

**ZONING BOARD OF ADJUSTMENT  
APRIL 4, 2012 MEETING  
DRAFT MINUTES**

Board members present included Chairman Christopher Carley, Nicholas Wallner, David Parker, Stephen Norton, Robert Harrison Jr. and James Monahan. Also present Zoning Administrator Craig Walker and Rose Fife, Clerk of the Board.

**04-12 Steve Yianakopolos:** (Request for Rehearing) Applicant wishes to expand an existing hair salon to provide day spa services (use D-1) by converting an unfinished 1 car garage into habitable space and requests the following:

- 1) A variance to Article 28-2-4(k), The Table of Principal Uses, to convert a 155 +/- square foot garage area to a commercial day spa service use where such use is not permitted by right,
- 2) Variances to Article 28-7, Access, Circulation and Loading:
  - a. Article 2(a), Computation of Number of spaces Required, to permit the provision of 1 off-street parking space, when 9 spaces would be required,
  - b. Article 7, Parking Area Design Standards, to maintain the existing parking area without full conformance with parking area design standards required by the Ordinance.
  - c. Article 8(a), Restrictions on Backing into Streets, to permit a parking layout that requires vehicles to enter and exit the parking area by backing into Monroe Street, when such action would otherwise be prohibited.

All for property at 39 South Street in an RD Residential Downtown District.

The Board for this request consisted of Carley, Wallner, Parker and Monahan.

The request for rehearing was submitted by the abutter Gloria Sabien.

Craig Walker explained to the Board that the submission was made within the 30 day appeal period. This is a unique situation as the Board who originally heard the case also has the ability within that 30 day period to reconsider their original decision and if they so choose they could reverse their decision. The Board would have to base their decision only on testimony given at the original hearing.

Carley poled the Board to see received their packet of information in the mail and if they had a chance to read through it. The Board stated that they had. He then asked the Board if they wanted to reexamine/reopen the case or consider request for rehearing. The consensus of the Board was that they did not wish to reconsider their decision. The Board then considered the question of the Request for Rehearing. Carley asked if the Board found any new information or if they erred in law.

Parker asked Walker about some of the information in the memo that was submitted. Walker explained that the application had been signed by the owner of the property but the abutter did not have a full opportunity to read the application. That question #2 of the application was not filled out until just prior to the hearing. Carley felt that the information that was not completed on the application was explained in public testimony. So the information was presented. Parker stated that the Board does not always go through all 5 criteria. The public testimony touches on those. Monahan feels that the reasons, as submitted, were not sufficient. He feels there was no error in law and that the applicant is just questioning the judgment of the Board.

A motion to deny the request for rehearing was made by Monahan, seconded by Wallner and passed by a 3-1 vote with Parker in the minority.

**03-12 Fellowship Housing Opportunities Inc.:** (Recessed Hearing) Applicant wishes to convert an existing 3 unit residential structure into a 5 unit residential structure and requests the following: (Note: Due to a notice error of (1)(b) the following request was recessed to allow for proper notification.)

- 1) Variances from Article 28-5-3, Conversion of a Residential Building,
  - a. (Granted) Section (b)(1) Minimum Lot Size, to permit a 5 unit conversion on a lot of 4,367 square feet when a minimum lot size of 12,500 square feet is required,
  - b. (Recessed) Section (b)(2), Other Dimensional Requirements, and Article 28-4-1(h), Table of Dimensional Regulations to permit the conversion on a lot with 70 feet of frontage where 75 feet are required and permit lot coverage of 68 percent where a maximum lot coverage of 60 present is allowed.
- 2) Variances from Article 28-7, Access, Circulation, Parking and Loading
  - a. (Granted) Article 2(a), Computation of Number of spaces Required, to permit the provision of 2 compliant parking spaces, inclusive of 1 van accessible space when 10 spaces would be required,
  - b. (Granted) Article 7, Parking Area Design Standards, to maintain the existing parking area without full conformance with the Ordinances parking area design standards.
  - c. (Granted) Article 8(a), Restrictions on Backing into Streets, to permit a parking layout that requires vehicles to enter and exit the parking area by backing into Jackson Street, where such action would otherwise be prohibited.

All for property at 10 Jackson Street in an RD Residential Downtown District.

The Board for this case consisted of Carley, Wallner, Parker, Harrison and Norton.

The case was reopened by the Board. Carley went through and explained the request. It was requested that testimony only relate to the question at hand.

Paige Cannon, Executive Director of Fellowship Housing and Attorney John Arnold of Orr & Reno testified. Attorney Arnold explained that the lot has 70 feet of frontage. The abutters have plantings to the property line. They cannot obtain anymore frontage from abutters. The lot has existed this way for many years and there will be no significant change in use. The lot coverage is at 66%. A small patio is what increases the lot coverage to 68% however the pation is pervious pavers. This patio is needed to improve the accessibility to the building. It also provides an over flow parking space if it is necessary. This increase is only 2%.

John Vanacore, an Attorney in Concord, who is here representing the owners of 6 & 8 Jackson Street. The abutters are in favor, but there is a question of an easement being offered to them by Fellowship Housing. They have not had an opportunity to review it. It is a tract from the street to the rear of 6 & 8 Jackson Street. They are concerned that they are going to lose property that they've used for 30+ years. Carley stated that the Board is only taking up the frontage and lot coverage issues at this time and the easement issue is not within their purview.

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

**06-12 Chris Gately for Arthur Aznive:** (Recessed Hearing) Applicant wishes to legitimize a second freestanding sign and requests a variance from Article 28-6-9(c), Permitted Freestanding Signs, Section (1) to permit a second freestanding sign on a lot where 1 freestanding sign is permitted for property located at 15 South State Street in a CBP Central Business Performance District.

The Board for this case consisted of Carley, Norton, Wallner, Parker and Monahan.

Chris Gately testified. He would like to place a 2<sup>nd</sup> freestanding sign on the property. He submitted new photographs. He wants this request to be specifically for his business only. He hired someone to design this sign and stated he relied on them to know the laws. He's been put into this situation by that person who did not follow the laws. The owner of the building renovated his spot so he took a studio in the back until his unit was finished and the property owner allowed him to place this sign. It is designed to be visually pleasing and compliment the other sign on the property. It is double sided for visibility. Main Element sign is set so that it is impossible to hang his sign on the same posts. His shop is on the other side of the building, not the same side as Main Element. He is 15 South State Street and they are 13 South State Street. If the sign is on the wall it is not visible. The company that designed the signs told him not to worry about it.

Without the sign it would create a financial hardship. He is has been in business less than a year. The property owners would have to remove the posts and sonotubes and it would create a mess. His grand opening is 4/9/12. He explained each photo he submitted and the surrounding properties that have 2 freestanding signs. He explained the issue with visibility. The shrub blocks visibility also. He referred the Board to the submitted affidavits from abutters in favor of his request.

Wallner asked if there were 2 signs at the property when he rented. (No, but according to the owner, there was.) Parker felt the applicant's argument should be with the property owner. The variance would go with the property not the business. He is concerned with setting precedence. Wallner asked again about evidence of a second sign. Mr. Gately stated that the posts have been there over 20 years. The owner had the street address on the posts. Monahan asked if Code Administration identified the problem. Why this business and not the Main Element? Walker explained that Main Element had a permit which was issued in 2006. The Ordinance only allows one f.s. sign per lot.

In favor: none.

In opposition: none.

Letters in file in favor from: Michael Vermette DMD; Arthur Aznive; Concord Homeless Resource Centers and Main Element all in favor.

Walker explained that while the applicant's circumstances are unfortunate, the hardship has to be with the property. Monahan asked if a permit was issued for this sign. Walker explained that he had reviewed the sign permit file for this property and found no record of a permit being issued for this type of sign at the subject location and presented the sign permit file for the property for the board to review. Norton asked if he could have a sign on the building. Walker stated that he could have an affixed or hanging sign.

DECISION: A motion to deny the request was made by Parker, seconded by Norton and passed by a 4-1 vote with Wallner in the minority.

**08-12 Timothy Golde for the Mary Ann Foster Revocable Trust of 1989:** Applicant wishes to subdivide a 24.74 acre tract of land into a three lot cluster subdivision with common open space land area and requests the following:

- 1) Variance from Article 28-4-7(g)(1), Minimum Common Open Space, to permit the provision of 6.11 acres (34%) of the "buildable" common open space when the buildable common open space portion of the total required common open space would be 7.14 acres (40%) and
- 2) Variance from Article 28-4-7(g)(1), Minimum Common Open Space, to allow proposed lot #2 to only have access to the common open space when the lot should have access and be contiguous to the common open space.
- 3) Variance from Article 28-4-7(f), Perimeter Buffer Required, to reduce the required perimeter buffer from 100' to 50' and
- 4) Variance from Article 28-4-7(f), Perimeter Buffer Required, to waive the front buffer requirement adjacent to the front property line for the proposed lot #1

All for property at 109 West Parish Road in a Residential Open-space (RO) district.

The Board for this case consisted of Carley, Parker, Monahan, Norton and Wallner.

Time Golde, a professional engineer who has been practicing in Concord since 2003 testified. The parcel is 29.76 acres and after a lot is removed the rest of the lot is 24.74 acres. The lot is a mile west of Carter Hill Road. It is located in the RO Zone and has 700 feet of road frontage. The existing house would remain on a 24 acre lot. Lot 3 is 4 acres with 70 feet of frontage. Lot 2 is contiguous to the buffer but not to the larger part of the open space. The City says that to subdivide in an RO zone it would have to be done as a cluster. They are only creating 2 new lots. They feel 6 acres is plenty for open space/recreational use land (They are providing 20 acres of total common open space). Lot 2 has access to the open space via the discontinued Davis Road.

Norton asked if there is an easement granted for lot 2 to get to the open space. Walker stated that it would be guaranteed through the Planning process. Norton asked why they could not create long skinny lots. Mr. Golde stated that due to the characteristics of the property it calls for the homes to be staggered. The terrain and the shape of the property call for it.

Carley asked what led them to this subdivision configuration. Mr. Golde stated that it was the existing house, the placement of the existing outbuildings, wells, septic systems, terrain, where they could put new septic and wells and driveways at less than 10% grade. Norton asked if the lots were created differently if any of the requests would go away. Mr. Golde stated that request #2 would go away.

Mr. Golde went on to testify that Request #3 for an RO buffer can be reduced to 50 feet with fewer than 4 lots and less than 20 acres. They meet the first part with less than 4 lots, but not the second as they have more than 20 acres. Golde stated that the land could actually support more than 3 lots. Monahan asked if the owner could make it denser. Mr. Golde stated that they could if they built a road in there. He then went through the criteria.

In favor: Ed Welch, who owns a parcel at 104 W. Parish Road.

In opposition: none.

Comments from Code Administration: Walker explained that the plan has been reviewed by Planning and they are supportive of what's been presented tonight.

DECISION: A motion to approve request #4 was made by Norton, seconded by Monahan and passed by a unanimous vote. Norton felt that granting this request would not change the neighborhood. A motion to approve request #1 was made by Norton, seconded by Monahan and passed by a unanimous vote. A motion to approve request #2 was made by Monahan, seconded by Wallner and passed by a 3-2 vote with Parker and Norton in the Minority. Norton feels that this request is created due to the design of the lots. Monahan felt that the Board did hear that there were characteristics and topography as to where the wells and septic need to go. A motion to approve request #3 was made by Norton, seconded by Monahan and passed by a 4-1 vote with Parker in the minority.

**09-12 Concord Food Co-op, Inc.:** Applicant requests a Variance from Article 28-6-9(b), Permitted Building Signs, Section (1), to allow a total of six (6) building signs when three (3) building signs are the maximum number of building signs allowed, for property at 24 South Main Street in a Central Business Performance (CBP) district.

Application was withdrawn.

OTHER ITEMS

Minutes: A motion to approve the March Minutes was made by Wallner, seconded by Parker and passed by a unanimous vote.

A TRUE RECORD ATTEST,

Rose M. Fife, CLERK  
ZONING BOARD OF ADJUSTMENT