

**ZONING BOARD OF ADJUSTMENT  
SEPTEMBER 5, 2012 MEETING  
DRAFT MINUTES**

Board members present included Acting Chairman Nicholas Wallner, David Parker, Robert Harrison Jr., Stephen Norton and James Monahan. Also present were Code Administrator Michael Santa, Deputy City Solicitor Danielle Pacik and Clerk of the Board Rose Fife.

**Public Meeting**

**17-12 John R. Heise:** (Rehearing Request) Applicant wishes to convert the first floor of a 2 family residential building to a business office (use F-1) and requests the following:

- 1) Variance to Article 28-2-4(j), Table of Principal Uses, to permit an office use,
- 2) Variance to 28-7-7(f), Driveway Widths, to permit a 12 foot wide driveway when 24 feet is required,
- 3) Variance to Article 28-7-7(g)(2), Setbacks from Lot Lines, to permit portions of the parking area to have no setbacks where 5 feet are required,
- 4) Variance to Article 28-7-14, Off-street Loading Area for Refuse Containers, to not provide an onsite refuse container loading area where one would be required for a commercial use, for property located at 9 Franklin Street in an RD Residential Downtown District.

Wallner asked the Board if they had read the material that was distributed to them. They all said that they had.

Did the Zoning Board of Adjustment apply legal standards with the facts before it? Should they ask Council before making a decision as to whether they had sufficient information?

Parker felt that the question of hardship was applied.

A motion not to rehear the case was made by Norton, seconded by Parker and passed by a unanimous vote.

Parker read the material and felt it was not materially different. There was no hardship. Harrison agreed. Monahan asked Code Administration if the applicant had a different request could they come back. Mr. Santa stated that they could.

**Public Hearings**

**25-12 Frances Potter:** Applicant requests a variance to Article 28-2-2, Zoning Districts Established, Section (b)(3) to subdivide a 12.81 acre lot creating 2 building lots of approximately 9.77 acres and 1.25 acres and retaining a 1.79 acre lot with an existing house where said lots will not be connected to the municipal sanitary sewer utility as required for property located at 38 Little Pond Road in an RS Residential Single Family District.

Mark Sargent of Richard Bartlett Associates testified. Frances Potter, owner of the property also testified. Mr. Sargent explained that it is a 12.81 acre parcel with a single family home on it. They are proposing a 3 lot subdivision. The access would be a common driveway. They would like onsite septic vs. municipal sewer. One lot has a home and there would be two vacant lots. The existing municipal sewer runs up that way until Samuel Drive. It's approximately 1200 feet away from this parcel. It would be very costly to extend the sewer line to this parcel; approximately \$108,000. That line would only service approximately 10 to 12 properties. Mr. Sargent went on to show the maps of where the property was. In 1996 or 1997 the common driveway was put in. Harrison asked if the road were already there. Mr. Sargent stated that it was, but it only serviced the one lot right now. The unnecessary hardship is the special conditions to the property. The municipal sewer is located approximately 1200 feet from the property. To extend it would not be economical or feasible. Not many lots would be serviced by the extension. The property lots would be the size for the RM Zone requirements without municipal sewer. There are similar lots in the neighborhoods. Ms. Potter has owned this property since 1995. This subdivision would not diminish property values.

Wallner asked Mr. Santa if there were sewer lines out there now, would she be before the Board. Mr. Santa stated no she would not be here. Monahan asked if they wanted the exemption for all three lots. Harrison thought the lots were large enough. Mr. Sargent stated that they meet the RM (RS) Zoning requirements and DES requirements for lot sizes.

Frances Potter testified that she moved to Concord in 1983. She needs to move to a retirement home due to health conditions. One third of her taxes relate to the land. She will have trouble selling the house with that much land.

Parker asked Mr. Santa if a sewer line were intended to run along Little Pond Road. Mr. Santa stated that there is not much that could be done up there. Mr. Sargent stated that there isn't much they can do up there due to the property limitations and topography. Harrison asked if the homes on Thackeray were on septic. (Yes.) Monahan asked what year the sewer line was extended for Samuel Drive. (Staff thinks it was within the last 5 years.) Mrs. Potter stated that her house was built in 1995. Mr. Sargent stated that individual septic systems would cost approximately \$6,000. To extend the sewer line would cost greater than \$100,000. He was told to use \$85 to \$90 per linear foot as a gauge.

In favor: none.

In opposition: none.

Comments from Code Administration: none.

DECISION: Harrison felt it was a reasonable use of the property. The financial hardship bringing sewer to that area was extensive. Parker stated that the topography wouldn't allow it. Motion to approve the request was made by Harrison, seconded by Monahan and passed by a unanimous vote.

**27-12 Barlo Signs for Carlson's Motor Sales:** Applicant requests that the Zoning Board of Adjustment overturn the Zoning Administrator's determination that electronic message center type signs are prohibited under Article 28-6, Sign Regulations, relating to a sign at 13 Manchester Street in a GWP Gateway Performance 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 #38-05 Barlo Signs and Carlson's Chrysler, July 6, 2005.

Wallner stated that the Board was sent the Minutes of the 2005 and 2006 hearings. Parker stated that he was involved in the decision in 2005/06. He doesn't see anything materially different. The Board was upheld in Court. Date and time was determined by the rules and intention of the City Council. He feels that this is an attempt by Barlo to challenge these decisions. Monahan asked if there were no change to the Ordinance since 2005. Mr. Santa stated that there was a change in the Ordinance in 2006 and it became more restrictive. Monahan asked if they are suggesting that in 2005 they could do date, time and temperature, but now they cannot. Norton asked if this would be approved under the old or new rules. He asked if there were any other signs approved for this type of sign. Harrison stated no. Mr. Santa stated that the City Council has not approved requests to change the Ordinance with regard to these types of signs. Monahan that this was not materially different.

A motion that this request was not materially different in nature or degree from the July 6, 2005 Case #38-05 was made by Monahan, seconded by Parker, and passed by a unanimous vote. This rendered the request to overturn the Zoning Administrator's determination mute.

**26-12 Barlo Signs for Carlson's Motor Sales:** Applicant requests a variance to Article 28-6-7, Signs Prohibited Under This Ordinance, to permit an existing non-conforming electronic reader board which was issued a permit in June 2005 (permit #SP079-05) with the restriction that the electronic component be "limited to solely displaying time & temperature with no moving message" in accordance with the Ordinance at that time (note: The Ordinance was amended 8/14/2006 removing the exemption allowing time, date and temperature), to display messages other than time, date and temperature at 13 Manchester Street in a GWP Gateway Performance 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 #70-05 Barlo Signs and Carlson's Chrysler, January 4, 2006.

The Board needs to determine if this request is different in material, nature or degree. Mr. Santa stated that the language in the Ordinance is now stricter. Monahan asked what happened with the Ordinance getting more restrictive is what is materially different. Parker felt it was the same request. Norton asked what the language was that changed. The sign hasn't changed. Wallner stated that the request is the same, but as the Ordinance changed it gave the applicant a new venue to come back.

A motion that this request was not materially different in nature or degree from the January 4, 2006 Case #70-05 was made by Parker, seconded by Norton, and passed by a unanimous vote. This rendered the request for a variance to Article 28-6-7 mute.

**28-12 NH Odd Fellows Home dba Presidential Oaks:** Applicant wishes to install an internally illuminated freestanding sign and requests a variance to Article 28-6-9(e), Sign Illumination, to permit an internally illuminated sign in a district where only external shielded light sources are permitted for property at 200 Pleasant Street in an IS Institutional District.

Anne Purington, Chief Executive Officer of Presidential Oaks testified. The Odd Fellows Home was incorporated in 1883. In 1932 they had high quality construction. In the 1990's the demographics changed and in 1995 they opened the nursing home which has 212 beds and more than 200 employees. The facility is staffed 24/7. They are an educational center. They are located on an 11 acre campus which is lacking identification. It is critical to the safety and wellbeing of staff and guests that it be identified better. Their sign is now 75 feet from Pleasant Street. It cannot be seen from Pleasant Street. They need a new sign. They did consider externally illuminated signage, but the sign will be curved and it would need 5 external lights. They felt that it would be prohibitive. The lights would shine into the resident's windows and the residential homes. They would also get buried under the snow. They want to relocate the sign. They want to be non-intrusive to the neighbors. They want simple off-white letters that would look like part of the stone wall.

Bob Perry of Advantage Signs testified. Parker asked Mr. Perry if externally lit signs can be directed to the sign only. (If it is focused and they minimize the fan. They need a complete row of lights and this is 15 feet long, much more intrusive.) LED is a low maintenance light vs. a fluorescent light. Norton asked why they needed the sign. Ms. Purington stated that the property needs to be identified. Norton stated that he understood identifying the property for people coming in, but emergency services know where the facility is located. Harrison stated that when driving up Pleasant Street that the building is not well marked. Bob Perry stated that they will be using channel letters with LED lights as they want to identify the property but not like a retail store. They will lower the illumination of the lights. They can put it on a dimmer or lower the power it puts out. Monahan asked if there are other signs in the City that compare to this one. (Concord Hospital.) Ms. Purington described the Pleasant View Campus, which has 2 signs that are externally lit. NH Odd Fellows Home's campus has 2 entrances, one on Pleasant Street and one on Minot Street. Harrison asked which entrance was the main entrance. Ms. Purington stated that they have 2 buildings so they are both important.

In favor: none.

In opposition: Ray Scienzo, 33 Minot Street. Asked how bright the light will be. The current lighting is so bright it lights his back yard. Harrison asked him if he thought the campus was well identified. Mr. Scienzo stated that when he initially got to the area he didn't know where it was.

Mr. Van McLeod, Kensington Road. This is a wonderful facility, but he is not in favor of LED lighting. He is in favor of external lighting. It is possible to light externally and keep it contained.

Comments from Code Administration: none.

Rebuttal: Thomas Johnson, President of the Board of Trustees for NH Odd Fellows Home. He has been with them for 30 years. The Board spent a lot of time determining what they need. This is the least intrusive. They made it clear to

Advantage Signs that it needed to be dim, but light enough to see. There have been internally lit signs there in the past. Flood lights are a lot more intrusive. They want to be very low profile.

Bob Perry of Advantage Signs gave information on LED vs. conventional lighting. Even if the sign is externally lit, they would use LED lights.

DECISION: Norton asked what the least intrusive approach was. He was not clear on that. He's not sure he has enough information to make a determination. Parker asked where the hardship was as they can light it in ways that are allowed. Wallner thought that perhaps a lawn sign may not be as effective when lit during snow season. So that persuades him that there is a hardship. Parker disagreed. Harrison felt that the hardship had been met.

A motion to deny the request was made by Parker, seconded by Norton and passed by a 3-2 vote with Harrison and Wallner in the minority.

MINUTES: A motion to approve the August 1, 2012 Minutes was made by Harrison, seconded by Monahan and passed by a unanimous vote.

A TRUE RECORD ATTEST,

Rose M. Fife \_\_\_\_\_, Clerk Zoning Board of Adjustment