



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: **October 15, 2009**
Meeting Time: **7:00 pm**

1. ATTENDANCE

- Regular Members Present: Vice Chair Bill Colbath, Frank Landford, Jim Kelley, Sam Reid
- Regular Members Absent: Chair Masi Denison
- Alternate Members Present: Otis Perry, Chris Prior
- Staff Present: Steve Bird; City Planner and Jean Glidden; Recording Secretary

Colbath sits in as chair. Meeting called to order at 7:00 pm.

2. APPROVAL OF PRIOR MINUTES OF AUGUST 20, 2009

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

Colbath suggested that item 3 old business be discussed after item 4 new business.

Colbath, Reid, Perry, Kelley, and Prior will be voting.

4. NEW BUSINESS

- A. Z 09-10 Durham Road Associates, Inc.(Applicant: Dover Veterinary Hospital, PLLC), 96 Durham Rd., a/k/a Tax Map I, Lot 14A, zoned R-20, requests a Variance from the terms of Article IV, Section 170-12, to establish and operate a personal service establishment (dog grooming business).

Michael Reznicek, Practice Manger at Dover Veterinary Hospital explained that they have been in the veterinary practice for almost 40 years and they are respectfully submitting a request for a variance that will allow them to bring in a dog groomer, who will provide services such as bathing, clipping and styling of the pets. Given the nature of the business this will be a natural part of the care and wellness of pets. Grooming of pets is typically encompassed in most veterinary practices. The business has downsized its workforce from 35 to 8 employees as of September 2008, and the amount of traffic in and out of the clinic has significantly decreased. They do not anticipate any issues with parking. They have 21 parking spots allotted for patients. They see approximately four patients every hour and have plenty of parking available to staff and patrons.

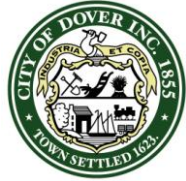
Sam Reid asked if will they would be having customers waiting for pets, or would they be dropping them off. He questioned the parking area.

Reznicek said that they anticipate people dropping off in the morning and picking them up in the afternoon. Some individuals may wait. Parking would be a non issue. He stated that we have 21 spaces marked off on the pavement. We also have a large dirt lot available for parking.

Colbath confirmed with Resniecek that grooming would be 15% of business. Colbath felt that since grooming would be a very small portion related to the veterinary practice, it was an accessory use.

Bird stated that in discussions with the Zoning Administrator, he ruled that dog grooming is not an accessory use to the veterinary use and informed the applicant to apply for a variance.

Reid agreed with Colbath but added that he felt that the Planning Department likes the variance angle, as parking and drainage are problematic and would require TRC to review the issues.



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

Public hearing open
In Favor or against the request

Richard Knox, 86 Durham Road, said he is not opposed to the request, but is concerned with how many more dogs would be located outside.

Reznicek stated that the dogs would be contained within the facility. They would only be brought outside to relieve themselves. This would not be a doggy day care.

Bird stated that the Planning Department supports the variance request as stated in the memo submitted (in file). We do have concern, which was voiced to the applicant previously, in regards to the dirt parking lot in the back, where many staff members park their vehicles. We are requesting that the Zoning Board add a condition that the applicant appears before the TRC to review parking and drainage issues as part of this application.

Kelley said he is not a fan of barking dogs. We should place a condition that this use would stay within the building. I would not want to be a neighbor with dogs barking. He asked Bird why they would have to put a condition on a variance, couldn't the City say we need to talk about your drainage issues.

Bird said this was a good opportunity to bring this forward to the applicant. The applicant has been aware of the issue. This was an opportune time to get the issues resolved once and for all.

Colbath asked Bird what the required parking spaces are for this use. Bird said based on the size of the building 21 spaces is adequate for the use. The employees use the dirt parking area.

Kelley expressed concern with the employees using the dirt area. He stated that he could agree with a condition that all cars park on the paved area.

Perry said the parking that they have meets the required parking spaces. This is an environmental issue to be addressed in a different way.

Colbath agreed that drainage and parking should be reviewed with the applicant and paved parking needs to be provided based on staffing and customer use.

Public hearing closed

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? **ii.** Did the Applicant demonstrate that no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction



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of the property? **iii.** Did the Applicant demonstrate that the variance would not injure the public or private rights of others? Section 1 of the applicant's submission will be used for the first criteria (in file).

2. Did the Applicant provide proof that demonstrates how granting the variance will result in substantial justice?

3. Did the Applicant provide proof that demonstrates how a variance would be consistent with the spirit and intent of the ordinance? **4.** Did the Applicant provide proof that demonstrates the variance will not result in a diminution in value of surrounding properties? **5.** Did the Applicant provide proof that demonstrates the variance would not be contrary to the public interest?

Findings of Fact were discussed and it was agreed upon by the Board to use section 1 of the applicant's submission for the first criteria (in file).

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. None of the animals on site for grooming will be housed outside.

Motion: Perry made the motion to grant the application for a variance subject to the condition. Kelley seconded.

Vote: U/A

Reid, Landford, Perry, Kelley, and Prior will be voting.

- B. Z 09-11 Lydia & Kevin Cooper, 67 Knox Marsh Rd., a/k/a Tax Map H, Lots 33 & 33A, zoned B-4, requests a Variance from the terms of Article IV, Section 170-12, to establish a coffee shop with a drive through service, where drive-in service is not allowed.

Attorney James Schulte represented the applicants. He asked Colbath to recuse himself for matters of prior conflict between each other and his clients that he has represented in the past.

Colbath said he is adamant about what they have been through in the past and said that it has nothing to do with what we are dealing with tonight. Discussion continued regarding the issue. Colbath said that he would step down but informed Attorney Schulte that he would discuss this matter with the City Attorney and get an opinion from him regarding the conflicts.

Motion: Perry made the motion for Reid to serve as Chair. Prior seconded. Vote: U/A

Attorney Schulte proceeded to discuss the application submitted. Kevin and Lydia Cooper are proposing a two-story commercial building, to include a coffee shop and dry cleaners, both of which will require drive-thru windows. While eating and drinking establishments are allowed in this zone, they are not allowed to have a drive-in window. He proceeded to discuss surrounding establishments. Engineer, Dana Lynch submitted an aerial photo of the area. Adjacent to the property is the I-2 zone, drive-thru windows are allowed. Attorney Schulte proceeded to discuss the site and explained that the site is large enough so that at least 11 vehicles can stack up from the proposed drive-in window without affecting traffic on the highway. The design of the project is so that the drive-in window is located as far away as possible from the residences. He continued to read through the application as submitted. If you have technical questions about the layout of the plan, how the vehicle stacking would work, the drive-thru lanes would work or configuration of the project Dana Lynch could respond to those questions.



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Kelley expressed concern with the traffic in that area and asked if the State would address traffic lights.

Attorney Schulte said the State would have to issue a driveway permit for this project and would have to meet their requirements. There is a traffic light on the corner of Littleworth Road and to some extent that helps. If this is granted it would have to go to TRC and the Planning Board for site plan review.

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

Public hearing open

In Favor – nobody spoke

Against – nobody spoke

Landford confirmed with Attorney Schulte that this project is strictly commercial.

Bird asked Attorney Schulte if it was the intent that this be a two window drive-thru for the restaurant operation.

Attorney Schulte said the intention is to have a speaker and one drive-thru window. Discussion continued regarding the location of the speaker and window and would be addressed during the site plan review process.

Bird stated that the Planning Department does not oppose the Variance as stated in the memo submitted (in file). They have taken efforts to remove the stacked cars from the view of Knox Marsh Road. This is a heavily traveled site and is adjacent to various commercial uses, including an eating and drinking establishment with a drive through service located down the road.

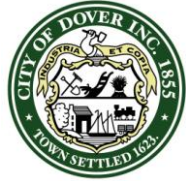
Public hearing closed

Discussion continued regarding noise, speaker systems, and setbacks to residences and approval through the Planning Board process.

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? **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? **iii.** Did the Applicant demonstrate that the variance would not injure the public or private rights of others? **2.** Did the Applicant provide proof that demonstrates how granting the variance will result in substantial justice? **3.** Did the Applicant provide proof that demonstrates how a variance would be consistent with the spirit and intent of the ordinance? **4.** Did the Applicant provide proof that demonstrates the variance will not result in a diminution in value of surrounding properties? **5.** Did the Applicant provide proof that demonstrates the variance would not be contrary to the public interest?



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Perry said that the findings of fact are that it is a larger lot and does meet all the design requirements, if it was set in an allowed zone, they satisfied the stacking requirements. Reid added that the abutter is a landscaping business and is a commercial use; 1/4 mile down the road is the I-2 zone, where there is a drive-thru coffee kiosk. Reid agrees with Attorney Schulte that this is a special circumstance, in a commercial area far from residential developed areas. Prior mentioned that no opposition at this meeting is beneficial to the case.

The Board felt that the appropriate finding of facts has been satisfied as submitted by the applicant.

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

Motion: Perry made the motion to grant the variance to allow a drive up window. Landford seconded. Vote: U/A

Reid stated that he would be stepping down on the next case.

Colbath, Landford, Perry, Kelley, and Prior will be voting.

- C. Z 09-12 Kenneth & Holly Grossman, Mill St., a/k/a Tax Map 16, Lot 32, zoned R-12, requests a Variance from the terms of Article IV, Section 170-12, to construct a two family dwelling, where single family dwellings are allowed.

Ken Grossman approached the podium and stated that Holly Grossman and Bob Stowell are present as well. They are requesting a variance to allow a duplex on a newly created lot in the R-12 district where only single family is permitted. We bought the property with a 4 unit building located on it. He stated that they would like to separate the building into 2 duplex buildings and move one of the buildings onto the newly created lot. If the building had to be demolished we would like to build a similar structure on that lot. He proceeded to go through the application as submitted for the file.

Perry confirmed with Bob Stowell from Tritech Engineering that the building would be moved to the newly created lot 32A.

Bird added that there had been a lot line down the middle of the 4 unit building placing a duplex on each lot up until fall of 2008.

Stowell referenced a map that he submitted prior to the meeting which showed the lot line.

Prior asked about the proposed rezoning of this area.

Bird stated that this is an area that is proposed to be rezoned to R-12. The current zoning is the UMUD district. The Council tabled the zoning amendments. If this stayed UMUD they would need a variance for a duplex. No matter which district they would be in they would need a variance for a duplex.

Kelley questioned UMUD and why duplexes are not allowed. Bird said UMUD is for multi-family dwellings. Anything less than five units is not a permitted use.



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Motion: Perry moved to accept the application. Landford seconded. Vote: U/A

Public hearing open
In favor or against the request

Holly Grossman explained surrounding multi-family dwellings and duplexes on the street.

Bird stated that the Planning Department supports the variance request as stated in the memo submitted (in file). We feel this it is in keeping with the neighborhood. The Grossmans contemplated doing a duplex on each lot.

Public hearing closed

Landford said that he would like to add a condition that each lot will only have a maximum of one, two unit structure.

Colbath confirmed with Bird that the applicants have applied for the subdivision. He questioned the proposed zoning amendments for this area.

Bird said what the Planning Board will do with any project that is impacted by the amendments is make a condition of approval that if the zoning does not pass through the Council that they would have to come back and amend their plan. In this case, either way they would need a variance for the duplex use, so we do not see it as an issue.

Discussion took place regarding the posted zoning amendments and how it would affect this request if Council did not approve the amendments.

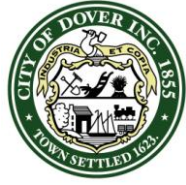
Colbath proceeded with findings of fact. Perry said that the nature of the variance that they are asking for is to be allowed a duplex on each of the lots that are created by the subdivision.

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? **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? **iii.** Did the Applicant demonstrate that the variance would not injure the public or private rights of others? **2.** Did the Applicant provide proof that demonstrates how granting the variance will result in substantial justice? **3.** Did the Applicant provide proof that demonstrates how a variance would be consistent with the spirit and intent of the ordinance? **4.** Did the Applicant provide proof that demonstrates the variance will not result in a diminution in value of surrounding properties? **5.** Did the Applicant provide proof that demonstrates the variance would not be contrary to the public interest?

After further discussion regarding findings of fact, Colbath suggested adopting the applicants submission as their findings of fact.



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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. Each lot will have only a two unit structure on it.

Motion: Landford made the motion to approve with the condition. Prior seconded. Vote: U/A

3. OLD BUSINESS

Colbath asked if all members received the letter of explanation regarding the packet of information that was requested. He stated that the Silver Street property is an illegal four unit building; therefore the City is going to take action against this property owner. The issue on 55 Back River Road was that this Board would not grant an addition greater than the existing building, but the addition is twice the size as the existing building. We weren't going to make two buildings joined by a connector and this is exactly what they have. We were not going to allow the old structure to be destroyed and rebuilt, and it was. Why do we sit here and make decisions and have them countermanded?

Perry said if this is true he doesn't know what they could do as a Board. We are not an enforcement Board. Should we talk with the City Manager? If there is an action that could be taken it should be taken from the person that benefited from it, we could always meet with the City Attorney to discuss.

Reid said that what disturbs him is that Mr. Turgeon took advantage of Mr. Clark and other members of the City. Can we do something to Mr. Turgeon?

Discussions continued regarding the issue and what could be done as a Board.

Perry suggested that Colbath speak with Denison about the issue. He suggested a non-meeting with City Attorney Allan Krans that could be scheduled prior to the November 19th meeting.

Motion: Perry made the motion to adjourn @ 8:58 pm. Reid 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

01-24-2010
 10-23-2009
 04-12-2011
 11-12-2009
 05-23-2010
 06-24-2012
 02-01-2011