



CITY OF DOVER

DOVER PLANNING BOARD - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers – 288 Central Avenue, Dover, NH 03820
Meeting Date: Tuesday, August 11, 2009
Meeting Time: 7:00 pm

REGULAR MEMBERS PRESENT: Frank Torr, Marcia Gasses, Doug Steele, Perry Plummer, Dean Trefethen, John Swartzendruber, Linda Merullo, Don Andolina

REGULAR MEMBERS ABSENT: Ron Cole

ALTERNATE MEMBERS PRESENT: Jan Nedelka

STAFF PRESENT: Christopher Parker, Planning Director, Steve Bird, City Planner, Jennifer Bretz, Recording Secretary

Torr sat in for Cole.

Nedelka sat in for Torr.

Meeting called to order at 7:01 pm.

1. CITIZENS' FORUM

Rick Hebbard, 97 Spruce Lane, stated that chapter 170-48, Building Permit Procedure which was last amended in 1987, would be better served if it were within chapter 170-68 Building Construction. On the notice, it stated that some of the text would be deleted. He doesn't believe it should be deleted; it should be changed and put into section 68. Chapter 170 is under the direction of the Planning Department and the Building Inspector's position is no longer under the Planning Department; it has moved to the Fire Department. It would make more sense for the Building Permit Procedure to be included in the Building Construction section which could be a housekeeping measure. He proceeded to discuss the permitting process from 1987.

2. APPROVAL OF MINUTES OF JULY 28, 2009

Motion: Plummer made the motion to approve the minutes, Merullo seconded. Vote: U/A.

3. OLD BUSINESS

A. Public Hearing and possible vote on zoning amendments to the land use ordinances and regulations.

Parker stated that there will be a presentation on the zoning amendments. There are also draft changes for the wetlands and conservation commission. That subcommittee worked on it yesterday which is why it was not in the Board's packets. He did not place the text online because he thought that the updated amendments were not as easy to go through as the original. The presentation will include a response to the public feedback received at the July 28, 2009 Planning Board meeting as well as the Form Based Code. Parker proceeded with the presentation. (In file)

Gasses stated regarding the Transfer of Development Rights, she wants to make sure that the Open Lands Committee has review of the parcel. In the past, the parcel involved in the TDR did not have substantial conservation features. The Open Lands Committee has been established and does have criteria. Her thought is that any parcel involved, which will be taking in lieu for conservation features, should meet an already established set criterion. That doesn't mean that the Open Lands Committee would rise to the level that they would be willing to spend money on it but they would endorse it.

Parker stated if you look at page 52, section G, when it comes time to approving the amendments, Gasses can make an amendment to the amendment that adds, "Land within ascending area when surveyed approved by the Planning Board, with endorsement of the Conservation Commission or Open Lands Committee." He stated that it would help the Planning Board feel more comfortable approving it if it did have that.



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Public Hearing Open

Malcolm McNeill, 180 Locust Street, stated he has praise and appreciation for the process and the Planning Department. At the last Planning Board meeting, his major concerns related to stylistic architectural types of controls that would turn the Planning Board into an Architectural Review Board. He also indicated that Planning Boards do not have authority to exercise that authority without there being a Historic District. In discussions with the Planning Department, the Planning Department has now made the controls to be elective rather than controlling. He continued to discuss architectural review.

Marty Coyle, 22 Grove St, stated he would like to thank everyone that has worked on the amendments. He believes that it's good to have a direction on which way the City is growing. He sees a lot of development in the City as recognized by the whole layout. He would like if traffic studies could go along with the development. On the corner of Chestnut St and Fourth St, there have been numerous accidents in that spot. Sometimes, you have to get your car half out into the road in order to be able to see oncoming cars. He hopes that with growth the City could keep an eye on the traffic patterns. He also had some questions regarding the residential portion of the Central Business District and how his taxes would be affected.

Parker stated in regards to the tax question, when you are in a residential property zoned to a commercial property as long as it is owner occupied there is no change in the tax status. There is a process the state allows where you can appeal to the tax office for that status. Historically, the City of Dover has waived that application process and just automatically kept the taxes as a residential structure. Until such time that a commercial structure is put into its place. If you're in the remainder of CBD, also known as B-2 district or UMUD today, you're already in a commercial district so there will be no change as well there. Regarding the traffic study, the Planning Board does look to those when going through the site review process. There's going to be some changes made to the Site Regulations to talk more about traffic which they would like to introduce more into the Subdivision process.

John Scruton, 99 Sixth St, asked for clarification regarding the zoning of Grove St and Spruce Lane.

Parker stated the only change happening on Spruce is the name of the district. It will stay a multi family district.

He stated in 1979 the City zoned out farmland. In 2002, more farmland was zoned out. Anytime there is any type of development, your taxes are going to go up.

Parker stated in 2004 the Board recognized the fact that farming is an industrial use. They rezoned 740 acres into an agricultural use. They added 740 acres into agricultural potential.

Kevin McEaney, 8 Gold Post Rd, stated he would like to say how great of a job that the Planning Department has done regarding the zoning changes. It's a positive step in the right direction. The first thing he wants to discuss is the Transfer of Development Rights. He is in agreement with Gasses. He believes that it is good ideas to have the Open Lands Committee complete an oversight on the conservation values of it. In regards to the Commercial Corridor, they had talked about the setbacks and having a maximum setback.



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Parker stated that they had redone the table. It was changed so that the principal building has a two story minimum but no maximum. On the side setback it has a 24 ft maximum to allow for the back and forth. There's a 10 ft rear setback but it's not a build to line.

McEaney had a question regarding the streetscape requirements.

Parker stated that they altered the benches from one every 30 ft to one every 100 ft.

Al Lobdell, 16 Lisa Beth Circle, stated that 28 years ago he purchased an old Victorian house at 46 Fourth St. It's been renovated into four apartments. He questioned whether his taxes were going to change.

Parker stated his guess is that Mr. Lobdells building is not considered residential because it is rented out/for profit. For a more definite answer, he would need to check with the Tax Assessor's office.

Lobdell stated that the traffic in the area is a big concern. Where his property is located, there are marked parking spaces across the street. Frequently, there are cars parked on both sides of the road which make it impossible for two cars to pass each other when cars are parked on both sides.

Parker stated that the Traffic Advisory Commission had looked into the Fourth St area a few years back. He'll ask them to look into it again.

Tom Backowies, 7 Chestnut St & 16 Sixth St, stated when he looked at the revised plan, it seems as if his property is left in the mixed residential zone. He feels that it should be put into the business district. He stated that his property is currently in the B-2 district and doesn't feel that it should be put into a mixed use zone.

Parker stated that he won't see much of a change. His building will be in the Central Business District but he'll be in the Mixed Use Sub district. The only limitation that he would see is should he want to put a hotel in, he would be limited to 12 rooms. He couldn't have an eating or drinking establishment. He would be allowed to have the uses in place today; he just wouldn't have residential on the first floor. That property would be limited to two stories in the mixed use.

Attorney Chris Wyskiel, 15 Lexington St, stated two weeks ago he stood before the Planning Board applauding the aggressive thinking of Form Based Coding. One week ago, he attended a meeting with local land use attorneys, engineers, surveyors and some local property owners who were, genuinely, listened to by the Planning Staff in sharing ideas and elaborating the concerns they expressed two years ago. Before the Board tonight is a zoning ordinance with some changes that will move forward Dover's progressive development.

David Eisler, 344 Washington St, stated he's a frequent user of the downtown. He would like the Planning Board to keep in mind that it is not the developers or the property owners who are affected by the Form Based Code but the people who use the downtown. If the people who use the downtown, stop using the downtown because the downtown becomes unusable, it will cease to be a destination. He applauds the Planning Board for trying to make Form Based Code work and asks them to maintain the rigor of the Form Based Code so that it is an effective means of maintaining the integrity of the downtown.



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Attorney Jim Schulte, Towle Avenue, stated that he would like to join the chorus of people who are commending the Planning Staff with all of the work that has been put in. A concern that he has is the Transfer of Development Rights. Parker's suggestion is to do a simple amendment that says if you're going to get into a TDR project that it needs the endorsement of the Open Lands Committee. He strongly suggests that the standards Gasses was talking about be incorporated into the ordinance. He states this based on having come from the experience of trying to present the single transfer of development project unsuccessfully. The TDR process has a couple of opportunities. Another concern is what is being proposed for the UMUD zone. They are taking an area where almost all of the buildings and uses conform to the existing zoning. They are proposing to change that into the most restricted residential zone, the R-12 zone. They will be taking one of the most densely populated residential areas in the City and making a couple of hundred apartments instantly non-conforming. When he suggested to Parker that this was a potential issue, it was stated that there was a 20% expansion allowed. He doesn't believe that that is correct. After reading the ordinance, the 20% expansion rule applies only to single family structures and there are precious few single family structures in the UMUD zone.

Parker stated that Attorney Schulte is correct, he had misread the ordinance. It is specific that single families may expand up to 20%. It's something they could look at into the future.

Atty. Schulte stated all of the residential structures could be duplexes. Those are probably conforming in the R-12 zone but all of the multi family will become non-conforming. It seems to him that, unlike other areas where you're trying to fit the new zoning to what's there, they're doing the opposite there. From his client's perspective they're doing it for the purpose of addressing their land and their potential.

Discussion ensued regarding the UMUD zone.

Susan Eisler, 344 Washington St, asked if the meeting with the attorneys, engineers, land owners and developers was public or private. She wasn't aware of that meeting. She knows we're trying to move towards a transparency in government but she wonders how much of the code change came from that meeting.

Parker stated that the code change that came from it came from the meeting and discussion with the City Attorney who had concerns about the legality of requiring the architectural without enabling a legislation that specifically spoke to that. There was a meeting. It was a back and forth conversation. Nothing was determined at the onset of the meeting. There were discussions with the City Manager and the City Attorney regarding the architectural as well as other items that came up in that meeting. The stakeholders that the Planning Department had initially reached out to in September as well as some of the people that had voiced specific concerns were invited to the meeting.

Kirt Schuman, Executive Director of Chamber of Commerce, stated that he applauds the Planning Board and Staff for what has been a two year process with many open meetings, stakeholder meetings and charette's. They applaud the removal of the architectural guidelines and the additional language put in protecting the property owners that decide not to attempt to fulfill those standards. They would like the Board to investigate additional incentives, in the future, to encourage further development and further adherence to those standards. They believe that their response to the recent concerns encourages the flexibility of development



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while promoting the characteristics that give our community character and continue to make Dover an attractive place for commercial endeavors. Additionally they support the expanded opportunity for commercial uses in this proposal and urge the Board to forward it on as recommended tonight

Lisa Corbin Walker, 20 Grove St, stated she has a question regarding a specific property that is zoned RM-8. It's a 3 unit property that she purchased 6 months ago with the possible intent of converting it to condominium in the future. If it is rezoned to the CBD, what kind of effect will it have on them? It's currently owner occupied but when they convert it, it may not be.

Parker stated that in the City of Dover the word condominium is associated with ownership and not land use. Being converted to 3 independently owned condominiums is fine. If it could happen today, it could happen tomorrow.

Corbin Walker also wanted to speak about the traffic study. Parking is very difficult in the Fourth Street/Grove area. Since moving there, in December, she has witnessed one accident and many close accidents. She believes the setback requirements and driveways should be looked into. It is very difficult to get out of some of the driveways in that area.

Chad Kageleiry, Dover Neck Rd, stated he would like to thank the Staff and Board for all of the work that's gone on, for the past couple of years, in establishing and proposing these changes. Overall, the product on the table is a progressive one and will encourage positive changes and growth for the City. He proposes that they pass it onto the City Council tonight.

Bob Stowell, 41 Sandpiper Dr, stated the communication that's taken place has been wonderful. A lot of questions and concerns have been answered. This is the way the zoning process should be. He applauds the Board and staff and they should move forward with the proposal.

Attorney Chris Boldt, 4 Evans Dr, stated that he gave a letter to Parker August 1 expressing his concerns. At this time 90% of his concerns have been addressed. He is particularly appreciative of the effort made by the subcommittee to match the Comprehensive Shoreline Protection Act State Legislation with the proposed change so that there isn't a conflict between State and City regulations. He did note one or two minor things in the proposals presented tonight. One is a minor housekeeping matter in the Conservation District, on page 5 paragraph F, the reference to 1987 no longer makes sense. On the Wetlands District material, page 5, when talking about wetlands buffers he's concerned about the use of the word minimum at 50 ft. He's requesting that they remove the streetscape section. It works great when redeveloping a block. If you have a much smaller project, you still may be required to put in a tree or bench in a place where it may not be needed. Also, you're putting private property into the midst of the sidewalk that the City normally controls. All of the other benches, waste bins, all of the other streetscape features that are currently in our City are maintained and controlled by the City. At the very least, if it's required it should be a condition that it will then be maintained, after approval, by the City. He doesn't want to see private landowners having the liability at one location for a bench, someone slipping on something, and 30 ft to the left, not have that liability.

Parker stated that once the plan is approved, the project is complete and the C.O. has been issued any improvements to the public infrastructure are maintained by the public. He would also suggest that instead of



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removing that section, he would encourage him, if he was an applicant, to apply for a Conditional Use Permit, to pay the money and make the case that you would only be working on a small portion not the whole block.

Atty. Boldt stated it helps to have the clarity. This is a much better product than what was presented two weeks ago. He realizes that this is a long process. They've had the input of many citizens.

John Scruton, 99 Sixth St, stated that Jeff Taylor, the FBC consultant, spoke to the Planning Board when they were developing the new middle school. He continued to discuss how Gov. Shaheen wanted to put a stop to sprawl.

Public Hearing Closed

Plummer asked Parker to address the Sawyer Mills area that was brought up by Attorney Schulte.

Parker stated that he had heard from the abutters and the Board that there was a concern with the usage and the density in that area and it was obvious from the project that was proposed. In reacting to that, Staff looked at other zoning that could be done out there. The R-12 was the most obvious. What was decided, in looking at the land, is that there are two uses going on out there; those along Central Ave, which are commercial, and the ones behind which are residential. His feeling is that they were hindering Atty. Schulte's client's development potential by having a commercial use, on the first floor, for that property in its present UMUD state. In looking at the different options, seeing that there is a lot of commercial properties already out there, they should have a commercial zone around them. He continued to explain why that area was rezoned the way that it was.

Plummer stated that if there's a property out there that will become non-conforming due to this change, what is the process that they would have to take if they want to expand.

Parker stated they would have to apply for a variance.

Gasses stated before getting to Transfer of Development Rights, she wanted to address the points that Mr. Scruton had made. Since 2002, the Conservation Commission and Open Lands Committee have conserved over 700 acres of land. She can think of at least 5 of those properties that included some form of agriculture. Approximately 20% of the City of Dover is under some form of permanent land conservation protection. It hasn't been that the Boards and the Council have not supported land conservation. It's the City, N.H. Fish and Game, Nature Conservancy, Audubon Society and private land trust who have jointly done this for Dover. Dover should be proud of what it's done to stop sprawl.

Trefethen stated he's in agreement with the rezoning of the business areas around exit 7 on Central Avenue. His question is directed at the four residential properties in the island. Those lots are R-20. He'd like to know how many of those lots conform to the R-20 zone.

Parker stated that none of them meet the frontage. Based on the lot size, all but one meets the requirements. There's one, on the corner, that's smaller. It probably met the requirement prior to the Spaulding Turnpike. The other three go all the way back to the turnaround.



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Trefethen stated even though they are already non-conforming, they are a lot of record so they could do an addition but they couldn't subdivide. Another question is how committed are they to the four properties being changed? The rest of the changes make sense.

Parker stated his concern is that it does make sense to rezone it but he has to look at it proactively as opposed to reactively. Two of the lots are owned by one person. If a developer were to approach the owner of those two properties, purchase the properties and go to the Zoning Board for a variance of a convenience store. The other two lots that will want to make their properties commercial. Instead of doing it in a controlled, methodical method of setting out the parameters, they are going to be reactive. Parker's opinion is that Planning is a proactive sport in a reactive environment of municipal government. The more proactive things the Board can do, he would encourage them to do.

Trefethen stated in regards to the consensus for the architectural standards within the Central Business District, what constitutes the incentives that they're going to get?

Parker stated that they would put together a waiver application form and list out the criteria that are contained within the architectural standards.

Discussion ensued regarding the architectural standards.

Torr asked the Board if there was anything they wanted to remove. No one responded.

Amendments to the Amendments:

Trefethen stated the first amendment he would like to make is on the Mixed Use and Residential CBD zone table. He would like to change the maximum story height, on the principal building only, from two stories max to two stories min, three stories max.

Plummer asked why three max.

Trefethen stated that in the area they are proposing to be the Mixed Use is predominantly two stories. There are some one story buildings in there but they look out of place. There would be certain areas where three stories would be very acceptable. We're looking at this to try to move forward, to try to put as much density as we can where we're already dense. This is where it makes sense to have the density if you're going to have it. We want to encourage the redevelopment of some of these areas.

Andolina stated when we add stories and increase density; there may not be enough parking.

Motion: Trefethen made the motion to change the principal building height from two stories max to three stories max, Merullo seconded. Vote: U/A

Motion: Trefethen made the motion to leave the four residential homes, at exit 7, in the R-20 zone. No one seconded. **Motion failed.**



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Motion: Gasses made the motion to amend amendment 15, Conservation District, & 16, Wetland Protection District, as presented in the document handed out prior to the meeting(in file), Steele seconded. Vote: U/A

Motion: Gasses made the motion to amend amendment to include land within the sending area, when surveyed, endorsed by the Conservation Commission and Open Lands Committee, approved by the Planning Board and preserved by easement or covenant as specified in amendment 17 subsections E may be counted for the minimum lot size requirement for a development site and receiving area. The criteria the Conservation Commission used, for ranking, shall be listed in the application, Steele seconded. Vote: U/A

Motion: Nedelka made the motion to remove, “when viewed from the street” from “Parking shall be considered accessory and shall not be the predominant use of a lot when viewed form the street.” from the Parking Lot sizes on page 21 section E-2, C-2, Trefethen seconded.

Andolina stated that the use of the word predominant is very subjective. We have to have something that further defines what predominant is referring to.

Parker stated that he would suggest changing it to, “Parking shall be considered accessory and not be the principal use of the lot.

Motion: Nedelka made the motion to change the wording to “Parking shall be considered accessory and not be the principal use of a lot”, Trefethen seconded. Vote: U/A.

Discussion ensued regarding pools.

Plummer stated that the Parker and his department should be commended for the whole process. At the last public hearing there were people who though the process wasn't going to work. That is the process. You put on the table a lot of what came out of a lot of charette's. Even if you think you're not sure something will move forward, but let's see what the public has to say about it. The public came out to share their opinions. There was some talk about the stakeholders meeting but everything said at that meeting was brought up in the public forum. The process worked as well as it could have. It's definitely cutting edge and good for the community. Also, chapter 68 is currently being worked on and looked at. There isn't a lag in procedure. It will happen before or simultaneously to the Zoning chapter.

Trefethen stated he is in support of this. There have been some comments about Sawyer Mills area, particularly in the main building, and what could potentially be used there sometime in the future. This is probably the third or fourth rezoning of that building in its lifetime. Things change, zoning changes and if things change again than the zoning changes again.

Motion: Plummer made the motion to pass the amendments to City Council as presented tonight, Andolina seconded. Vote: U/A

B. Wentworth Douglass Hospital Request for an Amendment to the Conditions of Approval

Parker stated in June WDH came forward. One of the conditions of approval, for the plan to be signed, is that the hospital goes before the Council to get approval for the relocation of the road. The hospital has requested



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to build the road first so that they can continue to use the existing road while they build the new road. They don't need the acceptance and discontinuance to happen until the end when the road has been completed. Parker would like to amend their conditions of approval to place the condition that the Council sign off on the new road from before the plan is signed to before the building permit is issued. They can't build the new building until the road has been accepted. Their main concern is liability.

Nedelka abstained due to conflict of interest.

Trefethen asked if the concern was if the Council was to discontinue the current road, then the City would not be under obligation to maintain the current road.

Parker stated the concern that he had is by doing that, the people that access the road, i.e. Doctor's Park and Spinelli, would then lose their frontage on a public road.

Motion: Andolina made the motion to amend the Conditions of Approval, Plummer seconded. Vote: U/A

4. NEW BUSINESS

5. STAFF COMMENTS

Parker stated that he wanted to bring up the Community Trail. There has been a sub committee established as part of the Open Lands Committee for the Community Trail. He stated that he thinks that it is a project that the Planning Board might want to also endorse as a sub committee. The Planning Boards endorsement as a sub committee allows the City to post it on the website and in the three places as part of the State RSA. If the Board approves it than the Chairman can appoint members to it if he so chooses.

Motion: Gasses made the motion to create a Community Trail sub committee of the Planning Board, Plummer seconded. Vote: U/A

Andolina asked for an update on the gravel pits.

Parker stated that things are moving along positively on the gravel pit front. On the second Tuesday in September is going to the gravel pit workshop. At that time we will be discussing future endeavors out there. From his understanding the neighbors are pleased with the Pruven gravel pit.

Parker stated received that he had received a letter from Aranco Oil. They are requesting to have a workshop on LED lights. They would like the Board to revisit their flashing sign ordinance and to allow for LED lights. They would like to put their prices in LED format.

Merullo stated she doesn't want to revisit this ever again. She was involved with the changing of the ordinance for a year. They finally got it through the ordinance, through the Planning Board, went to Council. There are a myriad of reasons why we do not want LED signs. She knows that they're not going to flash it but if you allow one, you have to allow them all.

Gasses stated that she agrees with Merullo. She saw an LED sign in a store window. It did stand out.



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Trefethen stated that he would suggest that they could write up a presentation for them to review.

6. COMMITTEE REPORTS

7. ADJOURN

Motion: Trefethen made the motion to adjourn at 9:40 pm, Merullo seconded. Vote: U/A