

ZONING BOARD OF ADJUSTMENT
March 6, 2013 MEETING
DRAFT MINUTES

Board members present included Chairman Christopher Carley, Robert Harrison Jr., David Parker, Steven Norton and Nicholas Wallner. Also present was Zoning Administrator Craig Walker, Code Administrator Michael Santa and Clerk of the Board Rose Fife.

08-13 United Church of Christ Retirement Community, Inc.: Applicant wishes to redevelop a portion of their existing East Side Drive campus and expand onto an adjacent parcel and requests the following:

- 1) A Variance to Article 28-2-4(j), Table of Principal Uses, to extend the Residential Social Service Center use (Principal Use A-12) onto 175 East Side Drive, the Somes Lot, into an RS Residential Single-Family District where such use is not permitted,
- 2) A Variance to Article 28-2-4(h), Multiple Principal Uses on a Single Lot, to permit more than 1 single family dwelling and more than 1 two-family dwelling on a single lot for a development that is neither a Cluster Development or a Planned Unit Development,
- 3) Variances to Article 28-4-5(d)(3), Building Separations, to permit building separations within the Heritage Heights campus of not less than 30 feet as shown on the proposed site plan, where 40 foot building separation is required, (Plan C1.1, Dated 1/11/13, Nobis Engineering),
- 4) A Variance to Article 28-4-1(h), Table of Dimensional Regulations, to permit a total lot coverage of 48% where a maximum lot coverage of 40% is permitted,

For the properties at 149 & 175 East Side Drive in RM Residential Medium Density and RS Residential Single-Family Districts, respectively.

Attorney John Arnold of Hinckley Allen and Snyder testified. Also testifying were Michael Palmeri, CEO and President of Havenwood, Richard Pizzi of LaVallee Brensinger and Erin Lambert of Nobis Engineering.

Zoning Administrator Craig Walker explained the reason he classified it as a Residential Social Service Center. See his written submission in file. He also explained the parking issues. The Board asked Walker to clarify the information he provided.

Attorney Arnold explained the site plan. The redevelopment project affects the north end of the East Side Drive campus, roughly the area north of Tad's Place. The property is in RM/RO zones. The buildings were built in the late 1970's. The project involves 85 units. They want to tear down 65 units and replace them with 34 units for a final total of 54 units on the north end. They will be expanding onto the Somes lot in the RS Zone.

Michael Palmeri, the President and CEO of Havenwood Heritage Heights testified. He has been employed there since January 1998. They are a not for profit and are faith based. They provide services for 600 seniors on 2 campuses. This includes all levels of living. They have been on the heights since 1967. They have built up campuses on East Side Drive and on Christian Avenue. By reducing the number of cottages on this lot, they are trying to add square footage to each living unit to make them more marketable to meet the demands of today's seniors. Approximately 25% of the residents are from the Concord area. They are good neighbors.

Richard Pizzi of Lavallee Brensinger testified. In 1999 they built 12 units on Ormond Street. They are using that model for this project. Of the 85 existing units, they are keeping 20 and building 34 new units. A total of 54 units will be left. They have met with City staff. Six of the 34 units will be single family units and 14 duplexes. The new units will be getting a single stall garage either attached or detached. All single story units.

Erin Lambert of Nobis Engineering testified. They did not want to create a large parking lot. The site will be a walking campus. It will be fully accessible. The storm water will be controlled through underground. They have been working with Planning to keep the pavement width narrow. It is a heavily wooded site and they are trying to keep as many trees as possible. The new buildings will be sprinklered. The cul-de-sac is designed to allow access to emergency vehicles.

Harrison asked if some of the buildings are separated by less than 30 feet. (Some of the existing building are less than 30' but the proposed buildings will be at least 30' separation.) Carley asked if they were single story buildings. (Yes.) Parker asked if the development would increase the number of residents. (It would change it back to 640 residents.) Norton asked about the current lot coverage. (Ms. Lambert stated that the RS is 14%, the RM is 38%.) Carley asked what the new lot coverage would be. (RS would be 37% and RM would be 48%.) Ms. Lambert went on to state that there are a number of acres not developed outside the area being built on.

Attorney Arnold went through the criteria. They would be improving the site, appearance and functionality. The Somes lot is unique as it is surrounded by the RM Zone. The Fire Department is okay with the building separations. The site has topographical challenges. They have worked with the Planning office. The lot coverage – they are improving the storm water run-off and preserving approximately 24 acres of open space. The lot coverage issues are created by accessibility enhancements. Carley asked if they had done a calculation of the total coverage of the section they want to redevelop. (Ms. Reardon stated that 38% and 42% if you exclude the bluff.) Carley asked if the topo is flat. (Yes.) Harrison asked where the hardship lies. Atty Arnold stated that the building separations are improving the conditions. There are 7 separations that exist that are less than 30 feet. Mr. Pizzi stated that they are keeping some existing buildings. The units they have now are unmarketable. Harrison asked if the units being demolished are now occupied. (Many are vacant.) Mr. Pizzi showed Harrison which buildings are staying by pointing them out on the plans. Attorney Arnold stated they need the number of units to make it viable. The general purpose is to prevent fire danger and privacy. There are uniqueness's. They submitted a copy of an email from Sean Toomey, Concord Fire Prevention. Harrison asked the width of the roads. (Ms. Lambert stated that they are 22 feet wide cul-de-sacs and the main entrance is 24 feet wide.) Carley asked who the neighbor to the north. (A single family home.) Do all buildings have garages? (Ms. Lambert stated that all the new buildings have garages and 3 carports will be built.) Attorney Arnold stated that the lot coverage hardship is unique to the site. It is transected by zoning boundaries and a bluff.

In favor: none.

In opposition: Steve Lebreton, the neighbor to the north at 183 East Side Drive. He purchased his home in 1999 and not having further development near him was a consideration at that time. He feels this will affect his property values. Norton asked if he could see any of this development from his property now. (Yes.) Is the community center a 2 story building? (Yes.)

Rebuttal: Attorney Arnold stated that they are willing to increase the vegetation on the Lebreton side of the property.

DECISION: Request #1: A motion to approve this request was made by Norton, seconded by Harrison and passed with a unanimous vote. The Board felt that this was more consistent with the neighborhood.

Request #2: A motion to approve this request was made by Harrison, seconded by Wallner and passed by a unanimous vote. The Board felt this was a reasonable use.

Request #3: Parker felt that the hardship was created by the number of units that they say that they need. He is having difficulty with request #3 and #4 as he cannot see the hardship. Norton was less concerned with #4. He agrees with Parker's concerns though. Carley stated that they are not starting from scratch as they are leaving buildings there. Harrison stated that the sight was flat, there is no sloping, etc. They are knocking down buildings and therefore he feels that they are starting from scratch. Parker felt that their hardship was by their own creation. Norton felt that the hardship is partly a financial one. Wallner felt that they are making improvements by reducing the number of buildings. He felt it was a reasonable use of the property. A motion to approve the request was made by Wallner, seconded by Norton and passed by a 4-1 vote with Parker in the minority.

Request #4: Carley stated that they are in two zoning districts. Wallner stated that there is 1 use on different lots. A motion to approve the request was made by Wallner, seconded by Norton and passed by a 4-1 vote with Parker in the minority.

10-13 Attorney Mark Puffer for T&L Investments, LLC: Applicant appeals the Zoning Administrator's (ZA) decision that the 5th unit in the subject multi-family dwelling was not legally created and requests the Board

overturn the ZA's decision that (1) the 5th unit was not legally created; and (2) failing to find the City estopped from denying the right to the 5th unit.

If the Board upholds the ZA's decisions applicant requests:

- 1) Variance to Article 28-5-3, Conversion of a Residential Building Section (b)(1), Minimum Lot Size, to permit a 5 unit conversion on a lot of 2,968 SF +/- when 12,500 SF of lot area is required,
- 2) Variance to Article 28-5-3, Conversion of a Residential Building Section (b)(2), Other Dimensional Requirements, to permit the conversion on a lot with 43' +/- of frontage where 75' is required and total lot coverage of 68% where a maximum of 60% is allowed,
- 3) Variance to Article 28-7, Access, Circulation, Parking and Loading, Section (1)(a), Applicability, to permit the conversion while maintaining the existing non-conforming parking configuration and to maintain the Variances granted under case #54-2001,

For property located at 21 – 21A Federal Street in an RD Residential Downtown District.

Attorney Mark Puffer of PretiFlaherty testified. Also testifying was Lani Rutledge, property owner.

Attorney Puffer stated that mother and son purchased the building in January of 2005. He went on to discuss whether or not he should proceed with the variance application and not the appeal to the Zoning Administrator's determination. Carley stated that he has a reservation about doing it that way because if Attorney Puffer goes forward with the variance and it were not approved, he would not be able to go back to the Administrative appeal.

Attorney Puffer proceeded with the Administrative appeal. He submitted booklets to the Board. T&L Investments LLC purchased the building in January 2005. Their Purchase and Sales Agreement stated that they bought a 5 unit building. From January 2005 through 2009 the building was used as a 5 unit building. In 2009 they evicted a tenant and the tenant called the City of Concord and housing complaints were made. There were issues in the fifth unit and the City found no approval for the fifth unit. The Zoning Administrator determined that the 5th unit was not legally established. Attorney Puffer provided evidence that the property was bought as a 5 unit, used as a 5 unit and in 1999 the prior owner bought it as a 5 unit building. Dietz Heins, a neighbor, provided a sworn affidavit stating that he has lived in the Federal Street area since the 1970's and he stated that this building has been a 5 unit building back to at least 1975. Mr. Heins owns 20 N. Spring Street, a 5 unit building that received approval and he also owns 22 North Spring Street which is also a 5 unit building. 29 Federal Street is also a 5 unit building. Carol Cilley owned all 5 properties.

Norton asked on what grounds the Zoning Board should overturn the Zoning Administrator's determination. Carley asked if it was because there was no record. (Correct.) Carley asked Walker if 5 units were not allowed in this zone. Walker stated that that was correct. Walker stated that the City of Concord first adopted a Zoning Ordinance in 1930 and the oldest copy we have on file is as amended in 1941. Five units at that location would have required zoning relief even back then. Walker stated he conducted an extensive review of the City records and although he had found records relating to other properties on the street there was no record of a variance for a fifth unit for this property on record. Carley asked when the 5th unit was put in. Walker stated that based on his research, the property was listed in the city directories from 1957 to 1980 as no more than 4 units in the City directory. 1980 was the first year a 5th unit was noted. Carley stated that the only way the Board could come to the conclusion that Mr. Walker was incorrect would be if they thought the City records were defective. Harrison agreed. Puffer stated that Walker said it was less than 5 units before 1980. Heins states that prior to 1980 there was 5 units there. They don't think it's likely that the owner would have changed the other 3 lots, but not this one.

DECISION regarding the Zoning Administrator's appeal: A motion to uphold the Zoning Administrator's determination was made by Norton, seconded by Harrison and passed by a unanimous vote. Evidence was absent to find to the contrary.

VARIANCES: Attorney Puffer went on to state that T&L Investments has owned the property since 2005 and it has been used as 5 units. The house was built in 1900 approximately. The building will not be expanded if the 5th unit were there. None of the dimensional regulations will change. The building is now non-compliant. It will not be any more non-compliant if the 5th unit were allowed. It is a dense area. Only 1 property in the block meets the dimensional requirements and the frontage is only met by 2 out of 25 properties on the block. The lot coverage is only "almost" met by a property at the northwest corner. The parking requirement is 2 spaces per unit which would bring the required spaces up from 8 to 10. This property only has 4 parking spaces and is all it could hold. This 5th unit has ever been

occupied by anyone who needed a parking space and it would be in their lease that there is no on-site parking for this unit. Any Housing Code or Life Safety concerns will be addressed before reoccupied.

Lani Rutledge, property owner testified. She has improved the building. It has new appliances, paint, etc. She and her son bought the property and brought the building up to Code. They are striving to improve the neighborhood. They stopped using the unit in 2009 when the City told them not to use it anymore. She feels it was due to the switch in Housing Inspector's. It was on the P&S as a 5 unit. She never rented it to anyone that had a vehicle. It is for low to middle income tenants. There is a bus line 2 minutes away. It is a studio apartment. Usually only 1 person lives there.

Carley asked Walker if 10 parking spaces were needed for a 5 unit building. (Yes.) Carley asked Ms. Rutledge if there were 4 tenants in there now. (Yes.) How many have vehicles? (One.) Attorney Puffer stated that no other non-conformities would be there if the 5th unit was allowed.

In favor: none.

In opposition: Andrea & Dana Garneau, 19 Federal Street. Strongly opposed. The parking is inadequate on the street. Federal Street is a no parking street. The tenants have more than the vehicles mentioned. The 5th unit is a basement apartment and Federal Street has flooding issues, i.e. water main broke, etc. They bought their property in 2003. At one time they had one of 21 Federal St.'s tenants sleeping in their back yard. The tenants of that property have been a nuisance.

Wallner asked if they were a single family unit. (Yes as is 17 Federal Street.) Harrison asked if people still park on the street. (Yes, their tenants do. But there has been a decrease in traffic since it's been a no parking street.)

Spencer Culp, 17 Federal Street. His is a single family home. He concurs with what the Garneau's said. He has lived there since December 2012. Federal Street is a narrow one way street. It doesn't accommodate overflow parking. The Police Department has been to this building 3 times since 12/12. The quality of the tenants is not great.

Comments from Code Administration: Mike Santa stated that even if the variance were to be granted, the 5th unit would not be habitable without being brought up to Code. It requires a Building Permit. The basement unit lacks egress windows and the building may need to be sprinklered.

Rebuttal by Attorney Puffer. They are looking for the right to convert it, but they need to meet health and life safety codes. Federal Street is no parking on either side. If the tenants have a car they would have to park it elsewhere. The nature of the tenants, the Zoning Board should not be taking that into consideration. Carley stated that they do not.

DECISION: A motion to deny all three requests was made by Norton, seconded by Harrison and passed by a 5-0 vote. The Board felt that it was a more non-conforming use and that there was no hardship.

11-13 Gail Lafoe: Applicant wishes to utilize an existing 2,000 square foot barn for a consignment/antique shop (retail use H-1) and requests:

- 1) Variance to Article 28-2-4(j), Table of Principal Uses, to permit a retail shop where such use is not permitted,
- 2) Variance to Article 28-7-7(h), Surfacing and Drainage, to maintain and use the existing gravel driveway and parking lot when all driveways and parking lots for non-residential uses are required to have a durable and dustless paved surface,
- 3) Variance to Article 28-7-7(g), Driveway Width, to permit the continued use of a driveway with portions 15' wide when 24' is the minimum width permitted,
- 4) Variances to Article 28-7-1(c), (Parking) General Provisions, Demarcation Required, to permit parking spaces and directions of traffic flow that are not appropriately demarcated with pavement markings and signs,

For property located at 54 Garvins Falls Road in an RM Residential Medium Density District.

Attorney Michael Bedard testified. Gail Lafoe was also present to testify. Attorney Bedard stated that his wife owns the antique shop that is now occupying the barn. In 1973 a riding school was approved. From there it morphed into a tack

shop for 29 years then an antique shop and last year it turned into an antique/consignment shop. This building has been used for 33 years for this purpose. They are here to legitimize it. There are no safety problems. They are lucky to see 10 vehicles a day. North on Garvins Falls Road is a handful of other buildings including Racquet Ball Club, Dunkin Donuts, and on the other side of the road there is 1 commercial property. The hardship is that the owner is on SSDI and depends on the income from the property to survive. The City taxes it as a commercial piece of property. He submitted photographs. The driveway isn't conforming but the intent is to have cars pass safely and for 33 years that has been the case. It is a packed driveway.

In favor: none.

In opposition: none.

Comments from Code Administration: Walker stated that he knew it was a tack shop but was an owner occupied business. He never investigated it. It was brought up when the business changed, etc. and he had to pursue it at that point.

DECISION: A motion to approve the requests was made by Wallner, seconded by Harrison and passed by a unanimous vote. Norton stated that there are other commercial activities on the road. It doesn't violate the spirit of the Ordinance. Wallner felt that it met all criteria. Walker wanted it noted that it is a low intensity retail use and that there was testimony of 10 vehicles or less.

12-13 Adam G. Burr-Mecum for Concord Union School District: Applicant wishes to establish a retail store for the sale of pet food and supplies and to provide pet related services such as grooming and training and requests:

- 1) Variance to Article 28-2-4(j), Table of Principal Uses, to permit retail sales (use H-1) where such use is not permitted,
- 2) Variance to Article 28-2-4(j), Table of Principal Uses, to permit to permit personal service uses (use D-1) where such use is not permitted,
- 3) Variance to Article 28-4-2, Buffer Requirements for Residential District Boundaries, Section (b)(1), Buffer Width Standards, to waive the 30' buffer requirements of this Article with the condition the applicant will maintain a natural buffer of not less than 25' between the northerly property line and the edge of the pavement for the development rather than along the district boundary as required,
- 4) Variance to Article 28-7-2,(e), Table of Off-street Parking, to permit the provision of twenty four (24) parking spaces on the property where twenty eight (28) spaces are required.

For property located at 139 – 143 Old Turnpike Road on a lot transected by an IN Industrial District boundary and an RM Residential Medium Density District boundary.

Attorney Maria Dolder of Hebert & Dolder testified. Adam Burr-Mecum was also available to testify. Attorney Dolder stated that the proposal is for a retail shop for pet food and supplies. This is vacant land across from NH Federal Credit Union. It is a vacant, buildable lot. The property is unique as it is transected by zoning district lines IN and RM. It has grading issues. There is a 30 foot sewer easement on the zoning line to the City of Concord. They can put in a driveway and pavement, but they cannot build on the easement. There are buffer requirements even within the lot as it has a residential and a non-residential zone. He would like to build a 3500 s.f. building. TF Bernier has done the plans. They are containing the development on the IN zoned piece. All of this is a hardship. They are minimizing the impact to the surrounding area. The building will be a retail store and will be in conformity with the bank building. The parking relief is to keep all the improvements in the IN zoned piece. The applicant feels that 10 parking spaces would be enough. There is grooming and training also there. No other property in the area has this situation. The spirit and intent of the Ordinance is to have reasonable development of the property within its settings. He has his store currently on Airport Road, he is just moving it here. There is a dog groomer also on Airport Road. This is the least impact to the area. IN uses are more intense than this use. They will be keeping a natural buffer. The easement is the hardship and it is also protection to the abutters. It will not diminish the values of surrounding properties. There are other office uses in the area. All services will be within the building. There will be no animals outside and no overnighters.

In favor: none.

In opposition: Better Cloutier, Russell Street. She is concerned with parking in the back and doesn't want them to cut into the buffer in the back. It has blocked noise for all these years. Businesses have fences as a buffer also. i.e. IBEW on Airport Road, the insurance companies. She doesn't want anyone cutting across their property.

Susan Sierra, 8 Russell Street is concerned with the services. If there is any doggy day care that can be noise. Walker stated that that it is a separate use, and they did not request it.

Ezekial Barra, 58A Airport Road. His property is an investment property. He is concerned with the swale between the properties and he doesn't want them to throw any dirt into that.

Comments from Code Administration: Walker stated that this project still needs Major Site Plan Review with the Planning Department.

Rebuttal by Attorney Dolder. They are not required to hold the buffer off of Clouthier's back property line, but they will have a significant buffer.

DECISION: A motion to approve the requests was made by Wallner, seconded by Harrison and passed by a unanimous vote. Wallner felt that the property was unique.

- 13-13 Dan Freihofer, Freifuels, Inc. for CFA Corp.:** Applicant wishes to add a compressed propane gas fuel dispenser and tank to an existing fueling facility and requests the following:
- 1) Variance to Article 28-2-4(j), Table of Principal Uses, to permit the expansion a retail fuel facility in a district where such uses are no longer permitted,
 - 2) Variance to Article 28-3-2(d)(2), Uses Prohibited in the 100 year Floodplains and the F1 District, to permit the storage of hazardous materials in a F1 overlay district, for property at 112 Hall Street in an IN Industrial District.

Dan Freihofer testified. He submitted photographs to the Board. They want to put a skid mounted 2,000 gallon propane tank there. They would be dispensing fuel to commercial fleet owners. It is alternative fuel, green energy initiative. It is the perfect site. Commercial vehicles can get in and out of the site easily. It has an F1 overlay. The propane tank is anchored to the concrete slab and will not float away. Propane will not pollute the water. It is unobtrusive to the street. The tank will be invisible from the street. It has effective screening. It is a single dispenser and a 2,000 gallon tank.

Wallner asked if they would be refilling barbeque tanks. (No.) Carley asked who regulates this use. (Federal standards. In order to use the facility the person has to be trained first.)

In favor: none.

In opposition: none.

Comments from Code Administration: none.

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

FEBRUARY MINUTES: A motion to approve the Minutes was made by Harrison, seconded by Parker and passed by a 3-0 vote with Wallner and Norton abstaining.

A TRUE RECORD ATTEST,

Rose M. Fife, CLERK
ZONING BOARD OF ADJUSTMENT