



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

MEMBERS PRESENT: Masi Denison (Chair), William Colbath (Vice Chair), James Kelley, Sam Reid and Chris Prior (Alternate).

MEMBERS ABSENT: Frank Landford and Otis Perry (Alternate).

STAFF PRESENT: Steve Bird (City Planner) and Michelle Beauchamp (Recording Secretary).

OTHERS PRESENT: Marilyn Follansbee, Matt Hoppe, Andrea Hoppe, Christopher Boldt, John Ryan, Chad Kageliery, Jeff Cattle, Jennifer Viarengo, John O'Neill, Pam Simpson, Shawn Kelley, Michael Bolduc, Jennifer Lawson, Jay Delasora, Justice Smith, Kim Hazarvarian

The Chair called the meeting to order at 7:05PM. As an Alternate, C.Prior stood in for F.Landford.

Note: *Audio recording problems.*

1. APPROVAL OF PRIOR MINUTES OF FEBRUARY 18, 2010

S.Reid made the motion to approve the February 18, 2010 minutes. W.Colbath seconded. Vote: Unanimous.

2. OLD 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/E/TP. 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. [Continued from February 18, 2010 ZBA Meeting]

W.Colbath made the motion to bring the item of business off the table. S.Reid seconded. Vote: Unanimous.

The Chair noted that the meeting was continued for improper notification of the site identification poster. She noted that the meeting left off with the public hearing. She asked if there was anyone present that would like to speak who is against the application.

M.Follansbee presented the Board with a petition containing 121 signatures opposed to a gas station/convenience store in the area. She supplied photographs of the proposed location and noted that this proposal would directly affect her property value negatively. She noted that the area will be impacted by traffic. She added that Jack Buckley of Dover Housing Authority is planning a 28 housing unit in this area for senior citizens and does not support this application.

J.Cattle spoke in opposition of the application and was concerned about the traffic impact.

C.Boldt represented Matt and Andrea Hoppe of 26 Dover Point Road. He presented photographs taken from the Hoppe house towards the proposed site. He presented a letter from Barbara



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Shiembob of Keller Williams Coastal Realty which listed several negative characteristics (increased traffic, noise and fumes; extended hours of operation and impact on residential living; transient nature of the customers and the increase risk of violence and crime; and the hazardous and dangerous materials on site and the associated risk and noise). Her letter stated that the proposal would deter potential buyers from even considering adjacent residential properties. He noted that his clients put their house on market but as soon as applicants learned of the proposed site development, the buyer withdrew their offer. He presented a copy of the purchase and sales agreement and withdrawal letter.

C.Boldt noted that the lot for the proposal does not exist in its current configuration presented. He added that it is being piece mealed from properties surrounding it. Specifically from the R-12 District, where is use is not allowed and from the ETP. He noted that by State law, the Special Exception criteria cannot be varied; it is a permitted use when you meet the checklist. This application requires 60,000 square feet from the B-3 District; this project only gets 75,000 square feet by adding it from the R-12 District and ETP District. He believes the application does not meet the criteria for Special Exception. He noted that the ZBA cannot waive or vary the terms of the Special Exception and therefore the application cannot stand on its own feet it and must be denied. He noted that the applicant cannot meet the traffic criteria since they have not completed the traffic study. C.Boldt noted that there is an existing convenience store within 1/2 mile and a gas station in the other direction.

S.Reid made the motion to allow the proponents to respond. C.Prior seconded. Vote: Unanimous.

The Chair noted that the Board received additional letters: Letters in favor of the project (Robert Wunder, Greater Dover Chamber of Commerce & Visitor Center, Rosalyn Andrews, Rosemary August, Tim Dargan, Russell Lyon, Kenneth Plante, Dover Secretarial Services and Andrea Welch) and letters or e-mails in opposition (Jay McLaughlin, Roy & Gail Tanner, Sylvia Fosco, Jack Buckley Victor & Eleanor Strawbridge, Molly Sweeney and Constance Passas)

J.O'Neill, a business owner, noted that he supports a place of convenience for his workers to go get coffee or lunch. He added that Mr. Kageliery has done an outstanding job in Dover and is very considerate of his neighbors.

P.Simpson owns a business in Dover and is a member of the Chamber of Commerce. She supported the project because she believes there is a need for a gas station on Dover Point Road. She added that the projects Mr. Kageliery have done have been great.

S.Kelley noted that he travels everyday along this road. He owns a business in Portsmouth. He believes the population in Dover has changed drastically and putting in a convenience store/gas station would not additionally impact traffic. He added that he is in favor of this project.

M.Bolduc noted that he believes this project would be convenient instead of going through town, which can be challenging at some times during the day.



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J.Lawson travels Dover Point Road about three times a day and noted that there was no place to get a cup of coffee, bite to eat or gas and would rather spend her money at a Dover business than another community.

J.Delasora noted that there have been hundreds of houses built in the area and there is a big need for a gas station/convenience store. He noted that he currently has to go to Newington or into downtown Dover and felt that his commute was traffic for someone else. He added that this was a good situation.

J.Smith noted that she owns a real estate business in downtown Dover and she had no concerns for what this would do to home values. She was in full support of the project. She noted that the majority of the houses in the area are not on Dover Point Road.

C.Kageliery noted that in 1973 the land was zoned commercial and Mrs. Follansbee bought her housing knowing that as did the Hoppe family. He added that the adjacent properties are not impacted. He noted that the two vacant lots between subject property and the abutter are vacant.

C.Boldt noted that the Hoppe property was listed at an abutter.

C.Kageliery clarified that an abutter is not necessarily adjacent. He added that the Hoppe property is a few hundred feet away. It was noted that lot 26 & 19A are zoned R-12.

J.Viarengo noted that lot 19C, the subject property, is zoned R-12, B-3 and ETP. As part of proposal, a site plan and lot line adjustment will be proposed and lot 19A will have a portion added to 19C. She added that 50% of the lot is in the less restrictive zone. She noted that they are before this Board for a special exception on the gasoline and service station.

C.Kageliery noted that he owns lot 26 and lot 19A. He added that a licensed appraiser has noted that the adjacent properties are not negatively affected. He noted that he has attended Technical Review meetings and has incorporated suggested road improvements, which also speaks to traffic. He added that this proposal is allowed by special exception in the business zone and he stated that there are property rights associated with that.

There was a general discussion regarding the Thornwood development which was a concept blend of residential and commercial.

K. Hazarvarian, traffic engineer, noted that he will provide a complete traffic and access report for the Planning Board process. He noted that gas station/convenience does not create destination generators. He added that 2/3 of the traffic will be from Dover Point Road and will not add significant traffic in to the area in general. He stated that the access traffic coming in and out would be a concern and there is an added lane planned.

J.Kelley questioned what would trigger a traffic light. K. Hazarvarian stated a larger development.

W.Colbath questioned how many trips this proposal would generate. K. Hazarvarian noted that there are two types of trips. He noted that the peak hour preliminary calculations are about 200



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trips in a peak hour and he believes most of it would be drawn from passing traffic. He added that the daily number would be 1,000 or 2,000 over the course of the day. He noted that there are about 14,000 trips down Dover Point Road. He added that there will be some relocation of traffic, but the traffic character will not change dramatically.

C.Boldt noted that zoning ordinance was written to include them and be considered an abutter. He stated that there is a creek bed behind the property that is heavily wooded which eventually reaches the Bellamy River. He added that this is a major source of flood water control and you don't want to have the pollution of a gas station adjacent to this.

C.Boldt stated that the applicant does not meet the special exception criteria. He added that they have not produced any evidence that has contradicted the Follansbee letter, the real estate letter and the withdrawn purchase and sales agreement.

There was a discussion regarding the Brian White opinion letter. C.Boldt noted that B.White's letter states that this use will not have any more negative value than any other commercial use. C.Boldt added that it was irrelevant. We have given you a piece of evidence. S.Ried noted that a convenience store is allowed as a matter of property right. C.Boldt agreed that a convenience store would affect his client's property value, because of the lights that are used. C.Boldt noted that because they have a gas station element, it requires a special exception. C.Boldt agreed that a gas station would diminish property values more than a convenience store because of additional lights, pollution, spillage, fumes and noise. J.Kelley noted that most convenience stores have lights and noise. He added that gas stations have sophisticated methods for removing fumes. C.Boldt noted that this is a massive impact. He added that they do not have the square footage (60,000) within the B-3 District and cannot prove there will not be a compromise.

C.Kageliery noted that the use of land for a gasoline and auto service station may only be permitted upon the determination that the property values of adjacent land will not be compromised. He added that adjacent land was contiguous. They were required to be notified as abutters because they were within 200 feet.

J.Ryan noted that the City's definition of gasoline station is an automobile service station, the basic function of which is to provide for the sale of gasoline and oil and routine automobile maintenance. He added that this project does not include service station. He noted that it includes a convenience store which is allowed by property right.

M.Follansbee again noted her opposition to the application.

The Chair asked S.Bird if the Planning Department had an opinion. S.Bird stated that the Planning Department believes the applicant meets the criteria laid out in zoning. He added that there is nothing in zoning which requires all 60,000 to be in a specific district. He noted that a gas station has been allowed by Special Exception ever since the B-3 District was created.

Chair made the motion for a 30 minute recess to review the written evidence. W.Colbath seconded. Vote: Unanimous



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The Chair called the meeting back to order at 8:50PM.

J.Kelley questioned what would be allowed in the R-12 Zone. S.Bird noted a family dwelling, two family dwelling, conversion of existing dwelling to accommodate not more than 2 units, bed and breakfast, office, childcare facility, church, educational institution(post secondary), education institution (K-12), public recreation, public utility and pools. He added Elderly Assisted Care by Special Exception. J.Kelley noted that there is precedent in regards to the 50-feet. W.Colbath noted that ETP does not allow gas stations.

S.Reid made the motion to close the public hearing. J.Kelley seconded. Vote: Unanimous.

The Chair noted that the Board needs to determine if the applicant meets the criteria for a special exception. She added that the Board needs to determine if the applicant meets the 60,000 square feet. It was noted that only a small portion of the pavement goes into the R-12 zone. The Chair noted that a gasoline station is a special use and she believes that the 60,000 square feet is to make sure a gas station is placed in a large commercial area. The Chair noted that the Board needs to address the issue of granting a special exception when there is not enough space in the B-3 zone and move into another zone. J.Kelley questioned if the applicant could have configured smaller pumps to stay within B-3 zone.

S.Reid made the motion to proceed with hearing the request. C.Prior seconded. Vote 4-1, motion passed. (Denison opposed)

The Chair noted that Attorney Ryan feels the applicant does not need a special exception since they are not providing vehicle service. The Board felt that the special exception would be needed for the proposed use.

The Chair read the following general conditions:

- The requested use is essential or desirable to the public convenience or welfare.
- The requested use will not create undue traffic congestion, or unduly impair pedestrian safety.
- The requested use will not overload any public water, drainage or sewerage system or any other municipal system to such an extent that the requested use or any developed use in the immediate area or in any other area of the city will be unduly subjected to hazards affecting health, safety, or the general welfare.

The Chair noted that she has heard a lot of comments regarding the desirability and non-desirability of the proposed use. J.Kelley noted that he heard comments regarding the convenience as opposed to the need. C.Prior noted that some of the testimony noticed that this was not desirable. S.Reid noted that as a member of the public, that he would find this to be desirable. J.Kelley noted that it would be at the expense of the immediate homeowners. The Chair noted that this may be a case where the public good outweighs private rights. It is our duty to consider the current owner and future owners of the parcels involved.

W.Colbath noted that the devaluation becomes a question. He added that if it were located between the two businesses then it would be simple. He feared that the abutting residential lot



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may come before the Board and ask for a variance because it cannot build a residential property next to a gas station.

C.Prior noted that general development might be tough to take for the abutters. It was noted that the 121 signatures on the petition are folks that live in that general area. He felt that they would use the gas station if it was available to them.

J.Kelley noted that something will happen to that corner lot. The open area in the back will have a negative impact on the immediate lots.

S.Reid noted that the valuation issue is not part of the public convenience or welfare. We have to find that the use of land for gasoline or auto service station will not affect the property value of adjacent land and will not be compromised. He noted that the Hoppe property could be considered adjacent property. He added that Brian White is a well respected real estate appraiser and in his opinion this would not result in devaluation. There was a general discussion regarding Brian White's letter and how each member interpreted the letter.

The Chair noted that she felt the abutters would be less concerned if it was just a convenience store. She believes that the proposed use would affect the value of the homes and she takes the withdrawal of the purchase and sales letter very seriously. She questioned if the devaluation should be a price that should be paid for the public welfare. S.Reid noted that the rescinded offer does not say that the house is not \$295,000. C.Prior noted that an offer is only an offer if it is signed by the seller. The Chair agreed that the copy before them was not signed. A member of the audience noted that it had been signed. The Chair noted that the public hearing is no longer open.

W.Colbath noted that he was not convinced that the square footage had been resolved. He noted that the 60,000 square feet should be in the B-3 zone. He believes that would need a variance because they were asking for more than 50 feet into the other zone. J.Kelley noted that he felt this was a valid point.

The Chair noted that the Board heard from the traffic engineer and did not hear from the parties in opposition regarding a negative traffic impact. J.Kelley noted that there would be a negative traffic impact when turning in and out of the station. He noted that someone would need to cut across two lanes of traffic when turning left. The Chair noted that the applicant has been through the Technical Review Committee. W.Colbath noted that he has not seen a traffic report. It was noted that the professional opinion is that it would not be a problem.

The Chair noted the following criteria:

- The use of land for a gasoline and auto service station may only be permitted upon the determination that the property values of adjacent land will not be compromised.
- The minimum lot size shall be 60,000 square feet, the minimum lot width shall be 150 feet, 25% of the subject parcel shall be open/green space, the total permitted sign area shall not exceed 100 square feet.



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The Chair restated the general conditions and noted that the Board would need to take into consideration the testimony received.

W.Colbath noted that he has a problem with the ETP minimum lot size requirement. He added that if the City wanted the ETP to have gas stations, it would have gas stations as an allowable use. He noted that the proposal could be desirable, but it may not be essential. He added that going 50 feet into the ETP would be ok, but this Board does not have the authority under special exception to grant this, it would require a variance. C.Prior noted that the language does not state that all of the area needs to be in B-3. He added that the proposed lot is larger than 60,000 sq ft. W.Colbath noted that a gas station is allowed in B-3 and shall have 60,000 sq ft. He feels a variance would be needed to use the land in the other zones. He restated that this would need a variance.

J.Kelley noted that he would be concerned about the value of the other properties. He added that he felt the two real estate agents note that the properties would be compromised.

W.Colbath made the motion to deny the Special Exception. J.Kelley seconded. Vote: 3-2 (Colbath, Kelley, Denison in favor)(Reid,Prior opposed).

The Chair noted that the applicant has right to appeal the decision in 30 days.

The Chair called for a 5 minute recess.

3. OTHER BOARD BUSINESS

Review draft Zoning Board of Adjustment Application Form and Finding of Facts Form.

S.Bird discussed the proposed changes to the application form. It was noted that some changes are based on State law. It was noted that the "Findings of Fact" form would also reflect these changes.

W.Colbath made the motion to approve the changes. S.Reid seconded Vote: Unanimous

It was requested that the Rules of Procedure be added to the next agenda.

4. ADJOURN

S.Reid made the motion to adjourn at 10:30 PM. J.Kelley seconded. Vote: Unanimous