

**DOVER PLANNING BOARD
MINUTES OF MEETING**

Held: April 9, 1985
Council Chambers
Municipal Building
Dover, NH

Members Present: Chair Harold Preston, Stephanie Faria, Robert Steele, H. Les Elder, Pierre Bouchard, R. Craig Williams, J. Andrew Galt.

Alternate Members Present: Robert Seaver, Otis Perry.

Other: Planning Director Timothy Sheldon, Recording Secretary Kathleen Brown.

Chair George Maglaras was unable to attend because of another commitment.

Mr. Preston called the meeting to order at 7:05 p.m.

For the benefit of those citizens in attendance for the first item under old business: the review of the major subdivision of land owned by E. Richard Rowell, Mr. Preston stated that the application would not be reviewed or acted upon this evening as the developer has not yet submitted a completed set of plans.

ITEM #1: Public Hearing on the site review of land owned by Ronald R. Pombriant, Assessor's Map 27, Lot 201, zoned RM-8, on 7-9 Baker Street.

Mr. Sheldon read the report of the Site Review Screening Committee.

In response to a question from Mr. Bouchard, Mr. Pombriant stated that, upon the suggestion of the Site Review Screening Committee, two driveways will service the property. Mr. Sheldon explained that a waiver of the Driveway Ordinance is not required because the construction of 5 multi-family units is considered to be a commercial use and two driveways are permitted.

Public Hearing Opened - No one spoke in favor or in opposition to the proposal.

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Public Hearing Closed.

In response to an inquiry from Mr. Sheldon, Mr. Bouchard stated that the proposed location of the catch basin may need to be modified, depending upon the location of the existing catch basin.

In response to a question from Mr. Sheldon, Mr. Pombriant stated that it is not his intention to construct a sidewalk, although one is depicted on the plan on City property.

In response to a question from Mr. Seaver, Mr. Pombriant provided the Board with a legal survey of the property and stated that the lack of reference to it on the plan was an oversight.

In response to a question from Mr. Perry, Mr. Pombriant stated that he will make use of the open spaces on the sides of the building for passive recreation.

In response to Mr. Pombriant's comments, Mr. Sheldon noted that both passive and active recreation will need to be delineated on the plan, and he suggested that the developer could discuss this with the City's technical staff.

In response to further description of the property by the applicant, Mr. Williams suggested that the proposed patio and lawn area could be considered active adult recreation. Mr. Sheldon agreed that this was possible.

Mr. Sheldon stated that a waiver of the setback requirement outlined in the Site Review Ordinance would need to be considered by the Board.

Mr. Pombriant questioned the necessity of the placement of curbing on his site, as no curbing currently exists on Baker Street. Mr. Bouchard explained that the asphalt paving which runs to Mr. Pombriant's property line is considered to be the sidewalk, as there are presently no curbs along Baker Street. He stated that at the minimum, granite curbing will need to be installed along the entrance radii, and that an on-site review by himself and other City staff would be necessary to determine if

curbing along the front property line was appropriate. He further added in response to Mr. Pombriant's questions, that while railroad ties are permitted on-site, they are not an acceptable curbing material for City property.

Moved by Mr. Bouchard, seconded by Mr. Galt, to approve the application for site review, contingent upon the following conditions:

- 1) Granite curbing shall be installed along the entry radii of the proposed project. Additional curbing (ie. along front property line) shall be installed should the Department of Public Works so recommend.
- 2) A landscaping plan shall be submitted to and approved by the Planning Director.
- 3) An open space/recreation plan shall be submitted to and approved by the Planning Director.
- 4) The location/construction/etc. of sidewalks shall be reviewed and approved by the Department of Public Works.

Mr. Sheldon explained that the applicant has received a building permit for four units, but because he wishes to add one unit to the building he was required to apply for site review.

Moved by Mr. Bouchard, seconded by Mr. Galt to approve the request for a waiver of the 10 foot front setback requirement, and the 5 foot sideyard setback requirement, outlined in the Site Review Ordinance.

Mr. Preston stated that a reference to a survey must be placed on the plan. This condition was incorporated into the original motion of approval.

Vote on request for waivers: U.A.
Vote on motion for approval: U.A.

ITEM #2: Public Hearing on the minor subdivision of land owned by Hannaford Brothers, Co., (applicant Papa Gino's of America, Inc.), Assessor's Map 37, Lot 24A, zoned B-3, on Central Avenue.

James Dunn, of Dunn engineering and representing the applicant, explained the minor subdivision. He noted that two easements

would be created, one for access and a second for parking.

Public Hearing Opened.

Roger Boisse, 869 Central Avenue, spoke in opposition to the proposal and cited concerns regarding parking problems on the existing lot.

In response to a question from Mr. Bouchard, Mr. Sheldon stated that the parking spaces provided for the proposed restaurant were adequate. Mr. Preston noted that this was an issue relevant to the site review application.

In response to a question from Mr. Williams, Mr. Preston stated that the issue of water and sewer easements are also pertinent to the site review application.

In response to a question from Mr. Perry, Mr. Dunn stated that the owner of lot 24B will own the proposed access easement and the owner of lot 24A will own the parking easement.

Mr. Williams expressed concerns that the proposed subdivision was not in keeping with the spirit and intent of the Zoning Ordinance. Mr. Sheldon stated that the proposal legally meets the requirements for subdivision, as it does meet the bulk and dimensional requirements outlined by the Zoning Ordinance. Mr. Sheldon explained that, while the applicant will create a lot which conforms to the legal size, certain property rights will be transferred to an abutting land owner. Mr. Sheldon explained that all permitted uses within the B-3 zone, with the exception of fast food restaurants, require a minimum lot size of 20,000 square feet. The 60,000 square foot which is required for this type of establishment was intended to prevent fast food restaurants from locating on "shoe string" lots which would afford little buffering for abutting property owners. He noted that a parking easement is an encumbrance of the land, just as a utility easement or a street is, and its creation is within the legal rights of the property owner. Mr. Williams reiterated his objections.

In response to a comment from Mr. Seaver which suggested that the

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applicant is providing information relevant to the easement location for the benefit of the Board, Mr. Sheldon explained that because access to the lot is not from the front, the Board has the right to request this information.

Public Hearing Closed.

Moved by Mr. Steele, seconded by Mr. Bouchard, to approve the application for minor subdivision.

U.A.

In response to a request from Mr. Sheldon, Mr. Dunn agreed to delineate and reference the City's easement across this property on the final plan.

ITEM #3: Public Hearing on the site review of land owned by Hannaford Brothers, Co., (applicant Papa Gino's of America, Inc.) Assessor's Map 37, Lot 24A, zoned B-3, on Central Avenue.

Mr. Galt noted that the City easements need to be depicted on the site plan as well.

Public Hearing Opened - No one spoke in favor or in opposition to the proposal.

Public Hearing Closed.

Mr. Sheldon read the report of the Site Review Screening Committee.

In response to questions from Mr. Williams and Mr. Galt, Mr. Steele stated that the access easement for Garrison Hill Greenhouses need not be delineated on the plan, as it is part of a separate agreement between Hannaford Brothers and the Greenhouse owners.

Mr. Galt raised concerns that the Board would be in error by not carefully considering the proposed easements, and suggested that this situation may be likened to the recent Court case which involved the City and an application for site review submitted by

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Mr. Forbes, for property on Sixth Street. Mr. Sheldon noted that, in the case referenced by Mr. Galt, the judge ruled that the Planning Board had acted properly and in good faith and that no procedural error had been made with regard to the matter of abutting property owners' easements.

In response to a question from Mr. Sheldon, Tom Massingham, owner of the Garrison Hill Greenhouse, stated that Hannaford Brothers has retained the right to dictate the location of the accessway to his property.

Mr. Williams expressed his concerns that the accessway was not delineated on the plan.

Mr. Seaver noted that a site review approval will not interfere with any existing deed restriction.

In response to a question from Mr. Preston, Mr. Massingham stated that, to the best of his knowledge, no problem exists with regard to the accessway, as he has a guaranteed access to the street.

Moved by Mr. Bouchard, seconded by Ms. Faria, to approve the application for site review, contingent upon the following conditions:

- 1) Four (4) additional shade trees shall be placed in the northernmost island separating Garrison Greenhouse with the proposed restaurant.
- 2) The proposed lease lines shall be removed from the plan.
- 3) The City's utility easements shall be depicted and referenced on the plan.

Vote: 6-2 (Williams, Galt)

ITEM #4: Public Hearing on the request for a waiver of the Driveway Ordinance for land owned by Hannaford Brothers, Co., (applicant Papa Ginos' of America, Inc.), Assessor's Map 37, Lot 24A, zoned B-3, on Central Avenue.

Public Hearing Opened - No one spoke in favor or in opposition to the proposal.

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Public Hearing Closed.

Mr. Sheldon explained that the applicant was seeking a waiver of the five foot setback requirement for pavement from the property line, because the proposed Papa Gino's will be sharing the accessway with the Garrison Greenhouse..

In response to a questions from Mr. Perry and Mr. Seaver, Mr. Sheldon explained that the two site's will share contiguous paving.

Moved by Mr. Steele, seconded by Mr. Galt, to approve the request for a waiver of the Driveway Ordinance.

U.A.

ITEM #5: Public Hearing on the minor subdivision of land owned by Melville Hodgdon, (applicant Stuart & Constance Hodgdon), Assessor's Map M, Lot 2, zoned R-40, on Back Road.

Stuart and Melville Hodgdon explained the minor subdivision.

Public Hearing Opened - No one spoke in favor or in opposition to the proposal.

Public Hearing Closed.

In respnse to a question from Mr. Williams, Ms. Brown noted that the abutting property owners had been properly notified.

Stuart Hodgdon explained that it is his intention to build a three-bedroom cape style house. In response to a question from Mr. Preston, Mr. Hodgdon stated that he has received WSPCC approval for the lot.

Mr. Preston read the reoprt of the Site Review Screening Committee.

In response to a question from Mr. Seaver, Mr. Hodgdon stated that the map depicting "Lot B" was incorrect in its listing of total acreage, as it does not show a lot along the river owned by

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Mr. Rollins. The actual parcel owned by Mr. Hodgdon totals about 28 acres. Mr. Preston noted that the correction of this error on the final plan could be a condition of the Board's approval.

Moved by Mr. Seaver, seconded by Ms. Faria, to approve the application for minor subdivision, contingent upon the following conditions:

- 1) Receipt of WSPCC and City septic approval.
- 2) Receipt of a City driveway permit, when necessary.
- 3) The map depicting "Lot B" shall be corrected so as to properly reference the total acreage of the Hodgdon parcel and the location of the lot owned by Rollins.

U.A.

ITEM #6: Public Hearing on the site review of land owned by John Gavin, Assessor's Map I, Lot 3B, zoned RM-12, on Mast Road.

Mr. Preston stated that at the on-site review, the applicant and his agent explained that they would revise the plans in an effort to address the concerns expressed at that time.

Mr. Sheldon explained that Mr. Gavin will redesign the plan so as to remove the driveways and buildings which encroach on the steep slopes. He noted that the public hearing will be reconvened when the new concept plan is submitted to the Board.

In response to a question from Mr. Seaver, Mr. Sheldon stated that, according to the City Attorney's ruling, the Board's thirty-day time line for action on the proposal is not in effect until the close of the public hearing.

In response to another question from Mr. Seaver, Mr. Sheldon stated that the same public hearing could be held on two different plans.

Mr. Bouchard noted that a new public hearing will be held only if it is determined that there is a significant change to the proposal. He questioned who would determine the "significant change."

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Mr. Steele noted that the new plan to be submitted by Mr. Gavin will be the same plan, however it will be significantly reduced in terms of the number of units.

In response to a question from Mr. Galt, Mr. Sheldon explained that, at this point, the public hearing on this item is still recessed.

Mr. Steele suggested that the Board now open the Public Hearing and then recess it.

Public Hearing Opened.

Kerry Forbes, Longhill Road, suggested that given the circumstances, Mr. Gavin may best fare if he were given a new public hearing. He added that this action may also be in the best interest of the City.

Mr. Sheldon reminded the Board that they have the option to hold a new public hearing, should the new proposal include substantial change.

Mr. Williams clarified the fact that the Board may close the public hearing and schedule a new one, should the plan be substantially changed.

In response to a question from Mr. Galt, Mr. Sheldon explained that should a new public hearing be required, the Board may deny the original application or the applicant may choose to withdraw it. Either action would allow for the scheduling of a new public hearing.

Mr. Preston stated that, in his opinion, at the on-site review the applicant had suggested that the new plan may be substantially changed.

Bill Baber, Mast Road, stated that he agreed with Mr. Forbes that the applicant may best be served by the scheduling of a new Public Hearing. He noted that, in his opinion, the plan has already undergone substantial changes.

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Mr. Preston stated that the developer has agreed to revise the plans and until those revisions are submitted, there will be no action by the Board.

Mr. Sheldon agreed with a suggestion by Mr. Seaver that the Board recess the public hearing until Mr. Gavin is prepared with a new plan.

Mr. Preston again suggested that the public hearing be recessed until such time as the applicant is ready to submit a revised plan to the Board.

In response to a question from Mr. Elder, Mr. Sheldon stated that it will be the Planning Board who will decide if the changes to the plan are "substantial", and if a new public hearing is warranted. If a new public hearing is scheduled, it will be advertised in accordance with State regulations.

Public Hearing Recessed.

Mr. Elder suggested that Mr. Sheldon request the opinion of the City Attorney relative to the necessity of a new public hearing.

ITEM #7: Old Business

- 1) Review of the applciation for major subdivision of the land owned by E. Richard Rowell, on the corner of Dover Neck and Middle Roads.

Mr. Preston noted that this item will be postponed until the next agenda, as the developer has not provided the Board with the engineering plans for the project.

- 2) Review of the application for site review for the land owned by Geraldine Moore and Ruth Drake, (applicant Forbes & Parks), on Durham Road.

Mr. Fores stated that he wished to withdraw the application. He noted that after the site walk he realized that the plan looked good only on paper and not in practice. He suggested that he may submit a new site review application for only 3-4 units on the

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site.

In response to a question from Mr. Forbes regarding a major drain from Redden Garden which crosses his property, Mr. Bouchard stated that it appears to have been installed after the Planning Board granted approval for the apartment complex. Mr. Steele suggested the the recourse open to Mr. Forbes would be his attorney.

- 3) Review of the petition to rezone that area generally bounded by Back River Road, Mast Road, Garrison Road, and the Bellamy River, from its present zoning designation of RM-12 to R-12.

Mr. Preston suggested that the Board request a ninety-day extension from the City Council, during which the Board may not only discuss the petition, but also to develop revisions to the RM-12 zone.

Mr. Galt reminded the Board that they have been requested by the City Council to act on a specific petition, that being to change the zoning from RM-12 to R-12. He noted that it appears to be the sentiment of the Board to revise the RM-12 zone.

Mr. Preston suggested that rather than simply turn down the request for the R-12 zone and leave the area open for potential development, he would like to vote on the petition and the proposed revisions at the same time.

Mr. Galt noted that it may assist the Board in making its decision on the change from RM-12 to R-12, if it knew what options were available.

In response to a question from Mr. Elder, Mr. Sheldon stated that to the best of his knowledge, the rezoning petition will not effect any property owner besides Mr. Gavin. Mr. Elder clarified that the the petition will not effect any property owner, except possibly Mr. Gavin.

Mr. Williams stated that he agreed with the statements previously made by Mr. Preston, regarding the request of a ninety-day extension.

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Mr. Sheldon corrected his earlier statements regarding the effect of the rezoning petition on property owners in the area. He explained that Mr. Forbes, owner of land on Garrison Road, would not be permitted to receive a building permit for his proposal because of the recent ordinance enacted by the City Council, even though he has previously received Planning Board approval for the project.

Mr. Seaver suggested that the Board act on the petition and then begin work on the proposed revisions to the RM-12 zone immediately. He noted that in the interim, any project which may come before the Board could be dealt with on an individual basis.

In response to a question from Mr. Elder, Mr. Sheldon stated that even if the Board chooses to deny the rezoning petition, development in the area would be precluded simply by the processing procedure required. He explained that as soon as the Board has developed revisions to the RM-12 zone and the notice of the public hearing is posted, a lengthy process which involves public hearings before the City Council as well, is initiated. He stated that it would not be possible for an applicant to receive a building permit prior to site review approval by the Board, and therefore it would be difficult to bypass any rezoning.

In response to a question from Mr. Williams, Mr. Sheldon stated that he has compiled the suggestions of the Board members from the last meeting, with regard to possible revisions to the RM-12 zone. He explained however, that the Board should have a prototype regulation before it posts any notice of a public hearing. He suggested that this could be accomplished through a series of workshop sessions.

Mr. Bouchard stated that he agreed with earlier suggestions made by Mr. Galt. He noted that he would like to begin to develop revisions to the RM-12 zone through the workshop process.

Mr. Sheldon explained that the Board has 31 days from the public hearing held on March 26 in which to act on the petition. Mr. Galt noted that the Board will be required to act on the matter at this meeting or at the meeting scheduled for April 23, or

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request a ninety-day extension from the City Council. Mr. Sheldon stated that he hoped that the Board would act on the petition at this meeting.

Moved by Mr. Seaver, seconded by Mr. Elder to deny the petition to change the zoning from RM-12 to R-12. The Board will begin to work on possible revisions to the RM-12.

U.A.

Mr. Williams requested that the Board hold a public hearing on proposed revisions to the RM-12 zone at the next regularly scheduled meeting. Mr. Sheldon reminded the Board that it should have a solid proposal before scheduling a rehearing.

Moved by Ms. Faria, seconded by Mr. Elder to move this item to a workshop session to be held on April 18, 1985.

U.A.

Mr. Galt and Mr. Preston both noted that the petition for rezoning will now be forwarded to the City Council and they will act to approve or deny it. The City Council will hold another public hearing on the matter.

In response to a question from Mr. Seaver, Mr. Steele stated that the City Council will be made aware of the proposed revisions by the Planning Board, with regard to the RM-12 zone.

- 4) Approval of the minutes of the regularly scheduled meeting held on March 12, 1985.

Moved by Mr. Williams, seconded by Mr. Galt to approve the minutes as submitted.

U.A.

ITEM #8: New Business

- 1) Approval of the minutes of the regularly scheduled meeting held on March 26, 1985.

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Moved by Mr. Williams, seconded by Mr. Galt to approve the minutes as submitted.

2) Proposed Revisions to the RM-12 Zone.

Mr. Sheldon presented the Board with a summary of proposed revisions to the RM-12 zone, as discussed at the last regularly scheduled meeting. The items addressed included the revision setback requirements which promote a grid-style of development and the prevention of encroachment on environmentally sensitive areas. The proposed revisions would reduce the effective density of the RM-12 zone based on the number of bedrooms the developer will build and the environmental characteristics of the property.

In response to concerns raised by Mr. Preston regarding the required roadway width for multi-family development, Mr. Sheldon suggested that the Board schedule a review of that section of the Site Review Ordinance dealing with the issue as an agenda item for the upcoming workshop session.

Moved by Ms. Faria, seconded by Mr. Elder to adjourn at 8:50 p.m.

U.A.