



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
Meeting Location: 2nd Floor Conference Room
288 Central Avenue, Dover, NH 03820
Meeting Date: **Thursday, May 20, 2010**
Meeting Time: **7:00 pm**

1. ATTENDANCE

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

Staff Present: Bruce Woodruff (City Planner) and Jean Glidden (Recording Secretary)

The Chair called the meeting to order.

2. APPROVAL OF PRIOR MINUTES OF MARCH 18, 2010

Motion: S.Reid made the motion to approve the March 18, 2010 minutes. J.Kelley seconded but noted a couple of minor errors in the minutes, he withdrew his motion. M.Denison noted that she would like to propose to postpone approval as she feels too many inconsistencies are in the minutes. She noted that it appears that she has been misquoted and would like to take time to review the audio recording. **Motion:** S.Reid made the motion to table approval of the minutes. B.Colbath seconded. Vote: Unanimous Approval

M.Denison, B.Colbath, J.Kelley, S.Reid, and C.Prior will be voting.

3. OLD BUSINESS

A. Request for motion for rehearing regarding case 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.

Attorney John Ryan represented the applicant. He noted that they have submitted new information that was not available at the last meeting which includes a site plan that shows fencing, lighting, and landscaping along with a traffic report. We also included documentation regarding the issue with fumes, property appraisals and scientific evidence. We have now what is a complete record and ask that you grant the request in order to schedule a full hearing at the meeting.

S.Reid noted that he voted in favor for this project at the last meeting. New evidence has been submitted therefore we should vote to grant the rehearing. J.Kelley noted that his problem is with the diminution of value. He said he would be willing to hear the expert explain how it wouldn't diminish the value of surrounding properties. B.Colbath and M.Denison noted that more information has been submitted therefore should grant the rehearing.

Motion: S.Reid made the motion to grant the rehearing.C.Prior seconded. Vote: Unanimous Approval.

M.Denison, B.Colbath, J.Kelley, S.Reid, and F.Landford will be voting.

4. NEW BUSINESS

5. *Z 10-04 New Meadows Inc., Lilac Lane, Tax Map H, Lot 35-D, zoned RM-SU/B-4. The applicant requests a use Variance from the terms of Article IV, Section 170-11.D and 170-12.A, to construct three buildings to house 93 cold storage units.



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
Meeting Location: 2nd Floor Conference Room
288 Central Avenue, Dover, NH 03820
Meeting Date: **Thursday, May 20, 2010**
Meeting Time: **7:00 pm**

Attorney Mark Moeller represented the applicant. He expressed concern with B.Colbath voting on the case as he believes there is a conflict and would like to ensure that his applicant has a neutral hearing. B.Colbath said he said he does not feel he has a conflict in any way with the applicant. M.Denison stated that in cases of conflict it is the member's decision to vote. B.Colbath informed the Attorney that he will be voting.

Attorney Moeller stated that the owner Bill Pierce of New Meadows is present along with Corey Caldwell with MSC Civil Engineers and Land Surveyor Incorporated. He noted that the applicant is the owner of an existing multi-family condominium development consisting of 280 units on 77.20 acres. The particular lot in question is a 1.46 acre parcel. Additional condominiums have been approved that have not been built for a number of reasons. The applicant is proposing that on an existing commercial pad he would like to construct three buildings for a total of 93 self storage units. They would be a tremendous benefit to the tenants who have little or no storage space available. Most of the units would be used for the tenants. The proposed use as a retail building is not economical viable and this lot would remain in an undeveloped state for a foreseeable future. This would create additional revenue for the City of Dover. The storage facility would sit back off from Knox Marsh Road. He explained his application as submitted for the file. He asked that the Board approve the request.

C.Caldwell submitted drawings to review. The units will be constructed on an approved pad site. We are proposing pavement between the three buildings. He explained that the plan shows how the proposal fits in relation to the trail easement. Most of the construction for this has been completed. If we are successful tonight we would have detailed plans for the next step which is the Planning Board which will include drainage and more technical details which will be submitted at that time.

J.Kelley confirmed with C.Caldwell stated that there will be some site work, but no further site disturbance. The pad itself will be excavated. No further impervious material on this location, the pad would have to be excavated and replace it with concrete, but no need to occupy any more asphalt area than what is there.

The Chair opened the public hearing.
In favor of the request - nobody spoke.
In opposition of the request - nobody spoke.

J.Kelley asked if the condominium owners are notified. There will be construction based on the drawings submitted and is concerned that they were not notified. C.Caldwell noted that the condominium association was notified. It is up to the association to notify each tenant.

S.Reid stated that he would rather see the storage units located in the rear as shown, than located towards the street.

The Chair closed the public hearing.

B.Woodruff read the memo as submitted by the Planning Department (copy in file) which states that they do support the variance request with proposed conditions that the applicant go through



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type:	Regular Meeting
Meeting Location:	2nd Floor Conference Room 288 Central Avenue, Dover, NH 03820
Meeting Date:	Thursday, May 20, 2010
Meeting Time:	7:00 pm

TRC and Site Review process before the Planning Board, meeting all site review regulations pertinent.

Findings of Fact:

1. Did the Applicant prove proof that demonstrates the variance will not be contrary to the public interest? Yes. Other storage in the area, site is set back from road and ready market with 280 residential units.
2. Did the Applicant provide proof that demonstrates how a variance observes the spirit of the ordinance? Yes. Mostly in B-4 (allowed use) for RM-SU – it is an accessory use. Arbitrary zoning line in the middle of the lot.
3. Did the Applicant provide proof that demonstrates how a variance will result in substantial justice? Yes. Additional storage for existing units.
4. Did the Applicant provide proof that demonstrates the variance will not diminish the values of surrounding properties? Yes. Other storage units in the area.
- 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. Two utility easements, conservation easement and wetlands. **(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. Location of zoning boundary. **(iii)** Did the applicant demonstrate that the proposed use is a reasonable one? Yes. Accessory use possibilities and similar neighboring use.

Therefore based upon the foregoing, it is ordered that the application for the variance be granted with the following conditions:

1. Applicant shall go through TRC & Site Review process before the Planning Board meeting all site review regulations pertinent and will include screening to protect neighboring condominium views.

Motion: J.Kelley made the motion to approve with conditions. F.Landford seconded. Vote: Unanimous Approval.

M.Denison, B.Colbath, J.Kelley, S.Reid and F.Landford will be voting.

- A. *Z 09-14 Ronald Pfeiffer and Elizabeth Pettiford,(Owner: Leon Chapman)10 Summer St., Tax Map 12, Lot 22, zoned RM-U, requests a dimensional Variance from the terms of Article IV, Section 170-12.B, to construct an addition. The variance is required to exceed the 40% lot coverage.

Ron Pfeiffer stated that in 2003 they were before the Zoning Board and was granted a variance and a special exception for a request to construct an addition, but it was never constructed. They now intend to complete the addition. The home has just been repurchased. He explained that his wife is in geriatrics nursing. We have an extensive amount of experience and interest in working with the elderly. The addition would be on the front of the home, we have started some upgrades within the home with painting and new carpet. It would be an asset to the community. Half of the residents



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
Meeting Location: 2nd Floor Conference Room
288 Central Avenue, Dover, NH 03820
Meeting Date: **Thursday, May 20, 2010**
Meeting Time: **7:00 pm**

are from Dover. We request to re-allow us what we were granted to do before. He asked if they could keep the shed in the back as it was a condition to remove it back in 2003. We would like to keep it to store lawn equipment.

J.Kelley confirmed that the prior owner hoped to do an addition, but the time had lapsed.

The Chair opened the public hearing.

In favor of the request – nobody spoke.

In opposition of the request - nobody spoke.

B.Woodruff read the memo as submitted by the Planning Department (copy in file) which states that they do support the variance request and suggests that the shed remain on the property.

Findings of Fact:

1. Did the Applicant prove proof that demonstrates the variance will not be contrary to the public interest? Yes. Allows care facility to better serve the elderly population.
2. Did the Applicant provide proof that demonstrates how a variance observes the spirit of the ordinance? Yes. 2% minimal intrusion doesn't significantly impact congestion.
3. Did the Applicant provide proof that demonstrates how a variance will result in substantial justice? Yes. Allows for better facility with additional capacity.
4. Did the Applicant provide proof that demonstrates the variance will not diminish the values of surrounding properties? Yes. Minimal intrusion and neighboring properties are similarly congested.
- 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 use – need more interior space and very small lot. **(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. Similar congestion and minimal intrusion **(iii)** Did the applicant demonstrate that the proposed use is a reasonable one? Yes. Existing use.

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

Motion: B.Colbath made the motion to approve the variance request. S.Reid seconded. Vote: Unanimous Approval.

Sam Reid stated that he is stepping down.

M.Denison, B.Colbath, J.Kelley, C.Prior and F.Landford will be voting.

- B. *Z 10-05 Fastdogs Realty LLC, 432 Sixth Street, at the southeast corner of Sixth St/County Farm Rd., Tax Map E, Lot 32, zoned ETP, requests a use Variance from the terms of Article IV, Section 170-11.D and 170-12.A, to establish a dog kennel.



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
Meeting Location: 2nd Floor Conference Room
288 Central Avenue, Dover, NH 03820
Meeting Date: **Thursday, May 20, 2010**
Meeting Time: **7:00 pm**

Attorney Chris Wyskiel represented the applicant. They need to relocate their business as it is being purchased by the State of NH. He pointed out a couple of errors in exhibit four regarding parking spaces at the current site. We will not have any objection with staff at TRC with regard to parking spaces and in the process of the site plan we will seek an appropriate amount of spaces for this use. This will be a doggie day care and will board dogs and will include a small retail space. The screening will be four separate play areas and screened with chain link fencing and a stockade fence on the exterior of the chain link fencing. The dogs are tended by an employee all of the time and kept calm and they intend to have overnight boarding and this would require staff to stay overnight. They are taking the existing house that has been abandoned and the living quarters will be upgraded to accommodate staff. The 9,000 sq. ft. addition will be at the rear of the barn as it slopes down. He proceeded to discuss the zones and the uses in the ETP zone. General clean up of the site will help the area. The applicant has to move and would like to keep this viable business in Dover.

J.Kelley questioned the design of the addition. Attorney Wyskiel stated that Anne Nichols is working with an architect and has expertise for dog related uses. He stated that the intent is to blend the structures. Anne Nichols added that the intention is to keep it the same style of the barn.

B.Colbath asked who would reside in the building and wants to clarify that this will not be turned into a duplex. Attorney Wyskiel stated that this will not be a duplex and will be used for employees only. Our intention is to make this one residence and steal some of the space to weave into the other space. B.Colbath asked how the dogs will be controlled for night time so they don't impact surrounding residents. Attorney Wyskiel said they will be located inside, in their crates or internal rooms, the only outside use will be for the day care. B.Colbath noted that sound control is a key issue. Attorney Wyskiel said this will be addressed by double fencing and by staff being present.

J.Kelley also expressed concern with noise control and asked how many dogs would be located here. A.Nichols said it is an indoor boarding facility. Not a typical indoor outdoor run. The architect is soundproofing, with ceiling tiles, etc. We will be doing everything we can to keep the noise down. She stated that they plan to start with 40 dogs, but 50 will be the maximum for overnight boarding.

C.Prior asked about the plan shown and confirmed with A.Nichols that the day care part of the business will be located in the lower part of the barn building and will help with sound control.

Attorney Wyskiel proceeded to explain the application as submitted in the file.

The Chair opened the public hearing.

In favor of the request.

Dave Choate noted that he is with the commercial Real Estate Firm of Grubb & Ellis, Coldstream Real Estate advisors in Portsmouth. They have been the listing agent for this property for a year and a half. He stated that he has lobbied long and hard for DBIDA to get behind this zoning change for the property as he feels it is inappropriate for this particular property. Anybody who buys this property will have to come before this Board for a variance. The lower level where the dogs will be located most of the time has a very thick stone foundation which will help with sound control. This is keeping a local business in Dover. We have looked in other communities but the applicant would like to stay in Dover and this is the only location that would work well for this type of business.



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
Meeting Location: 2nd Floor Conference Room
288 Central Avenue, Dover, NH 03820
Meeting Date: **Thursday, May 20, 2010**
Meeting Time: **7:00 pm**

In opposition of the request.

Nancy Hagar, 8 Foxtail Ridge stated that she does not a problem with the business being located here, however is concerned with vehicles approaching this intersection. She stated that she travels this area numerous times and it is a very busy intersection as it is and feels that you take your life in your hands and this would add to it. I really think the traffic issue in this area is a major factor for a business of this magnitude.

Otis Perry, 91 Court Street stated that he is concerned with the noise problems. If this variance is granted I request that you implement a condition with strong language included regarding noise regulation. He added that this is a very busy intersection and this would add to the traffic; however his main concern is the noise control.

The Chair closed the public hearing.

B.Woodruff read the staff memo as submitted by the Planning Department (copy in file) which states that they do support the variance request; however suggest a condition that they go to TRC to review parking and access issues and Planning Board for site review.

J.Kelley asked B.Woodruff what would trigger the City for traffic control in this area. B.Woodruff said if this variance is approved it will go to TRC and will be reviewed by planning staff. We take an ITE handbook which talks about traffic and certain uses. We can figure out by square footage and or number of dogs what the traffic will be and we will then ascertain if a traffic memorandum report is needed or not.

The Chair closed the public hearing.

B.Colbath said he does not see a problem with the use but is concerned with the intersection.

C.Prior said he is concerned with the noise, but the way the lot is situated at this intersection, it is an allowable use in the surrounding properties. If we can get TRC and Planning to implement some sort of noise control to be at an acceptable decibel level and add that language to this request he stated he would be comfortable with allowing the use. M.Denison added that due to the lot size and allowable uses, it creates a hardship for this property. This is a very busy intersection; however a larger impact for a retail use could go in there as well.

Findings of Fact:

1. Did the Applicant provide proof that demonstrates the variance will not be contrary to the public interest? Yes. Existing business staying in Dover.
2. Did the Applicant provide proof that demonstrates how a variance observes the spirit of the ordinance? Yes. Two acre lot does not allow for standard ETP uses. This lot is zoned incorrectly, the variance mitigates.
3. Did the Applicant provide proof that demonstrates how a variance will result in substantial justice? Yes. Viable business use and improvement to an abandoned property. Easy access for clients.



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
 Meeting Location: 2nd Floor Conference Room
 288 Central Avenue, Dover, NH 03820
 Meeting Date: **Thursday, May 20, 2010**
 Meeting Time: **7:00 pm**

4. Did the Applicant provide proof that demonstrates the variance will not diminish the values of surrounding properties? Yes. Use will upgrade dilapidated building.
- 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. Small lot for zone. Existing historic buildings. On border of other zones that allow use. (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. ETP is designed for larger lots. (iii) Did the applicant demonstrate that the proposed use is a reasonable one? Yes. For a lot of this size, typical ETP uses are not possible. This use is a contained use that is allowed in the neighboring zones.

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

1. The applicant shall appear before the TRC & Planning Board to review parking, traffic flow, location of driveway cuts and utilize techniques to keep noise to a minimum so as not to offend neighbors.
2. Dogs staying overnight shall be kept indoors during night time hours.

Motion: B.Colbath made the motion to approve the variance request with the conditions. S.Reid seconded. Vote: Unanimous Approval.

The Chair called a ten minute recess @ 8:55 pm. Meeting resumed @ 9:05 pm.

M.Denison, B.Colbath, S.Reid, J.Kelley and F.Landford will be voting.

Attorney Schulte stated that both cases will be presented together but would like them to be voted on separately.

- C. *Z 10-06 A - Paolini Brothers Dev., LLC, 54 Dover Point Rd., Map K-1, Lot 20, zoned B-3, requests a dimensional Variance from the terms of Article IV, Section 170-12.B, to subdivide a parcel creating a lot with approximately 100' frontage, where 125' frontage is required.
- D. *Z 10-06 B - Paolini Brothers Dev., LLC, 54 Dover Point Rd., Map K-1, Lot 20, zoned B-3, requests a use and dimensional Variance from the terms of Article IV, Section 170-12.A, to allow the 12 previously approved residential units to be located on the second lot, which will contain approximately 46,000 sq. ft. area, less than the required area.

Attorney Schulte represented the applicant. He asked Mr. Colbath to recues himself. B.Colbath stated that any issues that he has with him, does not have a reflection on the applicant; therefore will vote on this case. Attorney Schulte proceeded with the applications. He stated that the two variance applications were done two to three years ago. Three years ago this Board approved a special exception to allow 12 residential units in a B-3 zone. The project presented at that time was for a 68,000 sq. ft. parcel with 10 townhouse condominium units and a three story building. The first two stories would have been office use and the third story residential units. The following year in July of



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
Meeting Location: 2nd Floor Conference Room
288 Central Avenue, Dover, NH 03820
Meeting Date: **Thursday, May 20, 2010**
Meeting Time: **7:00 pm**

2008 we received site review approval by the Planning Board. He showed the plan. The applicant wishes to subdivide the property into two lots in order to separate the commercial use from the residential use. The residential lot will have 100 ft. frontage. Two residences will be relocated from the commercial lot to the residential lot. The applicant is proposing to reduce the height of the commercial building from three stories to two stories. He added that due to recent changes in national residential financing requirements it is extremely difficult for residential unit owners to obtain mortgage financing if the lot on which the residence is located also contains a commercial building. He added that this will be built in phases. He continued to describe the application as submitted for the file.

J.Kelley confirmed where the zone line was located. B.Woodruff said that the line should follow along roads or along property lines or natural features, but in some cases it does not. F.Landford asked about the condominium association and confirmed with Attorney Schulte that they could have separate residential and commercial condominium associations if needed.

The Chair opened the public hearing.
In favor of the request – nobody spoke.
In opposition of the request – nobody spoke.
The Chair closed the public hearing

B.Woodruff read the staff memos for Z10-06A and Z10-06B as submitted by the Planning Department (copy in file) which states that they do support the variance request with a condition that the applicant return to TRC and Planning Board with both the subdivision and the revised site plan.

M.Denison said she feels like it is a transfer of development rights. Discussion took place regarding the height of the building. Attorney Schulte said the applicant would take the condition of no more than two stories in height for the commercial building. B.Colbath confirmed that there will be shared parking. M.Denison said she is normally not a fan of approving lots with not enough frontages, but this development is not changing and would like to add a condition stating that no change from the previous approved development.

Findings of Fact: Z 10-06A & Z 10-06B

1. Did the Applicant provide proof that demonstrates the variance will not be contrary to the public interest? Z10-06A-Yes. The development layout is substantially the same as the previously approved plan. Z10-06B-Yes. The number of units (12) remains the same as approved plan.
2. Did the Applicant provide proof that demonstrates how a variance observes the spirit of the ordinance? Z10-06A & Z10-06B Yes. Existing approved plan.
3. Did the Applicant provide proof that demonstrates how a variance will result in substantial justice? Z10-06A-Yes. Allows for variance Z 10-06B which allows ease of financing and sale of units. Z10-06B-Yes. Ease of financing and sale of units.
4. Did the Applicant provide proof that demonstrates the variance will not diminish the values of surrounding properties? Z10-06A & Z10-06B-Yes. Development is substantially the same as previously approved plan.



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
Meeting Location: 2nd Floor Conference Room
288 Central Avenue, Dover, NH 03820
Meeting Date: **Thursday, May 20, 2010**
Meeting Time: **7:00 pm**

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? Z10-06A & Z10-06B-Yes. Approved development (mixed use) conflicts with changed financial situation. **(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? Z10-06A & Z10-06B-Yes. Development is the same regardless of internal lot line. **(iii)** Did the applicant demonstrate that the proposed use is a reasonable one? Z10-06A & Z10-06B-Yes. Existing approved plan.

Therefore based upon the foregoing, it is ordered that the applications for the variance be granted with the following conditions.

1. Commercial building be limited to two stories in height and no residential development be allowed.
2. Applicant returns to TRC and Planning Board for Site Review and to create necessary easement.
3. Plan will be as presented (i.e. no substantial change from previously approved development plan) with the caveat that the residential units 11 & 12 may be moved.

Motion: S.Reid made the motion to approve the variance requests for both cases with the conditions. F.Landford seconded. Vote: Unanimous Approval.

6. OTHER BOARD BUSINESS

A. Discussion of Rules of Procedure

This will be discussed at the next meeting.

Discussion of confirming the abutters list on the applications took place.

7. ADJOURN

Motion: S.Reid made the motion to adjourn at 10:00 PM. J.Kelley seconded. **Vote:** Unanimous Approval.