



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, September 18, 2008**
Meeting Time: **7:00 pm**

1. ATTENDANCE

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

Meeting called to order at 7:04pm

2. APPROVAL OF PRIOR MINUTES OF AUGUST 21, 2008

Pg 4, par. 10 changes to "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.

Pg 6, before applicant presentation, add " Denison informed that applicant that only 4 Board members will be available to vote on this case and that the applicant must still have 3 votes in favor to receive the variance. Do they wish to proceed?

Pg 12, change to Henry stated he contacted the fire department.

Motion: Colbath made the motion to approve with corrections, Kelley seconded. Vote: U/A.
Reid abstained, absent at August meeting.

3. OLD BUSINESS – NONE

- A. Public Hearing on the proposed changes to the Rules of Procedure for ZBA.

Public Hearing Open

Atty. Chris Bolt made some recommendations to the Rules and Procedures.

Atty. James made some recommendations to the Rules and Procedures.

Public Hearing Closed

Discussion of the proposed changes continues under Item 5.

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

4. NEW BUSINESS

- A. 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 170-11 D 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.

Atty. James Schulte represents the applicant. He requested that Colbath recuse himself.

Colbath steps down, Prior will vote in his place.



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Atty. Schulte stated he is here to address two related requests. The museum to be allowed to have two permanent signs and the square footage. The museum is located in the RM-8 zone. There hasn't been a residence on that property in 100 years and given the circumstances under which it was given to the City, there can never be a residence on that property. It's committed for public park purposes and municipal purposes. The neighborhood that the property sits in is a Commercial neighborhood. Because it is located in the RM-8 zone, the limitation on signs is 16 sq ft. Refers to drawing. The signs they are asking for approval measure 24 sq ft. and 30 sq ft., one on the side of the road, and one above the main entrance. If the museum was located in a commercial zone, as their neighbors are, they could have a 150 sq ft. and a free standing sign. The primary reason for the sign on the side of road is it is a regional attraction. There are many people driving around looking for it and parents walking baby carriages looking for the museum. It gets to be a traffic and safety issue if you can't find it. In terms of whether or not the signs would be overwhelming or distracting, TD Banknorth, directly across the street, has three large signs. They are entitled to the signs and are in compliance with the ordinance. They are good examples of signs that the Dover ordinance allows. They are all valid, proper signs. Pictures submitted of signs in the City. (In file) In addition to the signs they are asking for, there are two banners, located on either side of the door, that advertise exhibits. They are temporary banners; they are not subject to the ordinance. As the exhibits change, the signs will be changed. There is a temporary sign, located on a building next to City Hall, advertising the Woodman Block condominium units. It's been a temporary sign for 2 years. Several of the abutters have sent letters in support of the application. A major residential abutter to the lot is the Dover Housing Authority project on Henry Law. Jack Buckley is present on behalf of the Dover Housing Authority to show they are in favor. He proceeds to go over the application.

Reid asked if the square footage of the signs would be allowed if the building was located across the street?

Atty. Schulte stated they could have one sq. ft. for each sq. ft. of frontage for the building. Just based on the Washington St. frontage, they could have 80 sq. ft. They are asking for 54 sq. ft.

Kelley asked how the City looks at temporary signs.

Clark stated regarding the condo sign, there is a provision in the ordinance that does allow for that type of sign. It has to be removed prior to the issuance of the final Certificate of Occupancy. In terms of the banners, they are looking at those the same way as the banners on the light poles downtown. It is public recreation and it is a City building.

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

Public Hearing Open

In Favor

Denison read four letters in favor of the variance from the Dover Housing Authority, Planning Director, Christopher Parker, TD Banknorth and George J Foster & Co., Inc. (In file)

Opposition - None

Public Hearing Closed

Denison stated that they have heard a lot of arguments in favor of the request.



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Reid stated it is startling that the property is zoned residential. Based on Christopher Parkers memo, he does not want it to remain that way.

FINDINGS OF FACT: AREA 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.

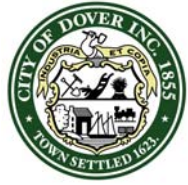
- a) AREA:**
- i.** Did the Applicant demonstrate that an area variance is needed to enable the proposed use of the property given the special conditions of the property? Yes, Vote U/A. This conclusion is based on the following findings of fact: Historical use for a long time has been recreational/commercial and there are no residences within site of property.
 - ii.** Did the Applicant demonstrate that the benefit sought cannot be achieved by some other method reasonably feasible to pursue, without the area variance? Yes, Vote U/A. This conclusion is based on the following findings of fact: No reasonable alternatives exist.
- 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: Consistent with neighboring area. Purpose is public use. Can not see the signage from any residential area.
- 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: Property is in a commercial area not withstanding the zoning.
- 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: Surrounding properties are commercial.
- 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: Makes finding the facility for out of town visitors easier given the difficult and confusing one way traffic pattern at that intersection.

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

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

- B. Z 08-21A Brian Fischer (Applicant: Bostock Donais, PLLS), 14 Fourth St., a/k/a Tax Map 31, Lot 27, zoned RM-8, requests a modification of the conditions of a Variance (ZBA Case Z 99-25) granted on December 16, 1999.**

Atty. Seth Bostock represents Brian Fisher, the owner of Wingnutz takeout and delivery. Atty. Bostock stated that Wingnutz is requesting a minor modification to a prior conditional variance from Article 4.170-11D granted Dec. 16, 1999 and a variance from Article 9.170-32E.5. Both requests concern permissible hours of operation. 14 Fourth St. has been used as an eating establishment for many years and when the City created its current zoning districts, 14 Fourth St was included in the RM-8 zone even though it is a few feet from the boundary line of the B-2 zone. In 1999, the property owner petitioned the ZBA for a variance allowing the use of the property as an eating establishment and the Board granted the variance on Dec. 16, 1999 with 2 conditions; 1. The hours of operation would be limited from 6:00 am – 9:00 pm. 2. No alcohol would be served. Wingnutz is requesting a modification on the hours of operation only. They are requesting that the business hours be allowed to operate beyond 9:00 pm on Thursday - Saturday. Concurrent with the request is a variance for the lit signage requirement. The hours requested are needed for a takeout restaurant. It is primarily designed as a takeout and delivery service. There is limited seating inside the restaurant. He proceeds to go over the application.



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

Colbath stated if they are going to vote on a condition change, a straight up and down vote would be the correct way to go. Otherwise, you would have to start the variance process all over again.

Atty. Bostock stated they do not want to revisit the original variance, it's just the hours. It would make sense to have some findings of fact. If the Board chooses not to do so, that is their decision.

Public Hearing Open

In Favor

David Terreson, owner and partner of Wingnutz. He stated that the variance would help him establish his business.

Denison asked if he knew what the projected revenue would be with the additional hours of business.

Terreson stated over the 3 days, it would be about \$3,000 more with the extended hours.

Linda Merullo, 21 Long Hill Rd Ext, stated she doesn't think the extended hours would be a detriment to the area. It would be good for the business and it would give them a good start. She doesn't have an issue with it.

Rick Jones read Parker's letter. (In file)

***Opposition* - None**

Public Hearing Closed

Reid stated if he was an abutter he would be complaining about the noise level beyond 9:00pm.

Denison stated given the location, there isn't a lot of residential abutters. In that area there is Dover Delite, which is closer to the residential zone, the train station and the church bells. Given that there is a lot of commercial use in that area, a little extra car noise after 9:00 pm is not going to affect the other neighbors.

Kelley asked how many car transactions would be expected Thursday – Saturday?

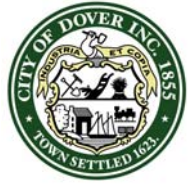
Atty. Bostock stated most of the later hours would not be the pick ups; it would mainly be the deliveries.

Terreson stated he isn't sure what the amount will be. He hasn't had the chance to be open that late yet. He's hoping for at least 15-20 cars after 9:00 pm.

Atty. Bostock stated their office over notified. They gave more than the immediate abutters because of their unique nature. It's a busy area that's on the edge of the business district.

Motion: Colbath made the motion to amend the hours of operation, Landford seconded. Vote: 4-1 Reid opposed. Therefore, based upon the foregoing, it is ordered that the conditions for the 1999 variance be amended.

1. The property is located in a heavily trafficked commercial area.



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2. The extension of hours to 11:00pm on Thursday, Friday and Saturday will not represent a significant increase in traffic or noise.

Note: The following item will be heard if the previous item is granted.

- C. Z 08-21-B Brian Fischer (Applicant: Bostock Donais, PLLS), 14 Fourth St., a/k/a Tax Map 31, Lot 27, zoned RM-8, requests a Variance from the terms of Article IX, Section 170-32 E (5) to operate an illuminated sign beyond 9:00PM

Atty. Bostock stated it's a matter of safety. If the business is open, it would make sense to have the sign illuminated so people know where they're going.

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

Public Hearing Open

In Favor

Margaret Terreson, partner at Wingnutz, stated if they are going to be open until 11:00pm, the sign needs to be illuminated so customers know they are open. It will also light the front of the shop so people can see and they will not trip on their way in. The lights are focused right on the sign.

***Opposition* - None**

Public Hearing Closed

Kelley asked if the sign would conform in terms of the sign ordinance?

Clark stated the ordinance states the illumination can shine only on the sign. It can not be directed anywhere else.

Kelley stated would you agree that such a design casts light to illuminate the front steps of the business?

Clark stated he would. There are many light fixtures with the type of shields that can be adjusted accordingly.

Reid stated he would vote for a variance in this case so that it is consistent with the previous vote.

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? Yes, Vote: U/A. This conclusion is based on the following findings of fact: Proximity to the B-2 zone. It's been used for commercial use historically.

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: The hours of operation of sign ending at 9:00 pm is not a significant impact on neighboring properties.



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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: The sign is illuminated. It's not impacting surrounding residences.

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: Allows business to operate at hours consistent with other restaurants in the area.

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: Location next to the B-2 zone and other commercial use.

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: No significant change in use. Minor change in operation of hours.

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: Consistent with historical use as a restaurant.

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

D. Z 08-21C Brian Fischer (Applicant: Bostock Donais, PLLS), 14 Fourth St., a/k/a Tax Map 31, Lot 27, zoned RM-8, requests a Variance from the terms of Article IX, Section 170-32 F (3) to install a temporary sidewalk/A-frame sign.

Atty. Foster stated the sign would be 8 ft beyond the building. There is a picture in your packets of the sign. His client agreed that if the Board is concerned about safety, he will remove the sign at dusk and it would not be out in the winter. The intent is to further visibility of the business.

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

Public Hearing Open

In Favor

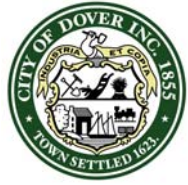
David Terreson, Wingnutz, stated the A frame sign would be taken in at dusk before it gets too dark. It would be brought out at 11:00 am when the business opened. During the winter, it wouldn't be put out at all.

Opposition

Linda Merullo stated she would like to banish all A frame signs from Dover. She doesn't like them. They are in the way. It wouldn't be on the sidewalk but it could get blown over. A-frame signs are supposed to be temporary but they end up being there for years. They get dirty and dingy. There are many more tasteful things that could be done for Dover other than an A-Frame sign. They are a detractor to the City. The Board is already going above and beyond to allow the sign to be illuminated at night.

Atty. Bostock stated that if the business was located in the Business district, he would be allowed to have the A-frame sign.

Public Hearing Closed



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Kelley stated to follow up with Linda Merullo, she made a point that if you were in the right zone, any business could have one.

Clark stated you can. Even though everyone can, not everyone does.

Kelley stated temporary does not apply to those? What's temporary about it?

Clark stated it's not permanently secured to the ground there is also a provision that requires it to be renewed on an annual basis.

Colbath stated if it's granted by variance, it doesn't apply any more.

Atty. Foster stated it would be amenable to limit the variance to his client.

Reid stated if they grant a variance it runs with the land not with the business owner.

Denison stated they can do that but there is also an enforcement burden.

Clark stated the ZBA can affix a reasonable condition geared towards a specific applicant.

Reid stated he would vote against the variance for this type of sign. It is a residential zone. They are unsightly and he isn't convinced that all of the factors have been met.

Kelley stated when he sees them, he doesn't read them, he dodges them because they're an obstacle and he doesn't find them informative.

Colbath stated it's a normal restaurant practice to put your specials on a sign.

Denison stated her main concern is she doesn't like putting conditions on something that would cause an enforcement burden to the town. While she isn't concerned with this particular applicant, they do want to have a nice looking sign that they will take in. By granting the variance, you're opening it up for someone who doesn't care about their sign. Without the annual application you would have to get in the B-2 zone, it's hard to enforce the condition.

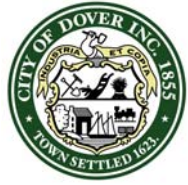
Kelley asked what the chances were that the zone would be changed.

Clark stated that hasn't been proposed at all. They usually look in the Master Plan of what is zoned incorrectly. That area hasn't been identified at all. The Master Plan is updated every 10 years. They just recently completed one and that particular area was not identified

Colbath asked how close the B-2 zone was to the property line.

Clark stated it's at the property line.

FINDINGS OF FACT: USE VARIANCE



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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: Other options are available to attract customers. This would be in addition to existing signage which is already adequate.

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: Purpose of the ordinance is to restrict the number of signs in a residential area.

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: Concern about safety and aesthetics.

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: Available signage is adequate.

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: The residential zone is intended to restrict excessive signage. Safety and aesthetic issues.

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 concerning the effect on surrounding properties. Concern about the nature of this particular type of signage.

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: Concern about safety and aesthetics.

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

Recessed at 8:53pm, Resumed at 9:02pm

E. Z 08-22 City of Dover (Applicant: N.H. Signs), Members Way, a/k/a Tax Map D, Lot 18-1, zoned B-4, requests a Variance from the terms of Article IX, Section 170.32 D (1), to locate a freestanding sign off site.

Don Booth, N.H. Signs, stated the variance is for a freestanding sign that will be located on City property. The agreement has been approved pending approval of the variance. The City Council approved the use of the property. Northeast Credit Union currently has a sign at the same location. That sign will be removed and the sign with four businesses will replace it. Refers to pictures. (In file) The sign is less than 20ft in height. The current NECU sign is very large compared to the proposed sign. It will be located on the corner of Member's Way.

Denison confirmed with Booth that the proposed location is at the corner.

Landford asked if the sign would be further back from the corner compared to the NECU sign. Will it obstruct the view?

Booth stated it will not obstruct the view.

Colbath asked if it would be a reduction in total square footage?

Booth stated it would be a reduction.



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Colbath felt that it would be less intrusive.

Booth stated it will have four businesses on one sign as opposed to four different signs. The business does not have actual road frontage. There are trees along the road that partially obscure the buildings there. He proceeds to go over the application.

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

Public Hearing Open

In Favor

Jim Ellis, 15 Alder Lane, stated he approves of the sign. His only concern is how bright the sign would be.

Opposition - None

Public Hearing Closed

Kelley stated he assumes the land ownership is established. The lots are now occupied and the sign would serve that purpose.

Booth stated when he started this process a year ago; his understanding was there wouldn't be any other businesses other than the four.

Reid stated Mr. Ellis was concerned about the lighting.

Dan Hutchin, NH Signs, stated the illumination is internal. The face of the sign is ivory, as opposed to white, which is more subdued. It won't be as bright as the existing NECU sign.

Ellis stated the existing sign is not very bright when it's lit. As long as it's equal to or less it would be good.

Reid asked if there would be a sign for the new hospital building on the other side.

Clark stated yes but it will be located on their property.

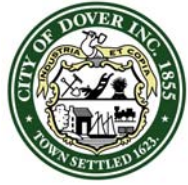
Colbath stated his concern is the City has approved their right to place the sign. The City has given them an easement to place the sign.

Clark stated there was a legal document that went back and forth between the attorneys several times before the license was approved by the City Council.

Discussion ensued regarding the removal of the NECU sign.

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.



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- 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: Business park with limited frontage in a zone that doesn't allow for reasonable signage.
- 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: Location of property and zoning makes it difficult to have adequate signage.
- 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: Signage conveys more information than current signage with less impact.
- 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: Allow the applicant to have signage easily visible from the roadway.
- 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: Allows freestanding sign to be visible from roadway.
- 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: Consistent with surrounding properties.
- 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: Improved safety by providing better signage.

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

5. OTHER BOARD BUSINESS

Denison stated they had several suggestions regarding the Rules of Procedure. If they amend them, they would have to have another public hearing.

Perry stated they wouldn't have to have a public hearing on them again. As long as they are not changes that has come from outside the context of a public hearing. They would have to have two public readings. Perry stated they should be on the agenda to be discussed as opposed to going over them tonight.

The ZBA proceeds to go over the Rules of Procedure.

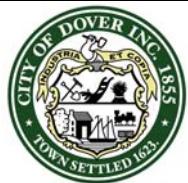
Denison stated the Fall conference is coming up. The Planning Dept. covers the cost of the meeting. The workshops are very helpful and useful. There is a meeting September 30 in Dover. Managing and Planning for Storm water in Dover.

Perry stated he will be attending. It's regarding the new EPA and how it will be handled.

Denison stated the 1967 duplex ordinance is unclear. She would like to ask the Planning Department to clarify the ordinance. She would like the new applicants to have a handout as opposed to amending the application.

Perry stated the Rochester Planning Department has a handout for the Planning Board and the ZBA.

6. ADJOURN



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Motion: Colbath made the motion to adjourn at 10:05pm, Perry seconded. Vote: U/A

List of Members

Masi Denison-regular member
William Colbath-regular member
Frank Landford-regular member
Sam Reid-regular member
Jim Kelley-regular member
Otis Perry-alternate member
Chris Prior-alternate member

Term Expires

01-24-10
10-23-09
04-12-11
11-12-09
05-23-10
02-08-09
02-01-11