



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, October 16, 2008**
Meeting Time: **7:00 pm**

1. ATTENDANCE

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

Meeting called to order at 7:08 pm

2. APPROVAL OF PRIOR MINUTES OF SEPTEMBER 18, 2008

Colbath stated on page 1, Attorney Schulte requested for Colbath to recuse himself due to a conflict of interest. There was no mention of conflict of interest. Remove that statement.

Motion: Perry made the motion to approve the minutes with changes, Kelley seconded. Vote: U/A

3. OLD BUSINESS

- A. Possible vote on the proposed changes to the Rules of Procedure for ZBA. – rescheduled for Nov. 20 meeting.

4. NEW BUSINESS

- A. * Z 08-23 Nancy Merritt, 5 Constitution Way, a/k/a Tax Map K, Lot 44, zoned R-40, requests a Variance from the terms of Chapter 126, Section 126-5.F, to construct a side carport addition onto a mobile home within 6 (six) feet from a side property line, where a minimum of twelve (12) feet is required.

Nancy Merritt, the applicant, stated she just moved into the mobile home park. She has had two back surgeries and is missing a disk. She needs to have coverage from the weather to prevent her from slipping and falling. The carport would add value to the property. There are many homes within the park that have the carports.

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

Public Hearing Open

Jones stated there have already been 4-5 of this type of request that have come before the Board from before. They've all been the same thing, individuals looking to put in a carport. They've all been before the Zoning Board and all were approved in past decisions.

Denison read from Planning Director Christopher Parker's memo, which states the Department has no objection to the request. (Copy in file)

Kelley asked if the existing driveway would be removed. Looking at the drawing, there is an existing driveway and a new driveway.

Merritt stated more driveway would be added because the existing driveway does not extend to the entrance of the carport.



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Perry asked why she decided not to put the carport over the existing driveway.

Merritt stated it's for aesthetics.

Prior added that the entrance to the house is along the side of the house as opposed to the front.

Merritt stated that due to her back surgery, if she were to fall, she could end up being paralyzed. If she could walk in under covering, it would be safer for her.

Public Hearing Closed

Prior stated he drove to the site today and there were other properties that have the carport as well. It will not diminish the value of any existing properties.

Colbath stated the land is owned by the park. They define lots only for a lease basis and to get density within the park. The park is one lot.

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: Location of home and size of lot.

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: Limited space on the lot.

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: Safety of Homeowner in winter conditions.

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: Consistent with existing neighborhood.

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: Consistent with existing neighborhood and testimony of owner of the land. (Dover Brook)

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: No conflict with the public interest.

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

1. The siding of the carport is limited to lattice, so as not to create an enclosed garage.

- B. * Z 08-24 B. Eldridge, S., A.W., & M. Weeden et al, (Applicant: Luke Wescott) 385 Sixth St., a/k/a Tax Map D, Lots 15, 16 & 16A, requests a Variance from the terms of Article V, Section 170-12, Table I, Part C-1, to construct a Drive-in Movie Theater.



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Christian Smith, an engineer with Beals and Associates, stated he represents the applicant. He handed out and explained a drawing of the drive in theater. (In file) The applicant will be leasing or purchasing 7 acres, of the parcel, which would hold the proposed drive in theatre. There are a number of things that are facilitated by this, for example internal stacking of traffic as opposed to it being out on Sixth Street and the use, with regard to traffic generation, will be in off peak hours for the businesses in the surrounding areas. Smith proceeds to review the application with the Board.

Perry announced to the Board that he owns property on the corner of County Farm Road and Sixth Street but he is not an abutter to the Weeden property.

Denison asked the Board and the applicant if they had any objections to Perry sitting on the case. No one had any objections.

Smith proceeded to review the application.

Colbath asked if Smith could indicate, on the map, where the 7 acres is within the 32 acres.

Smith stated there is a land locked parcel which is under common ownership. He refers to the map. The applicant is not the landowner. There are several property owners within the Weeden property. Map D, Lot 15 is owned by Diane Weeden, Lots 16 and 16A is owned by B. Eldridge and Weeden et al.

Denison asked if the reason for bringing in Lot 15 was due to the fact that they need a road over a portion of Lot 15 otherwise, they could come before the Board to ask for something on just Lot 16.

Smith stated that is correct. It allows them to keep close to the existing City utility easement where the sewer and water main run and also keeps the drive access out of the wetlands on the property.

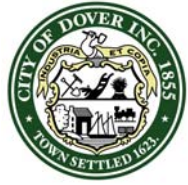
Colbath asked if there were 3 lots all under separate ownership or are they all owned by principles? He asked if they were trying to define a leased area leaving other portions to be used. Will there be a City road? Will there be separate property owners?

Smith stated they are trying to create a 7 acre section which could be purchased outright and would then require subdivision or would be leased from the owners for a 99 year lease.

Colbath asked when everything is done, will there be 1, 2, 3, 10, 25 lots? If the Board gives them permission to create two uses on the same lot, that's another question.

Smith stated in that event they could create a parcel as opposed to the lease. He stated that he didn't think that Colbath liked the lease option because there could potentially be dual uses on a single parcel.

Kelley stated it sounds like there is a business proposition with the intent of creating the drive in Movie Theater on a square area of land and to get there, they're involving some number of property owners that the Board can't get a handle on.



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Denison stated that a point that Colbath is trying to bring up is by trying to divide up an area that is for this use, doesn't make sense. The Board needs to be stating that the lot has the use. The use goes with a lot not a portion of a lot. If you want a portion of the lot to have a use, you have to subdivide so that you have a lot and that lot has the use.

Smith stated the only easement required would be for access.

Colbath stated if you're creating a lot that doesn't have any frontage, that's another variance request.

Aaron Brown, the broker for the property, stated he's represented the Weeden's for 6 years. There's a lot of ownership within the bigger parcel, 39 acres.

Discussion ensued over the location of lot 16A. A copy of the tax map was handed out. (In file)

Brown stated to answer the ownership question; there are 13 family members that have an ownership interest in the 32 acre piece. This was all one family's property. The family carved out a lot for Jeff and Diane Weeden. He built his home on that lot. That's why it exists and is different from what you're used to seeing. Jeff and Diane Weeden as they are present and they are the most impacted by the proposal at hand. In terms of the current application, the applicant is an interested party in that location. What is on the application is just the beginning step. It is not determined but Brown does not think that this use will be the only thing that would happen at this site. If this plan goes through, Christopher Parker has been privy to most meetings; the way they would like things to go through is for all 39+ acres to come back together as one and would be developed in a commercial vein, which is consistent with the City's desire from his understanding.

Perry asked how high the 2 screens would be.

Westcott stated roughly 90 ft.

Perry stated it was said that there would be no noise off of the property.

Smith stated that is the intent. The sound, from the movie, would go through the radio by way of satellite.

Perry asked if the screen would be visible from any public highways.

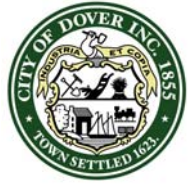
Smith stated there is a large wooded area and the second screen would face the east. It would be 1600 ft away from the road.

Motion: Perry made the motion to accept the application, Kelley seconded. Vote: 4-1 (Colbath opposed)

Public Hearing Open

In Favor

Jeff Weeden, 387 Sixth St, stated the back of his property directly abuts where the theatre would be. He and his wife feel that it would be a good use for the property. As far as building goes, it is not a highly developable piece of property. It is a good distance off of Sixth Street. It's at least 1600 ft from Sixth Street.



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He doesn't believe anyone would be able to see it from the road. His house is the closest dwelling to the proposed project. He stated it would bring revenue into the City.

John Weeden, 365 Sixth St, stated he is an abutter and doesn't oppose the project. He is concerned about the noise. He went to a drive in theatre a month ago. Everyone was sitting outside of their car with their radios. It was very loud. If there was a mall strip on the property, they would have to sever a lot of the trees. He would be able to see the screen if trees were cut down. He was under the impression that the land was being purchased; now he realizes that the property may be leased. He doesn't want the lights to shine in his direction and he doesn't want to hear the noise.

Opposition

Ed Sawyer, 399 Sixth St, stated he feels it would negatively impact their property value and the quality of life by having a drive in theatre next door, primarily from noise, sound and traffic. He believes the drive in could be built somewhere else that is zoned for it. Although the proposed plans built in vehicle stacking may not have any affect on the Sixth Street traffic, it would have an affect on his property to have several hundred cars lined up, waiting to leave between the hours of 7:00 pm and 12:00 am on weekend nights. Between the lights from cars, the sound of engines idling and the dust from a ¼ mile dirt road, he believes those are issues. He stated that drive in theatres is a concept that is a thing of the past. Regardless of the zoning, that whole side of Sixth St is residential.

Denison asked Sawyer if an enclosed theatre were being proposed, would he still be opposed.

Sawyer stated his concerns would still be the same. In the winter, they can see cars almost all the way to Liberty Mutual.

Linda Merullo, 21 Sandy Lane, stated when the Planning Board worked on the Master Plan they were hoping that Indian Brook Drive would not creep around the corner as far as retail and hotels. They were hoping to convert the B-4 zone into an I-4 or ETP zone. If that property ever became available to be sold, they wanted to continue it as a Liberty Mutual/Measured Progress concept. On page 47 of the MP, it does mention Sixth St and they are hoping to keep it as an I-4 zone. It is a quiet residential area at night. Regarding the movie theatre, she has concerns regarding the surface materials. The surface material is important. Whether it's a hot night or cold night, cars will leak gas or oil. Kids will not stay in their car, they'll be outside with their boom boxes. She was under the impression that the area was wetlands.

Denison referred to Parker's memo stating that the Planning Department supports the request and he also brought up that the area was previously R-40 which would have been an allowed use.

Kelley asked what it was changed to.

Denison stated it was changed to a B-4 zone, which does not allow it, and this is why they are here.

Public Hearing Closed

Perry asked if there were districts in the City that still allows drive in theatres.

Jones stated R-40.



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Prior asked how many cars, per screen, are anticipated and what will be the season for the theatre.

Luke Westcott, 24 Varney Road, stated it would be open from April-October and 150-175 cars per screen. He will develop the property and own it. It will be open 7 nights per week. The hours of operation will change based on daylight.

Denison asked if he was anticipating closing around 12:00-1:00 am during the summer.

Kelley stated that this struck him as a business you wouldn't see in 2008. He asked Westcott if he had market data that gave him confidence, once he goes through the process, that it would be a viable operation going forward.

Westcott stated that Movie Management, in Maine, did a survey. He supplies all of the theaters in the area with the movies. He did a market analysis and is expecting the theatre to do, approximately, \$850,000-\$1,100,000.

Kelley asked Westcott if he had any other data that gave him confidence.

Westcott stated if they are able to move forward, he will have another market analysis done.

Kelley stated when he was younger and went to the drive in, in the summers, when it was hot they did not want to sit in their cars. He can envision the lawn chairs coming out as well as people with their radios. The cumulative effect would generate noise into the neighborhood.

Westcott stated at the Weirs theatre, they have four screens going simultaneously. If someone has a loud boom box, they would tell that individual to turn it down.

Perry asked regarding the issues of permeability, will they be paving all of it.

Westcott stated the roadways would be gravel; the parking area will be grass.

Kelley asked if this were to be approved, could the applicant move the theatre to wherever he wanted it.

Denison stated they would have to put a condition on the approval within reason.

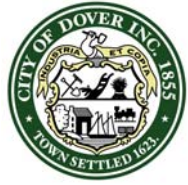
Westcott stated he is not leasing the property; he's purchasing the 7 acre piece.

Denison stated Westcott is purchasing a subdivided 7 acre piece, not the entire 32 acre property.

Kelley stated he would be dependant on gaining a right of way to get there.

Westcott stated that would be part of the purchase. He would have to have a right of way.

Prior stated there was mention of a strip mall and clear-cutting of trees. He would like clarification on it.



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Brown stated there have been discussions with the City regarding other inclusive uses to include this as part of a bigger concept for development on the site. It does not include cutting trees in wetlands. The area John Weeden was describing is all in the wetlands area. It is allowed in this zone to come closer than the 50 ft buffer but you have to give up some usage in other areas to compensate for that. It's also quite a process to obtain DES permitting to do that.

Prior stated looking at the wetlands line, on the handout, it looks like it's taking up a fair portion of the property.

Denison stated the 7 acre parcel that is proposed to be subdivided, does not include the section of trees that the abutter is concerned about. Therefore it's a question of whether that would be cut down unless there is something such, that the way the lines are drawn for the proposed eventual lot that would get subdivided out would include those trees.

Brown stated that he and the applicant met with John Weeden that day so he would know what was happening ahead of time. One of the things, in regards to why they're here tonight, is to talk more about a permitted use for the property and limiting it to that general area of the site. A lot of how everything will be played out will be dealt by the City Planning Board. Westcott is working to make sure that the screens are not intrusive to John Weeden's property.

Discussion ensued regarding the height of the screen.

Kelley stated when looking at the Planning Departments memo, the reference to outdoor movie theatre suggested that perhaps they were left out of the zoning because it was not a current frequent business enterprise.

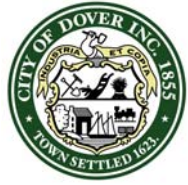
Denison stated she was thinking that as well. It was sort of an omission. Her interpretation of why it's allowed in the R-40 is because there's no going back through the code and cleaning it up.

Colbath stated it has to be allowed somewhere. A drive in is a use. You can't exclude them entirely. The only problem he has is no one seems to know what is being done, where they're going to do it and when they're going to do it.

Smith stated it is not going to be 35 acres. It will be 7 acres and there will have to be frontage provided somehow in the configuration of the subdivision. The applicant doesn't want to move forward with that if the use is not allowed.

Denison stated they could put some stringent conditions on the use variance so that the applicant is not required to go forward for a subdivision. They could define what the subdivision rules are. If they don't meet the subdivision rules, they would have to come back before them to modify the conditions.

Colbath stated once the approval is given, it is hard to retract it. He would rather err on the side of not making the wrong decision. He is not against the concept of a drive in theater; he just wants to make sure they have all of the information.



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Prior stated he can understand the reasoning behind it but he has some reservations about the potential for 300 cars coming in and out every night. He could also see the potential use of the rest of lot 16. He wants to make sure his decision is in the best interest of the current owners, abutters and the City.

Perry stated he's not supportive of the use. He believes it would have a negative impact on the residential abutters.

Kelley stated he can understand the property owners are trying to do something with the property. He's concerned about the traffic and the impact on the residential abutters.

Denison stated it is an interesting economic use; it's not the Board's place to decide if it's economical. That aside, it really comes down to impact on the abutters. If they look at the Master Plan as spirit and intent of the City, does this use mesh with those other uses? One of the things we've heard is traffic at really late hours. That's an off peak use compared to some of the industrial uses since there is still quite a bit of residential in that area. It does impact the abutters. The noise mitigation is somewhat dealt with but use goes with the land. Even if the applicant may be able to keep the noise down, a future owner may not keep everyone quiet. She asked if the members were ready to do the findings of fact.

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

5. OTHER BOARD BUSINESS

Discussion took place regarding a user-friendly handout when applying for a variance.

6. ADJOURN

Motion: Kelley made the motion to adjourn at 8:54 pm, 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