

**ZONING BOARD OF ADJUSTMENT  
MAY 5, 2015 MEETING  
DRAFT MINUTES**

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

**09-15 James and Sherry Upton:** Applicants wish to construct a 21 foot wide by 60 foot deep garage for domestic use and requests a variance to Article 28-4-1(h), The Table of Dimensional Regulations, to permit a 7 foot building setback along the westerly side property line where a 15 foot setback is required for property located at 12 Heights Road in an RM Residential Medium Density District.

James Upton testified. He would like build a 21' x 60' garage. His wife is 40 years old and has lived at this property for 39 years. His in-laws live next door. He spoke to his abutters and no one has objected to his proposal. This placement is the best location.

Carley asked why he chose this size. Mr. Upton stated that they have a car collection; classic cars. This would be for a non-commercial use. It would be for storage and garage use only. Harrison asked why not go straight back? Mr. Upton stated that if he did that the building would not be able to hold 6 cars and they would then need two variances instead of one. His existing garage is 7 feet less in width. If he went straight back it would affect his rear setback. In order to do anything different he would have to give up his breezeway and he wants to keep his breezeway. Wallner asked if the garage square footage is more than house. Mr. Upton said it was. Monahan asked if they were storing vehicles outside now. Mr. Upton said they were not. They are being stored at other people's homes and he would like to bring them back to his home. Carley asked if there were a shed in the rear of the property. Mr. Upton said there was. He would like to be able to have this garage and stay at this property especially where he has family next door. Harrison said that if it were configured differently they may not need a variance. Carley asked how many feet for the variance? Wallner said 8 feet. Carley asked if the existing garage is 14 feet from line. Mr. Upton said it was. Harrison stated that he was struggling to find the hardship.

Mr. Upton stated that the hardship to him is that he would like to stay next door to his aging in-laws to take care of them. Carley explained that the hardship has to do with the property. The request is not for a typical residential garage. Mr. Upton stated that on 21 Heights Road their garage is 1 foot to the boundaries. Monahan asked if there were anything unique about the property.

In favor: none.

In opposition: none.

Code: none.

**DECISION:** A motion to deny the request was made by Harrison, seconded by Norton and passed by a unanimous vote. The size of addition puts it out of the realm of a reasonable use. No hardship to the property was found.

Harrison stated that the size of the building is large; it isn't the standard 24 x 24 garage. Monahan said that he could put a 21' x 60' on the property without a variance. Wallner said that they would have rear setback issues. Walker said that the RM zone has a 25 foot rear setback. Harrison said that if he moved it over he

would lose the breezeway. Board deliberated the placement of the garage and what the hardship was. Carley said it was a substantial building on a small lot.

**10-15 Doug and Katrina Magee:** Applicants wish to install a solar array with an overall dimension of 70 feet by 13 feet and request a variance to Article 28-4-1(h), The Table of Dimensional Regulations, to permit a structure to be placed with no less than a 5 foot setback from the northerly side property line where a 40 foot side setback is required for property located at 15 Reserve Place in an RO Residential Open Space District.

Doug Magee testified. Also testifying was Eric Shifflett, of Granite State Solar.

Mr. Magee would like to install a solar array. Due to the topography of the lot there is only one place where it can be set up. It's a fairly large array. It would be put in the back of the property. It is not going to be seen by the road. The house faces east and west and the array needs to face south. There are wetlands towards the front right (east) and towards the rear left (west) of his property. Carley asked where the setback line is on the property. Mr. Magee showed them on the overhead map and explained. Page 4 of the proposal has a sketch. Wallner asked if the entire solar panel is in the setback. Monahan asked if they were net metering it? Mr. Shifflett said no. The entire array is not within the setback, just the corner of it. Mr. Magee said that it is 13 feet off the ground and angled 35 degrees. Harrison asked what the panels sit on. Mr. Shifflett said that it sits on central posts and a single girder on the front. The back of the array would be closer to the property line. No trees would be removed behind the array. It doesn't make any noise. Harrison asked if the posts were imbedded in concrete. Mr. Shifflett said they were. He does have structural drawings available. Norton asked if Planning Board review was needed. Walker said there is no review by the Planning office for this. Norton asked about why they aren't putting it south of the house? Mr. Magee said that they would have to remove every tree and his neighbors trees would be in the way. Carley asked Walker why it isn't considered an accessory use. Walker explained that it is an accessory structure but it exceeds the 250 s.f. area that permits a setback reduction to five (5) feet.

Mr. Magee said that the hardship is the house orientation. It will not create congestion in the streets; there is no danger to the public; there will be no additional shadows. The neighbor's home behind him is 6 to 8 feet higher than his property. This will benefit the public. He is adding public services to the grid. It is safer and better for the environment. It will add value to the homes.

In favor: none.

In opposition: David and Rebecca Biss of 27 Reserve Place. They consulted Capital Appraisal and they have a letter from them which they passed out to the Board. The Board took the time to review the letter from the appraiser. Carley said that twice Mr. Manias says vegetation would have to be removed but the applicant says it would not need to be removed. Wallner asked if the solar panels face south. Carley said they do. Norton explained on the overhead maps where the panels would be in relationship to the Biss's home. Mr. Biss said that the panels would clearly be in their view. There are very tall sparse trees there. They have a back deck out there and would like to enjoy it without viewing this. Mr. Biss feels it is contrary to public interest and spirit of Ordinance. The Ordinance requires a 40 foot setback for a reason. That is why they picked this location to live so they wouldn't be on top of each other and they would have that space. Trees fall every year and that would thin the buffer out. He classifies this as a permanent structure and compares it to being as big as a billboard. That would be their view in their backyard. Mrs. Biss said that when she was first shown the layout it was located differently. Now the reflection off the glass panels could be in their property. Mr. Biss spoke to the hardship question. Mrs. Biss said that this property is part of the subdivision which was created with the same setbacks. He has reasonable use of his property. Carley confirmed that they felt the criteria for

hardship are not met. The Biss's agreed that was correct. Mr. Biss stated that there is nothing in the Ordinance for solar energy systems being a permitted use such as there is for small wind energy systems. Mrs. Biss said that the size of the panel, 70 feet long, is the length of their home. When the development was done, there were covenants for the development and those setbacks are in the covenants. (Carley commented that the Board has no jurisdiction over private covenants.)

Richard P. Boyer who lives across the street at 26 Reserve Place which is a pie shaped property. He thought about putting a solar panel on the roof of his home but decided against it. Solar panels on pedestals are ugly. The covenants were in place when he purchased this expensive home. In general large pedestal solar based panels are more industrial than residential. Mr. Boyer stated he would probably not see the array from his property. He does not feel this will raise the property values but lower them. Harrison asked if he knew if the applicant's lot was wet. Mr. Boyer does not know.

Code: Walker spoke about the Ordinance and wind energy systems and advised the Board that small wind energy systems are specifically mention because it is required by RSA.

Rebuttal: Mr. Magee stated that in the summer you can only see about 10 feet of his home from the road. The property at 26 Reserve place will have no view of the panels. He explained the layout as far as it would affect the Biss's property. They will see a foot above the panels. Reflection: it is a solar panel it is designed to absorb sunrays not reflect them. Mr. Shifflett stated that this is not a pole mounted track; this is a low profile array. The array will be perpendicular to the house to the north of it. The panels will not be facing the house. There will be no glare. The profile view will be the side view of the array. They cannot install the array anywhere else due to the topography, septic, etc. Norton asked how many feet there were from the house to tree line below. Walker said it was less than 9 feet. Norton stated that they could still do a solar panel but it would be next to the house. Mr. Shifflett said that it would interfere with their septic. They would have to take down all the trees, etc. Mr. Shifflett said that they are already looking at \$3000 in tree removal costs. Any more than that and it would be out of their scope to remove the trees. The grade is steeper than it looks. Mr. Magee gave Craig walker a thumb drive with photos to display. Wallner asked how high the solar panels are. Mr. Shifflett said that they are 12 to 13 feet high. Mr. Magee said that he has 3 children and his lights are always left on. Monahan asked for the aerial photographs. He asked again about the placement. How much higher would they have to go to avoid the shadow? Mr. Shifflett said that they cannot go higher because of the wind load.

DECISION: Discussion by the Board: the solar panel array would be 70' x 13' and 13 feet high at the highest point. Most would be in the setback. Norton stated that the location may be an optimal place, but it is not the only place to make this functional. The neighbor's argument is compelling that there are reasons that the City created this space. What is the hardship? Harrison felt that the hardship was the wetland areas. This is the optimum place to put the array is what their expert is telling them. Norton said that the appraiser says that there is little positive or negative impact. Monahan agreed with Harrison about the topography, etc. He asked Norton what if it was a fence or a swimming pool instead. Norton said he would say no for the same reason. Wallner agreed with the topography issues. Carley felt that this was new territory for the Zoning Ordinance. The economic value argument does not work for him. Because something makes my house more valuable doesn't necessarily make the neighbor's house more valuable. Where is the hardship? The scale of this structure? If this were a lawn mower shed he doesn't think that would be justified either. When this zone was set up, there was clearly a reason why larger setbacks were created there. This is a substantial structure. He doesn't see the hardship. It is not a reasonable use. Harrison says he agrees it is a big structure.

A motion to approve the request was made by Monahan as he felt the hardship test was met due to the topography. The appraiser was not here to answer questions, which would have been helpful. Motion was seconded by Wallner.

More discussion ensued. Norton stated that there are two other locations on the property that this could be placed without affecting the array. He feels the Board doesn't have enough information to argue that there is a hardship. Monahan stated that he might withdraw his motion and possibly Table the request asking for more information. Wallner would like to see a better plot plan with the setbacks notated.

Monahan withdrew the Motion to approve the request. Wallner was in agreement. Norton wants to know what the negative impact would be if they moved it either east or south.

A motion to recess this request for one month pending new information from the appellant was made by Norton, seconded by Harrison and passed by a 4-1 vote with the Chair in the minority

**11-15 Mary & Craig Walker:** Applicants wish to construct a 24 foot wide by 24 foot deep 2 story garage/workshop for domestic use and relocate an existing accessory shed and request the following:

- 1) Variance to Article 28-4-1(h), Table of Dimensional Regulations, to permit for the garage/workshop a 5 foot setback along the west side where a 10 foot setback is required,
- 2) Variance to Article 28-4-1(h), Table of Dimensional Regulations, to permit for the garage/workshop a 10 foot setback along the north side where a 15 foot setback is required,
- 3) Variance to Article 28-4-1(h), Table of Dimensional Regulations, to permit for an accessory shed a 5 foot rear setback where a 25 foot setback is required,

for property located at 94/96 Warren Street in an RN Residential Neighborhood District.

Mr. Walker stepped down from the table and left the room. Harold Carter and Mary Walker testified. Mr. Carter is Craig and Mary's brother-in-law. Mr. Carter stated that the Walker's would like to build a 24' x 24' two story garage in northwest corner of the property. They also want to relocate their 10' x 14' shed to the back center portion of the property. This is an unusual piece of property as their front property line is on Warren Street and a portion of their back property line is on Summit Street; and, which is 8 to 10 feet higher than the rear of their property. The westerly portion has another stone wall that rises to 5 feet on that side. Their northwest corner, the abutting property, has a garage sitting on top of this 5 foot rise. Mrs. Walker showed where the garage would be located on the overhead map. The shed would be moved to the middle of their backyard. They are trying to avoid interfering with the other neighbor's property and are trying keeping it away from their other neighbors. They would like a 24' x 24' two story garage. The variance is needed for the setback on the rear left side of their property. They are also trying to have a straight line into the garage from the driveway. Mrs. Walker stated that neighbor's garage and this garage will be back to back. If they put the garage behind their home they wouldn't have any backyard. Carley asked if it would be in the setback even if they did that. Norton asked if 24 were a normal size garage. Carley said it was. The rear setback would not affect anyone. Mrs. Walker stated that Craig has spoken with their neighbors and all have been in favor of the request. Robert and Diane Puckhaber wrote a letter in favor. The shed will be 5 feet from the rear property line. Norton asked if the shed was higher than the wall. Mr. Carter said that it was not. Carley asked if it were going to be a one or a two story garage. Mr. Carter stated that it would be a two story garage. Mr. Carter stated that in the surrounding area of 13 houses, there are 8 garage and 2 of them are two stories. The lot is relatively small and to build a garage and have a useable backyard and have reasonable convenient access to a garage, it needs to be in positioned in this way.

In favor: none.

In opposition: none.

Code: none.

DECISION: A motion to approve all 3 variance requests was made by Wallner, seconded by Harrison and passed by a unanimous vote. Wallner said that the circumstances of the property are unique due to it being placed on two streets, the property characteristics, the neighbors have garages, and the shed being moved to a 5 foot setback is really no change. There is no harm to surrounding properties in terms of value. There are peculiar characteristic to the lot.

**MINUTES** A motion to approve April 2015 Minutes was made by Wallner seconded by Harrison and passed by a unanimous.

A TRUE RECORD ATTEST,

Rose M. Fife, CLERK  
ZONING BOARD OF ADJUSTMENT