

**DOVER PLANNING BOARD
MINUTES OF MEETING
OCTOBER 9, 2001**

MEMBERS PRESENT: Ron Cole, Dennis Ciotti, David Landry, Chuck Maglaras, Anthony McManus, John Sullivan, Beth Thompson, Frank Torr, Brenda Whitmore (Late)

MEMBERS ABSENT: Jerry Reese, Peg Stevenson, Pete Lavoie

STAFF PRESENT: Steven Stancel, Planning Director and Jane Frankie, Recording Secretary

Ron Cole brought the meeting to order at 7:00 p.m. and stated that Brenda Whitmore will be 15 minutes late for upcoming meetings due to a master's program class that she is currently taking at UNH. He announced that the **Motiva and Bellamy Mill Apartments (Great Bridge) would not heard this evening.**

Steve Stancel indicated that a new survey plan for Great Bridge shows some of the City right-of-way going through the property, which could affect their parking area. This was a big enough issue that some additional work needed to be done behind the scenes before coming back to the Planning Board. Steve explained with regard to Motiva, that the City's independent traffic engineer's response to the applicant's most recent traffic engineer's design was received late last week. That was not enough time for the applicant's engineer to review and respond, so they have requested an extension to the 23rd.

Several abutters had a real problem with this, specifically Dennis Duffy. "Why was this issue on the agenda? Where is Motiva? Why were they notified and the abutters not? How many extensions were going to be granted? We are not being treated fairly!"

Steve Stancel advised the audience that the City had notified their attorney, Mr. Don Bryant, that this item would not be discussed tonight. Ron Cole suggested that their attorney should have notified them of this change. He also added that it was his understanding that there was not enough time to look at the traffic study in order to represent the community properly. Ron Cole advised some of the abutters that he would declare them out of order in order to continue the meeting.

ITEM #1: Approval of Minutes

Frank Torr made the motion to approve the minutes of September 25, 2001.

Beth Thompson seconded.

Anthony McManus pointed out a spelling error on Page 16, third paragraph from the bottom. Barry Moore of 30 Silver Street, should say Berrien Moore.

VOTE U/A

ITEM #2. Application for a conditional Use Permit for Donald Smart & Sandra Ackler, Assessor's Map 15, Lot 52, zoned RM-10, located at 38 Fisher Street.

Donald Smart stated that he is asking permission to move his garage. He stated that he has met with the Conservation Commission and they have no problems with this.

Frank Torr moves for acceptance.

Dennis Ciotti seconds.

VOTE U/A

Public Hearing Open

There were no comments.

Public Hearing Closed

Steve Stancel stated that the Planning staff recommends that the Conditional Use Permit be approved with the following condition:

1. The applicant shall install a silt fence and other appropriate erosion control measures before excavation and construction of the garage.

John Sullivan moved to approve with the staff recommendation.

Dennis Ciotti seconded.

VOTE U/A

ITEM #3. Application for a minor lot line adjustment of land for Kenneth & Barbara Godin, Assessor's Map A, Lot 36-9 & 36-10, zoned R-40, located on Parsons Lane.

Kevin McEneaney represented the Godins saying that the Godins wish to adjust the lot line so as to add additional land to the lot that has the house on it, reducing the size of the vacant lot so that they can sell it as a single-family house lot.

Dennis Ciotti moved to accept.

Seconded by David Landry.

VOTE U/A

Public Hearing Open

There were no comments.

Public Hearing Closed

Steve Stancel stated that the Planning staff recommends approval with the following condition:

1. Add both of the owner's signatures to the plat.

Chuck Maglaras asked where the driveway would be located and how Public Works would be able to get around to plow.

Kevin stated that driveway locations were not necessary at the time the subdivision was approved, but it probably would come out on the cul-de-sac area when Parsons Lane is completed. It will not be curved as it appears on this plan.

John Sullivan made the motion to approve with the recommended condition.

Seconded by Dennis Ciotti

VOTE U/A

ITEM #4: Application for a site plan for Terra Nova Property, LLC, Assessor's Map D, Lot 14-3B, zoned I-4, located off Venture Drive.

Bob Stowell of TriTech Engineering represented the applicant. There is a driveway just to the north of the Capital Plumbing site that is a common drive that is shared by both Capital Plumbing and Frito Lay, and will be shared with this site as well. They are proposing a 10,000 s.f. light industrial, multi-tenant bldg. with four separate units containing 2,500 s.f. each. The front of the building would be office space and the rear would be used for manufacturing and distribution w/loading in the back. An illustration of a similar structure was shown to the Board. Since no specific tenants have been outlined for the property at this point, the technical review process resulted in a concern with the amount of parking on the site. He indicated where additional parking could take place at the rear of the property, which would support enough parking.

Chuck Maglaras moved to accept the application.

Seconded by Frank Torr

VOTE: U/A

Abstained - Beth Thompson

Public Hearing Open

There were no comments.

Public Hearing Closed

Steve Stancel stated that the Planning staff recommends approval of the site plan with the following conditions:

1. Add the owner's signature to the plan.
2. Add surveyor's stamp and signature to sheet T-2
3. Add engineer's stamp and signature to sheets SP-1-4
4. Provide an architectural rendering of the building.
5. The applicant shall submit the utility easements to the Planning Department for review prior to recording the easements.
6. Any additional recommendations from the City Engineer.
7. That the DEDC will review the plan (per Beth Thompson informing Stancel that this was agreed upon by the applicant at the Technical Review Committee)

Chuck Maglaras moved to approve with the staff recommendations.

Seconded by Frank Torr.

VOTE U/A

Abstained - Beth Thompson

Brenda Whitmore arrived.

Ron Cole stated that no member could sit in the City Counselor's seat except for a City Council representative.

ITEM #5: Application for a Conditional Use Permit for Jason & Barbara Theodore, Assessor's Map H, Lot 18, zoned R-20, zoned R-20, located at 16 Leighton Road.

Representing the Theodores is Dover Attorney Jim Schulte. He said that this current proposal is for a reduced size version of the original plan. The Theodores have agreed to change their request for a two-car garage to a one-car garage. By reducing the size of the garage, the setback will now be 21 feet. The remainder of the proposal is the same. Mr. Schulte acknowledged that the Planning Board (and the State) has jurisdiction over any construction taking place within 75 feet of surface waters. The original proposal was presented to the Conservation Commission and their basic concern was the possible request for a seawall should any future flooding threaten the new construction. The requests for these conditional use permits (whether for sea walls, garages, etc.) must always be considered upon their own merits. He said they do not foresee any need for the Theodores to come before this Board in the future for a sea wall. The existing retaining wall is going to remain intact; there will be additional plantings along the top of that wall of salt water resistant plants in order to dissipate any wave action and to prevent any problems with erosion. The house is going to be constructed on piers as this one currently is so that there will be no foundation. Considering the input from the Dover Conservation Commission the matter was presented to the State, and was approved by issuing the wetlands permit and a shoreline protection permit. The State's concerns were basically prevention of pollution during construction. Having all the necessary State permits, they just need the City's permission for this project. Mr. Schulte finds that the City's regulations for Conditional Use Permits are not particularly helpful in addressing this type of concern, and he went on to list the seven issues set forth in the ordinance.

- 1 To prevent the development of structures and land uses on naturally occurring wetlands and flood-prone areas, which will contribute to pollution of surface and ground water by sewage or other contaminant. There is City water and sewer. Because there won't be a full foundation, construction will be limited and there is existing uses both from adjacent properties and on this property.
- 2 To prevent the destruction of natural wetlands, which there is no concern about destroying wetlands in this case.
- 3 To prevent unnecessary expenses to the City; to provide and maintain essential services and utilities. There won't be any changes in those, and neighbors are already served by existing municipal utilities.
- 4 To encourage those uses that can be most appropriately and safely located in wetland and other environmentally sensitive areas. This is an existing use, both for this property and for the others. The structures are going to be larger but the nature of the use is not going to be different.
- 5 To preserve existing natural drainage systems and the vegetation and wildlife habitats that they are in. Drainage systems won't be changed, and vegetation and wildlife will be enhanced because of the shrub, grass and tree plantings.

- 6 To preserve wetlands and other environmentally sensitive areas or other ecological reasons including those sited in RSA 483B, which is the Shorelands Protection Act and they have been granted a permit.
- 7 To preserve and enhance the aesthetic values associated with waterways and natural shorelines. Even the Dover Conservation Commission acknowledged that the proposed structures would be aesthetically better than the 70-year old current structures.

Atty. Schulte pointed out that from Boston Harbor Rd down to the end of the point there are no more than three or four true summer camps and very few homes of this size left down there. Atty Schulte reminds the Board that out of the 34 properties between Boston Harbor Rd. and the end of the Park (building dimensions taken from property tax records), not including Newicks and the marina, 21 of them have structures totaling greater than 2,000 s.f. With a reduced size garage it will be a two-story structure with a footprint of 1,893 s.f. less than 2,000 s.f. And so this property as we have reduced the scale is well in keeping with the neighborhood. His last point is that although this lot is small (50 X 125) it is surrounded by two larger properties, each nearly an acre. The density of these three particular properties is never going to be great even by adding this new larger structure on there, because you have the two large lots surrounding the little one. It would be different if you had a dozen of these little lots in a row and everyone was planning a big house of them. There will still be substantial open area because of the right-of-way, which runs down the middle having large trees growing on it, which will remain undisturbed. Atty Schulte offered copies of the approvals from the State for the record.

Ron Cole asked Atty. Schulte to confirm the increase in the footprint of the present size of 1,068 s.f. to the proposed size of 1,893 s.f.

John Sullivan stated that he feels very strongly that there should be a greater attempt to get a bit closer to that 75-setback requirement from the high water mark? He noted that the structure appears to be just 25 feet away from the high water mark.

Atty. Schulte pointed out that several Board members did actually comment on the size of the garage specifically, which is noted in previous minutes. The existing property is only 12 feet from the high water line, this proposal is actually moving it back to 25 feet, which is in fact the deck, being 8 or 10 feet. So, the house itself is going to be nearly 35 feet back from the high water mark. If you say that you don't want any structures closer than 75 feet, you are still going to end up with a very tiny house because you have setback problems on all sides. If you look at the neighborhood, although that 75 foot setback applies to all the properties down there, most were built close to the water and very few will currently meet the 75 foot requirement, including those that are immediately adjacent. We are trying to push this back, but there is some limit as to how far you can push it back and still have a viable project.

John Sullivan noted that he would to see this closer to the 75 feet, not necessarily the whole 75 feet, but an honest attempt toward meeting that setback.

Atty. Schulte stated that you can't just say that it has to be 75 feet back because you have this Conditional Use Permit process which is for the purpose of something less stringent than the variance but something more than rubber-stamping it. You have to have a concern that is focused on "is this going to hurt the environment to do it the way we want to do it?" We are trying to do that. He said that they are putting in plantings, to protect erosion.

David Landry stated that regarding aesthetics of the conditional items mentioned above they are not just talking about the structure but of the aspects of the shoreline. He asked if the house interfered with any other landowner's view of the water.

Atty. Schulte answered that it does not and won't in the future.

Landry pointed out that Item #7 is broader and takes into consideration other than what Atty. Schulte states. For example, what does the house look like from a boat on the river? Landry also states that he believes that it is within the purview of the Planning Board to just say "no" because something does not meet the setback requirement of 75 feet. But the Board is about trying to compromise and work with people. There is an existing house on this lot and it is being moved back some 25 feet roughly from the existing deck so the house is moving back. This does represent an improvement over what is there, and that is significant.

Frank Torr moved to accept the application.

Seconded by Beth Thompson.

VOTE U/A

Public Hearing Open

Bobby Jean Weiler, a wetland scientist from West Environmental, concurs with Atty. Schulte that they have obtained State and Shore land Protection permits. Both of these permits required that during construction that there be hay bales and silt fence, that they be checked regularly and be cleaned out if they need to be to prevent erosion into the water. And lastly, after the home is built the installation of buffer plantings that are salt tolerant, berry producing to provide habitat for songbirds and small animals, and their root systems would help provide fertilization to help prevent erosion. She said that the present house is greater than 50 years old and is not a very stable building and hasn't been washed away. It has withstood the storm of 1996 and the winds and waves of the storms/high tide of this past spring so flooding is going to be an issue. The new proposed building will be on piers and she said that she didn't think the Theodores would be back here looking for a permit for a seawall. Environmentally, the proposed building is more appealing in terms of plantings, grasses, and habitat and is further away from the water.

Ron Cole recalls that on the site walk there was discussion about the south-facing location of the house and how severe storms apparently do not seem to affect it.

John Sullivan asked if West Environmental had experience with other various towns' setback requirements, and have they recommended abandoning those setback requirements from the high water mark because some buildings don't tend to get swept away by hundred year storms.

Ms. Weiler states that they never make any recommendations for towns to abandon their ordinances.

John Sullivan asked if West ever offers a guarantee to a town saying we will put up half million dollars if this house gets swept away or we will insure you against the liability if you allow this property to go without an additional seawall being constructed one-third the recommended distance from the high water mark?

Ms. Weiler stated that they do not offer that guarantee. But they do monitor the project.

Public Hearing Closed

Steve Stancel stated that the Planning Department has given a lot of thought to this application and they have come to the conclusion that there is a problem inherent in the City Conservation District Ordinance itself. There is a 75-foot setback, however, we do allow via Conditional Use Permit people to build within that 75-foot setback. The original concept of the Conditional Use Permit was that nothing is ever black and white. The City Council wanted to have some flexibility in the ordinance in order to allow people the proper use of their property. However, the ordinance may be a little bit too subjective which may lend itself to litigation in the future. He said that the Conservation District Ordinance should be looked at in the near future and perhaps create and clarify guidelines and be more specific in allowing encroachments within that 75-foot setback. Not having those available to us today, the Planning staff recognizes that the applicant has taken steps to reduce the impact of the proposal, and the new layout is a compromise. The Conservation Comm. Chairman, Tom Fargo, has reviewed the new plans and concurs with the proposed conditions of approval. The Planning Dept. approval with the following conditions:

1. The applicant shall provide the Building Inspector with an Elevation Certificate for the property prior to the issuance of a building permit, in accordance with the floodplain regulations in Chapter 113-5.
2. The applicant shall install a silt fence and other appropriate erosion control measures.

David Landry confirms with Steve Stancel that should some other party living here in the future come before the Board wanting to change the seawall, and it was determined that it would have an adverse environmental impact, it would it be legally within the Board's purview to say no

Frank Torr moved for approval with the two conditions set forth by the Planning staff. Seconded by John Sullivan.

Anthony McManus is going to vote against this because he feels that two-thirds of 75 feet is too much of a waiver request and the proposal exceeds the maximum percentage of the lot for the size of the building. The Theodores bought a small lot and they knew what they were up against when they bought this small lot. It is not the responsibility of the City to bail people out who buy a piece of property in this condition and size. There are communities around who are passing ordinances to prohibit people from doing that just because of over crowding. We might be setting a precedent on size of the house and will have a hard time refusing future similar requests.

John Sullivan agrees that the ordinance is designed to offer some degree of flexibility, but there is flexibility and then there is contortionism. And abandoning two-thirds of the setback requirement is closer to contortionism. The only compromise that has been reached on this is we have a smaller garage, which wasn't the most important issue to this application. He again apologized if that was understood to be the key concern. There has to be a reason that the City came up with the 75 feet from the high water mark as a reasonable and workable solution. He believes that the developers are going to come back here with a request for a larger seawall. They have to, any insurance company is going to say they have a much bigger investment and it has to be protected.

VOTE 4 – 3

Opposed: McManus, Sullivan & Ciotti

ITEM #6 Old Business

Motiva and Bellamy Mill Apartment issues will not be addressed this evening.

a. Discussion and vote for Stabile Homes of Dover, Tuttle Lane (28 lots)

Frank Torr motioned to remove this item from the table.

Seconded by Beth Thompson.

VOTE U/A

Kevin McEneaney introduced Paul Connolly (Civil Works) and Moe Paquette (Stabile). He explained that this project is a 28 lot single-family subdivision off Tuttle Lane to be developed by Stabile Homes of Dover and currently owned by Bill Tuttle. At the last meeting the Engineering Dept did not have a chance to review the revised plans and they agreed to table so the plans could be reviewed. On Friday they received a list of engineering comments, of which they have addressed 99 percent. However, there are four items that they want to bring to the Board's attention and are not ready to move forward on:

1. Recommendation from the Engineering Dept was having to provide public access via an easement over one of the lots within the subdivision to the City owned parcel, which is located on Dover Point Rd. Kevin said that parcel is controlled by the Conservation Commission who is not in favor of granting that. There is a significant frontage on Dover Point Rd. for that parcel, and we don't feel that it is necessary to provide further access through one of the lots within the subdivision. They wish to remove this recommendation.

2. A waiver for the installation of an 8-inch water line. According to the City standards, a 12-inch water line is what is recommended for installation within subdivision. The memo from the Engineering Dept. supports that waiver. That is a requirement that is quite often waived.

3. The second waiver we would request would be a reduction of the pavement section from 32 feet with sidewalks on both sides to 24 feet with sidewalks on one side. This is also a waiver that is normally granted for a number of years now and the Engineering Dept would also support this waiver. To go along with this waiver we would agree to post "no parking" on the side of the street which is the side that does not have the sidewalk on it, similar to the Alden Woods Subdivision.

4. And last they would ask a waiver from the requirements for the size of the required granite bounds at every curve point along the ROW line. The requirement within the code is for a 6X6X54 inch long granite bounds. There would be in the order of 40 plus of these bounds, each weighs 150 pounds. That size is very difficult to handle with one person (or two), so we are requesting a 4X4X48 inch bound which is standard on what's been in other subdivisions.

Kevin said they agree with all the conditions of approval that are listed in the packet and have no problems with those and look forward to getting conditional approval so that we can get the project moving forward

Steve Stancel said that he finds merit to providing pedestrian access to the City piece. He feels that people in that subdivision will want to walk to the City piece. He said that without some kind of easement they will walking through people's yards, or will walk out to Dover Point Rd. Initially it was suggested that a tot lot be created on the City owned parcel. The Conservation Commission did not like it because they would like to see that parcel remain in as pristine shape as possible.

Paul Connolly suggested they could walk from the tot lot, to Overlook Drive to the existing easement under the power lines to get access to the City land.

Steve Stancel said that the easement under the power lines in not a public easement, it is a utility easement. The public walks and skis on it, but it is not formalized, and they could get kicked off it, particularly if it's going over private land.

Kevin stated that they can't cover the Public Service/gas easement with an additional easement on top of that, but Moe Paquette has said that Stabile would be willing to put an easement on the common lot line, which is directly behind the tot lot. He would be willing to put a 10-foot easement, not specifically a path, but an easement.

Steve Stancel stated the Planning staff recommends approval of the subdivision plan including the waiver of the 8 inch water main, the waiver of the road down to 24 feet, the size of the ROW markers down to 4x4x48 and to include the following conditions:

1. Add the owner's signature to the plat.
2. Provide the Planning Dept. with a copy of the NH Wetlands Permit and add the permit number to the plat.

3. Provide the Planning Dept. with a copy of the NH Site Specific Permit and add the permit number to the plat.
4. This approval includes the approval of the Conditional Use Permit.
5. The applicant shall grant a conservation easement to the Conservation Commission for Canney Brook and associated buffers. Said easement shall be granted prior to the issuance of the first building permit.
6. Revise the plat to resolve the issue of the reserve strip contained on lot #28 in a manner acceptable to the Planning Department.
7. Revise the plat to extend the proposed sidewalk to Dover Point Road.
8. Add the engineer's stamp and signature to sheets 10-23.
9. The applicant shall contribute \$13,550 to the Community Services Vehicle fund, payable prior to the first occupancy permit being issued.
10. The applicant shall contribute \$5,600 for recreation equipment, payable prior to the first building permit being issued.
11. The applicant shall deed the Tot Lot to the City of Dover for use as a neighborhood recreational area. The deed shall be executed and recorded prior to the issuance of the first occupancy permit.
12. Any additional conditions recommended by the City Engineer prior to the meeting, a list of these comments in a memo tonight.

He also pointed out that a memo from Pete Lavoie recommends approval.

David Landry recalls that Pete Lavoie would not vote in favor of this at the last meeting, and asked why is he OK with this now?

Steve Stancel replied that if there are any issues that arise from the drainage study that causes a change in the plan, that plan has to come back to the Planning Board.

David said that a big thing was made about not extending utilities at the last meeting. He said that he would support this but extending utilities in many cases beyond their existing place is something that we are not obligated to do. We talk about controlling growth, but we cut people breaks and extend utilities. This is a 28 lot subdivision that would probably end up with 10 or fewer lots if they had to have the conventional septic and well. Even if we have \$300,000 houses, these houses are not going to pay in tax dollars for what it's going to cost the City. He opposes the idea of requiring homeowners to plant trees on their lots. He favors trees planted on the green belt between the sidewalk and curb. It's attractive, uniform and years from now will be beautiful. Let people do whatever they want with their yards.

Commenting on the drainage problems, Paul Connolly indicated that because all the drainage heads in a westerly direction from the high point of the site toward Canney Brook, and goes under Dover Point Road in a culvert, they are sure drainage would not cause any problems. He confirmed to Dennis Ciotti that the drainage study has not been brought before the City Engineers or Pete Lavoie since the last meeting.

John Sullivan felt that more and more plans are coming in with the developers being asked to pay for things that aren't really directly related to their development, i.e. the Community Services Vehicle Fund and the tot lot. In the future he would like to see these plans detailed, specific impacts related to the development itself and not some other ancillary fund.

Anthony McManus moved for approval of the application with waivers and conditions as represented by the Planning Dept, including the recommendations of the City Engineer. Seconded by Frank Torr.

VOTE 6 - 1

Opposed - Dennis Ciotti

Ron Cole thanked the City, the Conservation Commission, the applicant and the Board for all the cooperation involved in achieving the approval of this project tonight.

Beth Thompson comments on the smart growth seminar last week and stated that it was an embarrassment that the only people that showed up were David Landry, a staff person and herself. She said that they had people here from the State and from Rochester. It was something they had talked about and wanted to learn about and just thought that there would be more support.

Frank Torr suggested contacting the mayor regarding alternates for the Councilperson and for Beth Thompson and Pete Lavoie who are both municipal personnel.

Dennis Ciotti asked if there are any written requirements for the Planning Board for the size of the tot lot in any development. Steve Stancel stated that there wasn't.

ITEM #8: Adjournment

Dennis Ciotti made the motion to adjourn

Seconded by Beth

VOTE U/A