

**ZONING BOARD OF ADJUSTMENT
JULY 8, 2015 MEETING
DRAFT MINUTES**

Board members present included Chairman Christopher Carley, James Monahan (Conflict with Case 21-15), Nicholas Wallner (Conflict with Case 22-15), Steven Norton, and Andrew Winters. Also present was Zoning Administrator Craig Walker and Clerk of the Board Rose Fife.

09-15 **James and Sherry Upton:** (Request for Rehearing) 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.

Per request of the applicant the Board took no action as Case #19-15 was approved.

15-15 **Todd Anderson:** Applicant wishes to construct a 14' wide x 20' deep garage and requests the following:

- 1) A Variance to Article 28-4-1(h), The Table of Dimensional Regulations to permit an 18 inch rear setback where a 25 foot setback is required,
- 2) A Variance to Article 28-4-1(h) The table of Dimensional Regulations, to permit a minimum side setback of 6 inches where a setback of 15 feet is required,
- 3) Variance to Article 28-4-1(b), Minimum Lot Size, to permit construction of a structure on a lot with 5,564 SF +/- of land where 10,000 SF is required,
- 4) Variance to Article 28-4-1(c), Minimum Lot Frontage, to permit construction of a structure on a lot with 10 feet of frontage in a district where 80 feet would be required,

For property at 62 ½ Stone Street in an RN residential Neighborhood District.

Todd Anderson testified. He would like to place a 20 x 14 garage in the back corner of his property. Currently the driveway is the location where he would like to put the garage. There is currently a shed that exists next to the proposed garage structure. He will tear the shed down. The other neighbors in the area have a garage. It fits with the nature of the neighborhood. The lot is a "p" shaped property so he only has a small frontage. Due to the layout and small lot there isn't a lot of space on either side of the property.

Carley asked who the neighbors were. Mr. Anderson said that the neighbors are all residences, no businesses. He has spoken to all of his neighbors and they are in support of his request.

Winters asked if there were a way to build the garage to meet the setbacks. Mr. Anderson said that there is not due to shape of the lot. The setbacks and frontage issues will not allow for it. Mr. Anderson also said that he would open the back yard up as they would be tearing down the shed that is there now.

In favor: none.

In opposition: none.

Code: none.

DECISION: A motion to approve all 4 variance requests was made by Wallner, seconded by Monahan and passed by a unanimous. Wallner felt that the request was in character of the neighborhood as there are garages throughout at other properties. The property is also unique. A single stall garage is a reasonable use of the property.

17-15 **Fisherville Estates:** Applicant wishes to install a new 24' x 48' manufactured home and requests Variances to Article 28-4-6(g)(5), Minimum Building Setbacks and Separation, to permit the placement of a manufactured home on a lot with a separation of 37 feet from the home on lot #15 and 31 feet from the 600 SF +/-

garage/storage structure on lot #17 where building separations of 40 feet are required for property known as Lot #16 at 105 – 107 Fisherville Road in an RH Residential High Density District.

Robin Cutter, President of Fisherville Estates testified. They would like to place a mobile home in their park to replace one that was demolished. According to the City's regulations they cannot fit a marketable home on that lot. The replacement home would be a 24' x 48', 3 bedroom, 1.5 baths where only a 19' x 55' home would fit. That size is not available. The only other home that would fit would be 14' x 48' and that is not marketable.

Carley asked if they had a specific tenant or owner lined up. Ms. Cutter said they did not at this time but the Association is willing to purchase the home to place there until it gets sold. They are 56 units and if they lose that unit for income, their lot rent will go up. The last home that was on this lot was a 12' x 50'. Carley noted that her application included a plot plan showing placement of homes. Ms. Cutter stated that the home on lot 16 was condemned by the City of Concord and they had to demolish it. Winters asked the sizes of the surrounding mobile homes. Ms. Cutter stated that most of the homes on this end of the park are the older single wide units that are from the 1970's or early 1980's. Carley asked if all the surrounding properties are part of the park. Ms. Cutter said yes. Winters questioned if more units come down would they need to come before the Board. Ms. Cutter does not foresee that. Winters asked if the mobile home size they want to put there would be consistent with the homes generally near it. Ms. Cutter said yes. This home wasn't taken care of and needed to be replaced. Monahan asked if there is a storage building on lot 17? Ms. Cutter said that there was and the owner of that shed, Mr. Ben Matott is here to testify.

Ben Matott testified. He owns lot 17. He showed the Board his storage shed which is oversized. The surrounding trailers are not going anywhere. The trailer is 31 feet from it to the shed. The code used to be 30 feet between mobile homes but the Ordinance changed to 40 feet between homes. The park has a lot of elderly and fixed income folks in the park.

In favor: none.

In opposition: none.

Code: Walker stated that there is a clause in the Ordinance that permits removal and replacement in kind in manufactured housing parks. They are before the Board because it is a double wide with different dimensions.

DECISION: A motion to approve both variances was made by Monahan, seconded by Winters and passed by a unanimous vote.

Monahan thinks that because it's an existing lot in an existing park their options are constrained. It's important to recognize that Concord has lots of different housing options. It is also important to maintain a variety of well maintained affordable dwellings and housing options. The setback relief is in keeping with the neighborhood.

18-15 [Granite State Baptist Church](#): Applicant wishes to establish a place of religious worship and requests a Variance to Article 28-2-4(j), The Table of Principal Uses, to permit a church (use B-7) in a district where such use is not permitted but otherwise in compliance with the supplemental standards of Article 28-5-10, for property located at 236 Sheep Davis Road in the portion of the property located in an IN Industrial District with an (AP) Aquifer Protection District overlay.

Pastor Peter Chamberlain and Attorney Roy McCandless testified. The Pastor stated that the church was started November of 2013 in the Grappone Conference Center facilities. He has searched across the City for property. He's met with Zoning Administrator as well as Lt. Ken Kiehl of the Fire Department. He tried to do his due diligence to find a location. Any property that is available for a church use by right is out of their price range. They have looked at rental properties. They have not been able to find any other place. It is 5 acres zoned industrial (with part in the RO district). The hardship to this property is that it abuts the river and they have an Aquifer Protection overlay. The property has been for sale by the owner for several years. Everything they have looked at requires zoning relief. This meets the requirements for a main arterial road. They have public water and public sewer that they can connect up to. They would like to stay in Concord. They will not hinder the traffic; there is a turn lane in front of where the church would be. There are businesses around it that are closed on Sunday. On the North side is Manchester Sand and Gravel (former Outdoor World) which is not being used. The building is a 3,000 s.f. metal building. They could renovate the existing structure.

They have had architects and engineers look at the building for them. The property would be cleaned up. The church has around 55-60 people in their growing church. The youth are renting the West Street Ward House for their programs.

Attorney McCandless stated that the river limits the use that can be made of this parcel. The church has no hazardous waste. There is no fair and substantial relationship per Article 28-1-5 a-g all those purposes would be met. Bektash Temple is right around the corner, the Fire Academy is next door. These are all public assembly use buildings. The safety concerns and traffic concerns are all met. Religious Land Use says that the City cannot put substantial burden on land use for churches. There is no other place in Concord for the church to go in town. They believe the undue hardship has been met. Is it a reasonable use? Yes, it would be unreasonable to deny the variance as it is not the least restrictive means to fulfill the Ordinance.

Monahan asked how many square feet the church would be. The Pastor said it is a 50' x 60' metal building; 3,000 s.f. and there is a proposed layout in the variance package submitted. The auditorium would be half that building. They would be looking at an occupancy of no more than 150 people. There are 33 spaces on a gravel parking lot and that includes 2 ADA parking spaces. Monahan asked if they had any plans to expand or have a school. The pastor said that they have no plans right now but do desire to increase in the future. They would have to look at that at that time. Winters asked if 33 parking spots would be enough. By Walker's calculation he showed 44 spaces based on the square footage required by code. The Pastor said that they could fit 35 spaces on the existing gravel. There is room to expand on that on the property.

Walker asked a clarification question. He didn't see anything in the application saying that they would keep a gravel parking lot there. The Pastor said that in the paperwork it says they would keep what is existing there now. Walker said that they would need to pave the parking lot or it would be an additional variance to keep the gravel parking lot. Monahan asked Craig how the fact that it was along the river would impact the paving. Carley stated that the Board could not consider the issue of paved or unpaved tonight. The Pastor said that depending on budget they may decide to pave.

Winters asked Walker if the church were to grow in size would they need more variances. The Pastor said that based on the current code they would meet all setbacks. Walker answered Winters and said that if the church were to expand in the future they would need to return to the Board for additional variances as it is a non-compliant use (established by variance).

In favor: James Walker Jr. His father is the property owner and is in the audience. His dad has been a long time business owner in Concord and has used the property for business. Due to the nature of the overlay the property has been very difficult to sell as an industrial property. Several people have looked at the property and are interested until they see the river. His dad is elderly and would like to pass the property along. They think this is a real opportunity for the property. He and his dad support this request. Carley asked about marketing the property to industrial users and if they had concerns with the overlay. Mr. Walker said that was is correct. The overlay is almost half the property. Norton questioned constraints on similar properties. Monahan asked what the building on the lot was used for. Mr. Walker stated that for a long time there was an arborous business, and then in later years it was golf cart repair business.

In opposition: none.

Code: Walker (ZA) stated that the AP district was added December 2010. The AP district prohibits any use involving substances that can contaminate the ground water. Winters asked if an existing use is excluded from the 2010 AP District. Walker said that existing uses are permitted to continue in their current status but not expand. This property and use have not been used for more than 5 years (and would probably not be permitted to be reestablished). Norton asked if there were anything that would be allowed in that 2010 change. This use seems less problematic in that area than others, but are there other uses out there that are even less problematic. Walker listed the current neighboring uses and whether or not they would be allowed in the AP district.

DECISION: A motion to approve the request was made by Norton, seconded by Monahan and passed by a unanimous vote.

Testimony indicated that the property's proximity to the river and the restrictions of the overlay districts made it difficult to utilize the property for uses that were otherwise permitted in the district.

19-15 James and Sherry Upton: Applicants wish to construct a 21 foot wide by 44 foot deep garage for domestic use and requests a variance to Article 28-4-1(d), Minimum Yard Requirements & (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.

Prior to hearing this appeal, the Board must determine whether the request differs materially in nature or degree, or whether the circumstances affecting the property have changed significantly when compared with the circumstances existing under the request in case #09-15, James and Sherry Upton, May 6, 2015.

James Upton and Attorney John Arnold of Hinckley Allen testified. Attorney Arnold gave an overview. The Upton's own the property. It is zoned RM. It is a small lot. The existing house and single car garage were built in the mid 1960's. In May they asked for a variance for a 21' x 60' garage. It would be 7' from the property line. The Board denied the application due to the size of garage and where it was situated on the property. The Uptons have since decided they could shrink it to a 21' x 44' garage. They can't relocate the garage on the property so they are asking for a 21' x 44' garage encroaching within the setback by 7' vs. 15' setback required. The size difference, he feels, is materially different.

A motion that this was a new case was made by Wallner, seconded by Monahan and passed by a unanimous vote.

Attorney Arnold gave an overview of property and its location. He went through the points of a variance. The Board's concern last time was that a 21' x 60' garage was unreasonably large. They have reduced the size to 21' x 44'. They feel this is reasonable as there are other garages in the neighborhood. Neighbors have larger outbuildings and garages. The garage proposed would be 924 s.f. The garage at 21 Heights Road is 960 s.f. the one at 7 Heights Road is 1020 s.f. and 11 Heights Road has a number of outbuildings that add up to 1400 s.f. The proposed garage is smaller than the other garages and outbuildings in the neighborhood. A garage of this size would be allowed in this district if it didn't encroach on the property. Other properties have homes that encroach into the setbacks. The garages at 21 Heights Road, 11 Heights Road and 7 Heights Road all encroach into the setbacks. The home is a single story home build in the 1960's. There is a breezeway between the house and existing garage. They approached builders and the builders said that they couldn't remove breezeway as the wing off the back of the house has a roof that slopes towards the garage. The new garage needs to be low enough to have a split roof to have water diverted. The garage can't be put in back of the property as the property is only about 66 feet wide. There are only 45 feet between house and the rear lot line. This is the only location due to the drainage issues and small size of the lot. Without the variance there would be an unnecessary hardship. The lot is .18 acres. They feel it is a reasonable request and smaller than other garages in the area. The property line that is affected would be far enough away from the building. The Upton family has lived in this neighborhood for decades. The neighbors have been spoken to.

Monahan asked if there were another outbuilding on property. Attorney Arnold said that there is a shed. That shed is as close to the property line as the proposed garage and the shed would be torn down or relocated.

In favor: none

In opposition: none.

Code: Monahan asked Walker if there were people at the last hearing that spoke before or against it. Walker didn't think there was any opposition. Wallner checked the Minutes and concurred.

DECISION: A motion to approve the requests was made by Wallner and seconded by Monahan and passed by a 4-1 vote with Norton in the Minority. Monahan felt that the hardship is one that the applicant is entitled to a reasonable use of the lot and in this day and age a garage meets that and the configuration of the house on the lot.

Norton feels that the hardship is created by the size of the garage vs. the size of the lot. It is really only consistent with the property that has lots of outbuildings in the neighborhood. Carley said that any size garage would be in violation of the setbacks. Winters stated that the current garage is a little into the setback. Norton said that if 14 Heights Road abutters didn't care then it might be less of an issue. Wallner stated that they could put the garage in the back of the house and meet the setbacks; however, it would be at the expense of major lot coverage between the garage and the

driveway to access it. Carley said that generally the Board has found it is a reasonable use to put a garage next to their house. Carley asked if this size were a reasonable interpretation of a garage. Winters said that it looks like the current garage is a 1 car garage. Carley said a single car garage would be 12' x 24'. Winters asked if this were a reasonable size for a 2 car garage. Carley said it is larger than that.

20-15 [Loretta Y. Webster](#): **(Withdrawn by applicant)** Applicant wishes to establish a physical therapy clinic (office of healthcare practitioner, use E-3) and requests a variance to Article 28-2-4(j), Table of Principal Uses, to establish a physical therapy clinic where such use is not permitted and a variance to Article 28-2-4(h), Multiple Principal Uses on a Lot, to permit more than 1 principal use on a lot where one of the uses is not an authorized use under Article 28-2-4(j), Table of Principal Uses, for the portion of the property at 297 Pleasant Street that is in an RM Residential Medium Density District.

21-15 [Rebecca Williams](#): Applicant requests the Board overturns the Zoning Administrator's decision that use and marketing of the property as a single family dwelling was a replacement and abandonment of the non-conforming use as a two-family dwelling for property at 25 Grove Street in an RD Residential Neighborhood District.

If the Board upholds the Zoning Administrator's decision the applicant requests the following to permit a conversion of a single-family dwelling to a two-family dwelling:

- 1) Variance to Article 28-5-3, Conversion of a Residential Building, Section (b)(1), Minimum Lot Size, to permit the conversion with a lot size of 4,540 SF +/- (per deed) where 7,500 SF would be required,
 - 2) Variances to Article 28-5-3, Conversion of a Residential Building, Section (b)(2), Other Dimensional Regulations, to permit the conversion on lot that with an existing lot coverage of 67% where 60% is the maximum allowed and frontage of 74' (per deed) where 75' is required,
- for property at 25 Grove Street in an RD Residential Downtown District.

Monahan recused himself. This case was heard by a 4 member Board.

Walker said that the owners have used the property for a single family home and have marketed it that way.

Rebecca Williams, the property owner and Robin Dennis of Remax Connection, the realtor testified. Rebecca testified that they purchased 25 Grove Street and it was listed as a Single Family residence at the time and used as a single family home although the layout was as a 2 family. They envisioned using it as a 2 family once their family had grown. They received the letter from the Assessing department saying they lost their vested rights for a 2 family as they were using it as a 1 family. The 2 family residence fits the nature of the neighborhood. The last 2 times the property was listed and sold it was listed as a single family but still assessed by the City as a 2 family. The City assessed it as a 2 family for many years. It seems like the City has in effect treated it as it had a variance.

Craig Walker stated that the non-conforming use is the use of the land that legally existed at the time the Ordinance changed that would no longer be permitted. This was being used as a duplex as far back as the 1940's and at that time the use would have been permitted. The Williams purchased this property in 2007. They purchased it as a single family home and used it that way. If a non-conforming use has been abandoned or replaced you lose the right to that non-conforming use. They have used it and marketed it as a single family home and therefore have lost the vested rights as a 2 family home without a variance.

Carley asked if they listed it as a single family home. Ms. Dennis testified that it was listed in the single family MLS. The pictures that are still on line show that the second floor unit was not being used. The first time in July 2006 and when the Williams bought it transferred in 2007 and from on line photos there was empty units on the 2nd floor and it was listed that way. Carley asked how they listed it. Ms. Dennis stated that it is listed for sale as a single family. 95% of the buyers would want to use it as a 2 family home. They received an offer in May contingent on a variance being granted for a 2 family home. The issue with it as a SF is that it works very well for the Williams but there are 2 bedrooms on first floor, living, dining and kitchen and second floor 2 bedrooms, living room kitchen and bath. They would have to renovate the 2nd floor to remove kitchen, etc. on second floor. The property has 2 driveways, one on Grove Street and one on Perley Street. The hardship is the marketability of the property.

Norton asked about the differential in tax rates between single family and 2 family. Walker stated that the Courts have ruled that assessments of a property do not count. Norton stated that the City made a distinction that the use had been abandoned. Winters asked if there were a definition of abandonment in the Zoning Ordinance. Walker said yes and he read it to the Board.

A motion to uphold the Zoning Administrator's interpretation was made by Winters, seconded by Norton and passed by a 4-0 vote.

Variance: Ms. Williams stated that the house works very well as a 2 family. They have made no changes to the property. There are separate driveways, kitchens, egress. There are separate utilities. There is 800 s.f. for each unit. They cannot sell their home as everyone wants a 2 family. Within a 1 block area of their home there are multi-family units. The neighborhood is close to downtown. The return to the assessment of a 2 family is in keeping of the nature of use of the neighborhood. The property has been assessed by the City as a 2 family for many years.

Winters asked if there were many multifamily units in the area. What about single family. Ms. Williams stated that the one next to them on the Perley Street side is the only single family in the area.

Ms. Dennis said that there is a lot of interest in the property as a 2 family and this is the best use of the property. There is a need for more housing in the area.

In favor: Andrew Doughty stated that he is in favor of the proposal as he is the prospective buyer of the property. Two family homes are hard to come by. They like the area and would like to see younger families move into that area.

In opposition: none.

Code: none.

DECISION: A motion to approve all the requests was made by Wallner, seconded by Norton and passed by a unanimous 4-0 vote.

Norton stated that this is not unusual for Concord. Carley felt this was a peculiar situation. It is a small lot. The coverage and the lot size are what they are but the house has been a 2 family for a long time physically even though it wasn't used that way. Wallner stated that based on the character of the neighborhood it is a reasonable use. Norton feels that they should disagree with #1 as there isn't anything different with the neighborhood and he sees 4 houses not consistent with it. Carley said that the Ordinance may not fit now. The configuration of an existing long standing building is part of the consideration. Winters said that in that area the demand for SF housing is minimal.

22-15 [Diane Sanel for the Diane Sanel Trust 2007](#): Applicant requests a Special Exception under Article 28-2-4(k), The Table of Accessory Uses, Section B. Accessory to a Principal Non-residential Use, and in accordance with the Supplemental Standards of Article 28-5-35, to convert a portion of an existing commercial building into a dwelling for a resident caretaker (accessory use B-5) for property located at 108 Airport Road in an IN Industrial District.

Wallner recused himself. This case was heard by a four member Board.

Diane Sanel testified. She owns the property at 108 Airport Road. She has a dog grooming business downstairs. It is in the IN zone and she is having problems renting it out. Having dogs downstairs makes it more difficult to rent out. She would like to put an apartment there (accessory caretaker's unit).

Ms. Sanel stated that she had tried to rent it out with something compatible with the dog business. There is a lot less traffic with a dwelling unit. She meets all the criteria for creating an apartment. It will not change demand for municipal services.

In favor: none.

In opposition: none.

Code: Walker this is an accessory use.

DECISION: A motion to approve the request was made by Norton, seconded by Winters and passed by a unanimous 4-0 vote.

MINUTES

A motion to grant the June minutes was made by Monahan seconded by Winters and passed by a unanimous vote.

A TRUE RECORD ATTEST,

Rose M. Fife, CLERK
ZONING BOARD OF ADJUSTMENT