

**MINUTES FOR ZONING BOARD OF ADJUSTMENTS
DECEMBER 17, 1987
COUNCIL CHAMBERS**

MEMBERS PRESENT: Alden Joy - Chairman, Barry Hager-Vice-chairman, Joyce Bowden, Willam Colbath, Randy Turner, Dave Bertrand, Mark Dellner, Dave Anderson.

ALSO PRESENT: Steve Stancel - Planner, Dick Selleck - Inspector, Patricia Unish - Recording Secretary.

Business meeting was called to order at 7:05 P.M.

Minutes from November 19 and November 23, 1987 were accepted.

11-19-87 Dave Bertrand motions to accept minutes
Dave Anderson - seconded
11-23-87 Dave Bertrand motions to accept minutes
mark Dellner - seconded

ACCEPTANCE FOR CASES TO BE HEARD THAT EVENING

H87-46 Mark Dellner motions to accept
Dave Bertrand - seconded
H87-26 Dave Bertrand motioned to accept
Mark Dellner - seconded
H87-68 Bill Colbath motioned to accept
Mark Dellner - seconded
H87-69 Bill Colbath motioned to accept
Mark Dellner - seconded
H87-70 Mark Dellner motioned to accept
Dave Bertrand - seconded
H87-71 Bill Colbath motioned to accept
Mark Dellner - seconded
H87-72 Dave Bertrand motioned to accept
Dave Anderson - seconded

Steve Stancel explained the Ordinance on subdivision to the Board. Steve also stated that next month will be elections. He would like to have a work-shop for all zoning board members. This work-shop will deal with the Master Plan. A work-shop was scheduled for the second Thursday in February. Which will be Feb. 11, 1988 at 7:00 P.M.

Mark Dellner stated he will be unable to attend the January Zoning Board meeting.

Alden Joy stated that a request from Mr. Valpey (H87-72) to move his hearing up to the first hearing of the evening.

Alden Joy asked the Board to vote upon this.
Mark Dellner motioned to move the hearing.

Dave Bertrand - seconded
Vote U/A

Alden Joy stated he will be stepping down from cases H87-68 and H87-69. Dave Anderson will sit in on case H87-68, and Randy Turner will sit in on H87-69.

Dick Selleck stated that the agenda for January is now full.

Attorney Dan Callahan questioned Alden Joy on who would be sitting in on the Tamposi/Nash hearing.

Alden Joy stated the Board members who sat in on the hearing in September will rehear the case that evening.

Alden Joy read a letter he received from the City Attorney (Scott Woodman) Stating there will be a trial January 22, 1988 at 9:30 A.M. at the Strafford Court House. This case pertained to William and Sheila Dube vs. the City of Dover, N.H./Athur J and Winifred grimes.

Business meeting closed at 7:25 P.M.

PUBLIC MEETING OPENED AT 7:30 P.M.

Alden Joy explained the procedures for the evening to the public, and introduced all Board members.

H87-72 Theodore S. Valpey Jr. 9 Bayview Road, also known as Assessor's Map J, Lot 19, Zoned R-40, requests a variance from the terms of Article X, Section 170.41.A to increase a non-conforming structure.

Mr. Valpey stated he would like to put an addition onto his home. A variance was needed again. Mr. Valpey was granted a variance a few years ago to build an additional apartment for his caretaker. Mr. Valpey will be adding a bedroom, office/study, and an enclosed pool area. Mr. Valpey also stated he met all requirements.

Ron Callan a direct abutter agreed to this application. If denied he will not be able to utilize his property. It would also improve the neighborhood.

Steve Stancel questioned where the hardship was?

Mr. Valpey stated that having a variance the last time, requires him to return for another variance for this addition.

Alden Joy read a letter from City Attorney (Scott Woodman) stating the use of this property is conforming in that each building is a single family dwelling and each dwelling is used for a single family residential use.

Public Hearing Closed

The variance was granted with no conditions.

1. the Applicant does face a hardship due to the fact of the previous variance. Normally this would be an accepted change without any variance.
2. It will deliver substantial justice by allowing normal use of the property.
3. It will be in harmony with the spirit and intent. There was no detrimental impact.
4. It will not be any diminution in the value of the surrounding property.
5. Public Interest will be delivered by the testimony given in favor.

H87-46 Samuel Tamposi and Gerald Nash, 3 Plaza Drive, also known as Assessor's Map D, Lot 2, Zoned B-3, requests a variance from the terms of the Interim Growth Management Ordinance to construct a 140 unit multi-family housing project. (This was a rehearing of a case heard on 9-17-87).

Barry Hager will step down and Dave Anderson will sit in on this case.

Dan Callahan attorney for Tamposi and Nash. Stated he was appearing before the Zoning Board again tonight on a rehearing. We are requesting a variance from the Interim Growth Management Ordinance. This prohibits us from going forward. Our site plans have been fully accepted by the Planning Board. Our Special Exception application followed. This is the subject of tonight's hearing. This parcel of land consists of 21 acres. Situated uniquely by Weeks Traffic Circle, two city wells, other residential properties, commercial property, property owned by the State of New Hampshire. To put it in the simplest terms we are seeking a variance tonight in order to use this property. If this variance is not granted from the Interim Growth Management Ordinance, the City of Dover has then taken the property. This is illegal, the property owners will be entitled to compensation for this land. Mr. Callahan went on to explain a few other cases with the same sort of problems. The Interim Growth and other regulations enacted by the City of Dover. The City of Dover does not have the right to impose upon the private citizens. This is illegal, the property owners will be entitled to compensation for this land. Mr. Callahan went on to explain a few other cases with the same problems with variances, Interim Growth Ordinance and other regulations, enacted by the City of Dover. The City of Dover does not have the right to impose upon the private citizens. This property is zoned B-3, B-3 Zone is for commercial use. Options to property owners are banks, barber shop, hotel, motel, retail, multi-family by Special Exception. There are no commercial options because of the location of this property. A plan was shown to Board Members, a view of the lot showing all abutting property. This is no commercial option for this property, because we are located near the City wells. The City has Aquifer Protection which reduces the coverage from 50% to 30% in Aquifer Recharge Areas, and now that area covers 10%. The only reason our proposal is not subject to this 10% was because our plan was accepted before the Aquifer Ordinance. The Aquifer Ordinance came into effect November 1987. If 10% requirement was in effect for commercial, and it is in effect for commercial only 10% of the lot can be covered, 10% of a 21 acre lot (2.1 acres).

(Going back to Exhibit 1) Mr. Callahan explains the accessways onto the property. Stating that after paving the roads 1 1/2 acre of surface left to be built on. 6/10 of one acre can have construction on it.

Exhibit 2

Copies of request for our rehearing were distributed to all Board Members. Exhibit 2 refers to a policy adopted by the City of Dover. The City of Dover should discourage tracks of land to allow access through residential property. Policy #2 says property zoned as business development should be discouraged from impinging on residential areas. That policy says we cannot use the access point on Plaza Drive, for commercial purposes. Mr. Callahan refers now to Exhibit #3, stating the State of New Hampshire wrote City of Dover and requesting from the City of Dover where the State with property along Sixth Street could use access point through Long Hill Road and Long Hill Road Extension to allow for commercial access. City of Dover responded March 9, 1984. City has enacted on a policy that would restrict commercial traffic. With Lot 2, Map D - 1984 - City of Dover Planning Board approved this a commercial site. Last hearing in September, the plans show one access point. The access point shown through property was through property now owned by the State of New Hampshire. Plans required that one access point be on Sixth Street, connector road and only that road. Access point-through residential property and Weeks Traffic Circle were blocked off.

Exhibit #4

Exhibit 4 is a signed, approved plan dated January, 1984, and signed by Planning Director Timothy Sheldon. Mr. Sheldon made notes on this plan that read: State of NH refused to sell salt shed property: Plans Are Void.

Exhibit #D

Can traffic exit off the Weeks Traffic Circle. There is a access point off Plaza Drive on to the traffic circle. City of Dover Growth Ordinance 170-28.2 says in Section E new construction structures on these parcels of land that access onto the Weeks Traffic Circle. That is the City of Dover's Ordinance.

Exhibit 4C

Letter from the State of New Hampshire Department of Public Works and Highways. The letter specifically mentions the predominant concern which requires additional discussion, this concern is the left turn motion into Old Rochester Road.

The developer cannot develop this property. If the Demoulas project were submitted today they would be rejected. The

affidavit that I do not have is one from the City Planner at the time in 1986 and from Pete Bouchard in charge of city water and sewer.

The possibility of a residential development was discussed with them. Based upon their conversation, Mr. Millimet, continued with this project. The results were to seek a project which would protect the city water. Mr. Nash and Mr. Tamposi have owned this property for some twenty years. They have paid taxes and never demanded any services. The property would have a better value if built for residential use rather than commercial. There have been four water reports done on this property. The City has done two and we have done two. As a result of this report, the City reported challenges some of the methods, but reaches the same conclusions. The City reports of this project is approved it will be the last project approved it will be the last project approved in this area. I have reviewed every lot based on Assessor's Map, the Aquifer area, over 95% of those lots have some improvements on it. The City has a copy of traffic study, however, Exhibit #5 developer (-----
-) undetermined) The traffic generated by the proposed development will have a negligible impact to the level of service on Glenwood Avenue and its intersections. While the traffic volumes through the intersection with Whittier and Plaza Drive increase due to the development by 24 percent in 1987 and 17 percent in 1997 the L.O.S. remains excellent. The development therefore will not create the need for any roadway or intersection improvements.

Access will be limited to Plaza Drive. The City will have the right to take any easement. Mr. Callahan Passed B.H. Keith & Associates resumes and a statement from them. Report stating a residential proposal will be the best economic use. Property left in its current condition poses more of a problem to the water supply and quantity than does a development. Growth Ordinance passed by City says it treats all developers and land owners fairly reasonable. Exception of the developers, is to develop the property for residential purposes based on their meeting on May 1986. To deny this variance would be denying 170.3 which is to encourage most appropriate use of land in the City of Dover.

That is your charge. That charge is not accomplished by denying this variance tonight. There is no commercial site similarly located like this site. Similarly situated exactly like this property. A parcel of land 21 acres, abutted by two city wells, state property residential and commercial property. If we were in any other section of the City, we could develop commercial without coming to the Board. The Growth Ordinance only applies to multi-family housing. If we were located downtown Dover we could do multi-family housing,

without the Growth Ordinance making a special exclusion. The hardship in this case the inability to use this property in the zone which it is located and that is commercial. The only alternative is to get a Special Exception to develop this land residential. Spirit and intent of the ordinance you must read the zoning ordinance not the growth ordinance. This variance is inconsistent with the Growth Ordinance. Spirit and intent of the zoning ordinance 170.3 defines most appropriate use of the property. Substantial justice will be awarded if this variance is granted. Because you will be complying with the Constitution of the State of New Hampshire and the United States of America. It accomplishes various benefits for the City of Dover. There will be no diminution in the value of property. Vacant land has less value than developed land. Public interest will be achieved. It is the ideal use of the land. Multi-family would be the best use for this property. There is no other commercial site in Dover like this property. This variance ordinance is confiscatory to the property owner.

Gerald Nash stated that he owned this land with Mr. Tamposi for some twenty years. We purchased this land when it was the buerro pits and gravel pits used to build the turnpike. There were pits 60 to 70 feet deep. We spend considerable amount of money to make this land what it is today. We had plans on using it for uts zoned purpose of commercial useage. The City and several people used it for one reason or another. We were never allowed to use the turnpike, or the Week's traffic circle. The last attempted use was DeMoulas, carried all the way to the conclusion. But he was turned down because he could not acquire another access other than going out through either end of Plaza Drive. After that we were notified of a public hearing by the State of New Hampshire and the City of Dover on the project that's just about completed at the Week's traffic circle. Ah, that was suppose to be done with improvements in that area. It was stated by the Engineer at that meeting, that they would not gravel and the City would not do anything to help so that you could bring in more traffic on that Circle. After that meeting the City never acquired originally that 400 foot access that they are required by State of New Hamshire to own to protect their own wells. They brought in an new ordinance to restrict growth and restrict use of that property around the wells to do it without paying for it. I could get two to three times as much money for that property as commercial property rather than residential property. If we don't go out Week's Traffic Circle we cut the property down. It is allowed under the Ordinance to use it under Special Exception. We have to get some use out of this property. We met with City officials of the City and all were in favor of this multi-family project. They thought it was a

great idea. The led us down a Garden path, we spent a large sum of money. Then all of a sudden things started to slow up. There were road blocks coming up. One was the fee to go for a variance. We were supposed to be on the agenda, later to find out we did not make the agenda. The fee's were not turned in until several weeks later. its been one thing after the other. We do not want to go to court. Thats the last thing we want to do. If we cannot get the most out of the property that we should thru the zoning we will be satisfied to do this. If we cannot do this we have no alternative but to seek relief by the court. This will be the first time in my life that I had to do this. After 20 some odd years I have rights. To have the City of Dover take these rights away I think this is wrong. I plead my case.

Mark Dellner asks Board for a five minute recess. To be able to read over all the exhibits given to the Board members by Mr. Callahan.

Board Members vote on a five minute recess.

Public Hearing Continues

Opposition:

Bill Collins - Planning Director for the City of Dover stated he was there that evening because of information that was submitted. In requesting a rehearing his name was used very, very liberally. The use of my name, that are not accurate and ways that are not correct. There are several statements in the affidavit signed by Joseph Millimet, as well several statements in the request for a rehearing that I encouraged, and certain things that I requested, that I never did. The affidavit signed by Joseph Millimet statement #5 stating at that meeting referring to May 9, 1986. Mr. Collins and Mr. Bouchard reacted favorably and approved and encouraged multi-family development on this land. Mr. Bouchard (public works director) and myself never approved any of these plans. The meeting that occurred May 9, 1986 which was my 11th day on the job as Dover's Planning Director. We met in my office, there were no plans, no calculations, no reports. The only thing that was presented was a colored sketch or a colored photograph. It was something colored in with a magic marker. Pete Bouchard was walking down the hall. I called him into my office. We stood for a very brief time, we never even sat down. Looking over the colored sketch there was a very general discussion which took place very briefly. We did discuss the idea of multi-family units on this property. We did react favorably, but it was based on a very general, and very brief assessment. There was no discussion on sewerage, traffic, no details of site plan approval. Mr. Bouchard and myself have no authority to

approve anything. If we had that authority we would have actually more authority than the State Board gives the Planning Board. As this statement applies we would have approved plans without any public hearing process. This was a very, very general discussion. It was not a discussion comparing development alternatives as the affidavit complies, it was a discussion of a colored sketch that took place in that meeting. It was so brief that we did not even sit down. We stood up and it was a meeting that Pete Bouchard was there by sheer accident. During the course of that discussion, I pointed out I had no idea what the property was, I had been a resident of Dover for barely two weeks and been on the job for about two days. Pete Bouchard stated he would drive me out there someday. How could I have encouraged one type of development, let alone approve the process of this property when I didn't even know where the property was located. Second page of the Affidavit and spelling out several of the points that Mr. Millimet said that approval and encouragement was based upon. There was a statement, the whole project would result in drainage problems in that area and that was supposedly at this point approved and encouraged this project. There were no drainage plans, no calculations, there was nothing other than a colored sketch. Next Item, Item #D was stated that the project would be amended with all the drainage problems and concerns in that area. We have a computer that we run to determine the sewerage capacity available. We did not run this computer program on May 9, 1987.

Paragraph #7 There was no application submitted on January 9, 1987. The application for this project was submitted on April 16, 1987. What did occur on January 9, 1987 at 9:30 am Mr. Millimet and Mr. Gilford met in my office and were given a photo copy of the first draft of an aquifer protection list. In this draft it stated any development would be zoned 10% of the size of being covered. I explained this ordinance would be adopted and there may be some problems.