



CITY OF DOVER

DOVER PLANNING BOARD - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers - 288 Central Avenue, Dover, NH 03820
Meeting Date: **Tuesday, October 24, 2006**
Meeting Time: **7:00pm**

Members Present: Tony McManus, Frank Torr, Ron Stock, Doug Steele, Marcia Colbath, Dean Trefethen, Donald Andolina, Perry Plummer, John Swartzendruber, Ron Cole, Kirt Schuman
Members Absent: Bryan Cahoon,
Staff Present: Steve Stancel, Planning Director; Christopher Parker, City Planner; Rick Jones, Community Development Coordinator and Jean Glidden, Recording Secretary

1. Citizen's Forum

Chuck Cheney spoke on behalf of his father Don Cheney, 53 Back River Rd. and asked that the information that he submitted be reviewed and that action be taken as quickly as possible.

2. Approval of the minutes.

Don Andolina motioned to approve, seconded by Perry Plummer.

VOTE U/A

Chairman Cole announced that **Item #3**, lot line adjustment of land for Paolini Brothers would not be addressed.

4. Consideration and acceptance of a request for a lot line adjustment of land and Conditional Use Permit for Charles Kageleiry, John O'Neill, and Michael Brigham, (Owners Elliott Rose Company of Dover, Inc. & 26 Dover Point Road, LLC) Assessor's Map K, Lot 19 & 26 and Map M, Lot 4, zoned ETP & R-12, located on Dover Point road and Middle Road. (P06-51)

Steve Stancel explained that an abutter indicated that the public notice was not properly written and that one of the owners of the project was not listed. He suggested, because of all the abutters present that the Board move forward in a preliminary hearing and allow the applicant to make a presentation and the abutters to ask questions. The abutters will be renotified and the project will have formal acceptance on November 14, 2006 and the clock will start.

Malcolm McNeill represented the applicants. They will appear again on November 14th and their experts will all be present. The parcel is 98.7 acres. The zoning is ETP with a small portion being R-12. The property under contract has been sanctioned by the Strafford County Superior Court. 17.5% of the land mass is utilized for residential purposes and under the ordinance 35% is permitted. 43.5% of the site is used for commercial when 40% is the minimum. Open space is 39% and 20% is required. Upland open space is 21% and 10% is required. The applicant has made an attempt to exceed all the environmental components and maximize the commercial. Access to the site is primarily from Dover Point Road. The access from Middle Rd. will be used for the residential use. The 48 residential units for 55 and older will range from \$350,000. The proposed congregate care facility will contain 112 units. The roadways off the main roads will be private. There will be a retail facility, restaurant, bank and a medical facility. An automobile facility will be using an area and an area will be for office/retail. The people, who



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live there will be able to live, work and shop and used the other facilities. He went over the number of parking spaces for the various uses. Significant buffering is planned. There have been discussions on making the center road a city street but their preference is a private road. The issue of cut-through traffic has been discussed at TRC. They have established a trail throughout the property. Russ Thibeault has submitted a fiscal impact analysis. \$420,000 is the net positive impact to the City. He went over the Conditional Use Permit and stated that they are in compliance with the ordinance. There are environmental problems that need to be mediated by the buyers. They will be doing a small lot line adjustment. They will be back on November 14th for Conditional Use Permit approval and also to proceed to site review and subdivision approval for the whole project.

Bob Stowell stated that there are 3 lots involved and went over the details at the easel.

Dean Trefethen asked what kind of congregate care facility is proposed.

Malcolm McNeill said that they will be more specific on the congregate care facility at the next meeting but believes it will be like Langdon Place.

Frank Torr asked about the trails and paths to other residential areas such as Applevale. What is the plan on the demolition of the greenhouses?

Bob Stowell stated the trail starts in the Dover Brook area with sidewalks from Middle Rd to Dover Point Road. They can check into other connections.

Chad Kageleiry said they are waiting for the State mandated cleanup of the soils and debris. The soil contamination is basically inside the greenhouse buildings and the seller is obligated to take care of that contamination. A demolition crew will be hired to remove everything from the property except for one building to use as an office.

The public hearing was opened.

Barbara Payton , 59 Augusta Way, asked about the size of the congregate care, how many stories it would have and how close to the property line it would be.

Chad Kageleiry answered that they will be 3 stories high.

Bob Stowell explained that there is a requirement of a 50 foot no disturbance buffer and the buildings are in excess of 75 feet.

Marilyn Follansbee, 25 Dover Point Road, stated that she has no opposition as long as the portion on Dover Point Rd. remains residential.

Kelly Nevins, 37 Applevale Drive, stated they can see the greenhouses from her back yard. They are concerned about the parking lot, bright lights, hours of operation of the store and the



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restaurant. Also she wanted to know if the restaurant will have loud music and if there will be a fence so people won't be cutting through their yard.

Bob Stowell said it is premature to guess what type of restaurant will come in but fencing will be appropriate in many locations. Because Applevale is higher he felt that trees will be their best defense. He felt that connectivity with the neighbors will stop people from cutting through where they shouldn't.

The public hearing was recessed.

Steve Stancel described the process to receive the Conditional Use Permit. The staff feels that the roadway system should be public so that the surrounding neighborhoods would be able to easily utilize the site.

Ron Cole asked Chuck Cheney, with regard to the retirement development on Back River Rd. if he had discussed the photos that he brought in with the staff.

Frank Torr felt that the Board should go out to the site. He said there is a vast amount of ledge being taken out of there and being processed on site.

Steve Stancel stated that Tom Clark, the building official has been out there. He added that the 50 foot buffer is in dispute. The landscaping plan shows that the existing vegetation was to remain and it has been cut down. The Building Official will be addressing that.

- 5. Public Hearing and vote on the Modified Action Plan expenditures and reprogramming funds and program income to include: HUB family Support Center for space renovation at the McConnell Center increased from \$45,000 up to \$79,300; Dover children's Center funds for space renovation at the McConnell Center increased from \$150,000 up to \$190,805; Dover Adult Learning Center for funds to raze the current building at 22 Atkinson St. to make way for a playground, and McConnell Center funds to complete the commercial kitchen \$18,895.**

Steve Stancel stated the City recently sold a parcel off the Sixth Street Connector for the State Park n' Ride. Previously \$125,000 has been allocated for the human service agencies. An additional \$110,000 was received for the parcel for a total of \$210,000 so they are recommending allocation of the money. The City Council will also hold an additional public hearing and take a vote.

The public hearing was opened.

Kerry Keach, President of the Board for the HUB spoke in favor and said that the \$34,000 will allow them to move forward.

Christine Rockefeller, President of Dover Children's Center, stated that the \$46,000 will allow them to secure a contract to secure the fit out cost.



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The public hearing was closed.

Steve Stancel pointed out that the funds are being utilized for the McConnell Center. The improvements will benefit the City, as well as the individual organizations. He explained the Liberty Mutual project and how the land came into the CDBG program.

Tony McManus motioned that the Planning Board recommend the expenditure of the funds and move it to the City Council, seconded by Donald Andolina. **VOTE U/A**

6. Old Business

- a. **Discussion and possible vote on a site plan of land for Paolini Brothers Development, LLC, located at 48 ½ Dover Point road. (P06-50)(3 units)
WITHDRAWN**
- b. **Discussion and possible vote on a site plan and Conditional Use Permit for Mark Investments, Inc. (Walgreens), located at 856 Central Ave./1 & 3 Glenwood Ave. (P06-32)**

Dean Trefethen motioned to remove from the table, seconded by Donald Andolina. **VOTE U/A**

Atty. Bill Tanguay, represented the applicant. They are withdrawing the waiver for the Glenwood Avenue driveway, the waiver for the drive-up window voice operation and the hours of operation. They are not seeking a waiver for the landscaping on the Glenwood Avenue side but are still seeking the waiver regarding the landscaping on the Central Avenue side to retain the visibility of the building because it is setback from the road. They are proposing a variety of trees and landscape islands with perennials and shrubbery, sidewalks and park benches. They have narrowed the driveway width on Glenwood Ave.. He spoke on the proposed signs and locations. The applicant agrees to submit a deed to the City where the road encroaches on their property. He said that they will assist the neighbor across the street with some landscaping help but they don't know what he wants. Atty. Tanguay said they would prefer that the City comes up with a plan to mitigate the impact to Mr. Banian and they would like to just provide the funds for that.

Tony McManus asked how the drive-thru would work and what type of fence would be used.

Bill Tanguay said it would be consistent with the ordinance and would not involve a loud speaker. The fence would be a board on board, 8 foot high, solid fence.

Perry Plummer asked who will be responsible for the maintenance of the landscaping on the City property.



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Bill Tanquay stated that the City now maintains the landscaping. If they get approval with regard to the sign, and if the Council would grant them an easement for the location of the sign, they would agree as part of that proposal, to take up the maintenance of the entire parcel.

The public hearing was opened.

Gaye Dean, Smith Well Rd., was concerned with preserving the tall lilacs on their joint property line. She was also concerned with the lights and the drive-thru window.

A representative from Bohler Engineering stated the proposal is to construct a retaining wall with a board on board fence on their side of the line and maintain the lilacs as much as possible.

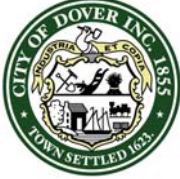
Steve Stancel explained that the ordinance calls for non-audible, which means touch pad or human contact would be utilized.

Charles Banian was concerned with the proposed driveways across from his driveway. He felt that placing hedges in the front would not stop the lights from shining into his house. He felt that this project would not help the evaluation of his property.

The public hearing was closed.

Steve Stancel gave the following recommended conditions of approval:

1. Add the owners' signatures to the plan.
2. The approval includes granting waivers for a 30 foot wide driveway on Central Avenue, for the distance of the Central Avenue driveway from the street intersection, and for landscaping in the interior of the parking lot and along the perimeter of the parking lot along Central Avenue. Attached to that: waivers are subject to agreement of developers to maintain said improvements and right-of-way area.
3. The applicant shall submit a completed Lot Merger Form for recording at the Strafford County Registry of Deeds prior to signing the site plan.
4. The applicant shall submit a deed to the City of Dover for the encroachment area of Glenwood Avenue on the southeast corner of the lot, prior to the issuance of a building permit. The lot line adjustment plan shall be submitted and approved by this board.
5. The Stormwater Operation and Maintenance Plan shall be reviewed and approved by the Environmental Projects Manager prior to signing of the plan.
6. The applicant shall install two monitoring wells on the site, in a mutually agreeable location, to be added to the City's monitoring system for the Smith & Cummings wells, as recommended by the Conservation Commission. An access agreement shall be prepared and signed by both parties, prior to the issuance of a building permit.
7. The applicant shall revise the site plan by changing the "Right Turn Only" signs to read "No Left Turn".
8. The applicant shall revise the landscaping plan by adding two additional shade trees in the Central Avenue right-of-way area, to the satisfaction of the Planning Department.



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9. The applicant shall prepare a landscaping plan to mitigate the impacts of the project on the property at 8 Glenwood Avenue for approval by the Planning Department, prior to signing of the plan. The applicant shall agree to provide adequate funding to the owner at 8 Glenwood Ave. for the purpose of landscape mitigation.
10. The applicant shall contribute to the City the funding necessary to accomplish the change order for the Glenwood Avenue widening improvements shown on Sheet C4. The amount required shall be determined by the City Engineer and submitted by the applicant prior to the issuance of a building permit.
11. The Planning Board recommends to the City Council that the sign location on Central Ave. be allowed in the City right-of-way subject to future relocation costs if it is ever required to be removed for roadway expansions in the future. The developer agrees to meet any subsequent sign ordinance provisions currently being proposed by the City.

Frank Torr made the motion to approve with the 11 recommended conditions, seconded by Dean Trefethen. **VOTE U/A**

Doug Steele said he is supportive of having their sign on City property. He likes the idea of a smaller sign and hopes it is supported by the City Council.

- c. Continued Public Hearing, discussion and possible vote on a proposed amendment to the Dover Zoning Ordinance by revising Article 170-32 “Sign Review and Regulations” Section D “General Provisions” by amending section 5 to limit the allowances for flashing signs and by amending Section Q “Definitions” to add a definition for flashing signs. A complete text of the amendment is available in the City Clerk’s Office and Planning Department of City Hall and on the City’s web site www.ci.dover.nh.us.**

Chris Parker stated that they are not saying “no” changeable text. The text can be changeable as long as it’s manual. It’s not an anti-store, business or sign ordinance. It is a reaction to a court case that has come down saying that the City is discriminating in its sign ordinance. By saying you can have time, date and temperature flash but you can’t have anything else flash, the City is discriminating based on content, which is not allowed by the First Amendment of the Constitution of the United States. This ordinance will say, point blank, that you can’t have flashing signs. They feel this will even the playing field for enforcement sake. The ZBA defined that a changeable text sign that is electronic can be changed every 10 minutes and no sooner. Businesses have agreed to the 10-minute rule but then change their minds. The sign companies are saying pay the fines; it is worth the business they will get out of it. There are two pending court cases. The demand is there for changeable signs so the City needs to say no and stick to the ideal and create a non-discriminating ordinance.

Discussion ensued with regard with current enforcement issues.

Christopher Parker explained that they are looking at a \$100.00 fine per day. The State allows for a \$250.00 fine. The more subjectivity is put into the ordinance, the worst it is to enforce.



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Tony McManus said that the two signs that are violating the ordinance are on a 5 or 10 second cycle. If they are fined \$100.00 a day and \$700.00 per week, it would not be lucrative to them.

Steve Stancel said in talking to the City Attorney, when it goes to court, the fine is determined by the judge. Naser Jewelers has gone to court 3 times and pled guilty and there has been in the vicinity of \$550.00 total fines given to them. There is a court order so that we are not moving forward with Naser Jewelers until the pending court case between the City of Concord and a sign user that is in Supreme Court is determined because it is very similar. The judge wants to find out what that determination is before hearing this case. If Concord loses, it is possible that the existing 3 or 4 signs could continue.

Dean Threfethen doesn't see the enforcement issue going away and hates to see some of the signs grandfathered.

Tony McManus felt the City is trying to avoid having 30 signs, all of which could be a problem and doesn't see any benefit in tinkering with the ordinance. If the Concord case says that we can't ban electronic signs then we would have to repeal the ordinance. In the mean time we should put the ordinance in place to let people know what we want.

Doug asked if the sign would go with the building or if it would leave with the business.

Steve Stancel answered that it goes with the property, not the user.

Frank Torr said that there is middle ground on any issue and felt that it should be addressed so that it would satisfy all parties.

Marcia Colbath said that she hasn't heard one person say they like flashing signs. The only middle ground would be the idea that if you change the wording of the sign by a keyboard after the business closed and it stayed that way all day long, she might go along with that. She has a real problem with flashing signs. It is against what the City of Dover wants to look like.

Don Andolina felt the signs would bring about the continuing need to adjudicate with a cost to the City and it is not humanly possible to police it. A fixed ordinance that is clear is needed.

Steve Stancel indicated after speaking with the City Attorney about the option of possibly allowing a changeable sign on a daily basis but only if the Board wished to fall back a bit. The sign could be electronic but didn't flash and could be changed daily. The concern was that it was totally subjective and random in the determination of 24 hours. His reaction was why would 24 hours be ok and two not be ok.

Donald Andolina felt that manual changes would discourage people from making changes every hour or more frequently. He thinks it is reasonable. Stafford Farms wants to put up a sign so they don't have to go out on a ladder to change their specials. In this case if we had a fixed electronic sign they could be in their office when it is bad outside and change the special. He couldn't see where someone would be changing it every 5 minutes.



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Chairman Cole said it is a nice town and let's keep it a nice town.

The public hearing was opened.

Discussion ensued with regard to sandwich board signs that non-profits are allowed to use.

Linda Merullo, 21 Long Hill Road Extension, stated that over the years Naser Jewelers has only been fined \$500.00 and it means nothing to them. They will never adhere to the rules. She feels that the signs will all be flashing just like the ones that are grandfathered. She is concerned with money being spent on lawsuits. She wants to keep North Dover looking nice.

Ron Stock, 19 Quaker Lane, speaking as a citizen of Dover and as a business owner, has no intentions of putting in an electric sign board but it would be a good option to have. He felt it is wrong to ban electric signs. Banning the signs is wrong and there has to be some middle ground. Going up a ladder is dangerous and being able to change the sign manually from the inside would be a good thing. He said that he doesn't think that the signs should flash but should be able to be changed manually. That is technology.

The public hearing was closed.

Tony McManus motioned that the Board recommend passage of the ordinance and pass it on to the City Council, seconded by Donald Andolina.

VOTE 7 – 1

Opposed – Frank Torr

d. Discussion of Class VI Road Recommendations

Steve Stancel explained that a committee had been formed to research the Class VI Roads and they made recommendations to the Planning Board. Two weeks ago there was a workshop and based on that workshop they have put together four recommended actions that the Board can move on if they wish.

1. To recommend that the City Council create a new committee to verify and validate the current efficacy of conclusions from the Planning Board committee, take a comprehensive look at all issues of the Class VI roads to include financial, liability, maintenance and development potential. The committee should also focus on addressing those issues in the area of Old Garrison and David Tuttle Road, Hanson Road, and Green Hill Road. He gave very specific recommendations on how the ad hoc committee should be made up.
2. Recommend to Community Services that County Farm Road from the end of the maintained section near the nursing home to the river be maintained from access to the river and trails and to preserve the status of the road as a viable public highway. Recommend the same action for the Class VI portion of Rochester Neck road across the river.



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3. Recommend to the Planning Department that a new bridge project be added to the CIP (as per Transportation Master Plan) along with improvements to approaches for County Farm Road and Rochester Neck Road to plan for a future transportation corridor.
4. Recommend to Community Services that Covered Bridge Lane be paved in the future. Add a paving project to the CIP for Covered Bridge Lane.

Tony McManus motioned that all four be recommended, seconded by Donald Andolina. **VOTE U/A**

7. New Business

Steve Stancel stated that it is time for the CIP. The City Manager is having a joint workshop between the City Council and the Planning Board next Wednesday, November 1, at 7:00 PM.

Frank Torr said there will be a Waterfront Meeting on Nov. 2nd at 5:30 in the Council Conference Room. There is a public hearing coming up.

Steve Sstancel stated there would be a public hearing on the Waterfront on November 9th, in the Council Chambers and will be televised. On Nov. 15th there will be a workshop with the City Council.

Ron Cole said that he would like to be the Chair for one more year.

8. Adjournment.

Donald Andolina made the motion to adjourn at 9:20 pm.

John Swartzendruber seconded.

VOTE U/A