

**ZONING BOARD OF ADJUSTMENT
APRIL 6, 2011 MEETING
DRAFT MINUTES**

Board members present included Chairman Christopher Carley, David Parker, Steven Norton, James Monahan and Bob Boley. Also present Zoning Administrator Craig Walker, Code Administrator Michael Santa and Rose Fife, Clerk of the Board.

07-11 DAVID & SHARON LABOMBARD: Applicant requests variances to Article 28-4-1(h), Table of Dimensional Regulations, to permit the removal and replacement of a freestanding garage maintaining a side setback of 3.5 feet and increasing the rear setback from 6 feet to 10 feet where 10 foot side setbacks and 20 foot rear setbacks are required at 44 South Spring Street in an RD Downtown Residential District.

(Note: This request was previously granted by the ZBA on 10/13/2004 as case #77-04, expired on 10/13/2006 without request for extension)

David & Sharon LaBombard testified. They have a 24'x32' garage that is old. They would like to tear it down and build a 24' x 26' garage. They feel the garage as it exists is unsafe. It is rotted on the side and tilted to the left. They have old logs holding the second floor up. Sharon also stated that the lot size dictated where the garage was built on the lot and it still does. They will be replacing one structure with another. It is now a fire hazard. This will enhance the property. They will put down a new concrete slab. They are shortening the garage, which makes them more compliant.

In favor: none.

In opposition: none.

Comments from Code Administration: none.

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

08-11 Brady & Sonya Carlson: Applicant wishes to add a second floor to an existing single family home and requests the following:

- 1) Variances to Article 28-4-1(h), Table of Dimensional Regulations, to permit enlargement of a second level by vertically extending an existing single family structure having a 5 foot +/- setback from the easterly lot line and a 2 foot +/- setback from the northerly lot line where a 10 foot setback is required from both lot lines,
 - 2) Variance to Article 28-8-3(c)(2)(a), Conditions for Development of a Non-conforming Lot, to permit further development on a lot with no frontage when a minimum of 22 feet is required
 - 3) Variance to Article 28-8-5(b)(1), Non-conforming Structures, to permit alteration of the existing structure in a way that increases its non-conformity
 - 4) Relief from RSA 674:41 to permit issuance of Building Permits and construction on a lot having no frontage on an accepted City street.
- all at 84.5 West Street in an RD Residential Downtown District.

Brady Carlson testified. He and his wife have lived at this address for 4 years. They share a driveway with 84 West Street. The home has one 12'x10' bedroom with a half bath. They would like to take

the existing second floor, which is only big enough for one bedroom and storage, and expand it to make it 3 bedrooms and a full bathroom. They want to insulate the home and upgrade the electrical. This will enhance the livability of the interior of the home. They will not expand the footprint, only build up. Parts of the home already encroach into the setback.

In favor: none.

In opposition: none.

Comments from Code Administration: none.

DECISION: Norton asked Walker how it's creating a non-conformity? (There is a vertical extension which increases the size of the structure.) (Carlson stated that the house is 1300 s.f. now. The second floor will be 1000 s.f. more than they have now.)

A motion to approve the request for all 4 requests was made by Parker, seconded by Boley and passed by a unanimous vote.

09-11 Raymond Dilucci & Betty Seeler: Applicant wishes to remove an existing single family residential structure and replace it with a residential duplex structure and requests variances to Article 28-5-2, Duplex or Two-Family Dwelling to permit the construction of a duplex:

- 1) on a lot having a lot size of 12,218 SF when 15,000 SF is required and
- 2) on a lot with frontages of 27.3 feet and 19 feet on 2 streets when frontage of 120 feet on 1 street is required

both for property at 12 Foster Street in a UT Urban Transitional 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 88-03.

Betty Seeler testified as well as John Rokeh, the Engineer on the project.

Carley asked them to address the question of whether or not this appeal was substantially different than their appeal that they brought forth in Case 88-03.

John Rokeh stated that in 2003 the submittal was for a 4 unit and they requested 5 or 6 more variances than they are proposing today. The existing house is not in a good state. It is beyond repair. The garage has the roof caving in. Both home and garage are in need of demolition. They now want a duplex, not 4 units. It fits within the neighborhood better. He showed the Board the old plan.

Carley asked the Board if it were a different case. A motion by Norton seconded by Boley and granted by a unanimous vote that this request was significantly different than the one they brought forth in Case #88-03.

John Rochi stated that the existing house is into the front and side setbacks. The garage is into the rear and side setbacks. They would demolish both the buildings and the new buildings would conform to the setbacks. There is not much frontage as it is a corner lot of an old subdivision. The lot only has 12,218 s.f. vs. the 15,000 s.f. that is needed. A new two car garage would also be built.

Carley asked if the house were now a duplex. (No, it is single family.) Why did they decide on a duplex? (Ms. Seller stated that it is expensive to support the house without the financial help of the

second unit.) Norton asked if she lived there now. (Sometimes.) Are there duplexes in the neighborhood now? (Yes, but on smaller lots.)

Carley asked Walker if an existing single family home of this size could be converted to a duplex. (Yes.) Without ZBA approval? (Yes.) Monahan asked if they were building a garage. (Yes, within the setbacks for 2 cars. It is larger dimensions.) Norton asked if the land sloped down to the railroad bed. (Yes.)

In favor: none.

In opposition: Sally Crosby and Bob Crosby of 8.5 Prospect Street. It has been 8 years since the original ZBA application. She has parking concerns. It is a 90° turn from Foster Street to Prospect Street. The parking on Foster Street is hazardous. Bob Crosby stated that they have lived there 30 years or so. The new house and new garage would enhance the neighborhood but he is also concerned of the 90° road turn.

Comments from Code Administration: Walker addressed the parking issue. Parking will be provided on site. A single family or duplex allows back to back parking.

DECISION: Parker asked where the hardship was. What is it? They could renovate the house that is there. Financial reasons are not a hardship. Duplexes do not qualify under hardship. They are changing it by tearing it down. Carley stated that the only hardship he heard in the testimony was financial. Walker stated that personal financial gain is not a hardship. Parker reiterated that a single family home could meet the criteria. Boley wanted to be sure that this does not encourage property owners to let their properties deteriorate.

A motion to deny the request was made by Parker and failed. A motion to approve the request was made by Norton, seconded by Monahan and passed by a 3-2 vote with Parker and Carley in the minority. Norton stated that the request is not inconsistent with the character of the neighborhood and improves it. The hardship is the construction of the lot and how it was carved out.

04-11 Attorney Richard Uchida for P&M Realty of Concord LLC: Applicant wishes to establish a steam generating plant (use K-11) requiring Variances to:

- 1) Article 28-4-1(h), Table of Dimensional Regulations, to permit a building structure with a height of 82 feet where a 45 foot maximum height is allowed,
 - 2) Article 28-4-1(g), Applicability of Design Standards to Performance Districts, to permit a development with a floor area ratio (F.A.R. = The total floor area on a lot, divided by the (total) lot area of the lot) of 0.045 where a minimum FAR of 0.3 is required, and
 - 3) Article 28-2-4(k), Table of Accessory Uses, to permit outdoor storage of materials and inventory (accessory use B-7),
- all for property located off of Langdon Street (M/B/L 25B/1/1) in an OCP Opportunity Corridor District and an RO Residential Open Space District.

(Note: This request was originally granted by the ZBA on February 6, 2008 as case #06-08, with a modification of the height variance granted on November 5, 2008, a one (1) year extension was granted on February 3, 2010)

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

Attorney Richard Uchida testified as well as Peter Bloomfield of P&M Realty. Attorney Uchida stated that all variances are the same as what was granted in 2008 and 2010. The project has not gone forward due to financial constraints. They are inching closer, but are not fully ready to go forward. He gave the Board the site plans. They are the same as submitted in 2008 and 2010. The property

is off of Langdon Street in the south end. Part of the property is in an RO zone. This is for the Concord Steam Plant that now exists on the State Hospital campus. The height variance was for the building around the boiler. The floor area ratio variance is needed as the site is too big to do it. The outdoor storage is for woodchip storage. The height variance is to build around the turbine to make it look like an office. The site is 25-26 feet below South Main Street. This is in the same districts that allow buildings 80 feet high. It is less visible than the Pillsbury Street building that is about 60 feet high. He showed the Board in past views from various areas and how it's really not a conspicuous location. The outdoor storage is for the arrival of wood chips on the site. The woodchips will be there for less than a day. The site is out of view from South Main Street. It is not unsightly. Historically the ZBA's have re-granted with no changes.

Norton asked how close to financing they are. (They need all the power purchase agreements before they can receive financing.)

In favor: Letter from Joseph Lindsay of Capital Dodge in support.

In opposition: none.

Comments from Code Administration: Walker explained the floor area ratios.

DECISION: Parker asked how many times they could come back to the Board. Walker explained that they are limited on extensions, but otherwise as many times as they need.

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

12-11 ZED Properties, LLC: Applicant wishes to construct an office building requiring variances to:

1) Article 28-2-4(b), Purposes of the Established Districts, Section (11), GWP Gateway Performance district, to waive the requirement that the proposed building be serviced by municipal water and sewer utilities; and

2) Article 28-4-1(h), Table of Dimensional Regulations, to permit a 10 foot setback from the rear property line when a 25 foot setback is required;

All at 20 Break O' Day Drive (M/B/L 112/5/38) in a GWP Gateway Performance District.

(Note: This request was originally granted by the ZBA on April 2, 2008 as case #13-08, a one (1) year extension was granted on April 7, 2010)

The full 5 member Board heard this case and the rest that followed.

Attorney Richard Uchida and Erin Reardon of Nobis Engineering testified. Attorney Uchida stated that this was the exact same request for variances granted in 2008 and 2010. This is a LEED Platinum building that he'd like to build. He explained the site location. It is a 5 acre parcel in a GWP zone. He explained the two variances that they need and why. The Planning Board also granted them a waiver not to connect to water and sewer. Ms. Reardon explained the LEED building and the point process to achieve Platinum standard. This is not typical septic system. They will have their own heat source.

Carley asked about setbacks. Uchida stated that the building needed to be moved back to accommodate the grading and collection of rain water and parking. The large berm from I393 will make the building less visible. The property is unique – it is a "cast away property" that was not intended to be developed when they established the water and sewer investment district. They have received Planning Board approval for a waiver. They have worked with fire and general services.

In favor: an email from Carlos Baia. He does not object to a variance.

In opposition:

Code Administration:

DECISION: A motion to approve the request was made by Boley, seconded by Parker and passed by a unanimous vote with the conditions as set forth in the approval of Case #13-08.

10-11 Banks Chevrolet-Cadillac: Applicant requests a Variance to Article 28-3-6, Aquifer Protection District, section (d), Community Water Systems Protection Area, (3) Prohibited Uses (j), to install 2 underground storage tanks (UST), one 25,000 gallon UST for waste oil and one 12,000 gallon UST for gasoline, where subsurface storage of petroleum products, except for propane is prohibited, for property located at 137 Manchester Street in a CG General Commercial District.

Peter Holden of Holden Engineering testified. Fred Booth of Banks Chevrolet was also available to testify.

Mr. Holden explained the site layout. They applied for site plan approval in July 2010. Banks is replacing the dealership as GM is demanding that they comply. September 2010 they received approval and October 2010 they started building the building. Planning met on 10/20/10 and had discussion on the Aquifer Protection District and it was voted on in December 2010 to enact the Aquifer Protection District. A 4,000 foot radius needs to be met. They have an above ground waste oil tank on site that is used to heat the building. They have a gas filling area on the site also. They sold approximately 3,000 cars last year that needed fuel. They wanted to be in a 25,000 gallon waste oil tank. During the year they store approximately 30,000 gallon of waste oil from servicing cars. They did inquire in January to the building department. Hebert Construction asked Mike Santa explaining that they were looking for approves from DES for the approval. Mike replied that there were no building code issues. Due to this response they ordered the fabricated oil tanks and ordered the roof top units without the heating units expecting them to be using the waste oil tank. DES John Ford has been contacted. Their letter is on its way. Pembroke Water Department does not want this here as Banks Chevrolet is approximately 3,700 feet from their wells. Tanks are double walled tanks, fiberglass tanks so they do not rust. He explained the tanks and their sensors.

Norton asked if there were any storage techniques approved within the ground water protection ordinance. (Not in accordance with the Ordinance.) Monahan asked about the underground gas storage – is there no where else on the site that this could be put? (It will be in the landscaping area and would need a variance for that.) If this had been done a year ago would it be grandfathered? (Yes.) Carley asked about the DES approval. Do they take into account the Aquifer? (Yes.) Much discussion ensued regarding the Aquifer Ordinance.

In favor: none.

In opposition: Chris Culberson, Pembroke's Waterworks Superintendant. He explained that the 4,000 radius is created by DES. Ten years ago they reclassified their wells. They have the highest level of protection in the State. As part of their classification they maintain an inventory of storage tanks in the wellhead protection area. Carley asked him if the wells supplied Concord. (No, Pembroke only.) Carley asked about the Aquifer Protection Ordinance. (He explained.) Parker asked if these go in will it change Pembroke's classification? (No.) He submitted a letter from the Pembroke Planning Board.

Code Administrator Michael Santa spoke to clarify the 3/4/11 email that indicated the contractor contacted him regarding code issues. What he said in the email was that there were no Building Code requirements and forwarded him to the Fire Dept., Planning Dept., etc. He was only dealing with Building Code issues, no other.

Rebuttal by Peter Holden. There were no comments from the public when taken up with Planning and the Council. The Ordinance was passed without public input. A little clarification would have helped.

DECISION: Carley does not feel he has the technical skills to analyze this himself. He feels he would not be interested in voting on this tonight as he'd like more information on the tank placement and the Ordinance. Boley agrees and wants to see what the DES says about this. Banks had tanks there before their renovations began. Parker felt there were environmental issues and they have not been in yet and there is still time to figure it out. Norton felt that with tonight's information granting the variance is contrary to the intent of the Ordinance. He would like more information and be specific. Boundary issues, i.e. how was it calculated. Monahan would like to hold off. Could they calculate and redraw the blue line so it's more accurate.

A motion to TABLE was made by Norton, seconded by Boley and passed by a unanimous vote. The Board would like detailed information as to how the boundaries were calculated and what it means for the protection of the wells in Pembroke, etc.; how the DES Engineers who review the applications evaluate if the tanks should be allowed in the Aquifer Protection Zone; rationale for writing the Ordinance as it was written; what was the rationale for the prohibition of tanks when the Ordinance was adopted. Mr. Boley questioned vested rights verses protection of health.

11-11 Concord Housing Authority: Applicant wishes to add 11 dwelling units to an existing multi-unit apartment building and requests the following Variances to:

- 1) Article 28-4-5(e)(2), Maximum Floor Area Ratio (FAR), to permit a FAR of 1.3 where a ratio of 1.0 is required,
 - 2) Article 28-4-5(i), Parking Requirements, requiring compliance with Article 28-7-1, Access, Circulation, Parking, & Loading requirements,
 - 3) Article 28-7-2(e), Table of Off-Street Parking, to provide no additional parking spaces when 22 new spaces would be required (maintain provision of 25 spaces when 105 spaces originally required for elderly housing, 232 spaces required by today's multi-family use)
 - 4) Article 28-7-10(a), Parking lot Perimeter Landscaping, requiring a 5 foot wide landscaped strip of hedges or other dense plantings at least 4 feet in height along the perimeter of the parking lot,
 - 5) Article 28-7-10(d), Landscape Materials Standards, to maintain the provision of 2 ornamental shade trees where 7 would be provided,
 - 6) Article 28-7-12(b)(3), to maintain existing parking configuration with a portion of the parking located within the front yard, where all parking is required to be located in the side or rear yard,
 - 7) Article, 28-7-13(a) & (c), Off-Street Loading Requirements, to waive the requirement for the provision of two separately dedicated 1,000 SF loading spaces,
 - 8) Article 28-7-14(d), Setbacks for Refuse Containers, to maintain existing location of the dumpster within 10 feet of the property line, and
 - 9) Article 28-7-10 (b), Parking Lot Interior Landscaping Required, to waive the requirement of providing interior parking lot landscaping of at least 5% of the gross parking lot area when the requirement for parking spaces is greater than 50 spaces,
- all for property located at 15 Pitman Street in a CVP Civic Performance District.

Attorney Daniel Luker of PretiFlaherty testified along with John Hoyt the Executive Director for Concord Housing Authority.

Mr. Hoyt wants to add affordable units to the 105 single bedroom units in the Krutchfield building. The building was built in the early 1970's. It is a 7 story high rise building. There would be interior construction only for 11 units. For some reason 3 units in the original construction were never finished, 2 units on the 7th floor and 1 unit on the 2nd floor. They will be adding the units where the offices were and also where the multi-purpose room is located. The 11 units will serve the elderly and disabled folks. The rent is 30% of the adjusted gross income – it is low income housing. The average rent is \$270/unit. The new units will be the same size as what is there now. They have a waiting list of 258 people. They have 25 parking spaces but only have 1 person on the waiting list for a parking space as of today as most tenants cannot afford a car. The primary variances are needed due to the modification of the non-conforming use. They are not making the situation worse. They are providing a public service. The parking has existed as it is today for approximately 37 years and they have not had a problem with it. The average income is \$1,000 a month for tenants. These are one person units. This is not contrary to the public interest. There are not complaints from abutters. There are no exterior changes. This is a unique housing facility.

Monahan asked about a waiting list. (They have a waiting list for the Krutchfield building and the Kennedy Building.) How long of a waiting list? (A year to a year and a half wait. The Section 8 waiting list is 935 people, the Elderly/Handicapped is about 3 years wait.)

Attorney Luker stated that there is no room for a 5 foot buffer as they abut 2 parking lots.

In favor: none.

In opposition: none.

Comments from Code Administration: none.

DECISION: A motion to approve all requests was made by Monahan, seconded by Boley and passed by a unanimous vote.

NON-AGENDA ITEM

St. Paul's Cell Tower update. Walker stated that St. Paul's no longer wants the pine mono-pole. He would like to know if this is consistent with the Board's original approval. The Board, by a consensus, wanted the applicant to come back to the Board as they felt this was materially different.

MINUTES: A motion to approve the Minutes from 3/2/11 was made by Norton, seconded by Boley and passed by a unanimous vote.

A TRUE RECORD ATTEST,

_____, CLERK
ZONING BOARD OF ADJUSTMENT