

**ZONING BOARD OF ADJUSTMENT
DECEMBER 3, 2014 MEETING
DRAFT MINUTES**

Board members present included Chairman Christopher Carley, Nicholas Wallner, James Monahan, Robert Harrison Jr 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 January 7, 2015 was made by Wallner, seconded by Harrison and passed by a unanimous vote.

35-14 Paul & Beth Morrisette: Applicants request a variance to article 28-5-46, Single-Family Dwellings in a Standard (Non-cluster) Subdivision, to waive the requirement that the applicants provide the common open space required under Article 28-4-7, Cluster Developments thus allowing the applicant to pursue subdivision of the subject property into three (3) parcels for property at 283 Oak Hill Road in a Residential Open-space (RO) district.

Paul Morrisette testified. He gave a history of the situation.

They built a home 8 years ago on the Loudon side of Oak Hill Road but had lived on that road for close to 30 years. The property in question was the Potter's farm. The Potters had farms all over and this property has an old farm on one side of the road and a barn on the other side of the road. This farm was owned by Kenneth Potter who died in 2005. He left his farm to his nephew Don Potter and the property is in disrepair. In November of 2012 Mr. Potter wanted to sell the property. He and his wife are real estate investors and they own an auction company. He talked his wife into buying the property. They wanted to save this historic

property. The property is about 25 or 26 acres. He and his wife would like to subdivide the property. The closest neighbors are the Ayotte's at 263 Oak Hill Road. There are power lines that go along the left side of the property. The power lines connect to hiking trails and the fire tower in Loudon. They knew the property was in an RO zone. He knew it was 2 acre minimum and 200 foot frontage. He spoke with Becky Hebert and Steve Henninger in the Planning Division when he bought the land in 2012. In 2007 the City of Concord modified the (cluster) zoning for RO zoning. They wanted (only) Cluster zoning out there. Mr. Morrisette explained that he understood how cluster developments would be beneficial for the City and the developer.

The conventional non-cluster subdivision (regulations for the RO district) require that 60% of the property remain open. He feels that that is basically donating land back to the City of Concord.

Mr. Morrisette gave a lengthy explanation of his experiences of working with the City's Community Development Department over the past several years since the time that he acquired the subject property.

Carley asked Mr. Morrisette why he felt the variance was appropriate.

Mr. Morrisette stated that he wants to subdivide 2 two acre lots from the parcel, one with the existing house and the other undeveloped land. He's required to forgo development of 60% of the original lot. The property has significant value and road frontage. He doesn't want to do a Cluster Subdivision as he doesn't want to do a roadway. He already has road frontage on Oak Hill Road.

It is not feasible to give up a lot of money by giving development rights just to create one lot with a house on it and one lot for development. He feels it is unconstitutional to ask him to give away his development rights. It does not make any sense. The Planning Board is aware that they have this problem. The Planning division told them that they were working on that issue. The Planning Division put it off. Then they scheduled a meeting and the night before they cancelled that meeting. It is two years later and he is still waiting for an answer from the Planning Division. He met with Carlos Baia, Craig Walker and the City Solicitor. They suggested he come before the Zoning Board to request a variance.

Carley asked if it were approximately 30 acres. Mr. Morrisette said he thinks it is approximately 25.82 acres before the subdivision. Holden surveyed the property. Carley believes that somewhere around 16 acres would be 60% of the property. Mr. Morrisette said that it depends as some of that would be open space on the created parcel. But he thinks it is about 15 acres that he would lose the development rights to. Carley stated that that would leave 10 acres to develop. Carley asked for the property description. Is all of it developable? Mr. Morrisette stated that there are some small wet spots. He thinks they are identified. There is ledge on the property. The property is steep in certain areas. About 15 to 20% would be unbuildable. But that could be included in the lots anyway. Carley asked when he bought the property. Mr. Morrisette stated that he purchased the property in 2012. Carley asked if at that time he were unaware of the RO regulations. Mr. Morrisette stated that he was unaware of it but he feels that is irrelevant. He has Supreme Court cases he could show the chair. Carley asked about the 5 criteria for the zoning variance as defined in the application. Under the law the Board can only look at those 5 criteria. Those things have to do with hardship, etc. Mr. Morrisette stated that the only reason he is before the Board is because of a meeting he had with Carlos Baia and Craig Walker. This is not his idea; it is Carlos Baia's and Craig Walker's idea that he approach the ZBA. He had to pay extra money for a surveyor and to pay to be here. Carley stated that he is trying to collect information about what is going on with the property physically. The hardship that this creates for Mr. Morrisette is that he can't develop the land as profitably as he expected to. Mr. Morrisette stated that was correct. He is getting development rights seized for 60% of the land. Mr. Winters wanted clarification that his argument could be made by any owner of property in an RO zone. Mr. Morrisette stated that was true. This is basically an attempt by the Planning Board to make a pretty complex problem legally for them go away with a swipe of the Zoning Board. He was convinced by Mr. Baia and Mr. Walker that the Board might see it his way. He can argue every lot owner around him wasn't held to this level of scrutiny. They are close to RM

zoning which are 1 acre lots and there are other lots in the area that are not two acres in size. He is proposing bigger lots. Monahan asked if he would be able to put additional lots on the Oak Hill Road frontage. Mr. Morrissette stated that it is not his intent to do so. He has 1200 or 1400 feet of frontage. He could subdivide and put 12 lots on this property and block off the street. Monahan asked if he had talked to his City Councilor. Mr. Morrissette stated that he had.

In favor: none.

In opposition: none.

Neutral comment: Joe Ayotte, 263 Oak Hill Road. For the record he disagrees with the westerly boundary line as delineated by Holden Engineering. Carley asked if Mr. Ayotte thought that the surveyor had made an error. Mr. Ayotte said yes he did think they had made an error. He was shown the lines by the original property owner who referred to steel pins, which are recognized. They are pursuing their own survey. Monahan asked how much he thought it was off. Mr. Ayotte said he thought he was missing about 30 feet. Carley asked if that were on left side. Mr. Ayotte said that it was the northwest corner of their property would be 30 feet to the east.

Maureen Bresnahan, 387 Oak Hill Road. They abut the property on the other side of Oak Hill Road. Oak Hill Road is one of the areas in Concord that was specifically listed as wanting to maintain the open space. Her concern is having that part of town changed significantly. There are houses along the road, that wouldn't be great either. Most people live out there because they like the open space. They have lived there 12 years. The land is steep on that parcel. Carley showed her the plan and where the house is and where the second lot is proposed. She asked if the variance were to be approved is the third lot also buildable. Carley stated that if the variance were approved he could build on more of the land. She said she would be opposed.

Daniel Geiger, who owns an abutting lot to the east. There is 54 acres in current use. His property is in Loudon. His question is, do we know what the build out would be? To grant a variance at this point without further information leaves the abutters with questions as to what the ultimate concept for this piece of property might be and how it is to be utilized. The wetlands have not been identified, neither have the steep slopes. What is the access to the third lot? Where would it be? For the Board to approve this without this knowledge seems to be taking a step before there is enough information. There is a utility right of way that is not useable. Carley stated that the configuration of any future development on there is not within their purview, but it would be within the Planning Board's purview. What they are shown is what they are either approving or disapproving and if it changes in any significant way the owners would have to come back to the Board. Mr. Geiger asked if this were a feasible option. Mr. Walker explained that they are only approving or disapproving a 3 lot subdivision at this time and there is nothing else presented to the Board. Mr. Geiger would like to be on record as being opposed as he feels there isn't enough information presented.

Dean Wilbur, who lives at 99 Oak Hill Road and has lived there for 40+ years. He has a tree farm. He is on that road 2-3 times a day. He has seen lots of changes on this parcel. He knows quite a few of the neighbors. He found it interesting to hear Mr. Morrissette say that he bought the property and wants to preserve it. He has watched this old farm house transform. He saw granite which was dumped on the side of the road being applied to this house. Three house lots are even more out of character than adding the granite to the old farm house. He doesn't buy the hardship based upon the monetary issue. He opposes the request.

Comments from Code. Walker offered to brief the Board on the intent of Cluster development and open space if they needed more information. Mr. Carley felt they had enough information at this time. Walker stated he was available for questions.

Winters speculated that this land, putting aside future concern, does this land comply. He is not using nearly 40% of the lot. It complies with current zoning. Walker stated that it does not comply for a Cluster Development. It would be okay for a 2 acre subdivision. Carley asked if they are 2 acre lots and have the frontage are they good to go then? Walker stated that they are counting on the surveyor stamp on plan to be accurate.

Rebuttal by Paul Morrissette. He is surprised by the neighbors concern. They are just trying to get some of the investment back to save the house. As far as the Ayotte's and the lot line issue, he doesn't care where the lot line is, he hired a surveyor.

DECISION:

Carley reviewed that the variance is to allow no open space vs. the 60% required. The appellant believes that this is an inappropriate Ordinance. Winters felt that what is being asked of the Board is to declare the RO open space requirement unfair to anyone that would want to do what he wants to do. It is not up to the Board to decide that. He doesn't think that the Board can invalidate the district.

Monahan stated that he appreciates the frustration of the property owner but the Board is bound by what they can do. He does not feel that the criteria have been met. Harrison agrees with Monahan. He does not see a hardship. Wallner concurs. Maybe as part of their disposal of this case tonight they could urge the Planning Board to look at this a little sooner. Monahan would like to see it resolved by the Planning Board.

A motion to deny the request was made by Monahan, seconded by Harrison and passed by a unanimous vote.

OTHER ITEMS

A motion to approve the November 2014 Minutes was made by Wallner, seconded by Harrison and approved by a unanimous vote.

A TRUE RECORD ATTEST,

Rose M. Fife, CLERK
ZONING BOARD OF ADJUSTMENT