

**ZONING BOARD OF ADJUSTMENT
DECEMBER 7, 2011 MEETING
DRAFT MINUTES**

Board members present included Chairman Christopher Carley, David Parker, Robert Harrison Jr., Nicholas Wallner and James Monahan. Also present Zoning Administrator Craig Walker.

Public Meeting

35-11 Carolyn Parker for Cumberland Farms, Inc.: (Tabled case) Applicant requests that the Board overturn the Code Administrator's Decision that a sign containing a remotely activated "scroller" is prohibited under article 28-6-7, Signs Prohibited Under This Ordinance, Section (a), due to the fact that there are parts or surfaces that physically or visually move, rotate or create the illusion of movement for property located at 417 South Main Street in a CG General Commercial District.

A motion to take case off the Table was made by Wallner, seconded by Monahan and passed by a unanimous vote.

A motion to uphold the Code Administrator's decision was made by Wallner, seconded by Monahan and passed by a 5-0 vote.

39-11 Joseph Williams: (Tabled case) Applicant wishes to use a metal frame shed for tool and vehicle storage and requests a variance to Article 28-4-1(h), The Table of Dimensional Regulations, to permit a 6 foot setback from the rear property line where a 25 foot setback is required for property located at 10 Foster Street in a UT Urban Transitional District.

A motion to take case off the Table was made by Monahan, seconded by Harrison and passed by a unanimous vote.

Carley stated that the case was Tabled as the Board wanted to know how the case came before the Code Administration's office's attention. Walker explained that a neighbor complained about a business being run from this location and upon inspection Code Administration found this structure was there without a Building Permit.

Carley stated that they heard testimony from the applicant that there was a garage with a roof on it but no sides there when he purchased the property. Abutters stated that this was not the case. Walker explained that when the current owner purchased the property September 22, 2006 the City Assessors went out December of 2006 and there was no entry on their Assessment card of this structure being on site. September 8, 2011 the City Assessor's went out again and the garage was then listed on the card as being there.

Monahan asked if the shed were to be repositioned would it meet the setbacks. Walker provided the Board with a scaled site sketch showing the property with the building envelope drawn on it. Carley stated that the house looked like it was outside of the setbacks also.

DECISION: A motion to deny the request was made by Parker, seconded by Harrison and passed by a unanimous vote. Parker felt that there was no hardship as the structure, if placed properly, could meet the setbacks.

Public Hearings

37-11 Kim Delois Fannie: Applicant wishes to subdivide a property and create 2 lots and requests a variance to Article 28-2-4(h), the Table of Dimensional Regulations to create a lot with 12,302 SF +/- of land where a lot size of 12,500 SF is required for property located at 21 Rockingham Street in an RM Residential Medium Density District.

Attorney Tim Sheedy of Tarbell & Brodich testified along with Joe Wickard, Licensed Land Surveyor.

Mr. Wickard stated that Ms. Fannie would like a variance to create a substandard lot. The property is 24,804 s.f. now with 112' of frontage on Rockingham Street with the single family residence and 112' of frontage on Cote Street. The proposed lot they would like to create would have 112' of frontage on Cote Street and would comply with the Dimensional Regulations for the RM Zone. The lot on Rockingham Street that has the house on it would become substandard – 12,202 s.f. vs. 12,500 s.f. required. The parent lot has municipal water and sewer and the new lot will also. Out of 47 properties in the area, 33 of the properties are small and have less frontage. Several properties directly around this parcel have double frontage lots. The property is 200 feet shy of the needed area. This will not diminish surrounding property values. It is a reasonable request. He also submitted a petition that was signed by some neighbors.

Attorney Sheedy testified that this request is not contrary to the public interest. Approval will not alter the neighborhood. It is consistent with the neighborhood. The proposed lot will be used for a permitted use. The hardship would be in literal enforcement of the Ordinance. The lot being created is consistent with the lots in the neighborhood.

Carley asked what the hardship was. Attorney Sheedy stated that the special condition of the property is that it has frontage on two streets and the substandard lot would be the one with the home on it. There would be no further development on the substandard lot. They are only 198 s.f. short of the requirement.

Monahan asked if they had spoken to the abutters. (Yes. The neighboring church lot already has lot coverage issues and therefor was not an option for obtaining additional land.)

In favor: none.

In opposition: Lindy and David Keller, 8 Cote Street. Mrs. Keller stated that they are the easterly abutter. When they purchased their property they were told this lot could not be developed. If this request is approved, they would like a vegetative buffer between their property and the new lot. Mr. Keller testified that their lot and the Rockingham Street lot to the south are all very large lots. They have spoken with Mr. Fannie and all they would like is a buffer between the lots. They have lived at their home for 11½ years.

Monahan asked if they had a buffer on the other side. (They have a small one.)

Comments from Code Administration: As far as their request for a buffer, there is a question of enforcement of this condition. But if Mr. Fannie agrees to that, it can be put into the record.

A letter from the Concord Bible Fellowship church in favor of this request was submitted.

Rebuttal by Joe Wickard – There is mention of a buffer on page two of their submission.

DECISION: A motion to approve the request was made by Harrison, seconded by Wallner and passed by a 4-1 vote with Carley in the minority. Harrison felt that this was a reasonable use of the property. Monahan would like to encourage them to create a buffer.

42-11 Jessica Corr: Applicant wishes to utilize a portion of a warehouse/flex office space for a hair salon use for up to 4 chairs and requests a variance to Article 28-2-4(j), The Table of Principal Uses to permit a hair salon (personal service use D-1) for property located at 30 Henniker Street, Unit 11, in an IN Industrial District.

Applicant did not appear at the hearing.

DECISION: A motion to recess the case to the January 2012 meeting was made by Parker, seconded by Monahan and passed by a unanimous vote.

43-11 Craig & Maria Richards: Applicant wishes to construct a 7'4"x10'5" addition and requests the following:

- 1) variance to Article 28-4-1(j), The Table of Dimensional Regulations, to permit a side yard setback of 6 feet where a 15 foot setback is required and a
- 2) variance to Article 28-8-5(a)(1), Non-conforming Structure, to permit structural alterations to the existing building that that do not conform to the requirements of the district in which it is located,

for property located at 4 Wilson Avenue in an RS Single Family Residential District.

Maria Richard was available for testimony. Dwight Deacon, her contractor, testified. They are filling in a back corner of the house to create another bedroom. It's now a two bedroom house and they have 2 children and need another bedroom. They explored the possibility of a dormer, but that wasn't feasible due to the layout of the interior of the home. The best option was to take their porch and add on to make a bedroom.

Carley asked questions about the existing porch roof. The contractor explained that it was a shed roof. The porch has been there at least 25 years based on the size of the sonotubes.

Maria testified that her neighbors were okay with this request.

In favor: none.

In opposition: none.

Comments from Code Administration: none.

DECISION: A motion to approve the request was made by Wallner, seconded by Parker and passed by a unanimous vote. The Board felt it was a reasonable use of the property.

44-11 Spiros P. Flomp for FLOMAC Limited Partnership: Applicant wishes to remove a portion of an existing structure within the designated F2 floodway zone, construct a new addition and a new second structure and requests the following:

- 1) variance to Article 28-3-2(d)(1)(a), to permit the construction of a new restaurant structure in the floodway where buildings are not permitted,
- 2) variance to Article 28-3-2(d)(1)(a), to permit an addition to an existing structure in the F2 floodway where buildings are not permitted,
- 3) variance to Article 28-8-5(a)(1), Non-conforming Structure, to permit structural alterations to the existing building that that do not conform to the requirements of the district in which it is located,

for property located at 8 Loudon Road in a GWP Gateway Performance District.

Attorney Richard Uchida of Orr and Reno and Richard Lundborn, PE testified. Attorney Uchida explained that this is a 3.75 acre site that sits between the Christian Mutual Building and the strip mall that houses TJ Maxx. It is a 24,000 s.f. building that is in less than optimal condition. They want to remove a portion of the existing building, renovate the remainder of the existing building and add an addition to create a 17,500 s.f. building for mixed uses. In the front of the lot would be a 6,500 s.f. 2nd building that would be used for a restaurant. They need 3 variances to do this as they are located in a Flood Hazard Zone. The site was developed in the 1960's or so before this zone was created. This will not increase the flood zones/hazards or problems to the public.

Richard Lundborn testified that they are creating a 24,000 s.f. building and removing enough of their existing building to compensate for a new restaurant building. They are not increasing volume in the area at all. He explained the layout of the site.

Attorney Uchida testified that the property is unique. It has already been developed. Mr. Flomp has owned the building for over 25 years and with some of the floods we've had recently, they have not experienced any damage.

In favor: none.

In opposition: none.

Comments from Code Administration: none.

DECISION: A motion to approve all three requests was made by Parker, seconded by Harrison and passed by a unanimous vote.

45-11 Richard Uchida for the Duprey Center, LLC: Applicant wishes to erect a 10 foot tall freestanding sign that straddles the westerly lot line of the Duprey Center property and South Main Street right-of-way and requests a variance to Article 28-6-9(c)(2) to permit the sign to be placed with no setback from the westerly property line where a 5 foot setback is required for property located at 49 South Main Street located in a CBP Central Business Performance District.

Case was withdrawn.

47-11 Scott Boucher for Forget & Boucher, LLC: Applicant request the following in connection with a site redevelopment project:

- 1) Variance to Article 28-7-7(g)(2), Setbacks From Lot Lines, to permit no parking lot setback from the north and east lot lines in the areas adjacent to the new building as shown on the plans where a 5 foot setback is required,
 - 2) Variance to Article 28-7-10(a), Parking Lot Perimeter Landscaping Required & (d), Landscape Material Standards, to waive the required 5 foot perimeter landscaping buffer for the areas where the setback requirement has been request to be waived under section 1,
 - 3) Variance to Article 28-4-1(h), The Table of Dimensional Regulations, to permit a total lot coverage of 80.5% where 80% is the maximum allowed,
- for property located at 175 Manchester Street in a CH Highway Commercial District.

Jason Hill, Civil Engineer from Holden Engineering testified. He handed photos out to the Board. The site plan was approved by the Planning Board a year ago. This is the new Nissan Dealership. It also has an auto body building on the property. They are proposing paving 5 feet beyond the east to increase maneuverability. They will need to remove existing trees to do this and not plant the required trees. The property has more

than one zoning designation. The lot coverage will exceed what is allowed by a half of a percent. Their delivery area is in the back and now that the building is built, they realize there is not enough room. This is a unique property. Buffers are for screening between different uses. They have a woodland buffer already in the rear of the property. There is a runway protection zone there that makes them unique also. He explained the photographs he submitted.

Harrison asked about the tree line on the plans. (That is the 5 foot additional area they are looking to pave.) Harrison asked if the Planning Board had approved this. (Yes, they approved the original plans but this modification will have to go back again.) Walker stated that they will have to go back to the Planning board as a modification to a previously approved application.

In favor: none.

In oppositions: none.

Comments from Code Administration: Engineering has been working with the applicant. The City is not opposed to the elimination of the landscaped strip as it provides no needed screening to protect the City's land. The owner has commented during other discussions that they plan to distribute the required planting around other portions of the property. The owner has also been talking with the Planning Board.

DECISION: A motion to approve all three requests was made by Monahan, seconded by Harrison and passed by a unanimous vote. Monahan felt that this was a reasonable request with minimal impact.

48-11 James Raymond for Rumford Realty Corp.: Applicant wishes to construct a private commercial parking lot and requests the following:

- 1) Variance to Article 28-7-7(g)(2), Setbacks From Lot Lines, to permit portions of the parking lot along setback the westerly property line to be reduced to a 1 foot setback in two designated locations, as shown on plans, when 5 foot setbacks are required,
- 2) Variance to Article 28-7-7(e), Minimum Aisle Width, to permit aisle widths of 20 feet when aisle widths of 24 feet are required,
- 3) Variance to Article 28-7-6, Compact Automobile Spaces Permitted, to permit all spaces to be compact when 25% is permitted by right, for property located at 16 Montgomery Street in a CVP Civic Performance District.

Tim Goldie, a professional Engineer and Attorney Matthew Surge of Upton & Hatfield testified.

Mr. Goldie stated that the request involves 2 lots. They had ten 8' wide by 15' long parking spaces constructed in 1994 on the adjacent property. They are used by the law office and have a variance which was approved in 1994 to allow encroachment into the 5 foot buffer line. The second lot is the Friendly Kitchen site which was destroyed by fire this year. Rumford Realty wants to purchase the property from the Friendly Kitchen. They would like to add 20 more parking spaces with a normal parking layout. The south side setback will not be 5 feet vs. the 2 feet that it was. They need to be 1 foot from the rear lot line. They will have 2 aisles, 20 feet in width. This is a private parking lot and not a public parking lot. There will be no drainage issues. The rear abutter Mr. Newton has met with them and he would like them to connect their pavement with his. They have no objection to that.

Attorney Surge stated that parking lots are permitted. It is a reasonable use. He went through the criteria. The aisle width would be the same as the Montgomery Street lot – 20 feet wide. They are asking for minimal relief. This will bring the southern lot into conformity. The public health, safety and welfare will not be at risk. They now have 31 spaces with 19 of them being rented. If this is approved they will have 30 spaces and won't have to rent. Thirty-five is the total number they need so they will keep 6 rentals. There is no diminution of property values. He submitted a letter from a Realtor.

Parker questioned the hardship. Harrison asked if they would repave the whole parking lot. (Yes they will repave and re-grade the whole lot.) Carley asked Walker if the second driveway needed relief. (It needs a conditional use permit.) Carley stated that if they eliminated 3 spaces they wouldn't need a variance on the west side. (They would still have drainage issues.) Monahan asked if they didn't have the 3 variances how many spaces would they be able to fit? (Ten spaces vs. the 30 spaces they needed.)

In favor: none.

In opposition: Mary McGann, Montgomery Street asked how their lot is going to back up to theirs and asked about snow removal.

Comments from Code Administration: none.

DECISION: A motion to deny request #1 was made by Parker and failed for lack of a second. A motion to approve request #2 & #3 was made by Harrison, seconded by Monahan and passed by a unanimous vote. A motion to approve request #1 was made by Harrison, seconded by Monahan and passed by a 4-1 vote with Parker in the minority.

OTHER ITEMS

A motion to approve the November 2011 Minutes was made by Harrison, seconded by Monahan and passed by a unanimous vote.

Walker delivered a letter to the Board from Gloria McPherson, City Planner, on behalf of the Planning Board regarding issues relating to Case #45-11. Even though the case was withdrawn per the applicant's request since the PB had requested the letter be sent it was still necessary to deliver it to the Board.

A TRUE RECORD ATTEST,

Rose M. Fife, Clerk Zoning Board of Adjustment