his trucks. Monahan asked if the shed were used for the business. Mr. Bailey said the shed was filled with more household use items, like a lawn mower, etc. It's more of a screen to park his truck and trailer behind. His business is self-contained with the pickup truck and the sealant trailer. Carley asked what other equipment there is. Mr. Bailey said he uses hand tools, the equipment trailer and a white construction trailer, which was his snowmobile trailer, but he uses it for the business also. Carley asked if the variance applied to the trailer. Carley said that he was only able to park one vehicle auxiliary to the business. So it's one trailer that is in need of a special exception. Trucks have no signage so they are not considered in need of a variance. Winters asked why he needed the two trailers. Mr. Bailey said that the City came to him saying he needed these variances and special exceptions. The construction trailer, he did not think he needed a permit to park it there on the property. Having the yellow seal coat trailer on the property, he understands is what needs zoning relief. He wants to make sure he is "covered". Monahan asked if there was any noise or odor associated with cleaning it at the end of day? Do you operate on the property? Mr. Bailey said that yes he operates on the property. It's a 13 hp Honda motor. His lawn mower is a larger motor at 26 hp that he uses for personal use. He does use the Honda motor to mix the product prior to a job. Monahan asked if it was more than just storing the equipment at the end of the day. Mr. Bailey said that the sealant is mixed when purchased off premises. Monahan asked why he would need to run the sealant motor. Mr. Bailey said that just prior to using the product you need to agitate it. So if he had a job first thing in the morning, he would need to start the motor to start the agitation process so the product would be ready when he arrived at the job site.

In favor: none.

In opposition: Ann Clune who lives at 15 Currier Road. This is a residential area, not commercial. She didn't sign up to have an asphalt paving company right next to her house. Her land abuts his land. There is traffic in and out of his driveway. He has employees and their traffic. It sounds like a chain being dragged up the driveway. It's the level of noise. You don't bring that type of equipment in a residential area. There are back hoes and other equipment there. There is always some kind of equipment being used over there. The smell is not good either. It's impeding the quality of her life.

Winters stated that they are being asked to look at the storage of equipment and trailer. He asked if there were more going on. Ms. Clune said the sound of the equipment going up the driveway. This is heavy equipment, paving equipment. She's been woken up by the equipment. This is a residential area.

Tom Santos who lives at 18 Currier Road only wanted to ask a question of Mr. Bailey. He has no problems or complaints. He'd like to know if the chemicals being stored are flammable. Winters asked if he had noticed anything out of the ordinary as far as business activity. Wallner asked about noise. He said no he hadn't heard anything.

Comments by Code Administration: none.

Rebuttal by Mr. Bailey. Carley asked about flammability and safety. Mr. Bailey said it was extremely safe. It is state of the art equipment, intended only for asphalt sealing, not paving. The trailer holds a water base liquid sealant. The sealants that are available to commercial businesses are similar to what you buy at Lowe's but a better grade and quality. They cannot apply toxic products because of EPA regulations. It is nothing like 15 or 20 years ago. Carley asked if there were any flammable. Mr. Bailey said there were not. He also said that he owns an Xmark lawn mower that has a larger motor than the agitator. The property is 5.5 acres. He has a 56 inch lawn mower that does not have lights on it. He doesn't mow it at night. He has no large equipment there. He has been improving the property, so there has been some activity. He has a Building Permit for the work he is doing on his home. Wallner asked about the backhoe the neighbor mentioned. He doesn't own one, but he's rented pieces of equipment as he is doing an addition on the back of the property. Contractors have come in to do work. Winter asked if that work was completely unrelated to his business. Is he just working on his home? Mr. Bailey said that with respect to Mrs. Clune's concern, there is more noise from them just living there, vs. the business. Winters asked if he had employees coming in and out of the property. Mr. Bailey said he did not.

DECISION: Carley asked to address requests #1 and 2 first. Those are the special exceptions. Wallner said that he meets the appropriate location, it is not incompatible with Currier Road land use, it is not detrimental to traffic, and he feels he meets the criteria. He's in support. Motion to approve request #1 and 2 was made by Wallner and seconded by Winters. Winters wanted to add that in his view what the Board is looking at does not relate to noise, etc. Monahan agrees. They are asking to allow him to park the vehicles there. The motion was made and seconded and passed by a unanimous vote.

Request #3, the variance request was then taken up. A motion to approve the request was made by Monahan. He feels it helps to avoid the clutter and is a passive piece of equipment. Winters seconded the motion and it was passed by a unanimous vote.

32-14 James & Laura Levesque: Applicant wishes to remove and existing 16' x 20' garage / mudroom and replace with a 29' x 20' garage and requests a Variance to Article 28-4-1(h), Table of Dimensional Regulations, to permit a 25 foot building setback from a side property line where a 40 foot setback is required for property at 4 Edgewood Drive in an RO Residential Open Space District.

James Levesque testified. The current garage is on an improper foundation so the garage is shifting and sinking into the building. He has to remove it to safe guard the house. The reason he needs to extend into the setback is because the only access to the basement is through the bulk head which is located in the garage. To do laundry and so forth he would then have to shovel off the bulk head to get into the basement. This garage was not wide enough to park a vehicle so he is proposing a two stall garage that is functional.

Carley asked about the neighboring property on the construction side. Mr. Levesque stated that the property is on the town line of Bow and the neighboring property is in Bow. Bow's setbacks are 25 feet. There is a descent amount of forest between the garage and abutting property. He submitted letters from the abutters in both Bow and across the street. Wallner asked if he was extending his garage to coincide with the asphalt. Mr. Levesque stated that it did. Monahan asked if they were adding a mud room. Mr. Levesque said they were not. Monahan asked if the bulk head was still going to be in the garage. Mr. Levesque said that it was. Carley asked if the letter he has from the Bellaire's are the people that live in Bow? Mr. Levesque said that they were.

In favor: none. (See letters in file.)

In opposed: none.

Code: Walker stated that there was a previous request in the year 2000 which was under the prior Zoning Ordinance. The setbacks then were 40 feet and they had requested 25 feet. They were granted and the variance was never acted on and has expired.

Letters in support from Matthew Jepson of 1 Edgewood Drive and the Bellaire's of Bow.

DECISION: Wallner is persuaded on the hardship issue having a bulk head in the garage being unusable. This request, if granted would not diminish the value of surrounding property. A motion to grant the request was made by Wallner, seconded by Monahan and passed by a unanimous vote.

33-14 Sal Alosa, Jr. for the Gloria Alosa Revocable Trust: Applicant wishes to convert the second floor of an existing building from commercial (office) to residential apartments and requests the following:

- 1) Variance to Article 28-2-4(j), Table of Principal Uses, to permit the conversion of a non-residential building to accommodate 1 or more dwelling units (Principal Use A-14) where such use is not permitted,
 - 2) Variance to Article 28-4-5, Development of Attached and Multi-family Dwellings, Section (d)(2) Maximum Lot Coverage and Density to permit a total density of 32 units where a maximum of 24 units would be permitted,
 - 3) Variance to Article 28-4-5, Development of Attached and Multi-family Dwellings, Section (d)(3), Building Dimensions and Separation, to maintain a parking configuration with no separation between the building and the parking lots when a 15 foot separation is required,
 - 4) Maintenance of a Variance previously granted under a prior ordinance to permit parking to a property line where a 5 foot setback is required,
- for property at 8 Old Suncook Road in a CH Highway Commercial District.

Sal Alosa Jr. testified. He is the 3rd generation for this family business that has been here since the 1970's. This complex was built in 1977. This property has 2 buildings. This building is vacant now. Granite State College was there for 7 years. The original use of the building was for 16 apartments on the second floor and 6 offices down stairs. The apartment entrances are on the side (ends of the building). The second building is set up for 16 apartments upstairs and 8 offices down stairs. In 1991 the apartments were taken out for the

State of NH PUC who was the sole tenant on the second floor and they converted 15 of the 16 units into office space leaving the last unit to be used as a break room. He would like to put the residential use back in. It is very difficult to rent or lease the second floor for office space. He has had plenty of people looking for first floor easy access office space. It's been 2½ years now that it has been empty. He brought documentations from a couple of people with pictures. Lou Manius who is an appraiser in the City of Concord states there is no market for this use here. The use that he'd like is the same use as when it was built. It had met all requirements and codes then. He had a few pictures in the second tab of his handout and he explained what they were.

Carley asked if when this was bought was it was an apartment building. Mr. Alosa said that his grandfather built the complex. Wallner said his plan shows 16 units, but they are asking for 32. Mr. Alosa said that is the total number of units for both buildings. They did a reconfiguration for compact parking. Compact spaces make up 50% of the parking to accommodate the office space upstairs. In 1991 they did not require a variance to change the use of the building. Walker explained the variances granted in 1991 were related to parking.

Carley asked what the hardship was. Mr. Alosa said that Premiere Properties has tried to rent it for the last 2.5 years for him and they have not had any success. They have tried to accommodate everything that has been asked by prospective tenants but they are now at a point where they cannot make someone take a second floor space. The demand seems to be for apartments. His other apartments on Manchester Street are full. He can rent them much quicker than office space.

Winters asked if the first floor offices are rented now. Mr. Alosa said that they are not. The last tenant had the whole building. Monahan wanted to be clear that his intention is residences on the second floor and business on the first floor. Mr. Alosa stated that that was correct. Monahan asked about the other building on the property. Mr. Alosa explained that it is set up the same. Monahan asked about the parking request. Mr. Alosa said he didn't realize it needed parking relief as they are different requirements as was originally there. He has an overabundance of parking if he is allowed to go back to residential. He has had no problems with parking. Carley asked if his request was not about the number of parking spaces but the configuration of the spaces. Walker said that was correct. Monahan asked Walker a few questions. Walker explained the parking setback requests from the property line and the building.

In favor: none.

In opposition: none.

Code: none.

DECISION: Carley had a question on the applicability of the conversion section of the ordinance and the density requirement. Walker explained the differences between development of multifamily dwellings on virgin land and conversion of existing commercial property for multifamily. What is applicable to this case is the conversion of an existing nonresidential building with the applicable supplemental standards. Where those supplemental standards cannot be met than relief must be requested.

Monahan asked if there were sufficient parking there for the residential units on the second floor and all the businesses on the first floor. Walker stated that yes there was sufficient parking. In fact there is more than required.

Winters asked if generally residential is not permitted. Walker stated correct. Winters asked if all the other buildings were not permitted. Walker stated that back when it was built in the 1970's it was permitted but the Ordinances have changed since then.

Variance #1: Conversion of non-residential building. The principle hardship was that the building is not selling as office space. Winters wants to approve this request because he feels that what he is saying is accurate that he cannot rent this property and there is a shortage of affordable housing, but he is having a hard time wrapping his head around the fact that this is zoned for no residential at all. It seems that that is more of a problem with the master plan. Monahan stated that he doesn't disagree with Winters, but he knows there are other apartments on that lot. He is struck with item #3 and he is wondering if there is already enough parking in that parking lot why that variance is needed. Wallner stated that there are other properties that have second story apartment configurations in that area. They are asking to put it back to their original condition. The granting of the variance will not alter the general character of the area. The parking facilities are adequate to support the proposed use.

A motion to approve requests 1, 2, 3, and 4 was made by Monahan, seconded by Wallner and passed by a 3-1 vote with Carley in the minority. Monahan was persuaded by the fact that the building was originally configured this way and he did identify a hardship with the risk of a vacant building for a very long time and there are similar buildings in this section of town.

34-14 Girls Incorporated of New Hampshire: Applicant wishes to utilize a previously granted Special Exception under Article 28-2-4(j), Table of Principal Uses, and in accordance with Supplemental Standards Article 28-5-10, Community Centers, to permit a Community Center (Principal Use B-14) and preserve Variances to Article 28-7-1, Access, Circulation, Parking and Loading to continue for a proposed permanent change of use for property at 15 Shawmut Street in an RN Residential Neighborhood District.

They are in agreement with being heard by a 4 member Board.

Kathy Duffy-Cullity, CEO of Girls Inc. of NH and Karen Billings testified. They want to use the old Eastman Elementary School for an after school program and summer program. They are a licensed child care program so their ratios are smaller. They do not park large buses on the property, only a 15 passenger bus. Parents pick up the kids in their own vehicle between 5 and 6 pm and drop off between 7:30 and 9 am. They would like to increase their number to have 100 girls. This is one of 3 locations in the State of New Hampshire. Their hours after school run until 6 pm. They do not operate on weekends. The summer time they open at 7:30 am and close at 6:00 pm.

Monahan asked if they were going to own or rent the building. Ms. Duffy-Cullity said that they would be renting. How much of the building will you use? Ms. Duffy-Cullity said that they will be using 4 classrooms downstairs and 2 classrooms upstairs. They will be using the back of the building. Walker stated that on 2/6/13 the Board granted the Boys and Girls Club a Special Exception to use the property as a community center and a variance to maintain existing parking conditions. The variance was granted for the Boys and Girls club partially based on their claim of a hardship of it only being a temporary relocation. Winters asked about the special exception. Walker stated that the special exception runs with the land.

They have been at the Green Street Community Center for 12 years and would love a space of their own to grow.

In favor: Nancy Bartlett who lives at 9 Winthrop Street. She would be delighted to have them in their neighborhood. They have missed hearing the children.

Kim Lavoie who is in favor testified. As a single parent, whose daughter belongs to Girls Inc., it has assisted her in going back to school and being independent. They have reduced their fees and have special activities

for the girls. They have after school help for the girls. Girls Inc. is a blessing to a lot of help for single parents.

Suzanne Smith-Meyers, a Shawmut Street neighbor was also in favor. She would like to "enthusiastically" endorse Girls Inc. in the neighborhood. She wants them to be considerate of deliveries and trash taking place during business hours though.

In opposition: none.

Code: none.

DECISION: A motion to approve the requests was made by Monahan and confirmed that Girls Inc. was there on behalf of the property owners the School District, seconded by Winters and passed by a unanimous vote.

Monahan asked about a fire access road in the back? Walker said yes there was one and he showed them on the map.

A TRUE RECORD ATTEST,

Rose M. Fife, CLERK
ZONING BOARD OF ADJUSTMENT