

CITY OF DOVER

DOVER PLANNING BOARD - MINUTES

Meeting Type: Regular Meeting
 Meeting Location: Council Chambers – 288 Central Avenue, Dover, NH 03820
 Meeting Date: Tuesday, May 27, 2008
 Meeting Time: 7:00 pm

REGULAR MEMBERS PRESENT: Ron Cole, Marcia Colbath, Dean Trefethen, Frank Torr, Tony McManus, Perry Plummer, Donald Andolina, John Swartzendruber, Doug Steele

REGULAR MEMBERS ABSENT: Perry Plummer, Doug Steele

ALTERNATE MEMBERS PRESENT: Linda Merullo, Ron Stock, Kirt Schuman

STAFF PRESENT: Christopher Parker, Planning Director and Jennifer Bretz, Recording Secretary

Meeting called to order at 7:00pm.

Kirt Schuman sat in for Perry Plummer, Ron Stock sat in for Doug Steele.

1. Citizens' Forum - None

2. Approval of minutes of the minutes of May 13, 2008.

Motion: Don Andolina motions to accept, John Swartzenruber seconds.

Tony McManus stated that on pg 2, Betty Allen's name is Betty Ireland. On pg 7, in regards to Brox, David Cluff's name is spelled two different ways, Cluff and Clough. Clough is the correct spelling. (After subsequent research, Cluff is the correct spelling) Linda Merullo stated on pg 1, she sat in for Tony McManus. On pg 13, regarding the McConnell Center, it states the roof is almost complete, the roof is complete. **VOTE U/A with amendments to minutes.**

3. New Business

A. Consideration and acceptance of a Conditional Use Permit for Christopher & Kulli Barrett, Assessor's Map L, Lot 95-1M, zoned R-20, located at 13 Landing Way. (P08-21)

Steve Haight represented Christopher and Kulli Barrett. The Barrett's are looking to do some extensive landscaping in their backyard. They would like to put in a patio/landscaping and a walkway, to a gazebo, down to the Piscataqua River. They are here for a Conditional Use Permit because some of the work is within the 20% slopes on the lot. They have met with the Conservation Commission. They believe they have a positive recommendation from the Conservation Commission.

Motion: Torr motions to accept, Schuman seconds. Vote U/A

Public Hearing Opened

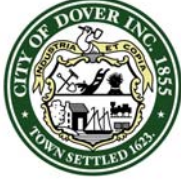
None

Public Hearing Closed

Staff comments:

Parker stated the applicant proposes to impact 1,522 square feet of 20% slope and 562 square feet of land within 100 feet of the Piscataqua River, to construct a patio, retaining walls, and stairs down to a future dock. The applicant appeared before the Conservation Commission on April 7, 2008 and received a favorable recommendation with no conditions (see e-mail from Tom Fargo).

The Planning Department recommends approval of a Conditional Use Permit subject to the following conditions:



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1. The applicant shall provide the Planning Department with a copy of the NH Department of Environmental Services Shoreland Protection Permit and add the permit number to the plan, if required by RSA 483-B.
2. The applicant shall provide the Planning Department with a copy of the NH Department of Environmental Services Wetlands Permit and add the permit number to the plan.

Motion: Andolina motions to approve, Swartzenruber seconds. Vote U/A

B. Consideration and acceptance of a Conditional Use Permit for Berry Surveying & Engineering, (Owners: Kevin R. Cooper, Jr. & Jeffery D. & Ellen L. Forget) Assessor's Map M, Lots 6 & 132, zoned R-40, located at 56 & 58 Dover Point Rd., and 53 Toftree Lane. (P08-22)

Cole stated there are still some issues that need to be worked out with the Planning Department, the board will be tabling this case so that the issues can be taken care of at the same meeting as the associated site plan.

Christopher Berry, of Berry Surveying and Engineering, represents the Forgets, Kevin Cooper and the Paolini Bros., LLC. The Conditional Use Permit is directly related to the site plan to allow for city sewer for this project as well as impacts to slopes over 20%. A month ago, the Planning Board took a site walk. They looked at the area proposed for Conditional Use. They are applying to the NH Dept of Environmental Services for a direct wetlands impact, which includes the temporary impact of jurisdictional wetlands of 1,029 sq ft of impact. It's temporary because they cut through the soil, stockpile material, trench out and tap into the 18 inch sewer main with the proposed sewer line. The main reason they're here is for associated impacts, buffers 50 ft around the jurisdictional wetlands. They're requesting a Conditional Use Permit of 2,379 sq ft of buffer impact on the Kevin Cooper parcel. That parcel is within 50 ft of the jurisdictional wetland. It's strategically placed along the top of slope and outside of the vegetation line. They met with the Conservation Commission. The Commission had questions pertaining to the buffer and wetlands impact. They were concerned with the subsurface soils. The impact they're proposing is within 40 ft of Varney Brook. In that area, there is historic marine and clay sediment. Water doesn't seep into clay and the marine soils. Water moves into trench situation. It's a problem because it creates an underground river. All of the impacts are temporary. They chose the area for impact because it was previously disturbed and there's not a lot of vegetation where they're proposing the sewer line. It's also the flattest area outside of the 20% slope area.

Colbath asks Berry to show the impact on the map.

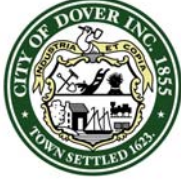
Berry explains the map.

A lengthy discussion continued regarding porous pavement.

Motion: Torr motions to accept the application, Stock seconds. Vote U/A

Cole stated the board is not taking action on the application this evening, we're just fact finding.

Public Hearing Open



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Wally Nubesky, 49 Toftree Ln, received letter about hearing Saturday, 5/24. The impact is bordering 51 and 49 Toftree. If Berry is not sold on project how can they be? McManus asked about water runoff. The runoff will run into his property. If the sewer pipe breaks, who pays for it? He spoke to the Wetlands and Conservation Commission. Neither has found a plan that they like. All of the water will be in Kathleen Hesseforts' backyard. The brook runs through Hesseforts' back yard. Who will pay for the bugs to be sprayed away? The added wetland problems, bugs, water, etc. The Forgets don't care, they don't have kids. They sold their pipe, which belongs to him. If there is a big storm and the culvert takes over, that will be going back into the earth which will go into the brook. This will add to the bugs, disease, and erosion. Please don't let this happen.

Cole states he will recess the public hearing so that Mr. Nubesky can speak again.

Jeffery Forget, 53 Toftree Ln. He is the individual that granted the easement into the sewer main. The sewer main that they will be tapping into does not affect anyone on Toftree Ln. The sewer line is across the brook from Toftree Ln. He recently had his sewer line TV'd out 200 ft. It went out into the middle of Toftree Ln and into the main sewer line. The sewer line does not tap into his pipe. He does have children and is concerned with what happens to his land. He observed what happens in the back during storms. Nothing on his property has been affected by storms. The brook does not overflow so much that it affects the slope. After seeing the proposal, he does not feel that it was too much of an impact.

Jim Schulte, attorney who represents applicants, stated if Conditional Use Permit is granted, this sewer line will not go into anyone's private line; they will tap into the city's line.

Berry stated he can provide everyone with full scale map. The confusion lies within site plan. Conditional Use Permit requires them to notify people within 200 ft. He submitted three sub sets of individuals that had to be notified.

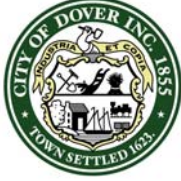
Nubesky continued to speak regarding how the plan will impact his property.

Public Hearing Recessed

Trefethen stated there are two things the Board needs to see the overall sewer plan of Toftree and Dover Point Rd. In addition to the plot plan, we should see the actual property lines, the complete lots of properties in that area. More of the macro picture instead of the micro picture. There is some confusion over what lines they're talking about and who owns it. That way the staff could give the Board a complete explanation.

Merullo stated she would like to see a couple of things added, porous concrete and pervious surface. She attended a seminar on porous concrete and her understanding is when you put in porous concrete you don't have to have extensive piping, if any at all. Can you put it on top of the berm? Can you put it in going down the slope, into the ravine? She would like to see a solid plan of what they're using and where they will be using it.

McManus stated Berry says this is a real potential site to try this out because of the soil that's there. If it's there, even if it costs more in terms of the city's interest, he thinks it's important. If you go back and balance some of the things, the cost might not be so much in the long run. Whatever the impact on Varney Brook, DES has held up the approval of the ETP project because of problems with the soil, Varney Brook and the dam. We're being asked to look at the Preston property to restore that to residential. Varney Brook starts somewhere in the cross



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portion of the Preston Property so if we have an opportunity to do something right and protect one section of that resource, we should make a real effort to do it.

Colbath stated not only are we impacting the deep slope, we're extending the steep slope. It's due to the level of density on this development. If the applicant wants to insist upon the density that's taking place in this development, she thinks they need to find a better way of handling the storm water without extending an already steep slope.

Cole stated when we have all of the information and get everything together; we're going to attempt to balance. From the standpoint of the Planning Board, we're trying to stay ahead. We want to do what's best for the community. Cole thanks Berry for the presentation on pervious surface versus the drainage. He spoke to some people at UNH about forming a sub committee to investigate the pervious surface situation. The subcommittee wants to protect the residents of the community and the abutters and attempt to work with the developers at the same time. The cost analysis will be interesting to see how it comes out when we get done completely.

Stock stated he would like clarification on the water passing through property from the cemetery combined with the water on the property that would be discharged out the back. He would like to get a better understanding of how much existing water is passing through.

Parker stated he recommends the board table this and act on it when the board acts on the site plan.

Cole stated that due to discussions, as we start to work toward a new and different Dover, this is one of the things that may well be a landmark issue as to what we do in the future. We want to make sure we do it right.

Motion: Torr motions to table, Schuman seconds. Vote U/A

C. Consideration and acceptance of a minor subdivision of land for Lydia V. Scott 2002 Trust, Assessor's Map M, Lot 1, zoned R-40, located at 220 Back Road. (2 new lots) (P08-23)

This application can not be heard by the Planning Board due to an existing zoning ordinance violation that is being investigated by the Building Official.

D. Consideration and acceptance of possible posting of rezoning of land located on Middle Road, known as Map K, Lot 6, from Executive Technology Park (ETP) to Rural Residential District (R-40), at the request of the landowner.

Cole stated we're familiar with the situation on this. He asks Parker if there is anything the Planning Department needs to share with the Board.

Parker stated that with the letter and the map that he was provided, he supplemented that with a sheet that shows the hatched area, which is a portion of land on the west side of Middle Rd that would be rezoned. It's approximately 18 acres.

Cole stated any action we take would be to post this so that we could proceed sometime in the future.



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Parker stated once we send out the letters, to meet the 15 day noticing period it would probably be the 2nd meeting in June for a public hearing and possible vote.

McManus asked what is the zoning of the land between Middle Rd and Back Rd.

Parker stated R-40. The intention of the landowner is to get all of their land in R-40.

Motion: Trefethen moved to post, McManus seconds. Vote U/A

E. Consideration and discussion of proposed site and subdivision regulation changes.

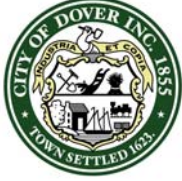
Parker read the 2 sets of regulation changes of the proposed amendments to the Site Review and Land Subdivision.

PROPOSED SITE REVIEW REGULATION AMENDMENTS

1. Replace the phrase 'Site Review Screening Committee' with 'Technical Review Committee'
2. Clarifies which items are require TRC review only and which require PB review. Additionally, it lowers the level required for review of parking areas, and incorporates EPA Phase II requirements for areas of disturbance.
3. Requires as part of a submission ground or aerial photos of the existing conditions, and clarifies the number of copies required at submission. Additionally, it adds the requirement of label submission for certified notices.
4. Requires electronic submissions at the time of application, to make it easier for staff to place the plans online for review by abutters.
5. Requires colored renderings of architectural plans.
6. Requires a neighborhood plan sheet identifying the plan within the surrounding area to show contextual impact. Also requires a colored streetscape rendering to show proposed changes, and requires a fiscal impact study for projects over 10 units. Requires a storm water management and erosion control plan – per Phase II regulations.
7. Updates the Storm water management regulations per Phase II regulations.
8. Updates the schedule of fees.
9. Adds storm water definitions.

PROPOSED SUBDIVISION REGULATION AMENDMENTS

1. Requires electronic submissions at the time of application, to make it easier for staff to place the plans online for review by abutters.
2. Adds the requirement of label submission for certified notices.
3. Requires electronic submissions at the time of certification by the Chair, to make it easier for staff to archive plans.
4. Requires electronic submissions at the time of certification by the Chair, to make it easier for staff to archive plans.
5. Adds the requirement of label submission for certified notices.
6. Requires electronic submissions at the time of application, to make it easier for staff to place the plans online for review by abutters and adds the requirement of label submission for certified notices.



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7. Stipulates that if your lot was created as a hybrid OSS lot you can not do a LLA that affects the open space
8. Removes the hybrid option of the OSS.
9. Removes the density bonuses for residential units in the OSS.
10. Requires a neighborhood plan sheet identifying the plan within the surrounding area to show contextual impact. Also requires a fiscal impact study for projects over 10 lots..
11. Requires a storm water management and erosion control plan – per Phase II regulations.
12. Chapter Increases the maximum street grade from 6 to 8.
13. Updates the Storm water management regulations per Phase II regulations.
14. Updates the schedule of fees.
15. Adds storm water definitions.

Trefethen asked when the Technical Review Committee looks at an application, what kind of posting do we do for that meeting and what kind of notice do we send to abutters?

Parker stated we notice it in City Hall and on the website. He would like to do a double notification. When the application comes in for the TRC, we would get a list and send those out. The problem is the TRC is a public meeting but not a public forum. It is designed for the Engineering and Planning staff to look at something but it's not designed for public input.

McManus asked if it is possible to post the TRC meetings in the newspaper?

Trefethen stated our expectation needs to change. The number of people who receive Fosters is low.

McManus stated it would save the cost of the mailings.

Discussion ensued regarding posting the TRC meetings in the paper and Amendments to Site Reviews and Regulations.

Motion: McManus moved to post, Swartzenruber seconds. Vote U/A

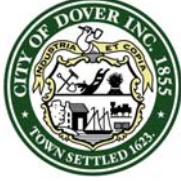
Cole says begin to take action at the first meeting in June.

4. Old Business

A. Discussion on Proposed Zoning Ordinance Amendments

- i. Amend the Table of Use Regulations by revising footnote numbers [9] & [23] to limit residential structures to the second floor or above in the B-3 (Thoroughfare Business District), O (Office District), and UMUD (Urban Multiple Use District), and to allow residential structures in only existing structures in the UMUD.

Parker stated after reviewing the minutes and speaking to Bruce Woodruff, he made a change on footnote 9 in regards to the UMUD zone. It says “units 2nd story or higher, units must be contained within an existing



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structure” he crossed that out. If the board were to say you have to have new construction but it has to be residential on the 2nd floor or above, he thinks it takes away 90% of the value of that lot. What it says is if you don’t have any commercial on that lot, than you can’t have any residential. We do not want to promote commercial there. Wants to rezone Mill St to the abutting R-12 zone or look at another option. R-12 would give some flexibility. Under Footnote 23, Parker added the words “newly constructed”. In the O zone specifically, people had concerns about the intentions of this. If it is on a new building it has to be residential only on the 2nd floor or above. It just has to be clear that it is on new construction only not for existing structures.

Colbath stated going over this she has some concerns that there is not a clear picture of what parcels will be affected in what way. She would like to have a workshop to go over the zoning maps. She doesn’t want to look back later and see that the board made a mistake.

McManus stated he wants to have an opportunity to think about this. He wants to see what the long term will be.

Cole asked if they should have a workshop involving all of the board members and a staff member or appoint a committee of two or three to come up with the comprehensive recommendations to the board in conjunction with the staff.

McManus wants to have a list of the areas that would be affected.

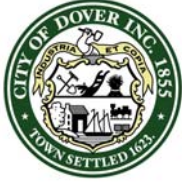
Colbath stated on the zoning map, she would like zones identified than, if there are questions about particular parcels, the staff would be able to answer them. They would also be able to say if it’s appropriate or not on what the board is doing on a particular parcel.

The workshop will be on June 24 at 6:30pm.

- ii. Amend the Table of Dimensional Regulations Table I: Principal Uses, Part C, by adding a new footnote number [16] to “eating and drinking establishment” uses in the Hotel/Retail (B-4) District, to allow the Planning Board to grant a conditional use permit to allow drive-thru service.**

Parker stated that on the Section 2 amendment, 1E, 300 ft was added in place of 200 ft. Parker had spoken to Scott Torr. He requested the change. Existing public street language protects Jensen’s Mobile Home Park. Currently, where the project had previously proposed a drive thru is closer to than 300 ft to the nearest unit in Jensen’s MHP. The public street will provide more of a noise than the drive thru. Included is decibel level sheet. The weakest sound heard is 0. Normal conversation is 60, telephone ring tone is 80, 90-95 is where exposure can result in hearing loss, etc... We’re looking at keeping it in the 40 decibel range. The structure would be 300 ft. It could be closer to the property line. Normal 75 ft setback rules would apply.

Merullo stated she has problems with the drive thru. She does not want to see a drive thru on certain streets. To have a coffee shop or bank and have multiple drive thrus causes a problem. It has to be specified where you want to put it in the city. It’s too much of burden on the area and the abutters. Nothing is ever quiet. There’s nothing wrong with getting out of your car every now and then to actually go into a place that you need to frequent. She is against this. She would like to bring this up at the workshop but wants to know what areas this is applicable for.



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Parker stated he disagrees regarding the workshop. He's speaking about Rt.108/Mast Rd and the Madbury town line, Indian Brook and Sixth St, Rt. 155 from Littleworth Rd/Rt. 9 towards Sumner Dr, from The Meadows, on the Northern side of the strip, where there's vacant land and than from The Meadows to the town line on both sides of the street, on Rt. 155. It's not that he doesn't want to have a workshop, it's a lot more succinct as opposed to the previous workshop where it was scattered all through town. These ones are a little more involved.

Merullo asked what if she has a problem with the urban sprawl. She does not want to see Indian Brook with a drive thru. It's become very populated.

Trefethen stated that's what it's zoned for.

Parker stated it allows the Planning Board to say, on a case by case site plan review, if you meet these 9 criteria, we're going to consider whether we give you a Conditional Use Permit to allow you to have a drive thru. It doesn't say you can have a drive thru. It says if you meet these 9 criteria we can consider giving you a drive thru. The more flexibility the board has, the better.

Schuman says there could be instances to increase our commercial property tax base over the next few years. This could be an instance where a drive thru makes sense in a location. We would hate to see that development have to go by the wayside because one of the requirements was a drive thru and our regulation prevented it. He's in favor of giving the board another tool.

Torr stated he'd like to get a legal opinion regarding Schuman's statement. If someone comes in and meets all of the criteria, it says may grant the approval but what if we deny it? Does the board have the ability to deny the request?

Parker stated the board denied Mill St. The board didn't issue a Conditional Use Permit because the Planning Board may issue it and they chose not to.

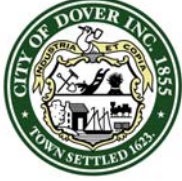
Torr stated they didn't meet the requirements.

Cole stated the fact that we have it in there with the wording of may, may allowed the potential developer to decide what they want to do with the full understanding that if they go through with their plans, the may puts it upon the board.

Colbath stated that due to the lack of character involved with a drive thru, she does not want to see on Rt. 108 and the neighbors didn't support it. She doesn't want to see one on Sixth St. A drive thru would cheapen the area. One less drive thru in Dover would not do us any harm.

Trefethen stated the criteria resolves the relatively few issues we've had. As Chris said, it's an option not an approval. The board isn't hurting itself by approving this; it just becomes on more thing that we have better control of.

Andolina stated the easiest way to control it is to identify what type of drive thru is acceptable. Another point is the amount of pollution this will cause. All we hear is global warming and pollution control. Idling engines will pollute the air. He wouldn't be in favor of this.



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Merullo stated she disagrees with Schuman. If the board approves this and it goes through, the board will run into the same problems that they have had with every other developer. If someone meets all of the criteria and the board denies the application, we'll find ourselves in court over and over again. She will not support this.

Cole state he has been the major proponent on working a deal so that we don't spend the taxpayer's money. He's of the opinion that being proactive as opposed to reactive is putting the board in a position where they're doing the right thing for the community. The right thing for the community is to make decisions and live with them regardless of whether we go to court or not. The Planning Board needs to determine the direction the direction that the community is going in.

Trefethen moved to recommend the amendment to City Council, Schuman seconds. Vote 4 to 5 defeated. Andolina moved to not allow drive thrus, Colbath seconds. Vote 5 to 4. Trefethen, Schuman, Cole and McManus oppose.

B. Discussion on May 20, 2008 Workshop Results

Parker goes over Workshop Results handout.

Cole stated that this is the best planning board he's served on. We've done a terrific job protecting the interest of the community. We know what we want for the community and we're working in that manner. There are seven concerns that need sub committees for the Planning Board. He'd like to have a Planning Board member serve on each committee as well as citizens of Dover. He stated that Christopher Parker would be the point of contact if you would like to serve on a subcommittee.

Discussion ensued in regard to forming sub committees.

5. Committee Reports

6. Adjournment

Motion: Andolina motions to adjourn at 9:15pm, Swartzendruber seconds.