

**DOVER PLANNING BOARD
MINUTES OF MEETING
MARCH 11, 2003**

MEMBERS PRESENT: Anthony McManus, Allen Schintzius, Margaret Stevenson, Joyce El Kouarti, Dennis Ciotti, Frank Torr, Beth Thompson, David Landry, Petè Lavoie, Ron Cole (late)

MEMBERS ABSENT: Parks Christenbury

STAFF PRESENT: Steven Stancel, Planning Director; Rick Jones, Community Development Coordinator and Jacqueline Freeman, Recording Secretary

Vice Chair Tony McManus, in the absence of Chairman Ron Cole, brought the meeting to order at 7:00 PM.

Alternate Joyce El Kouarti sat in Tony McManus' seat.

ITEM #1: Citizens' Forum

No one spoke

ITEM #2: Approval of the minutes of February 25, 2003

Beth Thompson made the motion to approve .

Dennis Ciotti seconded.

VOTE U/A

Abstained – Frank Torr, Peg Stevenson

Approval of the minutes of the workshop of March 4, 2003

Beth Thompson made the motion to approve.

Dennis Ciotti seconded.

VOTE U/A Abstained – David Landry, Frank Torr, Peg Stevenson, Pete Lavoie

ITEM #3: Consideration and acceptance of an application for a Driveway Waiver for Ronald Pfeiffer, (Wadleigh House) Assessor's Map 12, Lot 22, zoned RM-10, located at 10 Summer St. (P03-08)

Steve Stancel said that when the Planning staff started researching this application, they discovered that back in 1998 there was already a driveway waiver obtained by the applicant. So this application has been withdrawn.

ITEM #4: Consideration and acceptance of an application for a Conditional Use approval, related to parking, for Ronald & Elizabeth Pfeiffer, (Wadleigh

House) Assessor's Map 12, Lot 22, zoned RM-10, located at 10 Summer St. (P03-09)

Attorney Bill Tanguay, with the McNeill, Taylor & Gallo Firm, stated that there are currently 12 residents in the elderly assisted care facility and they are seeking to expand that to 18. When the Pfiffers first came to Dover the restrictions and the limitations on how elderly assisted care was controlled were much tighter. Recently a new ordinance was passed providing more flexibility. The applicant has to satisfy the three normal requirements for Special Exception and they are going to ZBA next week. He said that the maximum number of bedrooms allowed in the facility may be increased provided that the increase was found not to be detrimental to the neighborhood and conforms to the parking standards in chapter 170-44 Off Street Parking. He said that they don't satisfy the parking requirement. The facility has 12 people and they have been there for 7 years and in that time there has never been a resident who has had a car. He said so the parking requirements that are listed in the ordinance are intended to address the situation where the people who live there have cars. He said that what they have here is an in-town facility that caters to people who come and don't necessarily stay for a long time. They need the assisted care and no one has ever had a car so for that reason, the definition of elderly daycare is probably a better definition because if the residents don't have cars, why do you need the parking spaces. He said that people who come to visit with these folks usually take them out. He said that they thought that they had 8 parking spaces but after measurements, there may be only 6 or 7 spaces. He said that he drove by there earlier and there were 4 cars in the lot and there seemed to be plenty of space still available. They are looking to get the Board's approval to have 6 spaces and go to the ZBA and get their Special Exception. They feel that that number of spaces is appropriate given the nature and use of this property. He said that the Pfeiffers have talked to St. Joseph's Church and they are willing to provide them with some parking.

Elizabeth Pfeiffer read the letter from Father Cole from St. Joseph's Church, dated March 8, 2003, stating that he is open to working something out for extra parking if it comes to that.

Frank Torr made the motion to accept the application.

Dennis Ciotti seconded.

VOTE U/A

The public hearing was opened.

Eric Spralling, 16 Summer St., said that there has never been an issue with parking with the Pfiffers or with any of the residents. He said that there may be 2 or 3 times per year during the holiday season where there may be congestion. He is in favor of the Conditional Use.

The public hearing was closed.

Steve Stancel stated that planning staff worked with the Pfeiffers for the last couple of days and they feel comfortable in making a recommendation for approval. He said that initially their concerns were not so much with the number of parking spaces but with the design of the parking given the existing width of the parking area. He said that on Monday they received a new design showing 60 degree parking and since that time, they discussed a better option that they are going to recommend this evening. He said that it is better to go to 45 degree parking and with the addition of some paving out there it will meet the minimum national standards in architectural design for 45 degree parking. It does cut the parking spaces down to 6 spaces and it will require waivers.

David Landry said that he knew the applicant and had worked on the issues of elderly care for several years. He stated that he doesn't have a conflict in voting on this tonight but the subject of promotion of elderly care in the urban core goes back with him to the day when he was on the City Council. He said that it is a much needed operation in the City and with this type of operation, no one needs a car.

Frank Torr made the motion to approve the two waivers, one for the 5 foot setback requirement for pavement of the side property line, as well a, a waiver for cars backing out onto the street and the two conditions as follows:

1. The occupants of the house don't have vehicles and if they do they must be off site. In other words the parking on site must be for employees, management and for visitors.
2. Adequate landscaping be placed along the parking area adjacent to the abutter.

Beth Thompson seconded.

VOTE U/A

ITEM #5: Public hearing regarding amendment to the Code of the City of Dover, Chapter 170-12, Table of Use Regulations, Table I, Part B, to permit agricultural uses in the Assembly & Office (I-4), Executive & Technology Park (ETP), and Hotel/Retail (B-4) Districts

The public hearing was opened.

Dana Lynch, 24 Lexington St., also a property owner at 181 Watson Road known as Civil Works. He said that he was raised on a small farm and that he is very well aware of the effect of livestock. He said that he is here to speak against this proposal. He is not against agricultural uses in the City but he feels that this is not appropriate in the ETP which is the zone that his office is located in. Dana Lynch stated that the ETP zone is not a large zone and some of their neighbors include Liberty Mutual, The Cat Doctor and themselves. There is a vacant piece of land that has been purchased by a firm out of Somersworth that is in the telecommunications industry and they have plans to build out there eventually. It doesn't seem like a use that involves livestock up to the property line would be compatible with those kinds of uses. He pointed out that Dr. Young had to go to the ZBA to get a variance to be located in that zone. He said that they spoke in favor

of the variance but it had two conditions, 1) that the facility would treat only cats, and 2) all operations would be indoor and no outdoor kennels, containments or runs would be allowed. He said that those conditions maintained the integrity and intent of that zone. He said that by allowing agriculture they would lose the possibility of enticing other businesses to the area and creating what would be a very attractive use out there.

George Niles, 200 Sixth Street, stated that he lives in that zone and he has two horses and nobody has complained. He said that in 1977 he went before the ZBA and when they mentioned a horse they were told that if they did not already have that horse they couldn't have it because it was a residential zone. He said that they had 25 acres and still couldn't have a horse unless they already had it. He said that he later served on the Conservation Commission and they were able to make agricultural use acceptable for certain size lots and zones. He said that now they have gone to ETP zoning and are grandfathered but it would be nice if those horses were legal. He said that if you have that size piece of land, there should not be restrictions on it.

Brenda Whitmore, Henry Law Avenue, said that she is speaking in favor of the expansion of the agricultural use. She said that she believes that business and farming go hand in hand. She said that when the City Council passed the rezoning package for Columbus Avenue, there were existing farms and farm operations that were impacted by becoming grandfathered uses. She said that she disagrees with the fact that an agricultural business cannot present itself professionally. To say that someone is going to haphazardly have farm animals in a location and detract from someone else's business is not a terribly responsible comment. She said that she believes that as a result of the last rezoning efforts, they diminished the amount of agricultural land available by several hundred acres. This proposal that you have before you will provide for agricultural uses in excess of 1500 acres in the City Dover and provide additional business opportunities within these zones. She said that Dover should look proactively because this will preserve open space and bank land for the future.

Jack Story, 2 Charter Grant Road, said that on a limited basis he is representing a couple of folks on the Government Affairs Committee at the Dover Chamber of Commerce. The concerns that were expressed at their recent meeting has to do with the limited number of acres that are currently available for the Executive Technology Park. The amount of acreage in the City that is currently zoned for residential that would also allow for agricultural uses is almost 13,000 acres, obviously, a number of those acres are built on and can't be used. To give a perspective, there are only 781 acres of I-4 land and only 528 acres of ETP land. Jack Story stated that he can find very little in the Master Plan about increasing the amount of land for agriculture but the Master Plan is very clear in the Economic Development portion and talks significantly about the limited commercial/industrial land available for the future. He said that the recent rezoning resulted in a few precious additional acres in I-4, B-4 and ETP, and it is still not sufficient for the future. He said that he doubts if anyone would object to a farm like the ones that exist in the City today such as Eliot Rose or apple orchards, but he suspects that there would be many objections to a pig farm. He said that he's not sure that the issue of odor control has been discussed and he mentioned the public outcry with regard to the

sewerage treatment plant. He said that he wonders if the residential homes who are near these areas realize that they would be faced with significant odors. It's much different buying a home near an existing farm with the understanding that there may be odors already there than having a farm start up near your existing home or business. He said that there is an entire industry that has been built around odor control for livestock production. He read off some research that he did that showed a reduction in land value next to livestock farms. He asked the Board to vote no on this proposal or at the very least, take the issue of increased or even continued agricultural activity and send it back for additional study and public input, particularly from the businesses that might be affected with these types of operation.

Rick Hebbard, 97 Spruce Lane, stated that to the best of his knowledge one of the last pig farms happens to be his next door neighbor and that was back in the 1960's. He said that to think that someone is going to create a pig farm in Dover today, is not thinking and said that Jack Story led everyone astray saying that some of these facilities are going to come into Dover. Those places need to have more acreage than all the ETP land and other zones combined. We want to keep the City's agriculture the way that it is and that's what makes our community, our community. He added that he would like to see this amendment approved.

Dr. Joanne Young, who owns The Cat Doctor on Watson Road, stated that she has not been in town for too long and doesn't believe that this will impact her, but she would like the Board to consider the environmental impact. She has to agree with Mr. Story and Mr. Lynch too that cow manure and horse manure makes an impact on streams and ponds. She said that the federal government has looked at this.

Paul Connolly, 100 Roberts Road, also owner of 181 Watson Road, stated that he lives directly across the street from a working farm. He said that he chooses to live there and enjoys the activities on the farm and it is consistent with the residential/agricultural zone. He said that the subject here is allowing certain agricultural and livestock uses in a zone that has been set up to be Executive Technology Park, which is a business and industry zone. He asked if the City wants it to be business or agricultural. He said that he didn't want to imply that the two cannot coexist, quite conversely, he believes that certain agricultural uses such as growing vegetables, horticulture, greenhouse and retail sale of products raised on site are entirely consistent with the character of the ETP zones as they exist on Watson and on Dover Point Road. Speaking from first hand experience, when you put the livestock component into the equation, it changes the look of things. He spoke about the deposits that occur when livestock is present. He said that it isn't a big deal for him in the residential zone because there isn't that much traffic where he is. He said that allowing that use in the ETP zone doesn't go well with the nature of the livestock business and the byproducts of that business.

George Niles, stated that he doesn't think that people will spend \$50,000 or \$60,000 per acre to set up a dairy operation in Dover. What we are talking about is bringing back agriculture in the zone where it was taken away when it was rezoned ETP. He said that

we are not bringing in the agriculture we are bringing it back to where it was a few months ago.

The public hearing was closed.

Steve Stancel stated that the Planning Department agrees with the views of Mr. Niles and several other people this evening. He said that they believe that there has been a certain level of hysteria occurring tonight and it is important to point out that these particular uses are already allowed in the majority of the City such as all the R-40 zones and R-20 zones with the proper setbacks. He said that approximately 1,400 acres are already zoned for agriculture. He said that when they went through the rezoning process there was a concern by a few of the farmers located in the new zoning areas of becoming non-conforming uses. He said that it is important to point out that agricultural uses are already allowed in the I-1 and I-2 zones, as well as some agricultural uses allowed in the B-4 zones. He said that it is not a new concept. He said that they began to look at the other commercial and industrial zones and surprisingly, there were quite a few agricultural uses in the proposed zoning areas. There are farms in the Columbus Road area, there are tree farms on Route 155, apple orchards on Dover Point Road and horse stables on Sixth Street. Looking at the original objectives of the rezoning process, the objectives were to stabilize the tax rate, manage growth, balance commercial and residential development and promote open space and the quality of life in the City of Dover. The concept of allowing agricultural and farming uses in non-residential zones does not seem to be in contradiction. He said that farming is a business and it is an industry and is generally a positive fiscal impact, it promotes open space, preserves the land for other allowed uses, particularly in an industrial zone. He said that the Planning Department supports these proposed zoning changes.

Ron Cole arrived and took his seat as chairman and Tony McManus took his seat on the Board at 7:50 PM.

David Landry said that he is a proponent of open space but he is also a proponent of ETP. He asked for an explanation of the non-conforming use and what the issues are.

Steve Stancel explained that the use can continue at its present size and could also be sold as a farm. Steve said that the primary hardship of becoming a non-conforming use is the expansion of the agricultural use, as well as the potential of adding barns or outbuildings for certain types of agricultural uses.

David Landry said that most of the pig and chicken farms are largely in the south and are absolutely huge. He said that if we don't have anybody currently operating a poultry or a swine farm, there really isn't anybody that would be stuck with a non-conforming use. He said that we are not hurting anybody that is presently not operating a poultry or swine operation. If somebody decides in the future that they want to start one up but they don't have one now, he isn't that concerned about them. He said that he is only concerned with the people that are now farming being able to continue doing it.

Steve Stancel stated that this Board can do anything that they want. He said that the way that the categories are set up in the existing zoning, poultry and swine are included in farm livestock. He said that you would have to break out those specific uses from that category.

Discussion ensued with regard to taking out only poultry and swine out of the use.

Tony McManus stated that the agricultural rezoning is a good idea and that a lot of thought has gone into it. He said that when the rezoning proposals went through to the City Council they noticed that they had created a problem because there were existing agricultural uses in these zones and we were putting a burden on them because they would not be able to expand the use without going through the variance process. He said that they are not creating any new uses within the City these are existing uses that are in existing zones that people have taken advantage of over the years such as Mr. Niles with horses. He agrees that nobody is going to come in the City of Dover and pay the amount of money that it costs to buy land here for a commercial pig farm or a poultry farm. It is just economically not viable and it's ridiculous to even consider that as an option. He said that we need to consider that agriculture is a commercial use. He said that we should be encouraging people to come in to use open space for tree farms and for commercial flower gardens and for vegetables and things that are going to be sold in roadside stands. He said that it preserves open space for the future and it is less of a burden taxwise on the City than it would be if we had to create infrastructure for an industrial or large commercial use. It is a benefit to the City to keep that space open and we should recognize that and try to promote it. He said that the Speak Out Dover Program proved that at the top of the list of what people liked about the City of Dover was its rural character. He feels that it is an important position for the Board to take.

Frank Torr supported what Tony had already said. He said that what has been indicated to the Board this evening is what is taking place in other parts of the country and they call them factory farms which is mass production of whatever they want to produce. He said that there have been problems with that in other parts of the country but he didn't think that anybody in this area would buy property at the going price to go into dairy farming. He said that he thinks that this is an opportunity to keep existing farms and allowing them the opportunity to expand. He said that he doesn't feel that it would be detrimental to the neighbors by any means.

Beth Thompson stated that what she has heard tonight is that there is a zero percent chance that swine, livestock or poultry would ever go into the ETP on Sixth Street and she has also heard from businesses that they have a problem with the eventuality of that, and that is a concern for her. She said that the City has limited acres to develop as a business and technology zone and the businesses are saying that they would not like to locate someplace where there would be a possibility of livestock. She said to her it is a conflict of interest because if it is perceived as a conflict, then it is a conflict. She said if businesses perceive that there is a likelihood that poultry, swine and livestock would be next to them, then it is a problem. Beth Thompson emphasized that we should be very

concerned about our business community. We've made the effort to attract businesses to this area and she doesn't think that she could support this.

Steve Stancel said that he believes that it is just a difference of philosophy. Some people might say that perhaps those uses are better suited in a non-residential zone than in a residential zone.

Beth Thompson stated that several businesses have told her that they are not comfortable with agricultural. She said that, at one time, at Enterprise Park had big piles of gravel stored to be used in the future and until they spent money to level it out, people would not even consider looking at the lots because they couldn't see the forest for the trees. It needs to be easy and understandable for business coming in that we can assure them 100% that there will not be chickens next to their high-tech businesses.

Tony McManus made the motion to recommend the adoption of the zoning change and forward it to the City Council.

Peg Stevenson seconded.

Ron Cole stated that he wouldn't be participating in the vote and Joyce El Kouarti could vote in his place. He said that he wasn't a party to the discussion and he doesn't feel he should participate in the vote.

VOTE U/A 6 – 2

Opposed – David Landry, Beth Thompson

ITEM #6: Old Business

a. Discussion and possible vote on the CDBG funding requests for Fiscal Year 2003.

Chairman Cole stated that a workshop was held last week and recommendations were made in conjunction with the advise of the Planning Department.

David Landry stated that he was stepping down because he was not at the workshop and stated that Allen Schintzius could fill his seat for this item.

Frank Torr stated that he was stepping down and Joyce El Kouarti could vote in his place.

Dennis Ciotti thanked Rick Jones for his help with all the CDBG agencies that came before the Board and for putting together the list of how to divide up the money. He said that Rick did a great job.

Dennis Ciotti made the motion to approve the CDBG recommendations as presented and send them on to the City Council.

Joyce El Kouarti seconded.

VOTE U/A

b. Request for an extension of approval for Opechee Corp. for Lafrance Hospitality lot line adjustment and site plan for Map 39, Lots #78, 83, 89-94, zoned B-5, located at Indian Brook Drive/Old Rochester Road – File #P02-42 and 43.

Joyce El Kouarti made the motion to approve a 60 day extension.

Peg Stevenson seconded

VOTE U/A

Dennis Ciotti asked if the 60 day requirement could be changed to save the Planning Office the aggravation and added that it seems to be a growing problem.

Steve Stancel stated that it would take a revision to both the Subdivision and Site Review Regulations. Steve said that, historically, this time period tends to fluctuate. There was a time when it was 90 days and it was pushed back to sixty because some projects were just languishing. He said that the way the Wetlands Board is these days it can take longer than 60 days so he would recommend extending that at some point. Steve said that he could draft a proposed change for the next meeting and the Board can post it for a public hearing.

VOTE U/A

b. Atty. James Schulte is asking for a 60 day extension of approval for Millstone Properties, on Back River Rd., File4 P#P02-54.

Peg Stevenson made the motion to approve the extension.

Joyce El Kouarti seconded.

VOTE 7-1

Opposed – Tony McManus

Steve Stancel announced that the bids for the intersection of 108 and Central Ave. came back and the Council is awarding the bid tomorrow evening so work will begin soon.

Chairman Cole asked for a report of the Gravel Pit Committee

Allen Schintzius, Chairman, stated that they had a meeting on the 3rd and a very productive meeting this morning. He said that they have reviewed a first draft proposal and will be meeting again tentatively on the 24th. Allen Schintzius said that he feels that they need a few more meetings to do this and do it right before they have a formal proposal before the Board.

Ron Cole asked Board members who are on any other committees to give reports once a month. He said that this could be done at the first meeting of each month in the future.

Steve Stancel stated that on the desks is a proposed definition for farm agriculture. He said that he feels that it is important to nail down the definition of what farm agriculture is. He said that he would like the board take this home and it can be brought up at the next meeting for further discussion. He said that what it tries to do in non-residential districts is to have a requirement that the primary source of revenue on site must be

generated by the farm or agricultural use, thereby, it attempts to make the farm in non-residential zones a business or professional use. Because there had been some concern about people just subdividing and having just a garden He said that it may be too strong or not strong enough.

ITEM #8: Adjournment

Frank Torr made the motion to adjourn.

Beth Thompson seconded.

VOTE U/A