

CITY OF DOVER

DOVER ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers - 288 Central Avenue, Dover, NH 03820
Meeting Date: **Thursday, August 21, 2008**
Meeting Time: **7:00 pm**

1. ATTENDANCE

- Regular Members Present: Chair Masi Denison, Vice Chair Bill Colbath, Frank Landford, Jim Kelley
- Regular Members Absent: Sam Reid
- Alternate Members Present: Chris Prior
- Alternate Members Absent: Otis Perry
- Staff Present: Tom Clark, Building Official, Rick Jones, Zoning Administrator and Jennifer Bretz, Recording Secretary

Meeting called to order at 7:06pm

2. APPROVAL OF PRIOR MINUTES OF JULY 17, 2008

Colbath stated on pg. 3 John Sullivan was contracted "with B&M railroad to purchase the property." Kelley stated on pg. 7 add an e to Kelley. Colbath added that the sentence should be "there were technical issues on the plans submitted."

Motion: Colbath made the motion to approve with corrections, Kelley seconded. Vote: U/A.

3. OLD BUSINESS – NONE

Denison, Colbath, Landford, Kelley and Prior will be voting.

4. NEW BUSINESS

- A. * Z 08-15 A -Aranosian Oil Co., Inc., 52 Central Avenue, a/k/a Tax Map 15, Lot 71, zoned B-3, requests an Appeal from an Administrative Decision as it relates to Article XII, Section 170-52.C (2) (b) regarding Article IX, Section 170-32.D (5)(a)(Q)(Sign Table), to install a LED sign.

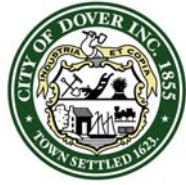
Paul Kenney represents Aranco Oil. He is here to appeal an Administrative Decision. The company disagrees with the Building Inspector's decision. He reads from Section 170-32.D (5). The LED signs they want to put up are price signs only. It does not flash or move. To change the numbers, someone has to go out and point a remote control at the sign. He passes out pictures of the proposed sign. (In file) On the current sign, in the winter, the numbers are frozen to the sign. You have to use a pole to put the numbers up with. Occasionally, someone has to get onto a ladder to get the numbers down. The new signs do not flash or change in intensity. They are reducing the signage. Instead of having four products, they are only having two products, Regular and Diesel.

Kelley asked where would the sign go and could the intensity be increased?

Kenney stated the intensity would not change because it is not run by a computer. The sign is completely self-contained. The remote control changes the numbers.

Kelley asked if that required a small computer to make the changes.

Kenney stated it is in the sign. It can only be changed by the remote. The signs only purpose is to show the price of regular or diesel.



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Motion: Kelley made the motion to accept the case, Landford seconded. Vote: U/A.

Public Hearing Open

Jerry Lynch, a Dover resident, stated at one time, Dover was worried about flashing lights running up and down Central Ave. If you allow one person to put in this type of sign, you will have to do it for everyone.

Jones stated that the staff met with Mr. Kenney prior to the application submission. Jones sent Kenney the denial letter based on their meeting. Based on Section 170-32.D (5) the definition of flashing sign, his sign meets the qualifications of the definition of a flashing sign.

Clark stated that from a historical perspective, there was a sign that was granted for a variance provided they stuck to a certain condition, which they did not do. A legal case ensued for a few years. This specific ordinance was drafted to include any electronic message center. That is the type of sign that Mr. Kenney is proposing. The ordinance was written so that none of them would be able to be displayed anymore.

Denison stated that what Clark is referring to is the Naser Jeweler case.

Public Hearing Closed

Prior stated he has seen the signs that Kenney is talking about. As long as it does not scroll or change, he understands what Kenney is looking to accomplish.

Denison read the denial letter written by Rick Jones. (In file) She stated that it is clear how the Planning Board and town have drafted this ordinance. Whether the board agrees with it or not, is not what they are deciding on. The board's has to decide if the administrative decision was wrong. Whether you think there should be an exception for fuel prices, there has not been one made. What would have to happen is if the applicant has a problem with it, they need to have the Planning Board adjust the ordinance to reflect the fact that fuel prices are not characterized in this.

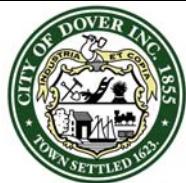
Colbath stated given what the Planning Board has said it is a changeable sign.

Landford stated that there needs to be a change in the ordinance before it can be allowed.

Motion: Colbath made the motion to uphold the administrative decision, Kelley seconded.
Vote: U/A

B. * Z 08-15 B - Aranosian Oil Co., Inc., 52 Central Avenue, a/k/a Tax Map 15, Lot 71, zoned B-3, requests a Variance from the terms of Article IX, Section 170-32 D (5) (a) (Q) (Sign Table), to install a LED sign.

Paul Kenney represents the applicant. He stated that the ZBA sits here for one reason, to correct things that slip through the cracks. No ordinance can cover everything. He agreed with the City of Dover when they stated No Flashing or Changing message boards. Everyone said that the



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changeable signs were a problem. The station service industry is changing. They are going to the LED signs. The LED signs are static, they do not move. Unfortunately for them, they slip through the crack. They can not improve their method of showing the price of their product because towns have gotten sick of scrolling message boards. They are asking for a variance to allow them to change the sign to an LED sign. In granting them the variance, they will be held to the variance. The variance will control the situation.

Motion: Colbath made the motion to accept the case, Prior seconded. Vote: U/A

Kenney reads over his application. There will not be any scrolling or intensity of light. The price has to be changed manually with the remote. It will not be changed by a computer. The LED signs give gas stations a cleaner image. Communities are against scrolling signs because it is a safety issue. This is a safer sign.

Public Hearing Open

Mike Garofano, 258 Dover Point Rd, stated he drives back and forth, to Washington D.C., on the interstate. He has seen the kind of signs that the applicant is speaking about. He hates pulling into a gas station where he thinks he's paying one price but it turns out that the gas is \$.15 more a gallon. If this will help advertise the more consistent item, then that would be good.

Jerry Lynch, a Dover resident, stated that granting the variance will open the door for other types of sign. Flashing signs have already been through the City of Dover and the citizens decided that they did not want them.

Clark stated the sign situation started with a promise that it would meet a condition of the variance. In order to enforce the condition the City had to go to court, which was an extensive legal battle and it cost the City a lot of money. He's not saying that it will be repeated but that is the history of this type of sign.

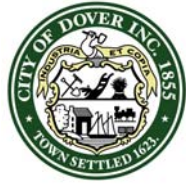
Denison stated the variance for the Naser case was conditioned on changing every 10 minutes which created an enforcement burden for the town. It was hard to maintain and at the end of the day it became a court case.

Public Hearing Closed

Prior stated the sign does not and cannot flash or scroll. Are all of the signs designed this way or could you purchase one that does have the ability to flash? Does the device that you would receive with the sign allow you to scroll, flash or burst the sign?

Kenney stated the device can only change the price. If necessary, they would shut the sign down to change the prices. It can't scroll and it's not designed to scroll. Refers to the pictures. (In file) They did not want to put an electronic message board in. It will have a manual reader board and only LED for the price.

Colbath stated it's a question of changing technology as far as the sign goes.



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Kelley stated that should be reflected and updated by the Planning Board.

Colbath stated they did but they tried to step too far the other way. That is what they are here to adjust; they're the Zoning Board of Adjustments. The use of LED is better technology than what is available.

Prior stated he feels that if they are clear and concise about how the sign is to be presented, they are not opening themselves up to a Naser Jeweler case.

Kelley stated what if there is a change of ownership.

Denison stated that if a new owner took possession of that property and wanted to change the sign they wouldn't be able to change it or would they? Would they be able to put in a new LED component that was animated?

Clark stated based on past experience, if the Zoning Board chooses to attach any reasonable conditions to a variance you could. Normally speaking the variance runs with the land. If you wanted to put a condition in just for Aranco Oil or Citgo you could.

Kelley stated based on existing technology you would also have to maintain the sign structure. As a consumer, he's happy with what is there now. He understands the motivation from within the business.

Landford stated that since the Planning Board has not okayed it, he believes they should stick within the Planning Boards ordinance unless they wish to change it.

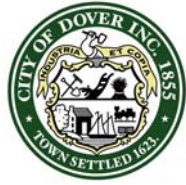
Kelley stated the sign people have a strong vested interest in moving the sign ordinance along. He believes that with as much angst as there are among communities regarding signs they're devoting a fair amount of resources to help their Planning Boards understand the points of safety. They would be more than prepared to make sure the Planning Boards move themselves along.

Denison stated that when the Zoning Board provides an adjustment for a certain situation it's often when the ordinance is unclear, particularly when it's old and it's been a while since it was updated. This ordinance was updated very recently. While she doesn't feel that they could never offer a variance for this ordinance, it's been made very clear what the intent of the Planning Board is. It's their wish. It's pretty clear that they do not want this type of signage. The only possible argument would be some hardship in the situation of this business.

Discussion ensued regarding the cost of the sign.

Prior stated gas stations advertise pricing; he would be in favor of the variance.

Landford stated he feels that the Planning Board needs to make a change before they say yes. Kelley stated the spirit and intent is too strong for him.



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FINDINGS OF FACT: USE VARIANCE

1. The applicant was to provide proof that special conditions exist and that literal enforcement of the ordinance would result in an unnecessary hardship.

a) USE: i. Did the Applicant demonstrate that the ordinance interferes with the reasonable use of the property, considering their unique setting of the property in its' environment? No, Vote: U/A. This conclusion is based on the following findings of fact: signage technology exists that does meet the terms of the ordinance.

ii. Did the Applicant demonstrate that no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction of the property? Yes, Vote: U/A. This conclusion is based on the following findings of fact: Ordinance does not distinguish between animated sign and static price for gasoline.

iii. Did the Applicant demonstrate that the variance would not injure the public or private rights of others? Yes, Vote: U/A. This conclusion is based on the following findings of fact: Proposed sign is consistent with what is there currently and communicates expected message.

2. Did the Applicant provide proof that demonstrates how granting the variance will result in substantial justice? No, Vote: U/A. This conclusion is based on the following findings of fact: Station can still communicate prices with current sign technology.

3. Did the Applicant provide proof that demonstrates how a variance would be consistent with the spirit and intent of the ordinance? No, Vote: U/A. This conclusion is based on the following findings of fact: Definition of "Flashing Sign" clearly includes this type of signage. Planning Board intent is clear.

4. Did the Applicant provide proof that demonstrates the variance will not result in a diminution in value of surrounding properties? Yes, Vote: U/A. This conclusion is based on the following findings of fact: Static sign is not diminutive of surrounding value.

5. Did the Applicant provide proof that demonstrates the variance would not be contrary to the public interest? No, Vote: U/A. This conclusion is based on the following findings of fact: Public interest is expressed in the ordinance. There is extreme opposition to any electronic signage in the town.

Therefore, based upon the foregoing, it is ordered that the application for the variance be denied.

Recessed at 8:00pm, resumed at 8:05pm.

C. * Z 08-16 M.H. Parsons & Sons (Applicant: Barlo Signs for Cleary Cleaners), 114 Central Avenue, a/k/a Tax Map 15, Lot 103, zoned B-1, requests a Variance from the terms of Article Section 170-32 D (5)(a)(Q) (Sign Table), to install a manual reader board.

Tim Sullivan, Barlo Signs, represents Cleary Cleaners. He stated that Cleary Cleaners is in the process of updating all of their locations to a clean, modern look that tells their consumers they are an established business and they care about what their appearance is. There's more technology available then when the sign was originally built. They are looking to modify their sign from a static reader board to a static electronic reader board. The static electronic reader board will not change, scroll, or blink. They will post one message during the day and turn it off at night. After hearing the case prior to him he understands how the board feels regarding these types of signs. They are asking for a variance to put up a static electronic reader board with the condition that it stays static.



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Denison stated the agenda item states install manual reader board, the applicant is asking for an electronic reader board. Does the board feel that this is sufficient notice or do they need to re-advertise it?

Discussion ensued regarding the advertisement.

Motion: Colbath motioned to not accept the case and have the City re-advertise the item correctly, Kelley seconded. Vote: 4-1 (Landford opposed)

The applicant will return for the September meeting.

D. * Z 08-17 Washington Street Mill, LLC (Applicant: Cocheco Arts & Technology Academy), Washington Center, a/k/a Tax Map 23, lot 14, zoned UMUD, requests a Variance from the terms of Article IV, Section 170-12, Table I, Part E, to establish an Educational Institution, K-12.

Colbath steps down. Denison, Landford, Prior and Kelley will be voting.

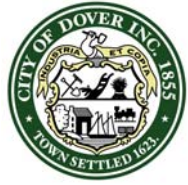
Denison informed the applicant that only 4 Board members will be available to vote this case and that the applicant must still have 3 votes in favor to receive the variance. Do they wish to proceed?

Atty. Jim Schulte, representing the applicant, stated he understood the situation and has explained the situation to his client. They wish to proceed with only 4 Board members.

Atty. Jim Schulte represents the applicant. He stated Cocheco Arts & Technology Academy is a publicly chartered high school. A college preparatory high school with an arts and technology based curriculum. The Charter school was issued a charter by the State of NH in May 2004. In January 2005, it opened its doors in the Bell Center. It stayed in Dover until September 2006 when it moved into the former Middle School in Barrington, where it is presently located. That facility does not provide the space needed for growth or the amenities that a downtown Dover location would provide. The school expects to have 70-80 students this year. There are 12 faculty members. The school expects to grow gradually over the next several years until it reaches a maximum size of 160 students. The website for the academy states that community involvement is a significant part of the curriculum. One Washington Center provides space to 3 dozen artisans. In the Barrington location, there are a few students that drive themselves. For this location, there will be 15 spaces available. Passes out a drawing. (In file) This is an application for a Use Variance because educational institutions are currently not allowed. The reason educational institutions are not allowed in the UMUD zone is our ordinance does not differentiate between the lower grades and the high school. There are different space requirements for elementary, which would not be compatible with the current downtown setting. Those considerations don't apply to a secondary school/high school. In addition to those identical activities, the UMUD zone allows theatre's, personal service and dance studios. Atty. Schulte reads from his application. He stated having the performing arts enterprise in the heart of Dover will add to the life of downtown Dover.

Denison asked if the parking proposed is what is on the drawing?

Atty. Schulte stated yes and there are spaces on the other side of the river also.



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Motion: Kelley made the motion to accept the application, Prior seconded. Vote: U/A.

Rachel Williams, 23 Hill St stated she is a member of the board of trustees for CATA. She moved the school to Barrington due to cost. The opportunity to move back to Dover is a tremendous move for the school. The students are required to perform community service. The school asks a lot of the families who have chosen to make a commitment to this school. They have plans to offer summer art classes to the public. There are not many options for space for an institution of their size. They would like to see themselves as a long-term tenant to develop their programs. Many students are artists. They would be adding to the life of the downtown.

Denison asked for the ages of the students.

Williams stated it is grades 9-12. Their anticipation of growth is up to 160 students. They would take on the empty spaces as they become available.

Discussion ensued regarding parking spaces.

Public Hearing Open

Fran Chickering, 32 Middle Rd, stated she has a daughter attending CATA. She started attending CATA when it first opened. It's an art-based school so they incorporate the arts into all of the subjects. When CATA was in Dover, they were good neighbors. They took part in the clean up of Henry Law Park. They try to be part of the community and they try to give back to the community. As people have said, there is community service requirement for graduation. To be here, in Dover, would give them many opportunities. In their graduating class, last year, 6 of the 13 students were from Dover. They have very strong Dover ties.

Wes Tator, 12 Landing Way, stated he is the real estate agent for the company that owns the mill. He has represented the Mill for the last 3 years. He would like to speak about the economic hardship of taking an old mill and turning it into a modern structure. The space has been vacant for almost the entire time that he's been working with that property. It is a space and a use that is consistent with the community and is consistent with other uses around it. He would like the board to consider this favorably.

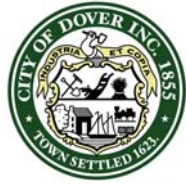
Atty. Schulte read a letter from Daisy Adams. (In file)

Deb Brown, the Director of CATA. She stated that this is an opportunity for the City of Dover to host the only public arts school in the state. When she attended the national charter conference in D.C., she realized that the City offers one of the most unique settings. There is a lot that the City can offer to the students.

Denison reads a letter from Julie Hurley (In file) which is in favor of the request.

Public Hearing Closed

Kelley stated it's a wonderful use of the space.



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Denison stated it is a better use than anything else that could be there. The ordinance is written a little too broadly.

Kelley asked if it was possible that when the ordinance was written, it was prior to charter schools.

Denison stated it is possible.

FINDINGS OF FACT: USE VARIANCE

1. The applicant was to provide proof that special conditions exist and that literal enforcement of the ordinance would result in an unnecessary hardship.

a) USE: i. Did the Applicant demonstrate that the ordinance interferes with the reasonable use of the property, considering their unique setting of the property in it's' environment? Yes, Vote: U/A. The use, school for grades 9-12, consistent with similar allowed uses in the area.

ii. Did the Applicant demonstrate that no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction of the property? Yes, Vote: U/A. This is not a typical school and its space requirements are consistent with this property.

iii. Did the Applicant demonstrate that the variance would not injure the public or private rights of others? Yes, Vote: U/A. Use is consistent and complementary with neighboring uses and there is no negative impact to the public.

2. Did the Applicant provide proof that demonstrates how granting the variance will result in substantial justice? Yes, Vote: U/A. This conclusion is based on the following findings of fact: 1. Unique challenge of occupying old mill space. 2. Puts school in a more central location that allows it to achieve its mission.

3. Did the Applicant provide proof that demonstrates how a variance would be consistent with the spirit and intent of the ordinance? Yes, Vote: U/A. This conclusion is based on the following findings of fact: The nature of CATA is consistent with permitted uses and use in the neighboring area.

4. Did the Applicant provide proof that demonstrates the variance will not result in a diminution in value of surrounding properties? Yes, Vote: U/A. Allows "difficult space" to be occupied and productively used.

5. Did the Applicant provide proof that demonstrates the variance would not be contrary to the public interest? Yes, Vote: U/A. This conclusion is based on the following findings of fact: Limited impact to public and complementary use to neighboring entities.

Therefore, based upon the foregoing, it is ordered that the application for the variance be granted.

Denison, Colbath, Landford, Kelley and Prior will be voting.

E. * Z 08-18 Deborah & David Farley, 256 Dover Point Road, a/k/a Tax Map L, Lot 96 E, zoned R-20, requests a Variance from the terms of Article IV, Section 170-12, Table I, Part C 2, to establish a retail use.

Deborah Weber-Farley stated that she would like to continue to sell Christmas Trees on their property. When they moved into their home, spring 2002, they were told by the City Clerk that they could sell anything from their home. For six years, they have sold Christmas trees on their property.



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Last year they received a letter from the City stating that they were against regulations in their zone. They have started a tradition with families and they would like to continue doing so.

David Farley passes out petitions and a letter from abutters and local citizens that are in favor of the variance. (In file)

Denison goes over the two petitions.

Weber-Farley stated the first weekend in December is when they begin to sell the tree that's why they need the third week.

Motion: Kelley made the motion to accept the case, Prior seconded. Vote: U/A.

Kelley asked if they only sell Christmas trees or do they sell other things throughout the year.

Weber-Farley stated they've cut down trees in their yard and sold fire wood.

Prior asked if the customers are parking on the side of the road.

Weber-Farley stated some park in the driveway, some park on the side of the road. Now that their backyard is clear of trees, they would rather their customer's park in the backyard.

Prior asked if the trees are from their property exclusively or are they from another source.

Weber-Farley stated that they get the trees from an acquaintance in VT; they also have some trees that are large enough to cut down, from their yard, which would be sold as live trees.

Public Hearing Open

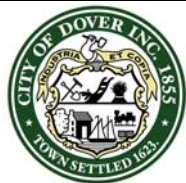
Denison reads a letter from an abutter Peter and Joyce Forsythe in favor of the variance. (In file)

Mike Garafano, 258 Dover Point Road, stated that he supports the variance. Due to a medical condition he can not have fresh trees in the house. The Farley's have done a great job with their lot. He has no qualms with it continuing.

Greg Gentile, 256A Dover Point Rd, stated the Farley's are very attentive to people and the conditions of the property. They go out of their way to make everything accommodating for the traffic. They donate a good part of the proceeds to a fund for the town every year. He's for the variance.

Denison read a letter submitted by Janet Caddle, 10 Roberta Drive (in file) which states she is not in favor of the request.

Jeff Caddle, 10 Roberta Dr. stated over the past several years, he's had to contend with cars parked on both sides of the street from customers picking up their trees. His wife had an accident, at this location, due to the cars parked on both sides. No matter how rural Dover used to be, it is now a major thoroughfare. There is a lot of concern about all of Dover Point Rd becoming a commercial district. He is not in favor of the variance.



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Bruce Kennedy, 5 Roberta Dr, stated he's watched the business for a few years and traffic is an issue. Those familiar with that part of Dover Point Rd, realize that there is a sighting problem. This is a single family unit but their asking for a commercial variance. He appreciates the fact that they are offering a benefit to a certain part of the community but he does not believe in the traffic and lighting issues.

Carolyn Mebert, 254 Dover Point Rd, stated for the past 6 years, when the Farley's have set up their signs, she's had to ask for the signs and trees to be moved back so that she can see to get out if her driveway. There is a 40mph speed limit on Dover Point Rd and no one abides by that. The Coast Bus drives by at 60 mph. Traffic is an issue. Sometimes their customers park in her driveway. She is in opposition to the request.

Ted Clancy, 113 Spur Rd, stated he is in opposition for the variance. The property is uniquely inappropriate for any commercial use. The trees are shipped in. He believes that customers would still purchase from a business that was zoned for that purpose. Across from the property is the oldest cemetery in Dover. There is nothing unique to the property itself.

Denison asked Clark how is retail sales defined in this context?

Clark stated when there isn't a definition in the zoning ordinance, they refer to the dictionary. The dictionary clearly states a retail sale is a sale of a product to the final consumer as opposed to a warehouse or wholesale. If the trees were raised on site, in an R-20 zone, this would be allowed by special exception. Since the business has been there for a number of years and as it's grown more successful, it's grown larger and larger and outgrew its space.

Denison asked if it's just now a violation and it wasn't before?

Clark stated it has always been a violation but when they approached the City Clerk's office, the City Clerk should have directed them to the Planning office to find out the use of that area. The City Clerk deals with licenses for businesses, so in her mind she answered the question correctly.

Farley stated not all trees were shipped in; they do have trees planted on their property for customers to cut down. They have planted trees all six years.

Denison stated it is a permitted use to cut your own trees, as long as that is all you are doing. You would have to come before the board to get a special exception. You are coming before the board to not only cut your own trees but sell trees that are shipped in as well.

Farley stated they have never had anyone park in his neighbors driveway. They do not make any money from the sale of the trees. After all of their expenses are paid, they donate what is left over to the kids Christmas Fund. They take a cash donation to the fire department every year.

Public Hearing Closed



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Kelley stated he's bothered by the traffic. December has short daylight hours. From a code enforcement standpoint, the only reason they went to look at the property is because someone complained? Is that what triggered the initial violation?

Clark stated what they usually ask for is a written complaint, which they did receive. When it is brought to their attention, they do have to investigate it.

Kelley stated if they granted the variance, he would want distinct conditions. He doesn't like the precedence of retail activity.

Prior stated setting up a retail location in this area is leading them down the wrong path. The way it's currently written, he has some reservations.

Colbath asked how far outside the realm of customary home occupation does this fall.

Clark stated customary home occupation prohibits retail sales. There can be nothing visible from the street.

Colbath asked if this is the only group that falls into this category?

Clark stated it's the only one that they've been made aware of.

Landford stated it's not good to start a retail use in this area. It's a residential area.

Denison stated she has a hard time figuring out hardship with what is consistent with what is on the land. She doesn't want to get into an enforcement burden with the City.

FINDINGS OF FACT: USE VARIANCE

1. The applicant was to provide proof that special conditions exist and that literal enforcement of the ordinance would result in an unnecessary hardship.

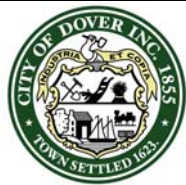
a) USE: i. Did the Applicant demonstrate that the ordinance interferes with the reasonable use of the property, considering their unique setting of the property in its' environment? No, Vote: U/A. This conclusion is based on the following findings of fact: The property is not unique and can be used without retail use.

ii. Did the Applicant demonstrate that no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction of the property? No, Vote: U/A. This conclusion is based on the following findings of fact: Restriction is consistent with the nature of the property.

iii. Did the Applicant demonstrate that the variance would not injure the public or private rights of others? No, Vote: U/A. This conclusion is based on the following findings of fact: Abutter testimony of difficulty getting out of her drive way and other testimony regarding traffic issues due to this use.

2. Did the Applicant provide proof that demonstrates how granting the variance will result in substantial justice? No, Vote: U/A. This conclusion is based on the following findings of fact: Permitted residential uses are allowed.

3. Did the Applicant provide proof that demonstrates how a variance would be consistent with the spirit and intent of the ordinance? No, Vote: U/A. This conclusion is based on the following findings of fact: Intent to separate residential and commercial use.



CITY OF DOVER

DOVER ZONING BOARD OF ADJUSTMENT - MINUTES

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4. Did the Applicant provide proof that demonstrates the variance will not result in a diminution in value of surrounding properties? No, Vote: U/A. This conclusion is based on the following findings of fact: No evidence presented and abutter testimony that she had difficulty getting out of her driveway.
5. Did the Applicant provide proof that demonstrates the variance would not be contrary to the public interest? No, Vote: U/A. This conclusion is based on the following findings of fact: Abutter testimony regarding traffic and intensity of use.

Therefore, based upon the foregoing, it is ordered that the application for the variance be denied.

- F. * Z 08-19 Children's Museum of New Hampshire, 6 Washington Street, a/k/a Tax Map 23, Lot 15, zoned RM-8, requests a Variance from the terms of Article IX, Section 170-32 E, (3) to 1) Install 2 signs, where a maximum of 1 is allowed and 2) to display sixty-nine (69) square feet of signage, where a maximum of sixteen (16) feet is allowed.

This case will not be coming before the board tonight.

- G. * Z 08-20 Peter J. Henry, 454 Central Avenue, a/k/a Tax Map 6, Lot 21-A, zoned B-2 requests a Variance from the terms of Article V, Section 170-16, to construct a stairwell, where a minimum of twelve (12) feet is required.

Peter Henry, 51 Snell Road Lee, NH. Stated that he recently purchased the building and is currently in the process of restoring the building. He is asking for a variance to construct a stairwell up from a back alleyway up to a second floor in this building. It is a two story brick building built in 1820. There are 10 offices upstairs. Currently, the only way to access the second floor is a large stairwell in front of the building. It's a shared stairwell between two buildings. By putting in a stairwell on the back of the building, it would take care of a safety issue. The most important issue is fire safety and egress. It's a 100 ft long building. If there were a fire, due to the fact that it is an old building, it would spread fast. This would provide an easy exit route for the offices on the 2nd floor. In the back alley way there is a lot of refuse from the restaurant next door. He's trying to create a space where individuals could start a small business. He could rent to one person because he has a single egress. If it were built today, it would have to have double egress because it's over 75 ft. The back alley is a hazard.

Landford stated that it is a hazard with all of the things in the alley.

Henry stated that he has cleaned it up. The parapet, on the roof, was about to fall off. It was debris from the roof. He thought about putting a stairwell in the building but it does not work. It cuts down on future retail use of the building. This would be a simple way to access the second floor. Henry stated Eric Hagman, of the Dover Fire Department, stated he was very much in support of Henry having a second egress to the second floor for fire and safety reasons. He was supposed to send a letter but he did not.

Denison stated without him being present and without the letter, we can't consider that.

Motion: Kelley made the motion to accept the application, Prior seconded. Vote: U/A.



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Denison stated she is curious about the right of way from a fire truck perspective. Can cars pass through there now?

Henry stated it is not accessible by cars. Kids go through there now but it's not a thoroughfare. There is a way to access it from First St.

Colbath stated on the plan, it states that lots 1, 2 and 3 shall have use of the right of way. If they have use of the right of way and Henry blocks off half of it. How would they have access?

Henry stated they would not. Maybe at some point there was a nice stairwell back there. He is not sure.

Colbath stated the drop-off was not always there.

Denison read a letter from Michael Cartelli. His letter states that the plans need to be more specific. She's assuming that Cartelli went to the Planning Department and reviewed the application.

Jones stated that he spoke to Michael Cartelli today. He explained to him what the project was and how many feet would be left. His concern was sometimes the delivery driver parks at the top. He wants to make sure that they can go through the alleyway.

Prior stated with the improvement being proposed, based on the drawing, it looks like you're going to install a new retaining wall with guardrail. Would that hinder anyone's ability to walk from Second Street down to Cartelli's?

Henry stated the guardrail would do that. The drawing is not how he envisioned it. His architect quickly drew the plan up for him. His thought was to just put a stairwell in and leave the outside open.

Discussion ensued regarding the egress and deed. The Board felt that they need more information.

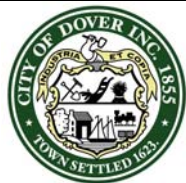
Motion: Landford made the motion to table the application, Kelley seconded. Vote: U/A.

5. OTHER BOARD BUSINESS

Denison stated there is a NH Fall Planning and Zoning Conference on October 25 at Loon Mountain. She asked if everyone is receiving his or her letters from Atty. Krans.

Colbath asked why they are stamped confidential.

Denison stated he wants to keep it attorney client privilege. She asked Atty. Krans about the letters that are a matter of public record. He stated that he didn't want to be the one to make it public record. Any communication between Atty. Krans and the board is confidential. If the Board chose to make it public record, it would be their decision. That is the process that he has been following. She also noticed from the minutes, last month, about their discussion of the Rules and Procedures. Otis made the motion for a public hearing but it is not on this month's agenda. Why is that?



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Clark stated the board has been very adamant about the number of cases per agenda. Had they put another public hearing on, they would have had to take one of the new cases off. They know it has to go on an agenda but only when there aren't so many applicants. In the Rules and Procedure, you can only have six cases per meeting.

Colbath stated he thought that it did not include Old Business.

Clark stated in the past, he was told that it did.

Motion: Colbath made the motion to consider Old Business as part of the caseload, Kelley seconded. Vote: U/A.

There was a letter from Atty. Krans regarding a change to the Right to Know law in regards to electronic communication.

Colbath stated on May 15, 2008 there was an Executive Session with Atty. Krans, Clark and Parker. It was characterized as an executive session. No subject was advertised. He disseminated some kind of information from that meeting. He doesn't think that they ever formally created an Executive Session. He doesn't think that they voted to seal any of the information that came from that session. If they're going to have an Executive Session like that, it could be defined as a public session but with non public comment and open for the public to view. They are required to seal minutes of the Executive Session. They were going to discuss a case, but it has to be defined as what they're doing. You have to list what was going to be discussed.

Clark stated that it was his understanding that it was a non meeting, not an executive session. A non-meeting being the Board was getting advice from Town Counsel. In that case, it's confidential. He asked Atty. Krans if they should put it on the agenda. He told them no, it's a non meeting and it's attorney client privilege. It's the attorney giving advice to the Board.

Denison stated that that was her understanding as well. When the Board meets with counsel, it is attorney client privilege. It's not a meeting.

Colbath stated he's trying to understand what the procedure should be.

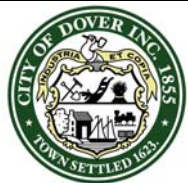
Kelley asked if they should ask Atty. Krans.

Denison stated she would ask the Local Government Center. Discussion ensued regarding enforcement issues.

6. ADJOURN

Motion: Landford made the motion to adjourn at 10:22, Kelley seconded. Vote: U/A

<u>List of Members</u>	<u>Term Expires</u>
Masi Denison-regular member	01-24-10
William Colbath-regular member	10-23-09
Frank Landford-regular member	04-10-08



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Sam Reid-regular member	11-12-09
Jim Kelley-regular member	05-23-10
Otis Perry-alternate member	02-08-09
Chris Prior-alternate member	02-01-11