



**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, June 17, 2010**  
Meeting Time: **7:00 pm**

### 1. Attendance

**Members Present:** William Colbath (Vice Chair), James Kelley, Otis Perry, Frank Landford, Chris Prior (Alternate Member)

**Members Absent:** Sam Reid

**Staff Present:** Bruce Woodruff (Zoning Officer), Lisa Ertle (Recording Secretary).

*Vice Chair called the meeting to order.*

W. Colbath noted he was Acting Chair for the evening. He stated that O.Perry was nominated as regular member and Masi Denison was not offered a position. A scheduled election will take place to nominate a Chair at the next meeting.

### 2. Approval of Prior Minutes of March 18, 2010 and May 20, 2010

W.Colbath noted the inability to hear the recorded audio for March 18, 2010 Meeting Minutes. He stated that a copy of the recording needs to be provided to all members in order to approve the minutes.

**Motion:** O.Perry made the motion to table the March 18, 2010 Minutes, and approve the May 20, 2010 Minutes. C.Prior seconded. Vote: Unanimous

### 3. Old Business - None

### 4. New Business

- A. \*Z 10-07 Greg Porciello, 163 Spur Rd., Tax Map L, Lot 43, zoned R-20, requests a Variance from the terms of Article IV, Section 170-12.A to convert a single family dwelling for the purpose of establishing a two family dwelling

Dick Gsottschneider represented the applicant, G.Porciello is present. D.Gsottschneider stated due to hardship of the economy they have fell behind on this plan and noted other families have been splitting their homes into multi-family units, and that is what they are seeking. The applicant is held back from making this a multi family unit by not allowing them to add a stove. D.Gsottschneider stated his concerns, and spoke about discussions with the Planning Directors and abutters. He noted that he is looking for a relief from the 1964 zoning amendment. Added they have received a letter from The Cheney Real Estate Company, which abuts the property, stating they have no issue with this plan.

J.Kelley asked if the two units are similar in size. D.Gsottschneider confirmed that it is of equal size, and J.Kelley stated this is similar to duplex units instead of adding an in-law type unit.

The Chair opened the public hearing.

In favor of the request - nobody spoke.

In opposition of the request - nobody spoke.

B.Woodruff stated that Planning Staff is neutral on this plan. The original structure was demolished because of its condition, and feels this may be a self inflicted hardship if owner had known about the



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May 27, 1964 provision. The lot is almost within the entire conservation district, and is entirely in the shore land protection zone. Applicant has met with DES and the Planning Board for approval of conditional use permit. Discussion occurred regarding the square footage of the lot. The applicant is doubling the square footage and occupancy compared to the old dwelling. A discussion ensued of the type of housing in the area.

G.Porciello stated that he put in a new sewer line to bring the septic away from the conservation area. C.Prior stated his concern on parking in regards to the conservation guidelines, and how the applicant expected to get vehicles parked. D.Schneider stated there should be no concern. C.Prior and D.Gsottschneider discussed plans from the original construction. D.Gsottschneider stated the changes they have made, with the exclusion of a stove, have been filed with the City to finish their project.

W. Colbath stated to D.Gsottschneider, that anyone who purchases this property could do what the applicant is asking. D.Gsottschneider stated nobody wants to do what they are applying for, so this is why they are seeking the approval so they can sell the property finished.

Public Hearing Closed

C. Prior stated at the time of the construction the applicant should have expressed his intent up front, and in his opinion the economy is not a hardship. F.Landford agreed, and feels it may be a personal hardship and property is not meant for a multi family use. J.Kelly stated the applicant could have deflected the hardship up front. O.Perry stated the view of the neighborhood, and his concern the house is on conservation district, and does not comply with other homes in the area. W.Colbath stated he agrees with the board members, and expressed his concerns of the intentions of the applicant. B.Woodruff added that in the entire zone, if the camps and other dwellings were constructed prior to 1964 they could convert to a duplex without the approval of the board. He explained the requirements that the applicant would have needed, just as long as they did not tear down the building. In this case, a previous building on this lot has been torn down. O.Perry asked for the requirements for structures that would fall into that date, wants clarification on what can be done according to the new amendments. B. Woodruff read the language of the old amendments, and the current amendments. Discussion ensued on the application.

### **Findings of Fact:**

1. Did the Applicant provide proof that demonstrates the variance will not be contrary to the public interest? No. This expansion does not meet the requirements of the ordinance.
2. Did the Applicant provide proof that demonstrates how a variance observes the spirit of the ordinance? No. The spirit of the ordinance was to allow an existing structure to be converted by right after the zoning had changed.
3. Did the Applicant provide proof that demonstrates how a variance will result in substantial justice? No. Substantial justice is to continue the existing trend of single family homes remaining in use despite age.
4. Did the Applicant provide proof that demonstrates the variance will not diminish the values of surrounding properties? Yes. Only evidence presented indicated no diminution in value.
- 5A. The Applicant was to provide proof that literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. (i) Did the Applicant demonstrate that special



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conditions of the property exist that distinguish it from other properties in the area? No. Similar to surrounding property. **(ii)** Did the Applicant demonstrate that no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property? No. Self imposed hardship is created by applicant. **(iii)** Did the applicant demonstrate that the proposed use is a reasonable one? No. Intension of use is inconsistent with area and lot side.

**Motion:** C.Prior made a motion to deny the variance. F.Landford seconded. Vote: Unanimous

- B. **Z 10-02 Summit Land Development;** property owned by 2830 Holding 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, Article VI, Section 170-18, Section 170-12, B-3 Table, and Article XII, Section 170-52.C.3, to allow a six bay station.

Attorney John Ryan, of Casassa and Ryan, represented the applicant. He stated they have been before the Board for other meetings, and tonight they are submitting exhibits and have consultants to discuss the application. His belief is that the applicant did not need a special exception. Gasoline stations in the past had repair facilities, convenience stores with gas dispensing facilities did not exist then. He noted the difference, in definitive terms, between gasoline auto repair stations and gas pumping stations, stating there is no repair or maintenance repair so they don't feel that they qualify for a gasoline auto service station as termed in this ordinance. The entire 60,000 square footage does not have to be in the entire B3 zone, in the past it was voted that it didn't have to be. He stated that upon discussion with the Planning Department, and research of other approved gas stations, he feels that the 60,000 sq. ft. requirement has been met. He asked the Board to find that the square footage requirement has been met. He stated that the Board had taken a vote on this determination during the original hearing.

Gregg Mcleod, of Appledore Engineering, explained the visual layout plan of the applicants proposed gas station. He described the landscaping and fencing that will be created around the property, and closed drainage installed at this site. They have met with TRC, as well as the Conservation Commission for approval on minor grading in the wetland buffer zone to accommodate an outlet structure. Noted this is a conventional site plan in regards to parking and convenience, and pointed out that an electric charging station could be implemented instead of gasoline dispensing, by right in the zone.

Attorney Ryan stated that he will present a lighting expert, who will speak on behalf of the photometric reports, to help dispel lighting concerns from abutters.

Ralph Sweet, licensed engineer, speaking on behalf of Kenneth Sweeney (Charron Inc.), who generated the lighting report, stated that information provided meets all the requirements codes for The City and NH for lighting. R.Sweet generated a report similar to Kenneth Sweeney's, and came up with the same results. J.Kelley asked for a review of the lighting plans for this site. R.Sweet stated they have flush lighting at the top and bottom of the canopies that will be at the station, and will extend 5 feet to the parking lot. J.Kelley asked if the lighting is modern and contained. R.Sweet described "cut off" fixtures; this was designed to meet code and be conscious of the abutting areas.



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Kim Hazarvartian, Traffic Engineer with TEPP LLC, stated that he completed the traffic study. He addressed the generated trips, and analyzed the intersections of projected queuing areas. They have proposed a couple of road improvements at different access points, and sign proposals that will help control this. He explained his calculations for the generated trip counts that would reflect the traffic on Dover Point Road, which he feels wouldn't increase traffic flow, will not create traffic congestion, and will not impair pedestrian safety. J.Kelley and K.Hazarvartian discussed pedestrian safety. C.Prior stated the regulation states that it will not unduly impair pedestrian safety, and asked for clarification of site use by all modes of traffic. K.Hazarvartian stated this would not be a destination site. J.Kelley asked if the traffic study was in concern to only those projects and nothing beyond it, and K.Hazarvartian confirmed.

Chad Kageliery, owner and applicant, stated his goals for the application and the project. He feels that this will be a desirable location for the residents; project follows and achieves the city's Master Plans. It will offer job growth, and will help increase the standard of living, and offer a tax relief. Attorney J.Ryan stated the water, sewer, or municipal services will not be overloaded, and the City's general welfare will not be unduly affected.

Brian White, of White Appraisals, has prepared two appraisals letters for the abutters to give to the ZBA. He stated that he looked at the property, for possible value change in the surrounding properties, and noted the mixed use of properties on this road. He suggested that he could not find any data that shows that abutting property value would be affected negatively. The area was looked into of the modern gas stations that have been added to the Dover. He looked at their property value in the area, and the property values of the abutters to these constructed gas stations. W.Colbath and B.White discussed the property values that were assessed, and any adjustments that were made to make up square footage. C.Prior stated that it is important to know we are here for the gas pumps and not the convenience store, and in his opinion there seems to be no diminution to property value on gas pumps. B.White said that his comparisons can not be specific, but his data speaks in reality to the proposed plan. W.Colbath confirmed that he didn't have any specific properties that had, before and after effects on property value, expect for behind Philbricks. B.White considered others station in the area, and confirmed what he could find to assess.

C.Kageliery compared two area gas stations to get property values, and found the assessments to be a lot higher compared to Dover Point Road. He stated the traffic on this side of Dover is a lot lower, and stated how the properties on Central Avenue have had growth, and increased property value in that area beside the gas stations. It may not impact adjacent property value, and feels there is business growth on Dover Point Road.

Rick White, of ADS Architects, was contacted by applicant to do a rendering view from the Hoppe residence to show the abutters view point of the property. He described the roof line, and the lay of the land and the contour of the property. It is hard to say it has a huge impact as far as the height. Discussion ensued on who is going to maintain the fence on the property, determined applicant would be responsible.

Attorney J.Ryan stated there has been concern in the past from abutters on the fumes from the gas pumps. Ronald Laurence, of Stantech Auto, provided in the report what was required by the state for rules and regulations, including all safety regulations required for this facility. He stated the EPA



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requirements for vapor recovery systems were being followed. These types of facilities are tightly regulated, and when properly constructed, installed, and regulated with all of the controls there should not be any vapor leakage. There should be no reason for pollution in the area; there is intent of containing vapor currents. He stated the guidelines that is used in California that they will be adhering to, and J.Kelly asked if this will be constructed by those guidelines. R.Lawrence confirmed, expect for the diagnostic equipment that is not available in NH.

Attorney Ryan stated there has been concern of the underground tanks, and stated the vapor smell is highly unlikely. He mentioned Trittech Engineering confirmed that no such impact will occur. Attorney Ryan addressed a few concerns that were received from abutters in regards to their concerns of proposed property. He feels there is no odor, lighting issues, or decreased property value. In respect to the criteria that was required from the Planning Department, all requirements have been made. He is asking whether this project is a special exception, to note that all requirements have been met, and the special exception to be approved based on the testimonials heard tonight. W.Colbath and Attorney J.Ryan discussed the previous discussions of the square footage requirements of the property.

The Chair opened the public hearing – In favor of the request.

Dan Barufaldi, of 31 Old Madbury Lane, and the Economic Director, for the Dover Business and Industrial Authority, here to speak in favor. He feels this will be a benefit to commuters, will not add to traffic, and will help to reduce local traffic going to Newington for gasoline. This site is a modern gas station and will have no environmental issues, lighting concerns will be addressed, and traffic noise will not exceed the existing noise level. Residents will enjoy the convenience and the property will be an enhanced tax writable. He feels the applicant, as a developer, can be trusted. Stated as a representative of Dover Business and Industrial Authority he approves this development.

Steve McCusker, of 2 Gold Post Rd, followed this application since the beginning. He has sat on the City Council in the past and have and seen citizens come to look for tax burden relief. Developing business use can help assist tax payers. This is a business opportunity and will offer a tax relief for residential land owners.

Jay Dell Isola, of Evans Drive, speaking as a resident on Dover Point Road. He feels the impact will have a better tax relief, a convenience, and does not see an impact on traffic. Stated he feels that this will be a great use to surrounding neighbors.

John Gray, of 34 Dover Point Road, owns a retail location adjacent to this site and stated that the gas station will increase the property value to his building and will benefit his retail clients. This is a commercial zoning area and feels this will be a great benefit, and traffic will not increase, instead will be a destination for the traffic that flows there.

John O'Neil, 42J Dover Point Road, owns a small office park on this road. This will be a convenience to have this site up the road. He states that himself along with the homeowner's in his development support this proposal.



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Kirt Schuman, Executive Director of Greater Chamber of Commerce, representing the business members. Chamber of Commerce is encouraged by continued growth with the City, and they are in support of the commercial growth in this area. He feels this will add growth in commercial growth.

Dave Paolini, of 78 Waterloo Circle, lives adjacent to this parcel and feels this will be beneficial. It is in a business zoned area that will serve the South End of Dover. He cited all of the business that have developed in this area.

B.Woodruff read an email from abutting property owners, Charlie and Debbie Reid, in support of the application. (Copy in File)

Public Hearing - In opposition of the request.

Mrs. Marilyn Follansbee, of 25 Dover Point Road, is against the request and addressed her concerns. She noted that she had submitted letters to the Board members. (Copy in File)

James Miller, property owner on Dover Point Rd., summarized all of the key points presented tonight. He expressed his concerns of lighting, noise, and fumes. He addressed the characteristic of Dover Point Road, and the low volume operation of the commercial businesses. Stated the traffic is low on this road in the night hours. This is a resident based area, and just down the road are two convenience stations. He feels that this will change the characteristic of this road, and will turn into a high volume area.

Steve Wilkinson, 33 Dover Point Road, owns adjacent property. He feels that this will not be aesthetically pleasing to anyone living across the street. He states that there is no need for a convenience station for residents on this road.

Public Hearing Closed

J.Kelly stated he felt development in this area is inevitable, and meets all requirements. W. Colbath wanted clarification of the language on the zoning ordinance, and compared the B3 lot to other areas. The area requirement of 60,000 sq. ft. is correct of the intent to be in the B3 zone completely and should be addressed by a legal attorney. He addressed the abutters concerns, and there is a need for a definition on abutter for this. Anyone living on Dover Point Road is affected by this proposal. He wants clarification on adjacent owners, so we can figure out who is affected by this. C. Prior discussed previous meetings that involved applicant and the Paolini's, and had the zoning lines been drawn accordingly this plan may have fallen into the B3 zone. A discussion ensued on how the lot lines were implemented and about whether they need outside legal opinions. B.Woodruff stated that he is the Zoning Administrator, and defined his role to the Board as a Zoning Officer as worded in section 170-53 of the Zoning Code. He feels that we don't need legal consult. F.Landford feels that the applicant has followed through with their requirements. W.Colbath thinks this will depreciate surrounding properties. C.Prior stated that he was a realtor and feels that the professional opinion of the appraiser is correct, and has taken into consideration the properties assessed on Dover Point Road and Central Avenue. W.Colbath discussed the negative impact this proposal could have to the abutters.



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**Motion:** O.Perry motioned to grant the special exception based on the evidence that the applicant has met all requirements. J.Kelly seconded. Vote: 4 to 1

Recessed at 9:45pm, resumed at 9:51pm.

W.Colbath announced that he would step down on the next case. The applicant will continue with four voting members.

- C. \*Z-10-08 Kristi Hartley, 22 Rabbit Rd., Tax Map J, Lot 13-Q, zoned R-40, requests a Variance from the terms of Article IV, Section 170-12.A to convert a single family dwelling for the purpose of establishing a two family dwelling.

Kristi Hartley gave a brief history of the home from 1971 to present, including the parking issues. When she bought the house, she rented the in-law unit. The traffic and volume was quiet. She now rents the house, and her tenants do not impact the surrounding area. She stated the abutters and acreage of the property. Discussion ensued on the exact location of the property, the abutters and wetland property surrounding it. O.Perry has asked if this has been a duplex. K.Hartley stated the house was constructed as two units, and wants to continue renting this as two units. She does not intend on selling the property.

B.Woodruff stated this property has had a history as a two-family dwelling. Applicant is here tonight because an issue of code enforcement needed to be corrected. J.Kelley clarified that applicant is the owner that lives out of state. K.Hartley stated her mother is a property manager that lives next door.

The Chair Opened the Public Hearing  
In favor of the request – nobody spoke.  
In opposition of the request – nobody spoke.

Susan Krecklow, of 12 Rabbit Road, abutter of this property stated that there has been a tenant in the back apartment for about 10 years, and feels that this does not affect the neighborhood. She is in favor of accepting the variance.

B.Woodruff stated this is an opportunity to make right a code case, and states applicant here to address the code enforcement issue. J.Kelley stated his concern for granting this variance in regards to any future owners. Discussion ensued.

Public Hearing Closed

### **Findings of Fact:**

1. Did the Applicant prove proof that demonstrates the variance will not be contrary to the public interest? Yes. An existing circumstance since 1984. There are no objections. Abutters are in favor.
2. Did the Applicant provide proof that demonstrates how a variance observes the spirit of the ordinance? Yes. The ordinance has changed a few times. There has been no problem.
3. Did the Applicant provide proof that demonstrates how a variance will result in substantial justice? Yes. Allows for better facility with additional capacity.



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4. Did the Applicant provide proof that demonstrates the variance will not diminish the values of surrounding properties? Yes. She will have a legal apartment that she has been taxed on for many years.
- 5A. The Applicant was to provide proof that literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. (i) Did the Applicant demonstrate that special conditions of the property exist that distinguish it from other properties in the area? Yes. The apartment has existed since 1984. (ii) Did the Applicant demonstrate that no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property? Yes. This allows the applicant to keep the present apartment. (iii) Did the applicant demonstrate that the proposed use is a reasonable one? Yes. Existing condition with no problems.

**Motion:** O.Perry made the motion to grant the Variance. C.Prior seconded. Vote: Unanimous

### 5. Other Board Business

Discussion regarding rules of procedure did not take place.

#### 70 Silver Street, Former ZBA Case/Court Case

B.Woodruff discussed the letter from Mark Moeller in regards to the 70 Silver Street case. (Copy in File) O.Perry asked who occupied the other 3 units. B.Woodruff stated this lot is owned by the landlord. The definition of a dwelling unit was discussed, and what type of unit this is assessed as. J.Kelly stated the appliances, and amenities show proof of residency in these photos. Discussion ensued on whether this should be brought to Court. O.Perry states that if he is living there, then he is under violation of the codes. J.Kelley is concerned about other residents that have been denied by the same action that he is trying to do. Discussion ensued on finding evidence on how many people living there, and whether the owner lives there. B.Woodruff needs exact language of dwelling to define this unit. There was discussion in regards on whether this needs enforcement. B.Woodruff suggested taking this case to the City Attorney, and noted that we want to try to abate the case before court. J.Kelley expressed his concerns of this case not being addressed. B.Woodruff stated what steps have been made, and what could happen next.

**Motion:** O.Perry motioned to bring this case to the City Attorney. Vote: Unanimous

6. **Adjourn** Motion: W.Colbath made the motion to adjourn at 10:37pm. J.Kelley seconded. Vote: U/A