

**ZONING BOARD OF ADJUSTMENT
April 3, 2013 MEETING
DRAFT MINUTES**

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

19-13 Peter Webster, for Webster Peter Realty, LLC: Applicant requests a Special Exception under Article 28-8-4(c)(2) to permit an expansion of a non-conforming steel manufacturing, fabrication and warehouse facility (uses K-7 & L-1) to add a 2 story 674 s.f. foot print addition which equals a 2.9% expansion of the existing building when a maximum expansion of 10% is permissible by Special Exception, for property located at 10 Basin Street in an OCP Opportunity Corridor Performance District in an F-1 Flood Hazard Overlay District.

The Board, by a unanimous vote, opened and recessed this case.

15-13 Steven Carter: Applicant wishes to remove a 15' wide x 18' deep garage and replace it with a 20' wide x 22' deep garage and maintain and extend the existing non-conforming side and rear setbacks and requests the following:

- 1) Variance to Article 28-4-1(h), The Table of Dimensional Regulations, to permit a side setback of 1'6" where a side setback of 10' is required and,
- 2) Variance to Article 28-4-1(h), The Table of Dimensional Regulations, to permit a rear setback of 2' where a rear setback of 25' is required,

For property located at 6 Dunklee Street in an RN Residential Neighborhood District.

Steven Carter testified. The house was built in 1910. The original garage is in poor repair. The foundation is cracked. They purchased the home 2 years ago. They have spent over \$100,000 remodeling the home and they need a bigger garage to fit a car into. The foot print is 5 feet to the left wider and 4 feet out. The new foundation will be no closer to the setbacks. This will not affect the property values in the neighborhood. It will enhance it.

Parker asked if they were demolishing the garage. (Yes.) Can you move the garage forward? (They would not have a good turning radius if they did that.) Where is your driveway located? (Right along the property line.)

In favor: Alex Streeter, 4 Dunklee Street, no objections.

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. Wallner felt it met all 5 criteria for a variance.

16-13 Tedeschi Food Shops: Applicant wishes to construct a 4-position fueling canopy to replace an existing 8-position canopy, reconfigure 3 driveways, reconfigure parking and requests the following:

- 1) Variance to Article 28-4-1(h), The Table of Dimensional Regulations, to permit a front setback of 18' where a front setback of 30' is required,
- 2) Variance to Article 28-7-2(e), Table of Off-street Parking, to permit the provision of 89 parking spaces when 109 are required,
- 3) 28-7-5, Requirements for Accessible Parking Spaces, to allow the provision of 1 accessible space when 4 accessible spaces are required,

- 4) Variance to Article 28-7-7 (e), Minimum Aisle Widths, to permit one-way aisle widths of 12'8", when 15' is the minimum aisle width allowed,
 - 5) Variance to Article 28-7-7(f), Driveway Widths, to maintain a driveway width of 38' on Village Street and 76' & 44' along Borough Road when 28' is the maximum allowed,
 - 6) Variance to Article 28-7-7(g)(2), Setbacks and Restrictions, to maintain parking with no setback from a front property line and stacking spaces within 7'3" of a front property line when a 10' setback is required,
 - 7) Variance to Article 28-7-7(g)(3), Setbacks and Restrictions, to maintain and add parking in front between the building and the street when parking in a General Commercial (CG) District is to be located to the side or rear of any building or structure.
 - 8) Variance to Article 28-7-10, Perimeter Landscaping, provide variable width parking lot perimeter landscaping ranging from 0' and 10' in width between the parking lot and the front property lines when a 10' landscaped strip is required along both front property lines,
 - 9) Variances from Article 28-7-13, Off Street Loading Requirements,
 - a. To provide 1 loading space when 2 spaces are required, (1 for each building)
 - b. Location of Loading Spaces, to locate a loading space in front of the building when a loading space is required to be located to the side or rear of a building,
 - c. Design Standard for Loading Spaces, to permit a loading space with an area of 490 s.f. when 1,000 s.f. are required,
 - d. Setbacks for Loading Spaces, to permit a loading space with no setback from a property line when a loading space must be at least 10' from any property line,
 - 10) Variance to 28-7-14(b), Location of Refuse Container Area, to permit the refuse container loading area to be located so as to require a collection vehicle to maneuver to and from the adjacent street by backing or maneuvering into the street,
- All for property located at 9 Village Street, Penacook in a CG General Commercial District.

Michael O'Donnell of TF Moran testified along with Bob McGann of Tedeschi Food Shops. Mr. McGann stated that they have been tenants at this property for 20 years. They have a lease with the property owners and they want to redevelop the fueling facilities. What exists now is very close to the front door and they want a safer layout. They only want 2 dispensers vs. the 4 that they have now. Mike from TF Moran testified that they were on a corner lot in the Thirty Pines Plaza. It is a triangle shaped lot. He went over the site plan. They need to update the fueling equipment. They need to update the safety of the traffic flow, pedestrian traffic, etc. They want to add more 'green' to the site. They will be narrowing the driveways and making them compliant. All 5 site drives are non-conforming widths. They will tear down the existing canopy and rebuild a new one. He showed plans of a new canopy and its location. He went through the criteria. It is a unique property with 2 frontages. They will be adding 6 additional parking spaces. He went through each bulleted request individually. The dumpsters will be relocated out of the right of way.

Carley asked about deliveries. (Potato chip trucks, soda trucks, bread trucks.) Harrison asked if they were making a concrete pad for loading. (Not sure. Striped off and noted as a loading area.) Norton asked about the new canopy lighting. (LED lights on the belly of the canopy. It is a standard canopy.)

In favor: Paul Cole of Foxfire Management. He stated that the owner supports the proposal.

In opposition: David Caron, owns the property to the North of Thirty Pines. He is concerned with request #9a on the list of variance requests. They drive and unload on his property. His asphalt is starting to cave in. His curb is ruined. Wallner asked him to show them his property line on the map. He went on to say that they block his driveway.

Comments from Code Administration: Mike Santa asked the applicant if they were withdrawing request #3 accessible parking spaces. (They are withdrawing request # 3 as they now meet the Ordinance requirements.)

Rebuttal by Byron Bedard of Ransmeier and Spellman. There is an access easement over Mr. Caron's property. They have a conforming loading zone.

DECISION: A motion to approve numbers 1 through 8 and number 10 was made by Norton, seconded by Wallner and passed by a unanimous vote. The Board felt that they are improving the property and are within the Spirit of the Ordinance. A motion to grant request 9b, 9c, and 9d was made by Parker, seconded by Wallner and passed by a

unanimous vote. A motion to deny request 9a was made by Parker, seconded by Norton and passed by a unanimous vote.

17-13 WBIN Media, Inc.: Applicant wishes to re-develop the former Walker School property from an elementary school to a radio/television media facility (use K-10) and requests the following:

- 1) Variance to Article 28-4-2(e), Buffers for District Boundaries in Collector or Local Streets, to permit buffers that average less than 15 feet in depth around the perimeter of the site when a buffer ranging between 10 feet to 20 feet with an average width of 15 feet is to be provided,
- 2) Variance to Article 28-6-7(i), Signs Prohibited, to permit 2 building signs with the highest point 33.5 feet above grade where the highest point cannot be more than 25 feet above grade for buildings which are less than three stories in height.
- 3) Variance to Article 28-6-9(c)(1), Permitted Freestanding Signs, to permit 3 freestanding signs totaling 65 s.f. when 1 freestanding sign of 40 s.f. is permitted,
- 4) Variance to Article 28-6-9(c)(2), Permitted Freestanding Signs, to permit free-standing signs within 5 feet of a lot line and within 50 feet of a residential zoning district when no point of a freestanding sign may be within 5 feet of a property line or within 50 feet of a residential district boundary,
- 5) Variance to Article 28-6-7 Signs Prohibited, (m) to permit off-site signage where signs unrelated to the principal use of the property is not permitted & (g) to permit a sign other than a sign erected by or on behalf of a governmental body to be located in or on a public right-of-way,
- 6) Variance to Article 28-7-2(e), Table of Off-Street Parking, to provide 58 parking spaces where 97 are required,
- 7) Variance to Article 28-7-7(g)(1), Parking Restrictions in the Required Front Yard, to permit parking in the front yard of property located in the Institutional (IS) Zoning District where said parking is prohibited,
- 8) Variance to Article 28-7-7(g)(2), Setbacks from Lot Lines, to permit parking within 10 feet of a collector or arterial street (North State Street and Bouton Street) and within 5 feet from Church Street for an existing parking lot, when 10 foot and 5 foot setbacks are respectively required.
- 9) Variance to Article 28-7-10(a), Parking Lot Perimeter Landscaping Required, to provide less than 5 feet of parking lot landscaping for the existing parking lot adjacent to Church Street and less than 10 feet of parking lot landscaping along North State Street and Bouton Street for a proposed parking lot, where a 5 foot parking lot landscaping buffer along the Church Street parking lot is required, and a 10 foot parking lot landscaping buffer along North State Street and Bouton Streets.

For property located at 4 Church Street in a IS Institutional District with an HI Historic District overlay.

Attorney Richard Uchida of Hinckley, Allen Snyder testified along with Jonathan Halle of Warren Street Architects and Bill Binney of WBIN. Also available to testify was Matt Mayberry of WBIN and Chris Nadeau of Nobis Engineering.

Attorney Uchida stated that the use is allowed by right. They will need Conditional Use Permits. It is a 1.86 acre parcel. It has 3 front yards. The site is surrounded by several zoning districts. The Purchase and Sales (P&S) agreement requires them to preserve the building and the parking area. The building was built in 1915. They went through the site plan and showed where each variance request was located on the lot. There is a sidewalk on the property. The City has asked for 10 feet to be granted for them for a sidewalk and a punch out area for a bus stop. In return the City will give them some property on their North State Street frontage. Then the signage will be on site and request #5 is no longer needed.

Bill Binney, President of WBIN testified. Concord is the only State capital without a full powered radio/TV station. He owns 16 radio stations and 1 TV station. He owns WJYY, The Wolf, WLNH, Frank FM, WFMQ. WJYY is located in Gilford NH. They are a locally owned and locally managed network. The building is unique. He would like to keep the integrity of the building intact. They have significant involvements with internships and schools. They are bringing jobs to Concord NH. They produced a video which they showed the Board. They are going to take down the old fencing and do more landscaping.

Jonathan Halle testified. He pinned up plans for the Board to view. They will be historically correct. They hired Liz Hengen and they have spoken with the Heritage Commission. There is a memorial on the corner of Bouton Street that they are trying to keep. They have 3 dishes that they need to make less visible. They have created a 4 foot retaining wall and a 4 foot berm to hide these dishes. Each sign was designed to help screen something. They are allowed 1 sign

at 40 s.f. and they would like 3 signs at a total of 65 s.f. He explained all the features on the site plans. He explained the higher signs also.

Attorney Uchida went through the variance requests. It is a mixed zoning district which makes the buffers impossible. They have 3 front yards and no rear or side yards. They could have 12 building signs by virtue of their building frontage but do not want that. They have worked with the Heritage Commission. The building, as it exists, is non-conforming. The Heritage Commission asked that they keep the "Walker School" signs on the building for historical purposes. They only need 30-35 parking spaces for this use.

In favor: Jack Hutton, 137 North State Street. This will not diminish his property value. Great addition to the neighborhood. A letter from John Dinetto, 114 North State Street in favor.

In opposition: Attorney Philip Hastings of Cleveland, Waters and Bass with John Fornier of Concord Group Insurance. Attorney Hastings submitted a packet of information to the Board. They have only 2 areas of concern. Three signs of 65 s.f. is of concern. The sign on the corner of Bouton and North State is proposed to be 26 s.f. and 4 feet of brick on a 3 foot high berm. This could impede visibility. The size is excessive and out of character with the neighborhood. They are concerned with parking; the number of spaces and where they are located. This is a 40% reduction in parking being asked for. They are concerned with the safety aspect. John Fornier stated that signage is an issue. The traffic pattern. They are concerned with visibility. Attorney Hastings stated that they are not opposed to the redevelopment, they have safety concerns only.

Comments from Code Administration: none.

Rebuttal by Attorney Uchida. The signage issues – he went over their concerns. Wallner asked how high from the sidewalk to the top of the sign? Attorney Uchida stated that it would be approximately 7 feet high. The sign at Bouton Street intersection is 26 feet long by 2 feet wide. Parking – he went through where on the site it would be placed and why.

DECISION: A motion to approve request numbers 1, 8 and 9, as modified was made by Norton, seconded by Wallner and passed by a unanimous vote. A motion to approve request #2 was made by Norton, seconded by Harrison and passed by a 4-1 vote with Parker in the minority. With regard to request #3, Parker could not see the hardship. Carley stated that he thought it was the lot size/shape. Harrison felt that they did a good job of utilizing the signs. A motion to deny request #3 was made by Parker and failed for lack of a second. A motion to grant request #3 was made by Norton, seconded by Harrison and passed by a 4-1 vote with Parker in the minority. A motion to grant request #4 was made by Parker, seconded by Harrison and passed by a unanimous vote. A motion to grant request #7 was made by Wallner, seconded by Harrison and passed by a unanimous vote. A motion to grant request #6 was made by Harrison, seconded by Wallner and passed by a 4-1 vote with Parker in the minority. Request #5 was withdrawn by the applicant.

18-13 Interchange Development, LLC: Applicant wishes to install a multi-tenant directory sign and requests a Variance to Article 28-6-9(a), Table of Maximum Sign Dimensions for Nonresidential Districts, to permit a freestanding sign of 95 s.f. where 60 s.f. is the maximum allowed for property located at 1 Whitney Road in a CU Urban Commercial District.

David and Lori Rausseau testified of Interchange Development LLC testified. They submitted additional information to the Board. It is a 3.75 acre parcel. An Xtra Mart will be developed on the site. The sign was approved by the City. The Xtra Mart was approved at 60 s.f. but they want to add for other uses on the property that have not yet been established. There will be one building with several uses.

In favor: none.

In opposition: none.

Comments from Code Administration: none.

DECISION: A motion to deny the request was made by Norton, seconded by Parker and passed by a unanimous vote. No hardship.

20-13 John L. Arnold for P&M Realty of Concord, LLC: In accordance with Article 28-9-3(C)(6), Expiration of a Variance, applicant is requesting a 1 year extension to the variances granted for Case #04-11 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.

Attorney Richard Uchida of Hinckley Allen & Snyder testified. Peter Bloomfield of Concord Steam also testified.

Attorney Uchida gave a brief background of the request. In 2008 the variances were approved for a steam plant. In 2010 they came back to request an extension. In 2011 they received approvals for the variances again. They are now asking for another extension.

Mr. Bloomfield stated that it has been a long road to get the financing. In January the Federal Government changed the rules again and they are trying to get the Financing all over again. They should hear within 30-45 days and should be starting construction this summer.

In favor: none.

In opposition: none.

Comments from Code Administration: none.

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

OTHER ITEMS:

A motion to approve the March 2013 Minutes was made by Wallner, seconded by Harrison and passed by a unanimous vote.

A TRUE RECORD ATTEST,

Rose M. Fife, CLERK

ZONING BOARD OF ADJUSTMENT