



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

### 1. ATTENDANCE

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

Meeting called to order at 7:05 pm.

### 2. APPROVAL OF PRIOR MINUTES OF NOVEMBER 20, 2008

Motion: Reid made the motion to accept the minutes, Landford seconded. Vote: U/A

### 3. OLD BUSINESS - NONE

### 4. NEW BUSINESS

- A. \* Z 08-26 B. Eldridge, S., A., W., & M. Weeden et al. (Applicant: Luke Westcott) 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.

Christian Smith, Beals Associates, stated that the applicant appeared before the Zoning Board in October. There were questions and concerns from the abutters and the Zoning Board that they were not prepared for. They withdrew that application and submitted a new application that addresses a lot of the questions and concerns that were previously brought up. He refers to the plan. He addressed parcel 16A which is a small, no frontage parcel that was previously cut out by the owners to create a separate parcel for children to use for ice-skating. He continues to point out the theatre and concession stand.

Denison asked if the Use Variance was for the entire parcel, a subdivision or a lease arrangement.

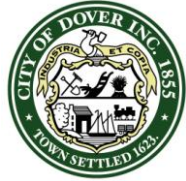
Smith stated if this moves forward, there would be a lot consolidation to eliminate lot 16A. There would then be a subdivision of 6-7 acres to create a separate lot for the drive in use.

Denison polled the Board to see if everyone would like to hear the case. All Board members agreed to continue with the case.

Public Hearing Open

Smith proceeds to go over the application and passes out photos of the property. (In file)

Aaron Brown, property broker for the Weeden and Eldridge family, stated there were some valid concerns, from the abutters, regarding the impact on their lifestyle. There are hotels, C&J Trail ways which operates 24 hours a day, Liberty Mutual which has a 3<sup>rd</sup> shift, Enterprise Park with a 3<sup>rd</sup> shift, Margarita's which is a restaurant and bar. There are several uses on this area of the parcel that would have more impact for the residential nonconforming uses. Although he is sympathetic to someone that resides within the business zone, it's difficult to limit development of the property. The family has owned the property for several generations. He's been working with them for 6 years. If residential use were an allowed use for this property, it could have been sold a long time ago. To spend a lot of energy limiting commercial development on the property because of concern for residences seems to be quite unfair to the family. Westcott is open to



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conditions so that it is not an open ended issue. It could be part of the variance if necessary. This is just the first step in getting something done. They would still have to go through Technical Review, a Site Plan review and the Planning Board. Another issue that had come up at the prior meeting was concern regarding the wetlands and any impact. It will have minimal impact on the wetlands due to the gravel. The gravel will make it have a pervious surface so there will still be drainage.

Colbath stated he understands that a parcel will be made out of the property, what will the parcel look like?

Brown stated they are looking for the ability to build a drive in on the back section of the existing conforming lot.

Smith stated they haven't contemplated where the lot lines will be until they know when the use will be allowed. The rear portion of the property is mainly wetlands that they will not be able to use.

Discussion ensued regarding the sound and traffic.

### \*In Favor\*

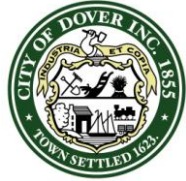
Sean Larose, 390 Sixth St, stated that he thinks a drive in theatre is a great idea. He's been watching the property since he moved into his home in 1999. He'd rather see the drive in theatre than a retail mall.

Christopher Parker, City of Dover Planning Director, stated the Planning Department supports the variance request. If the property were in the R-40 zone, the variance would be supported because there are very few controls, within the zoning ordinance, regarding a drive in theatre. If Westcott were to choose a 7 acre parcel in the R-40 zone, he would come in for site plan approval and receive a lot of what he needs because there are very few opportunities to check that. By coming in for a variance, Westcott is giving the Board a lot of control regarding condition of approval. Although it is a good move that the applicant said that they're going to try to get the frontage, through the Transfer of Development Rights ordinance, they could petition the Planning Board for no frontage on the lot. It is important to point out that it is located in a non residential zone. It's better to have the drive in located in a non residential zone than a residential zone. The Planning Department supports it. We think that the variance is much more appropriate for this land, than if they were to try to place it in the R-40 zone where the Zoning Board would have much less opportunities for conditions of approval. These zones were created specifically for commercial use.

### \*Opposition\*

Ed Sawyer, 399 Sixth St, stated that his concerns are still the same. Until the drive in is built, no one knows how much light and noise pollution there will be. Regardless of the zone, the property is surrounded by residential homes. The idea of 400 cars going up and down the dirt road is not something he's looking forward to. He would prefer that it would not be allowed.

Linda Merullo, 21 Sandy Lane, stated that as members of the Zoning Board they have a responsibility in the planning of Dover. She has concerns for a Drive in theatre in a rural residential neighborhood. The evening hours in the area are very quiet with minimal traffic. The drive-in would be operating when most residents are likely to have their windows open during the summer months. She believes that drive in theatres and electronic flashing boards are uncharacteristic to this neighborhood. It would be a hazard to passing



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motorists. The new North End Fire Department uses Sixth Street for a way to get out for emergencies. Whether it is flashing electronic or LED signs, they are unfit for Sixth Street and Dover as a whole. The Zoning Board should not approve projects that are out of context for the City of Dover.

Shawn Larose stated that he can hear Liberty Mutuals generator running for 4 hours every evening. If there were a strip mall in that location and they lose power, would there be a generator running every night? Would there be bright signs on at night? He'd rather see the drive in theatre than a strip mall.

Merullo stated that she is not in favor of turning Sixth Street into a hotel/retail area. The Planning Board is trying to rezone that area into an I-4 or ETP zone, which would operate the same way Enterprise Park, Liberty Mutual, and Measured Progress do.

Brown stated that the Weeden family has owned the property for several generations. It was a residential zone at one point. It could have been sold several times if residences were allowed there. It's now a B-4 zone. This is a business application before you. To hold the family hostage until rezoning goes through is an injustice.

Public Hearing Closed

Colbath stated he likes the theatre idea. He just has a problem granting a variance to a plan that does not have a delineation of lines.

Parker stated that he had advised Westcott to come before the Zoning Board first and get the use allowed. The benefit for the Zoning Board is they can state that they only want the theatre located on the back portion of the lot. If the Zoning Board does not want the theatre right on Sixth Street they can state that.

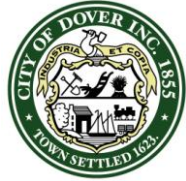
Landford stated that it is nice that they put in the theatre on the rear part of the lot but what about the other part of the lot. Can they put a strip mall on it?

Denison stated the strip mall is not relevant to the application. You can not put that kind of condition on the lot. It's a B-4 zone. Trying to require approval for something that they already have the right to do is an unfair restriction on the landowner. Do we approve this application for this use with a condition that shows what they are laying out for them now?

Reid stated he doesn't understand where the line is and how it relates to the proposal. Is everyone concerned that they are going to move the screens closer to Sixth Street?

Denison stated originally the screens were not positioned the way they are now. There was a concern that if they decided to move the screen or if the tree buffer gets cut down, you would have a light problem. What Reid is hearing is a cleaner presentation than the original one.

Reid stated the zoning laws tell how big the sub-dividable lot would have to be. He would give deference to the Planning Board. He's not concerned with where the line is drawn. He has concerns with the traffic in relation to the abutters. It's a commercial zone. It's the least intensive use for 4-5 months out of the year. If it's going to be a big hotel or the theatre, he'd rather have the theatre.



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Kelley stated theatres are allowed in this zone. He believes that when the zone definition was created, people didn't think of drive in theatres because they were less and less frequent as a business. They failed to specify drive in theatre as a category.

Denison stated when zoning something as B-4, you would imagine a more intensive use. The thought of having a lot large enough to support a drive in theatre in a B-4 district, was unimaginable. The R-40 zone is what was thought of to be able to support large tracts of land which is probably what happened. If enclosed theatres are a supported use, it's hard to say why an open theatre is not.

Colbath stated he has a problem with not having proposed plot lines and agreements for what's going to happen.

Discussion ensued regarding the conditions of approval.

Motion: Kelley made the motion to grant the variance per the conditions, Colbath seconded. Vote: U/A

### **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: Large flat lot with long driveway. Not typical of B-4 zone.

**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: Enclosed theaters are an allowed use in this zone.

**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: Traffic – based in traffic studies impact not significant. Noise – Master volume control and city ordinance for noise will address. Light – Conditions will allow for screening.

**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: Business use in B-4 zone similar to permitted uses.

**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: Use is similar (and even less intense) than permitted uses.

**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: Separation from the residential areas by conditions.

**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: Economic benefit and comparatively lower intensity than other permitted uses.

Therefore, based upon the foregoing, it is ordered that the application for the variance be granted. If granted, it is subject to the following conditions:

1. Orientation and location of buildings and screens be as depicted on the proposed plan.



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2. Use will be screened from view from Sixth Street.
3. Lot 16-A will become part of lot 16.

### 5. OTHER BOARD BUSINESS

Denison asked the Board if anyone had the signed Acceptable Use Policy to turn in. She also explained to the members where the new ZBA mailbox is located as this will be where you will be able to pick up your packets.

### 6. ADJOURN

Motion: Reid made the motion to adjourn at 8:29 pm, Colbath 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