



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers - 288 Central Avenue, Dover, NH 03820
Meeting Date: **Thursday, December 17, 2009**
Meeting Time: **7:00 pm**

Members Present: Masi Denison (Chair), William Colbath (Vice Chair), Jim Kelley, Chris Prior (Alternate) and Otis Perry (Alternate).

Members Absent: Sam Reid and Frank Landford

Staff Present: Bruce Woodruff (City Planner) and Michelle Beauchamp (Recording Secretary)

Others Present: Kevin Collins (STA Principal), Paul Connolly (STA Facilities Committee Chair) and Ron Holtz (STA Dean of Academics).

The Chair called the meeting to order at 7:05pm. As Alternates, C.Prior and O.Perry stood in for S.Reid and F.Landford.

1. Approval of Prior Minutes of November 19, 2009 & December 3, 2009

W.Colbath made the motion to approve the minutes. O.Perry seconded. Vote: Unanimous

W.Colbath made the motion to place the old business to the end of the meeting. C.Prior seconded. Vote: Unanimous. Land Use Regulations: Summary of December meeting. O.Perry provided additional information.

New Business

Z 09-16 Roman Catholic Bishop of Manchester. (Applicant: Saint Thomas Aquinas High School), 197 Dover Point Rd, a/k/a Tax Map L, Lot 15, zoned R-20, requests a Variance from the terms of Article IV, Section 170-12, to construct a 21,000 sq. ft. building addition with four (4) floors plus a stair tower for roof access with roof heights of approximately forty-five (45) and fifty-five (55) feet, where a maximum of thirty-five (35) feet is allowed.

P.Connolly, a Civil Engineer & Land Surveyor, noted that he was representing Saint Thomas Aquinas High School (STA) for a variance from Section 176.16. He stated that STA for several years has had a Facilities Master Plan that has been conceived, partially designed and partially executed. Phase I of IV included the new access and traffic movement around the site. It added more parking to accommodate student and faculty parking as well as addressing traffic safety.

P.Connolly noted that Phase II includes construction of a 21,000 square foot building addition onto the west side of existing building. The addition will house several elements: an identifiable entrance; activity center; a media center (library); a new chapel; 7 full size (900 sq ft) classrooms; and 2 new science labs. He noted that it will also enable the school to have a roof top lab, which allows us to center educational programs such as solar and wind power, roof top gardens, and weather measuring instruments on the roof. He added that the 55-foot stair tower would allow access to the roof.



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P.Connolly noted that Phase III and IV were a 20-year plan that could include a field house built into the slope near the athletic fields; indoor track; new basketball courts, sport lockers; conversion of the existing gym into an auditorium and lecture hall facility with stadium seating.

P.Connolly noted that the building addition will upgrade the library, labs and classrooms. He stated that there are no plans to expand the student base which currently is at 675 -725 students. He noted that they are asking for an area/dimensional variance. He added that the addition is being located in this area because this particular part of the property was planned to be expanded. The 16 existing windows located on that side of the building are for existing bathrooms and closets; they have no utilitarian function. The existing stairwell would be removed. He noted that the fourth floor of the existing building houses labs and it makes sense to keep the science curriculum on the same floor; classrooms would be on the second and third floor; and the first floor would contain the media center and identifiable entrance.

P.Connolly noted that he believes they meet the unnecessary hardship. He added that they meet the substantial justice criteria for the following reasons: the exterior appearance of the building will remain the same; the efficient interior programming of the building will be allowed to continue; the space demands will be met in spite of the fact that additional land is not available for use. The spirit and intent of the ordinance is set forth in Section 170-3; it is designed to promote the health, safety, morals and general welfare of Dover's residents and without question the existing high school use is entirely consistent with the spirit and intent of the Ordinance. The requested dimensional variance is consistent with the dimensional characteristics of the existing building, which supports the use that it houses. There is no evidence to the contrary relative to the stated purpose and spirit and intent of the ordinance and the requested variance. There is no diminution in value of surrounding properties since the proposed building addition can only be seen from 4 of the 11 abutting properties. He added that the addition is over 300-feet from the nearest abutting property while at the same time the nearest abutting property is less than 100-feet from STA's 4-story tall Notre Dame Hall. As such the placement of the proposed building addition cannot have a diminutive affect on any surrounding properties. This would not be contrary to the public interest since the general public will not visually realize the addition has been constructed. It is hidden from Dover Point Road. It will greatly enhance the facility and be competitive in a private educational market place.

J.Kelley made the motion to accept the application. O.Perry seconded. Vote: Unanimous

The Chair opened the public hearing. No comment was made.

The Chair read the memo from the Planning Department: The applicant has submitted an application to allow for the construction of a 21,000 square foot, four story additional with stair tower and roof access to their main structure of the High School. The heights requested exceed the maximum in the ordinance by 10 and 20-feet, respectively. The height is the same as the main structure which was constructed prior to the last major overhaul in Zoning in 1979. Staff agrees with the narrative reasons given for hardship, substantial justice, public interest, no diminution in value of surrounding properties, and spirit and intent. The Planning



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Department supports the variance request because the strict adherence to the requirements of the ordinance in this case by a needed continuation of the use of the site as an educational institution that does not appear to be overbearing to the abutters from what is already present.

O.Perry motion to grant the variance. J.Kelley seconded.

B.Woodruff noted that the staff did some research into the zoning ordinance 40-50 years ago. He noted that when the school was constructed in 1959, there were no height restrictions. At that time, the school was a conforming use which remains an allowable use in most zones to this day. He noted that in 1959 the zoning ordinance did not address dimensional regulations until 1979 when the zone was considered a residential zone. B.Woodruff noted that he believes it was an oversight. He stated that most schools are not 35 feet high, they are higher. When the application came in because of zoning, the dimensional need today is a nonconforming dimensional condition that may continue but must be here before you because of the strict reading of the ordinance. He stated that the hardship is the oversight of the zoning ordinance itself with regard to height restrictions for permitted uses in the zone that don't fit in with lower residential buildings. There could have been a footnote in zoning under educational facility which addressed the differing height rules.

The Chair noted that she understands the position of the Planning Department is that an additional reason this variance falls under the hardship clause, is that there was a problem with ordinance for educational institutions in that it does not have a safety valve for a reasonable building size/height for a typical educational use.

The Chair asked what the building would be in the future if it was not an educational institution and would be okay at that height. P.Connolly noted that if there was ever a need to vacate, it would be converted into a residential facility such as a nursing home, as an alternative use and practical use. O.Perry noted that if the use ever changed it would need to come before the Planning Board under site review and if the use was not allowed by zoning they would be before this Board.

O.Perry suggested incorporating the applicant's facts, staff's memo and findings into the Board decision. Vote: Unanimously

Old Business

2. Discussion on recommendations for land use regulation change annual report.

The Chair noted that she prepared a summary of the December meeting for the Board to consider. There was a general discussion regarding the Board sending the Planning Board a formal or informal letter regarding land use regulations. It was noted that the Board needed to express its' concerns about the language of some of the ordinances and that it would be helpful to know what the Planning Board's intent was.



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The Board discussed in-law units, enforcement and the need of a clear medical in-law variance. It was noted that by State law there is a reasonable accommodation for a physical disability and elderly may not be able to take care of them. That is not allowed for an in-law apartment because the existing ordinance only allows for physical disabilities. It was noted that it all depends on how you define a reasonable accommodation for physical disability and perhaps the City should expand on the other disabilities whether the criteria has to be a blood relative.

It was agreed that the communication between the two boards should be an informal communication between the ZBA Chair and the PB Chair.

3. Adjourn

O.Perry made the motion to adjourn at 8:11PM. J.Kelley seconded. Vote: Unanimous