

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: **Thursday, April 16, 2009**
Meeting Time: **7:00 pm**

1. ATTENDANCE

- Regular Members Present: Chair Masi Denison, Vice Chair Bill Colbath, Sam Reid, Frank Landford, Jim Kelley
- Alternate Members Present: Chris Prior, Otis Perry
- Staff Present: Bruce Woodruff, Zoning Administrator and Jennifer Bretz, Recording Secretary

Meeting called to order at 7:02 pm.

2. APPROVAL OF PRIOR MINUTES OF JANUARY 15, 2009 AND FEBRUARY 19, 2009

Motion: Perry made the motion to approve the January minutes, Colbath seconded.

Vote: U/A. Reid, Kelley and Prior abstained.

Reid stated the adjournment of the February minutes need to be completed.

Motion: Reid made the motion to approve the February minutes with changes, Kelley seconded.

Vote: U/A. Denison, Colbath and Prior abstained.

3. OLD BUSINESS

A. Annual Election of Chairperson and Vice Chairperson.

Motion: Denison made the motion to postpone the election until the end of meeting, Landford seconded. Vote: U/A

4. NEW BUSINESS

A. **Z 09-02 Daniel Webber, 1 Morgan Way, a/k/a Tax Map I, Lot 30B-28, zoned R-40, requests a Variance from the terms of Chapter 126, Section 126-5 F, to construct a side carport addition onto a mobile home within ten (10) feet from a side property line, where a minimum of twelve (12) feet is required.**

Daniel Webber stated that he does not have the 12 feet, on the side property line, which is required. He would like a little area where he can protect himself from winter weather.

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

Public Hearing Open

Kelley stated that part of the difficulty is that the lot has an angled lot line.

Webber stated the property tapers quite a bit in the front.

Denison asked the size of the lot.

Webber stated it's a third of an acre.

Woodruff explained that it is a conforming lot based on the dimensional regulations under Chapter 126 for a mobile home park. Webber owns the lot and it is a legal parcel in Dover.

Reid asked a question regarding the difference between a carport and a garage.



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Public Hearing Closed

Colbath stated it is a mobile home park and 10 ft sides do not contribute to the diminution of surrounding area.

FINDINGS OF FACT: AREA 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) AREA: i. Did the Applicant demonstrate that an area variance is needed to enable the proposed use of the property given the special conditions of the property? Yes, Vote: U/A. This conclusion is based on the following findings of fact: Angle of lot line necessitates a variance.

ii. Did the Applicant demonstrate that the benefit sought cannot be achieved by some other method reasonably feasible to pursue, without the area variance? Yes, Vote: U/A. This conclusion is based on the following findings of fact: Alternatives (making carport too small to fit a car or moving the existing structure) are unreasonable.

2. Did the Applicant provide proof that demonstrates how granting the variance will result in substantial justice? Yes, Vote: U/A. This conclusion is based on the following findings of fact: Protection from winter weather including health and safety issues.

3. Did the Applicant provide proof that demonstrates how a variance would be consistent with the spirit and intent of the ordinance? Yes, Vote: U/A This conclusion is based on the following findings of fact: Reasonable clearance between building and lot line for maintenance and safety purposes. (10 feet)

4. Did the Applicant provide proof that demonstrates the variance will not result in a diminution in value of surrounding properties? Yes, Vote: U/A. This conclusion is based on the following findings of fact: Abutter's petition and character of the neighborhood.

5. Did the Applicant provide proof that demonstrates the variance would not be contrary to the public interest? Yes, Vote: U/A. This conclusion is based on the following findings of fact: Abutter's petition and mobile park is a self contained area.

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

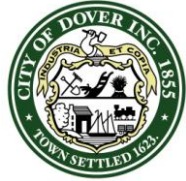
Motion: Colbath made the motion to approve, Reid seconded. Vote: U/A

B. Z 09-03 BHD Realty, 802 Central Ave., a/k/a Tax Map 37, Lot 30, zoned Office, requests a Variance from the terms of Article IX, Section 170-12, Table I, Part C-2, to establish a personal service establishment (dog grooming business).

Brad Dudley, owner of BHD Realty, stated he'd like to rent out space in the front of the building that was formally a shipping company. A dog grooming business is not allowed under the current ordinance. It would be a good business to have in the area. What is currently allowed is a daycare, doctor's office, law office. As a landlord, he's having a hard time renting out space. If the variance is not allowed, he may be put in a situation where he may have to sell the business because he can't rent the space out.

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

Public Hearing Open



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Jimmy Veinote, 7 Page Ave, stated he is an abutter to the property. He has some questions that he would like to hear the answers to. What would the hours of operation be? Would any of the animals be spending the night? How many people would live in that residence? Would there be any measures to control sound?

Sandra Burkett, realtor for the proposed tenant, stated the proposed hours of operation would be Monday- Friday from 8:00 am-5:00 pm and, possibly, one Saturday per month. She also stated there are no plans for the dogs to stay overnight.

Denison asked if it was a mixed use building

Dudley stated there is an apartment upstairs and the sign company is located in the back office. They currently have 10 parking spaces.

Denison asked what plan is for additional insulation to deal with the sound.

Dudley stated the dogs are walked with a person from the business. He stated there are not a lot of dogs there at one time.

Burkett stated the space is located on the roadside of the building. The most noise you would hear would be from the hairdryer.

Denison asked how many dogs are allowed at one time.

Burkett stated the most dogs they would have is 11 at a time.

Kelley asked what zone would allow a dog business.

Woodruff stated it is allowed in most commercial zones.

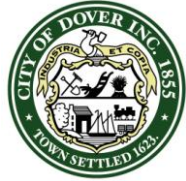
Veinote stated he empathizes with the business owner. He stated that traffic noise and dogs barking are two different things. He's lived in that area for a long time and has had a problem with dogs before. It's all residential behind the property. He doesn't want any trouble in the future with dog barking and instigating the neighborhood dogs to bark.

Public Hearing Closed

Reid stated his concern is that it is the office area of Central Avenue. The use is not allowable in that area for a reason. It's incompatible with the office use. The Supreme Court has stated that they should pay attention to Use variances because they can degrade the quality of the zoning. The Planning Board looked and decided what types of businesses should be in the Office zone and a dog grooming business is not one of them.

Kelley stated from a Planning Board point of view, the ordinance has been set up well. A dog grooming business shouldn't be in this zone when it is allowed in other zones.

Colbath stated that a dog grooming business is a personal service. There's also the noise concern for surrounding residents.



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Woodruff stated a variance was granted for a personal service establishment near Federal Savings Bank. The City isn't opposed to the idea but they are not supportive. If the Board chooses to grant the Use variance, to allow a personal service establishment, he would recommend placing a timeline on the property. For instance, if the business left, the variance would leave. The spirit and intent of the original Office zone, was a transitional zone that would allow the existing structures to remain. It was a way to make it so the property was worth the same or more. The bottom line is the City is neutral.

Colbath asked where the personal service establishment, that was granted a variance, was located. He asked what the variance was for that was granted for the sign company.

Woodruff stated he's not sure if there was a variance for the sign company.

Colbath stated the point he's trying to make is the sign company a personal service establishment.

Discussion ensued regarding a personal service establishment.

Woodruff stated he needs to talk to the Building Official to get more information for the Board.

Public Hearing Reopened.

Denison asked the applicant what the status of the existing business was.

Dudley stated that he bought the sign company in 2003. When he spoke to the Building Official, Tom Clark, his business fell under an artist's license. Signs have been manufactured there since the early 90's. He stated that the sign company is a personal service business. You sit with the customer and design the sign.

Public Hearing Closed.

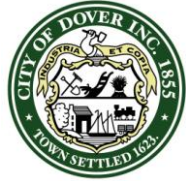
Denison asked if they should table the case until they can find out more information.

Motion: Reid made the motion to table the case to hear additional information about a grandfathered use, Colbath seconded. Vote: U/A

C. Z 09-04 Karen Lawrence & Sandra Devenney (Applicant: River Valley Development Corporation, 46 Dover Point Rd., a/k/a Tax Map K, Lot 23, zoned B-3, requests a Special Exception as provided by the terms of Article VI, Section 170-19, and Article XII, Section 170-52.C (3) to construct a multi-family project.

Atty. Jim Schulte represents the applicant, passed out copies of a memorandum regarding the status of municipal water and sewer and additional site plans. (In file)

Atty. Schulte stated the application is a result of the change in the zoning ordinance which states that multifamily uses in the B-3 zone require that the residential uses have to be on the 2nd floor or above and a business on the 1st floor. The project is identical to the Harvest Way project that the Board granted a Special Exception for. He proceeded to go over the application.



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Motion: Kelley made the motion to accept the case, Colbath seconded. Vote: U/A

Kelley asked when Harvest Way was built.

Atty. Schulte stated it's been there for 3-4 years.

Reid stated the plan doesn't show a lot of green space. Where will the water be dealt with?

Atty. Schulte stated some of the parking lot will have pervious pavement.

Doug LaRosa, Trittech Engineering, stated the drainage for the site will be collected and infiltrated into a gravelly outwash material that exists on the site. All of it will be treated for runoff and the runoff that is generated from the site will be 1/10 of what it generates now.

Discussion ensued regarding drainage.

Denison stated it sounds like the bottom floor of the residential units is a garage. The business is adjacent to the garage. On the bottom floor, there is an office in the front and a garage in the back. The residence is above the whole footprint on the second floor. The special exception is just for the residential unit. Is it for any residential unit or a residential unit with a first floor component?

Atty. Schulte stated it's for any multifamily in the B-3 zone. To be allowed in the B-3 zone it has to be 5 units or more.

Colbath asked Woodruff how the parking was calculated.

Woodruff stated it does meet the zoning requirements which require 2 parking spaces per unit.

Public Hearing Open – Public Hearing Closed

Woodruff and LaRosa discussed the decal lane.

Motion: Reid made the motion to grant a special exception, Kelley seconded. Vote: U/A

Recessed at 8:25pm.

Resumed at 8:35pm.

5. OTHER BOARD BUSINESS

A. Annual election of chairperson and vice chairperson

Motion: Kelley nominated Masi Denison as Chairperson and Bill Colbath as Vice Chairperson, Landford seconded. Vote: U/A.

Woodruff told the Board that there is currently a House bill that has survived crossover on April 9, 2009. It has gone over to the Senate. It's a Variance Language Clarification bill that simplifies and gets rid of the differentiation between Use and Dimensional Variances. There is movement afoot in the Senate to squash it by the developers.



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6. ADJOURN

Motion: Reid made the motion to adjourn at 8:44 pm, Colbath 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

01-24-10
10-23-09
04-12-11
11-12-09
05-23-10
02-08-09
02-01-11