

ZONING BOARD OF ADJUSTMENT
November 2, 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 and Rose Fife, Clerk of the Board.

35-11 Carolyn Parker for Cumberland Farms, Inc.: 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.

Carolyn Parker testified for Cumberland Farms Inc. They have an existing pylon sign. It is an old Exxon Station, so they had a larger sign.

The scroller sign is proposed and was denied by Mr. Walker, the Zoning Administrator. It is a mechanical device with film wrapped around a scroller. The sign is similar to what's there. At night the prices will be illuminated. The sign will be 57.3 s.f. less than what was there. That's a 40% reduction in size. The sign will be static, but prices will change once a day. This does not appear animated and is not an electronic sign at all. She showed photographs of what it would look like.

In favor: none.

In opposition: none.

Comments from Code Administration. Walker stated that scroller signs come in a variety of sizes and styles. He's applied the letter of the Ordinance evenly across the board. If the sign is okay, you need to say "all" scroller signs are okay. He explained the Court's stand on this matter. A question for the Board to ponder is does a scroller type of sign meet the description of the prohibited sign.

Monahan asked if this type of sign is prohibited, can the Zoning Board grant or deny a variance. Walker stated that they could.

Monahan and Harrison would like to hear from the City Attorney on this matter. Parker stated that they were not coming before the Board for a variance. Are we setting precedence with this type of sign? Carley stated that the Board could (1) Table the request and ask the City Attorney to meet with them, or (2) decide that they either agree or disagree with the Zoning Administrator. If the strict application of the law in this case does not make sense, that might be an argument for a variance appeal, even if the Zoning Administrator's ruling is upheld.

Rebuttal by Carolyn Parker. The Ordinance does not say "electronic" sign. It's not 'animated' or 'projected'. It is not a 'message' type sign. The wording does not eliminate this sign.

Carley stated that they could come back for a variance at a later date.

DECISION: A motion to Table the case was made by Monahan, seconded by Harrison and passed by a unanimous vote. The Board would like to solicit more information from the City Attorney regarding the rationale for the interpretation.

Note: Zoning Administrator, Craig Walker left the meeting for the remainder of the night at this time.

36-11 Donald Robie: Applicant wishes to construct a 12'x20' carport and requests a variance to Article 28-4-1(h), The Table of Dimensional Regulations, to permit a 3 foot setback from the rear property line where a 20 foot setback is required for property located at 16 Downing Street in an RD Residential Downtown District.

Ralph Potter, Contractor, represented Mr. Robie. They want to build a carport. The area for placement is already hard topped beside the garage. The existing garage is 3 feet off the back property line as it exists. He's within the 10 foot side line. Mr. Potter explained the layout of the property.

Parker asked how long a vehicle was. (About 18 feet.)

In favor: none.

In opposition: none.

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

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.

This request was withdrawn by the applicant without prejudice.

38-11 Karen L. Olson: Applicant wishes to expand an existing 1 car garage into a 2 car garage and relocate the existing driveway and requests a variance to Article 28-4-1(h), The Table of Dimensional Regulations, to permit a building setback of 12 feet from a front property line where a 25 foot setback is required for property located at 6 Moorland Avenue in an RS Residential Single-family District.

Karen Olson and her Architect Jason Lacombe testified. Mr. Lacombe stated that the building is already into the setback. The house was built in the 1950's and Midland Avenue did not exist at that time. When Midland Ave. was created, it made Ms. Olson's lot a corner lot and increased her setback requirements. Mooreland is now a thru street where it once was a dead end road. They do not want to back into the street due to this. There is a safety issue. They also want to relocate their driveway to Midland Street with a wider apron and go from a 1 to 2 car garage.

Carley asked if the rationale for the variance request was that it doesn't change the use. Mr. Lacombe also stated that snow removal is an issue as the occupants are aging.

Parker asked for clarification that this is an area variance, not a use variance. (Yes.) Are there some 'conditions' that make it so you can't do this project? (Part of the house is already in the setback. The

existing garage is within the 25 foot setback.) Ms. Olson stated that snow removal was an issue as the City backs into Midland Street and pushes the snow out from the grass and makes Mooreland Ave. narrower with higher banks. Getting out of the driveway is difficult.

Monahan asked if there was a curb on Mooreland Ave. Ms. Olson stated that there wasn't, but there is a drain that is covered all winter. Carley asked what the footprint on the new garage would be. Mr. Lacombe stated that the existing garage is 15' x 22' and the new one would be 25' x 24'.

In favor: none.

In opposition: none.

DECISION: A motion to approve the request was made by Harrison, seconded by Monahan and passed by a unanimous vote. Harrison felt that this was a reasonable use of the property.

39-11 Joseph Williams: 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.

Joseph Williams testified. He placed plans on the tack board so that all could see. Boutwell's parking lot is to the rear of his property. To comply, the shed would be in the middle of his yard and he wouldn't be able to enter as there is only 10 feet on each side.

Carley asked him how he entered his property now. Mr. Williams showed him on the map. Carley asked why he couldn't turn the building. He asked if it were an existing building. Mr. Williams stated that this was an existing carport. He only has 6 feet to the rear of the property. He submitted photographs and explained them. It was an open carport when he purchased the property and he enclosed it.

Parker asked if it had a foundation. Mr. Williams stated that it did not, but it had railroad ties around. He uses it to fix things and uses it as a "man cave". The lots are small in the neighborhood. No buildings comply within this neighborhood. His lot is only 4900 s.f. and the Ordinance requires 10,000 s.f. to build. He wants to keep using the building.

Carley asked if the building was there when he bought the property. Mr. Williams stated that the carport was there and he finished it. It was in this exact location. He gave photographs of the neighborhood homes. Where it is, he can use his yard and have a place for snow.

Harrison asked how long he has lived there. Mr. Williams stated since the end of 2004. Parker asked when he converted the carport. Mr. Williams stated that he converted it in 2004.

In favor: none.

In opposition: Claudia Tufo and Tom Tufo testified. They purchased 6-8 Foster Street, a direct abutter, 15 years ago. Since then 10 Foster Street has gone through a few owners. There was no carport in that yard. There is a 2 car garage. When he built the carport they asked Mr. Williams if he had a permit and he said yes. That was 2-2.5 years ago.

Carley asked if the carport was non-existent and Mr. Williams were here asking for a variance, how would they feel about that.

The Tufo's stated that the building is oversized for the lot. It is not good construction. It is a center point for Mr. Williams landscaping business, the equipment and the workers. He is not supposed to have equipment in the street or workers there. There are issues with parking. He's made arrangements to have the equipment parked at the Moose Lodge. They've never seen 'sons', but have seen workers come and go. They submitted photographs. It is for his business use, not personal use. The photos are of the 2 car garage and shed on the lot taken a month or so ago and some were a couple of days ago. He is close to their property line. The setback is 3'9" from the border on their side, not 6 feet.

Parker asked if there were another shed there. The Tufo's stated that there was. They also submitted aerial photos from 2000 and 2010. Mr. Williams purchased the house in 2006 according to the assessor's records. They spoke with the prior owners who stated that this structure in question was not there.

Ray DiLucci, 12 Foster Street testified. He is building a duplex and garage next door. He came before the Board for a variance and he has gotten all of his permits. Mr. Wilson swore to the Board that it was an existing building, but yet Mr. DiLucci watched him build it. Mr. Williams repairs cars late at night and runs his business there. He has never gotten a building permit. Mr. DiLucci wants to see it torn down. It is not pre-existing non-conforming. That's a business shed, not a shed used for personal use. Mr. Williams repairs cars and trucks out there. He disturbs the neighbors. He has a side setback issue also. Mr. DiLucci couldn't put their buildings where they wanted them, but where the Board allowed him to, so why can Mr. Williams?

Carley asked if the structure was not there and he came before the Board for a variance, how would he feel about that. Mr. DiLucci stated that the structure were too large for the area he put it in. He could put it 10 feet to their property line, but he can't do a 25 foot setback. It is disproportionately too large.

Rebuttal by Mr. Williams. The drawing is proportioned right. If he put the building where it should be, it would look odd. He would have to move it 4 feet to meet the side setback, which is costly. He wants the building to stay where it is. The landscaping business belongs to his two sons and they were parking a lot of equipment there. One of his sons lives on N. State Street so they couldn't park it there. Code Administration told him to Cease and he did. The Tufo's took a piece of his land by eminent domain when he put a fence 6" into the boundary line as his attorney advised him to.

Carley asked what bearing this had on his variance request. He asked Mr. Williams again if the building were there when he purchased the property. Mr. Williams stated that the structure was there. There was a carport and he enclosed it. He was told he could enclose it by Engineering. He did not know he was violating the law.

DECISION: Carley stated that he would like to talk to Mr. Walker before he makes a decision on this case as he is confused with a couple of facts. Harrison stated that he has room to relocate the structure. A motion to TABLE was made by Harrison, seconded by Wallner and passed by a unanimous vote.

40-11 Arthur W. Perkins, Esq. for the Elizabeth S. Perkins Trust: Applicant wishes to construct a roof over the front entrance and requests a variance to Article 28-4-1(h), The Table of Dimensional Regulations, to permit a front setback of 10 feet +/- where a 15 foot setback is required for property located at 87 North State Street in a CVP Civic Performance District.

Attorney Perkins has his office at 87 North State Street. He would like to construct a roof over the entrance to the building. The structure was built in 1815 with the main entrance on the west side of North State Street close to the front property line. They are within 16 feet of the setback from the front property line. They have 3 granite stairs to enter the property that are within the setback. He submitted colored photos. He showed the original roof over the stairs, which over time disappeared. When the snow melts and drips on the

steps it freezes and is dangerous. They cannot use the front entrance do to this. He showed a 3D of how the roof covering the stairs would look. Other properties along North State Street have a roof over their stairs and are within the 15 foot setback. This is to protect the stairs from the elements and to create a safer entrance.

Carley asked if the building next to theirs sets out further into the setback. Attorney Perkins stated that it did.

In favor: none.

In opposition: none.

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

41-11 Athena Holevas: Applicant wishes to remove a 6'x12' second floor entry porch and stairs to a second floor apartment and replace with an 8'x12' three season entry porch and stairs and requests a variance to Article 28-4-1(h), The Table of Dimensional Regulations, to permit a side yard setback of 6' 7" +/- where a setback of 10 feet is required for property located at 49 Tremont Street in an RN Residential Neighborhood District.

Athena Holevas testified. It is a two family home and she resides on the second floor. The main entrance is a set of stairs to a 6'x12' porch. She would like an 8'x12' enclosed porch and create a 3 season room. She would like to use it as a mudroom and 6 feet is narrow in terms of practical use. The building's front entrance is an emergency exit to her and her tenant.

Monahan asked if it were originally a two family. Ms. Holevas stated that the building was built in 1920 and she thinks it was a single family dwelling. She has lived there for 7½ years. She would like to enclose the porch with glass windows.

In favor: none.

In opposition: none.

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

MINUTES FROM OCTOBER 2011. A change was made with regard to the Bindery Case. There was a misspelling of a name. A motion to approve the Minutes was made by Parker, seconded by Harrison and passed by a 4-0 vote with Wallner abstaining as he was not at that meeting.

A TRUE RECORD ATTEST,

_____, CLERK
ZONING BOARD OF ADJUSTMENT