



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, February 18, 2010**  
Meeting Time: **7:00 pm**

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

**Members Absent:** Frank Landford

**Staff Present:** Steve Bird (City Planner) and Michelle Beauchamp (Recording Secretary)

**Others Present:** Jennifer Viarengo, Dave Paolini, Chad Kageliery, Don Wood, Vicky Burns, Doug MacDonald, Brian Gong, Barry Gier, Jason Garland, Richard Talbot and Christopher Boldt.

*The Chair called the meeting to order.*

*As an Alternate, O.Perry stood in for F.Landford.*

S.Reid made the motion to move the Election of Officers to end of meeting. J.Kelley seconded. **Vote:** Unanimous

### 1. Approval of December 17, 2009 Minutes

O.Perry made the motion to approve the December 17, 2009 Minutes. W.Colbath seconded. **Vote:** Unanimous.

### 2. New Business

- A. **Z 10-02** Summit Land Development; property owned by 2830 Holdings LLC, located at Dover Point Road/Thornwood Lane; Tax Map K, Lot 19C, Zoned R-12/B-3/ETP. The applicant requests a Special Exception from the terms of Article IV, Section 170-12/B-3 Table, to allow a 3,055 sf. convenience store and six (6) bay gas station with associated parking, utilities, stormwater management and landscaping.

J.Viarengo from Appledore noted that she was representing the applicant for the proposed Special Exception to allow a gas station with a convenience store. The site would be located at the intersection of Thornwood and Dover Point Road.

J.Viarengo noted that the proposed gas station/convenience store would be a convenience and a use not presently available along this stretch. The use would complement the other surrounding mixed uses. There is the auto dealership, offices, food uses, residential and the people that travel everyday to and from work. This proposed use is normal for a thoroughfare zone (B-3). The existing area does not have the gas station and the addition would provide improved convenience and reduce travel time for those that have to go elsewhere. This is desirable and essential for public convenience and welfare.

J.Viarengo noted that this road is traveled everyday in both directions. We are not adding new trips, there is existing traffic along Dover Point Road. We arranged the site to make sure there is safe access. We have not created traffic congestion.



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J.Viarengo noted that they have met with the City Engineer, who has issued a letter stating that we are not creating a hazard effecting the health, safety or general welfare. We are not a large user of water and sewer and have our own drainage mitigation. The proposed lot size is 77,777 square feet with 165 feet of lot width and 58% open space. We are not requesting any signage at this time. The property values of the adjacent land will not be compromised since this is a mixed use area. There are existing commercial and retail uses. We are retailing the gasoline, this is not a proposed service station attached to this. The proposed use could add value to surrounding properties. Commercial, businesses and office uses compliment each other. The similar uses allowed in the zone include bank, retail, commercial parking, eating & drinking establishments would all generate the same type of outcome that we are proposing. We have a letter from Brian White of White Appraisal which addresses the valuation: *I have reviewed the proposed site plan for a new gasoline/convenience facility to be located on 1.74 acre parcel of land located on the corner of Dover Point Road and Thornwood Lane. This parcel is identified as Map K, Lot 19C and it is currently owned by 2830 Holdings LLC. The plan calls for construction a 3,055 square foot building along with a gasoline canopy and other on-site improvements that are typical for a modern gasoline/convenience facility.*

*I have been asked by the owner of the subject property to prepare an opinion on the proposed use of this parcel as it relates to the possible change of value for the surrounding properties. I have been appraising residential and commercial property located in the Dover area for the past 26 years. I am very familiar with the Dover Point Road areas as I have appraised numerous residential and commercial properties located on or off of this road over the years. I am attaching a copy of my qualification for your review.*

*The subject property is largely located in the B-3 (Thoroughfare Business) zone. This zone allows for a variety of permitted uses including: Barber or beauty shop; Bank; Bed and breakfast; Commercial parking facility; Commercial recreation facility; Eating and drinking establishments; Hotel; Motel; New car sales; Office; Personal service establishment; Retail store; Service club; Theater; Child care facility; Church; Clinic; Educational institution, post secondary; Office (administrative, financial, professional). Several other uses are allowed by Special Exception. The subject's proposed use for a retail convenience store would be permitted in the B-3 zone while the proposed gasoline station would require a Special Exception.*

*The subject's section of Dover Point Road is part of the State of NH Highway System and is a heavy commuter route with over 15,000 vehicles per day. The proposed gasoline/convenience facility has been designed on a corner parcel that will have ingress and egress to and from Thornwood Lane and egress to Dover Point Road. The development will have good sight distance from both the northbound and the southbound lanes on Dover Point Road. This type of commercial development will benefit from both local and impulse customers as it would provide a combined gasoline and convenience service that is currently not offered in a modern facility anywhere along Dover Point Road.*

*If the proposed gasoline/convenience facility is constructed, the other commercial properties located on Thornwood Lane and Dover Point Road would not be negatively impacted as*



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*gasoline/convenience facilities are commonly found in areas with retail, office and automobile dealership facilities. I am not aware of any data that suggests that these properties would experience a diminution of value. There would be some impact from the subject's proposed facility on the nearby residential properties. This impact would largely be felt by an increase in traffic to and from the property. However, since the subject property is currently a vacant lot, any type of development would increase traffic to the property. A modern gasoline/convenience facility typically experiences the bulk of its customer visits during business hours with the volume declining during the evening hours. A similar increase in traffic would be experienced if a number of the uses permitted in the B-3 zone were constructed on the property. For example, if the subject's parcel was improved with a restaurant, lounge, hotel or motel use, the result would also be a similar increase in traffic to and from the property.*

*The subject's proposed gasoline/convenience commercial development is one that is commonly found along commercially zoned areas located throughout many cities and towns located in the Seacoast area of NH. In my opinion, it is not a use that is typically prohibited from commercial thoroughfares. Dover Point Road extends southerly from Stark Avenue over 3 miles having 3 business zoned nodes with none of them containing a modern gasoline/convenience facility. The subject's corner location with Thornwood Lane being the main access road enhances the utility of the subject parcel to accommodate a modern gasoline/convenience facility. It should be noted that there are 2 mixed use (commercial and residential) projects currently under construction on Dover Point Road.*

*The northern half mile of Dover Point Road, which includes the subject property, is a varied mixture of uses including single-family homes, multi-family homes, mobile home parks, commercial condominiums, residential condominiums, restaurants, ice cream stand, automotive dealerships, auto service facilities, general office uses, tattoo parlor, car wash, convenience/beverage sales, general retail stove shop and others. It is the very definition of a mixed use business thoroughfare zone.*

*Based on these facts and conditions, along with my experience appraising real estate in the Seacoast area of NH for many years, it is my opinion that the construction of the proposed gasoline/convenience facility on the subject property would not result in a diminution in value for the residential properties located on or off of Dover Point Road.*

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

J.Viarengo noted that they have not set the hours of operation and added that they would be consistent with what is allowed in the B-3 zone. S.Bird noted that the zoning ordinance does not limit the hours of operation. The Chair asked how, in the traffic study, did they analyze the variable for the toll road? J.Viarengo noted that they are still working with the traffic consultant. The Chair noted that she was surprised that they are not asking for a sign. J.Viarengo noted that there is no named tenant.

J.Kelley noted that he is surprised that there is no increased traffic. J.Viarengo noted that we are in the process of doing the full traffic study and mitigated accordingly. She stated that the proposed



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use would not create any more traffic than any other use allowed within this zone. She added that this is a thoroughfare zone. J.Kelley questioned if it was necessary to have a traffic light? J.Viarengo noted that there are improvements as part of the Thornwood Lane approval. J.Viarengo noted that they do not anticipate the need for a signal for this use. J.Kelley asked if they plan on putting a light up for the convenience of their customers? J.Viarengo noted that there is a threshold that needs to be met for a required light.

*The Chair opened the public hearing. The Chair asked if anyone present would like to speak that was in favor of the application.*

D.Paolini noted that he owns the parcel directly across the street and stated that he is in favor of this, not only because it is needed, but we could use this.

Chad Kageliery noted that we are asking for a permitted use with special exception that meets the criteria. Our proposed use will have the same or less impact than a number of other permitted retail uses that do not come before this Board. We believe we have the support of the Planning Department, Economic Development and direct abutters. We have provided the Board with a letter from a licensed appraiser that says the use being proposed would not be adverse to the neighboring properties any more so than another permitted use would.

The Chair read supporting letters from Robert Paolini of South Dover Investment Group; John Gray of JBack Realty LLC; and supporting emails from Debbie & Charlie Reed of Bill Dube Ford Toyota Scion; and Dan Barufaldi of the Dover Business & Industrial Development Authority. Documents may be found in the applicant's file.

*The Chair asked if anyone present would like to speak that was opposed to this application.*

D.Wood of 12 Dover Point Road noted that he was not a direct abutter, but a member of the neighborhood. He had concerns that a gas station/convenience store is being proposed in that particular location. He felt that the application was written directly from 170-52 of the regulation, word for word. The application notes that there is no location to purchase gas or convenience goods along Dover Point Road. He noted that there is Tuttle's, a convenience store and Care Pharmacy, all which carry convenience foods. He noted that there 3 gas stations within one mile, one of which is located direction on Dover Point Road/Stark Avenue. He stated that the contention is not correct, there is gas available and there are convenience foods. He felt that this would proposal would disrupt the flow of traffic and that is the prime concern on Dover Point Road. It will not be just the peak hours. Those people use that road all the time to go to the malls and on the weekends there is a greater use. There is an Exit factor, this could increase the traffic flow. Sewer is a given. He stated that every one of the pro letters heard tonight are from commercial people, not people from the neighborhood. This proposal will enhance their particular business. As a neighbor, he felt that this will decrease and take away from the value of the neighborhood. He added that the Zoning Boards responsibility is to the citizens of this City as stated in the Charter. He stated that the only way they meet the requirements of the lot size and green space is by over flowing into the R-12 & ETP Zone.



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V.Burns noted that she was speaking on behalf of Marilyn Follansbee who has submitted a letter: *The proposed filling station will be in direct line of our doors and I will see it every time I leave the house and at night when I lock up. If it had been there when we were looking for the house, I would have never bought this one. I know a gas station would lessen the value of our property.*

V.Burns read a portion of a letter from Letter from Darle MacFadyen of Prudential Verani Realty: *Realistically, a view of a bright lit multiple bay gas station backed by a convenience store will negatively impact market value. V.Burns presented photographs for the Board to review. So every time you exit or access your home or driveway you will have this view. The bright lights, beeps from the pumps, conversations while pumping gas, delivery vehicle noise, and traffic stopping to turn into and pulling out of a retail facility will all have an adverse impact on the nature of your neighborhood and cause devaluation of your property values.*

V.Burns read from another letter from M.Follansbee: *If this is being created to accommodate the car dealers, I do not think it fair to the homeowners who will have to listen to the bell "ding" and smell exhaust fumes and just plain see the station, knowing that it makes their property less desirable. The dealers have managed quite well for the more than 33 years we have lived here. There is a gas station .9 miles from the proposed site and a convenience store just .5 miles from the proposed site which is open 5:30 am to 8PM. I feel that not only would the proposed gas station and convenience store have a negative effect on the value of the homes near it, but could hurt these two businesses as well. One of the requirements for Special Exception is that a identification sign must be posted on the property for 10 days before this meeting. She added that there was no such sign. Finally if you have the slightest belief that a gas station/convenience store will lower the value of homes in the immediate area, that you deny the exception.*

D.Wood verified that the signs were not posted. The Chair noted that the Board typically requests that the applicant postpone until they can provide proper notification. J.Variengo noted that since there are concerned abutters, the right thing is to ask for a postponement and post the sign according to the regulations.

O.Perry made the motion to continue the public hearing and the decision until the proper notification has been made to a regularly scheduled meeting. S.Reid seconded. The Chair noted that the meeting is scheduled for March 18<sup>th</sup> 2010. The Chair clarified that everything stated tonight will be part of the record and will continue at the next meeting.

*O.Perry stepped down from the Board and as an alternate, C.Prior stood in for F.Landford.*

- B. **Z 10-03** The National Center for the Improvement of Education Assessment Inc; property owned by First Church of Christ Scientist; located at 31 Mount Vernon Street; Tax Map 30, Lot 120, Zoned RM-U/Office. The applicant requests a Variance from the terms of Article IV, Section 170-12, RM-U Table to convert current church building into office space.

D.MacDonald of Keane & MacDonald noted that he was representing the National Center for the Improvement of Education Assessment Inc. He stated that this unique project. The Center will



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renovate the church in a manner that will maintain its historic qualities. The exterior renovations include changing windows in kind, renovation to the front steps, painting and the roof.

D.MacDonald noted that the Center is a nonprofit organization that works with the State and other educational agencies to design and implement effective assessment and accountability of education programs and policies. The office operated from 9AM to 5PM during the week. Currently there are 9 professional staff members and 3 support staff.. On a typical day there would be 4-6 staff at the facility and one or twice a month there would be 12 staff present for a staff meeting. He added that there are very few visitors. The project proposes to subdivide the lot. It is unique since it is .94 acres and is located on Central Avenue and Mount Vernon Street. The proposal is to subdivide the lot along the zoning boundary line. The church would be on Central Ave zoned Office and the proposed office would be located on Mount Vernon zoned RM-U. The proposal will preserve the nature of the building and reduce pavement. They plan to return the landscaping like it was in the early 1900's.

D.MacDonald noted that they had a meeting a couple of weeks to discuss the project with the abutters and the experience was positive. We met several times with Planning Staff and received positive feedback.

D.MacDonald noted that it was sensible to divide property along the zoning boundary. For the feasible development of the parcels, the office zone cannot be used for the Center of Assessment use and the church currently cannot maintain in a sustainable fashion the church building. This is one of the only feasible manners in which this type of property is developed. The church is no longer going to be a viable use there and the building itself isn't truly easily converted into any kind of use that is allowed with less impact than this. By allowing the church to continue use on part of the parcel and by developing the church building in a manner that preserves the historic asset we have a pretty low use from an intensity perspective. We believe this is a feasible development that is consistent with public interest.

D.MacDonald noted that this is a unique area of the City. There are office uses in close proximity and a lot of mixed uses in the area, which would be consistent. The approval by the abutters suggests that the neighbors believe it is consistent with the character of the neighborhood.

D.MacDonald noted that the purpose of the project is to provide and restore a historic asset, developing sensible parking, limited parking, redoing the sidewalk, beautifying the building, there will be an agreement with the church to use the parking lot for church services. He added that this is a good relationship between the two which includes landscaping and building maintenance agreement. He noted that other uses that would be allowed there would be a substantial residential development, which could be an increased traffic and service demand.

D.MacDonald noted that the surrounding property values will not be diminished. He noted that this property has existed as a church since 1913 and we seek to maintain and improve the building, which will increase property values.



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D.MacDonald noted that there is no lot similar to it in that area. It is located in a mixed use area and bisected by the zoning, which makes it unique. The uses surrounding it are commercial and residential. He noted that other uses that are allowed are rooming houses, funeral parlor, adult day care, child care facility, K-12, education facility, all of which would increase the intensity of the use of the property. The church has existed there since 1913, the proposed use is less intense than many of the allowed uses. The other allowed uses given the building, are not practical. Preserving the historical asset is important and the strict application of the zoning ordinance would probably result in the loss of the asset to the City and the significant development of the parcel.

D.MacDonald noted that the proposed use is reasonable because it preserves the asset, lessens parking, creates beautification of the neighborhood and doesn't have nearly the impact some of the other allowed uses would have.

J.Kelley noted that this is a large building for 12 people and questioned if there was inventory. D.MacDonald noted that it would be purely office working space and noted that there was no large inventory. J.Kelley questioned if they would rent out to another business. D.MacDonald noted that there are no intentions to sublet. He added that they have chosen low impact lighting, provide more green space and make this home.

D.MacDonald noted that there is 6,300 square feet with twelve proposed office units. The first floor would have nine rooms, the second floor would have two rooms and the third floor would have one. It was noted that the Center will purchase the lot on Mount Vernon and move from their lease at One Washington Center in the Mill.

S.Reid made the motion to accept the case. W.Colbath second. **Vote:** Unanimous

The Chair opened the public hearing.

R.Talbot, a member of the church, noted that they could not maintain the old building. He stated that it dated prior to 1900. He noted that the neighbors love the park like environment. We looked for a buyer that would like the building for its historic value and was interested in retaining that environment in the neighborhood. This would allow us to stay in the same place and gives us the visibility up front. He added that it would retain that piece of Central Avenue.

B.Gong, the Director of Center of Assessment, noted that this would be the same square footage in Dover. We wanted a green space and to be a neighbor with the church. We would like to share the parking lot between the two of us. We would love to have the neighbors use the parking lot.

S.Bird noted that the Planning Department supports this variance request. He added that all the elements have been met. We believe that this is a creative use of a neat piece of property. He noted that the church has been looking for an alternative use and this is a perfect fit.

The Chair closed the public hearing.



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W.Colbath noted that it was consistent with the neighborhood and the space they are using now. It was noted that they are more like a consulting business and travel to other states. Their maximum number of employees is 15. S.Reid noted that what we don't want is on street parking. There was a discussion regarding enforcement, covenants, limiting parking, limiting the number of offices.

S.Bird noted that assuming the variance is granted, the Planning Department would look for prior variances on a parcel. If the Board sets a limit on employees, the employer would need to return to this Board if they need more. This would give the Board some control over the intensity of the use.

J.Kelley noted that there was a positive response from public in regards to this plan. The Chair noted that this use is consistent and it continues the positive use of the lot. It was noted that it was not contrary to the public interest. The Chair noted that it limits impact, preserves the nature of the building, it does not alter the essential character of the locality. The Chair noted that there is mixed use of residential and office use in the area. The proposed use would be less intensive than many of the allowed uses. J.Kelley noted that this would preserve and improve a historical site. J.Kelley noted that the value of the property would be equal to or better than what currently exists. S.Reid noted that this was a large lot size and a large structure which distinguishes the lot from other properties in the area. It was noted that this was a low intensity office is proposed and this was a reasonable less intensive use.

W.Colbath made the motion to approve with the conditions of a maximum of 20 employees.  
S.Reid seconded. **Vote:** Unanimous

### 3. Other Business.

There was a discussion regard the acceptance of applications. The Chair noted that she would contact the Local Government Center regarding procedures.

### 4. Election of Officers

S.Reid made the motion to elect M.Denison as the Zoning Board of Adjustment Chair and W.Colbath as the Vice Chair. J.Kelley seconded. **Vote:** Unanimous

### 5. Adjourn

S.Reid made the motion to adjourn at 9:05PM. J.Kelley seconded. **Vote:** Unanimous