



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - AGENDA

Meeting Type: Regular Meeting
Meeting Location: Council Chambers - 288 Central Avenue, Dover, NH 03820
Meeting Date: **Thursday, September 16, 2010**
Meeting Time: **7:00 pm**

1. ATTENDANCE

2. APPROVAL OF PRIOR MINUTES OF AUGUST 19, 2010.

3. OLD BUSINESS

4. NEW BUSINESS

- A. * Z 10-12 Restoration Church (Applicant: Rose Realty LLC), 18-20 Third St., (formerly Strand Theatre) Tax Map 6, Lot 37, zoned CBD, requests a use Variance from the terms of Article IV, Section 170-11.D and CBD-Commercial Table of Uses to establish a Church.
- B. * Z 10-13 STF Development Co., Inc., 4 Granite St., Tax Map 25, Lot 51A, zoned RM-U, requests a Special Exception meeting the terms of Article VI, Section 170.18 and Article XII, Section 170-52.C.3, to construct a three-unit townhouse condominium building with parking.

5. OTHER BOARD BUSINESS

6. ADJOURN

*If the application is accepted for discussion, the public hearing will be held that evening.

Persons with questions or wishing to see the plans are invited to visit the Planning Office, weekdays from 8:00 am to 4:00 pm. You may also view materials at www.dover.nh.gov, a map showing project locations can be found at www.dover.nh.gov/planhome.html. Follow us on Twitter @DoverNHPlanning and find us on Facebook at www.facebook.com/CityofDoverNHPlanning.



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
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Meeting Date: **Thursday, August 19, 2010**
Meeting Time: **7:00 pm**

1. **Attendance: Members Present:** Sam Reid (Chair), William Colbath (Vice Chair), James Kelley, Otis Perry, Frank Landford, Chris Prior (Alternate Member)
Staff Present: Bruce Woodruff (Zoning Administrator), Lisa Ertle (Recording Secretary).

Vice Chair called the meeting to order at 7:05.

2. Election of Officers

O.Perry nominated Sam Reid for Chair position. J.Kelley nominated O.Perry for Chair position. O.Perry declined the nomination of Chair.

Motion: A motion and second to elect S.Reid to Chair for Zoning Board of Adjustment. Vote: Unanimous Approval

3. Approval of Prior Minutes of May 20, 2010 and June 17, 2010

S.Reid noted an error on the adjournment for May 20, 2010 Minutes. He noted correction of J.Kelley to be changed as a second on the motion.

Motion: O.Perry made the motion to approve the May 20, 2010 Minutes. J.Kelley seconded. Vote: Unanimous Approval

The June 17, 2010 minutes were discussed. S.Reid noted C.Prior voted in his absence. O.Perry noted an error in spelling for the representative of applicant, last name is spelled Gsottschneider. He also noted an error on page 3: error in language, need to change to wording as "cut-off fixture".

Motion: O.Perry motioned to approve the June 17, 2010 Minutes with the changes noted. F.Landford seconded. Vote: Unanimous Approval

4. Old Business

There was no Old Business.

5. New Business

- A. Z 10-09 Rob & Ann Marie Wilkins, 2 Browning Dr., Tax Map 21, Lot 79, zoned R-12, requests a Variance from the terms of Article IV, Section 170-12.B, to construct an addition within 12.5 feet from a front property line where a minimum of twenty-five (25) feet is required.

Ann Marie Wilkins and Rob Wilkins noted they have been living on Browning Drive since 1982. They are hoping to add a small addition to the house. Bob Wheeler, Architect working with the applicants, noted the unique location of the lot and lack of space to build an addition on other areas of the house. They are asking for a variance to build off the side of the building next to the driveway. A. Wilkins stated that she has a letter in favor of the request from the abutters with their signatures. (Copy in file.)



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Public Hearing Opened

B.Woodruff noted the Planning Department has asked the applicant to show why they cannot construct the addition on the back of the house. He stated that the answer may be with the unique shape and location of the lot. The detached garage is currently outside the building envelope, and the proposed addition does not go out any further than the garage. B.Woodruff stated the Planning Department is making a conditional recommendation based on whether or not the applicants can provide proof that the interior design could be practical to the addition being built in rear, and not on the side. He noted the Planning Department has not investigated any potential drainage issues that may result from constructing the addition at the rear, and recommends exploring the issues of lack of adequate drainage that would preclude the construction of the addition at the rear which would meet the zoning requirements.

J.Kelley asked for clarification on what makes this lot unique. B.Woodruff noted when the subdivision was originally built the streets were built wide with large curb radii which affected the building envelope of this lot which is located on a corner.

B.Wheeler presented the plan that he rendered, including the intended areas for run off. He noted in the design is in keeping with the other houses in the neighborhood.

B.Woodruff noted because of the recent changes in the zoning setback requirement for frontage in this district the computed neighborhood average is about 25 ft. Therefore this variance request is not as substantial given the frontage setback average.

O.Perry asked if the house is in the buildable space within the 25 ft. setback, B.Woodruff confirmed that it is, but the garage is outside of the buildable space.

W.Colbath asked why the addition can not be added to the other side of the house to avoid any impacts of run off. B.Wheeler noted there is not enough space on the side because of the issue of impacts. W.Colbath asked how they will enter and exit garage. B.Wheeler noted there is plenty of space for a turn around. J.Kelley asked if you can enter onto Henry Law Avenue. B.Wheeler noted this would be possible, and discussed the building design in effect to Henry Law Avenue. They are trying to use the least amount of space possible. W.Colbath asked B.Woodruff if the garage was built by variance. B.Woodruff stated he did not have the answer but could get it. A.Wilkins noted the garage already existed when they bought the house in 1992. Chair asked the age of the house. A.Wilkins noted the house may have been built in 1979. B.Woodruff noted that the setbacks were different in the year 1979, and the zoning was different prior to 1979. A.Wilkins noted the other houses in neighborhood do not have that much frontage from the road. B.Woodruff noted this may have been an R1 zone in the past before it was changed to the current zoning district.

C.Prior asked permission of Chair to speak on the nature of houses. Chair accepted.

C.Prior noted the applicant's driveway, and his house, is on Henry Law Avenue where many homes are closer to the street because of when they were constructed. The applicant's house sits 12ft to 15



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ft from the street, and his abutters on Browning Avenue have about 20 ft. Browning Avenue was a development that was constructed later in time when the frontage requirement was larger.

Public Hearing Closed

Chair asked what water drainage issues there may be. B.Wheeler noted the location of the current runoff areas around the house, and indicated he wants to avoid those areas by looking for a favorable area. J.Kelley asked how it is taken care of now. A.Wilkins noted they are currently having issues in the basement which is the reason the addition should not be built there. J.Kelley asked if landscaping can be added to help with drainage, B.Wheeler noted French drains and rocks but he is trying to orient to be conducive to the neighborhood, reduce drainage issues, and to help keep the basement dry.

Findings of Fact:

1. Did the Applicant provide proof that demonstrates the variance will not be contrary to the public interest? Yes. No Public opposition.
2. Did the Applicant provide proof that demonstrates how a variance observes the spirit of the ordinance? Yes. The proposed addition does not encroach any more than other properties on Henry Law Avenue.
3. Did the Applicant provide proof that demonstrates how a variance will result in substantial justice? Yes.
4. Did the Applicant provide proof that demonstrates the variance will not diminish the values of surrounding properties? Yes. Property is consistent with abutting properties.
5. **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. Corner lot and hill behind the house **(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. Corner lot. **(iii)** Did the applicant demonstrate that the proposed use is a reasonable one? Yes. The addition does not encroach any more than the existing Henry Law neighborhood average nor protrude any more than the existing garage.

W.Colbath suggested adding a condition for provision of a turnaround in the driveway. Discussion ensued on driveway condition, determined that there will only be one condition for approval, as recommended by The Planning Department. (copy on file)

Motion: O.Perry made the motion to grant the Variance with the condition that there be no additional dimensional variances granted for this property. J.Kelley seconded. Vote: 4-1, (W.Colbath opposed)

- B. Z 10-10 Tom & Deborah Child, 9-11 Hamilton St., Tax Map 12, Lot 92, zoned RM-U, requests a Variance from the terms of Article IV, Section 170.41.C, to move an existing non-conforming structure and not have its final location meet the current required ten (10) foot rear dimensional setback.



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Tom Child noted they have owned this house since 1993, and have operated this house as a multi family building for a long time. The house was built in 1889, including the stable behind the building, and originally was a duplex. It became an apartment building in the 1960's, and currently has six 1 bedroom units with limited parking. The request for moving the garage will allow better access and will increase on site parking. T.Child noted he has contacted neighbors and abutters, and they have no objections. He has submitted a letter, for the file, to the Zoning Board of abutter's signatures for approval of the project. (copy in file)

Public Hearing Opened

B.Woodruff stated the Planning Department recommends this application be approved. He noted that if the garage is not moved there will be less parking available and will go against zoning regulation for two parking spaces for each tenant. The structure pre-dates any zoning therefore was constructed when there were no dimension regulations and the whole neighborhood shows that character. B.Woodruff presented a plan that shows 16 structures in the neighborhood that have non-conforming setbacks.

Public Hearing Closed

J.Kelley confirmed with T.Child that the garage is for storage, and that moving the garage would give more access for vehicles and backyard space for the tenants. T.Child noted it will be restored to the existing structure.

Discussion took place regarding the structure and potential concerns with infringement on abutters property during maintenance of the garage in the future. T.Child noted he will work in a way to cause little infringement on neighbors. Discussion ensued on how the rear of the structure will be painted without encroaching on abutter's properties.

W.Colbath confirmed with T.Child that the proposed side setback is 19 ft. on the West side, 38 ft. on the East side. W.Colbath asked why not move it further to the side to create parking. T.Child noted he used the width of a parking spot for a calculation, and would take more space if it were available. W.Colbath noted he feels that he already knows that a lot of people need permission, and asked if he spoke to the neighbors. T.Child discussed his conversations with one of his neighbors who is in favor of the proposal.

Findings of Fact:

1. Did the Applicant provide proof that demonstrates the variance will not be contrary to the public interest? Yes. Replacing an aged structured with a more code compliant structure.
2. Did the Applicant provide proof that demonstrates how a variance observes the spirit of the ordinance? Yes. The neighborhood has many similar encroachments and the non-compliance remains the same.
3. Did the Applicant provide proof that demonstrates how a variance will result in substantial justice? Yes. Increased parking and storage



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4. Did the Applicant provide proof that demonstrates the variance will not diminish the values of surrounding properties? Yes. The neighbors are supportive and there is no greater infringement.
- 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. Property is consistent with others in the zone. (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. The encroachment is no greater. (iii) Did the applicant demonstrate that the proposed use is a reasonable one? Yes. Applicants will be renovating the old structure.

Motion: O.Perry made the motion to grant the Variance. W.Colbath seconded. Vote: Unanimous Approval

- C. Z 10-11 Chad Weathers & Olga Mollin, 24 Westwood Cr., Tax Map F, Lot 17-N, zoned R-40, requests a Variance from the terms of Article IV, Section 170-12.B, to construct an addition (garage) within 11 feet from a side property line where a minimum of twenty-five (25) feet is required.

W.Colbath stepped down on this case. Chair noted C.Prior will be sitting in.

Chad Weathers and Olga Mollin stated they moved into the home in 2000. When they bought the house they had a house inspection, and were notified that the roof was bowing. He noted they want to replace the existing garage with a two bay garage. The exact frontage is not completely determined. They would like this surveyed to establish the property line before they go forward with the variance case before the ZBA. He noted they are hoping to do two 9 ft. garage doors, making this a 25 ft. width. He discussed the need of a surveyed property line for the garage and asked the Board for advice.

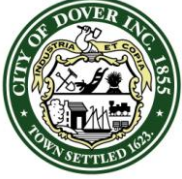
B.Woodruff noted the applicant may be asking to have this tabled until they can get the land surveyed. The applicant agreed and described their intentions to consult with the direct abutter once the land is surveyed. The Chair noted he would prefer this done right the first time. F.Landford suggested applicant let the Planning Department know when they will be available to make the meeting. The Chair asked if a surveyor is available, C.Weathers noted he has a surveyor available next week.

Motion: O.Perry moved to table the application. F.Landford seconded. Vote: Unanimous Approval

B.Woodruff and Chair noted that Planning Department will not be sending certified letters for the next hearing; abutters will be notified by regular postal mail service.

6. Other Board Business

C.Prior noted his concern with the finding of facts that is required for the determination of a case. He wanted to know the preferred method for a motion. O.Perry noted we have to make a motion to deny,



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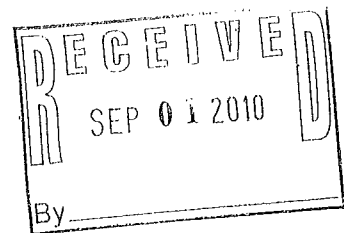
with firm guidelines. Discussion ensued on the “Finding of the Fact” state criteria required to make a motion. B.Woodruff suggested finding out what is required by law and whether we can adapt or adopt this. The Board was in agreement with this. The Chair noted he would like to know the best practice, and determined that further research will be done.

7. Adjourn

O.Perry made the motion to adjourn at 8:15pm. J.Kelley seconded. Vote: Unanimous

DRAFT

CASE # Z10-12 DATE RECEIVED 9/1/10
 AMOUNT PAID \$ 200.00 TIME RECEIVED _____
 CR # 4179



CITY OF DOVER
 ZONING BOARD OF ADJUSTMENT
 APPLICATION

ROSE (RESTORATION CHURCH - BARRINGTON N.H.)

I. APPLICANT ~~ANNEKOLD~~ REALTY LLC PHONE #: 659-3300
 ADDRESS 334 RFE 108, MADBURY N.H.
 PROPERTY OWNER ANNEKOLD REALTY LLC
 ADDRESS 334 RFE 108 MADBURY N.H.
 PROPERTY LOCATION 18-20 THIRD ST (STRAND THEATRE)
 BRIEF DIRECTIONS _____

ZONE CBD ASSESSOR'S MAP 6 LOT #(S) 37

TYPE OF APPEAL: (Please check off one) CBD COMMERCIAL TABLE OF USE

<input checked="" type="checkbox"/> VARIANCE	ARTICLE <u>IV</u>	SECTION <u>170-11A+D</u>
<input type="checkbox"/> VARIANCE (Physical Disability - RSA 674:33-V)	ARTICLE _____	SECTION _____
<input type="checkbox"/> SPECIAL EXCEPTION	ARTICLE _____	SECTION _____
<input type="checkbox"/> ADMINISTRATIVE DECISION	ARTICLE _____	SECTION _____
<input type="checkbox"/> EQUITABLE WAIVER	ARTICLE _____	SECTION _____

Describe briefly your plans for this property: TO USE THE THEATRE
FOR CHURCH SERVICES ON SUNDAY ONLY

II. REQUIREMENTS SUBMITTED: (Please check off)

- A. Plot plan drawn in accordance with a boundary line survey to scale not less than 1" = 40', (9 copies). They need to include the lot dimensions including area in square feet, and also the size and location of existing and proposed buildings if applicable, including setbacks. _____
- B. List of abutters including addresses and map and lot number of parcels who adjoin or are directly across the street or stream from property. _____
- C. Application fee of:

\$100.00 VARIANCE	\$ <u>100.00</u>
\$100.00 SPECIAL EXCEPTION	\$ _____
\$25.00 APPEAL FROM ADMINISTRATIVE DECISION	\$ _____
\$100.00 EQUITABLE WAIVER	\$ _____
- D. Certified letters fee:

# of abutters <u>43</u> X \$8.00 =	\$ <u>32.00</u>
Applicant & Owner <u>1</u> X \$8.00 =	\$ <u>8.00</u>
Foster's newspaper public notice	\$ <u>60.00</u>
TOTAL	\$ <u>200.00</u>

III. **NARRATIVE:** Complete the section pertaining to your request for a variance. Keep your answers brief and be prepared to explain them in detail at the meeting. The burden of proof is on the applicant. If you need more space use an additional sheet of paper

VARIANCE REQUIREMENTS: (PLEASE TYPE OR PRINT IN INK)

1. Provide proof that demonstrates the variance will not be contrary to the public interest.

PLEASE SEE ATTACHED INFO

2. Provide proof that demonstrates how a variance observes the spirit of the ordinance.

3. Provide proof that demonstrates how a variance will result in substantial justice.

4. Provide proof that demonstrates the variance will not diminish the values of surrounding properties.

5A. Provide proof that literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Unnecessary hardship standards are:

(i) Special conditions of the property that distinguish it from other properties in the area; and

(ii) 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; and

(iii) the proposed use is a reasonable one.

OR

5B. If the criteria in subparagraph 5A above are not established, provide proof that an unnecessary hardship exists if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

SPECIAL EXCEPTION REQUIREMENTS

1. Explain how the requested use would be essential or desirable to the public convenience or welfare.

2. Detail how the requested use would not create undue traffic congestion or unduly impair pedestrian safety.

3. Describe how the requested use would 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.

THIS SECTION OF THE APPLICATION MUST BE COMPLETED BY ALL APPLICANTS

IV. As applicant of standing of this request, I certify that the information herein is complete and accurate.

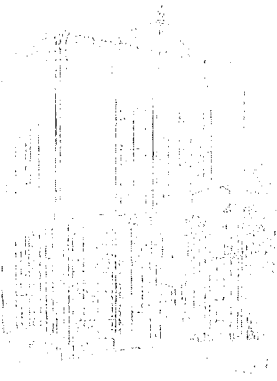
<p>IMPORTANT</p> <p>PROPERTY IDENTIFICATION SIGN MUST BE POSTED ON THE PROPERTY FOR THE 5 DAYS PRIOR TO HEARING. FAILURE TO POST MAY RESULT IN APPLICATION NOT BEING ACCEPTED</p>
--

Signature of Applicant* DAVID BLANEY

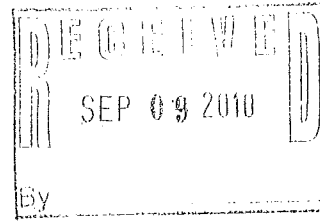
Amelawold Realty LLC
Signature of Owner*
R. de Beeto

*Both Signatures Required

<p><i>The applicant waives the requirement of holding a hearing within thirty (30) days of receipt of the application, pursuant to RSA 676:7, II:</i></p>	
<p><u>[Signature]</u> Signature of Applicant</p>	<p><u>9-1-10</u> Date</p>



Wyskiel,
Boc,
Tillinghast
& Bolduc, P.A.
Attorneys at Law



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***admitted in MA

September 9, 2010

Zoning Board of Adjustment
City of Dover
288 Central Avenue
Dover, NH 03820-4169

RE: Use Variance Application for Strand Theater Property
18-20 Third Street
Assessors Map 6, Lot 37
Owner: Anbelwold, LLC

Ladies and Gentlemen:

This office represents Anbelwold, LLC (“**Anbelwold**”), the owner of the Third Street, Strand Theater property, by virtue of foreclosure deed dated January 14, 2010 and recorded at Book 3805, Page 924 of the Strafford County Registry of Deeds. Anbelwold is a New Hampshire limited liability company registered to do business and in good standing.

This use variance application is co-signed by David Blakney, Pastor of the Restoration Church of Barrington, NH (“**the Church**”). The Church currently operates its religious mission as an affiliate of the “Assemblies of God” (headquartered in Springfield, Missouri) at its Route 125, Barrington, NH, property, which has a capacity of 400, and typical Sunday attendance of about 270.

Proposed Use/Reason for Variance Request

While the Church will fully maintain its current Barrington location and operations, it seeks to expand its base by conducting Sunday services in Dover at the Strand. Since acquiring the Strand property at foreclosure sale, Anbelwold has tried to sell or lease the property. Besides the small restaurant space leased to the Silver Moon Creperie, the theater portion of the property has not been used for approximately a year. Anbelwold is hard pressed to pay taxes, insure and maintain the property and its other ownership financial obligations without greater rental income.

The parties’ proposed lease anticipates the Church’s use of the property on Sundays (with services scheduled from 10:30 a.m. to approximately noon), and Tuesday evenings for service rehearsals.

Specific Use Variance Request

Anbelwold specifically applies for a:

Use Variance to authorize the use of the theater portion of the property for a non-profit organization's religious use, including, specifically, Sunday morning services, and service rehearsals not to exceed two evenings during the work week.

While the parties' lease currently contemplates only Tuesday evening rehearsals, the parties seek the flexibility of periodic additional rehearsals on an as-needed, or lease amendment basis.

Conditions to Variance

For reasons explained below, the following suggested conditions of approval would further support findings justifying the granting of the variance.

1. **Property owner and user shall meet with Technical Review Committee (TRC).**
2. **Property owner and user shall meet with Code Enforcement Officer (CEO) to determine any necessary life safety code improvements.**
3. **No exterior changes shall be made to the building except as may be deemed necessary for life safety issues in meetings with TRC or CEO.**
4. **The theater's marquee sign and glass-faced movie poster display cases shall be preserved and used as the property's signage for all property users.**

Exhibits

The following are submitted as exhibits to supplement this letter and the parties' application:

- Exhibit 1: Commercial Use Table (print 2 pages) for Commercial Business District
- Exhibit 2: Proposed Zoning Ordinance "Civic Building" definition change
- Exhibit 3: Google map print marked "9:30-10:00 a.m., September 5, 2010, 373 parking spots open-empty"
- Exhibit 4: Google map print marked "10:15-10:30 a.m., September 5, 2010, 473 open parking spaces"
- Exhibit 5: copies from Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. Chapter 21C

Background

The Strand Theater is unique to Dover and the region. Dover's recent adoption of Form Based Code zoning places the property in the Central Business District (CBD), which, by an overlay "regulating plan" and multiple Commercial, Residential, and Mixed use tables, defines a scheme of regulation intending to encourage a vibrant, mixed use urban core for downtown Dover.

As originally enacted, this new zoning regulatory scheme permitted the use for which this variance is sought. Page 2 of Exhibit 1 specifically permits civic uses within the Commercial overlay zone of the CBD. Exhibit 2 (ignoring the strikeout of "religion") recites the current Zoning Ordinance definition for civic buildings, which would allow the Church's use of the Strand. However, Exhibit 2 confirms the Planning Department's proposal, endorsed by the Planning Board, to eliminate religious uses from the Civic Buildings zoning definition.

This zoning change has not yet been endorsed by the Dover City Council. It likely will be reviewed by the Council at its September 27, 2010 meeting. Planning staff anticipates a City Council public hearing in mid-October, with a possible vote on all or part of the proposed changes that night or later. This schedule notwithstanding, Anbelwold and the Church concede that the "posting" of this specific zoning change requires use of the property consistent with the change if the parties desire not to wait and see if the proposed change is not endorsed.

The property will remain in private ownership. It will remain fully taxable. Although the tenant's use of the building is for a religious purpose, its payment of rent to the landlord makes that use commercial from the perspective of the property owner, who will continue to pay taxes without the benefit of any non-profit or religious exemption.

Also relevant to the granting of this variance is the replacement "District Purpose Statement" proposed by the posted Zoning Ordinance changes to the CBD:

The purpose of this district is to provide the appropriate locations for context sensitive zoning. The form based code in this district is intended to foster a vital main street both for itself and for its adjacent NEIGHBORHOODS through a lively mix of uses—with shop fronts, and SIDEWALKS, cafes, and other commercial uses at street level, overlooked by canopy shade trees, upper story residences and offices. The district has an increased emphasis on the form and placement of structures and a decreased emphasis on the function(s) contained within them.

Although proposed as new text, this statement is and has been true of all the Planning Department's Form Based Code rezoning efforts these past few years. The last sentence most importantly summarizes the essence of Form Based Code zoning. The last sentence justifies the granting of this use variance.

By granting the use variance, nothing about the Strand Theater's form will change, outside or in. Proposed conditions 3 and 4 can help preserve its historical uniqueness, and sense of street scape. The spirit of CBD zoning directs decreased emphasis on the function contained within the structure. This Board should place decreased emphasis on the limited (Sundays and Tuesday evenings) proposed non-profit, religious use of the Strand Theater and focus instead on the benefits granting the variance will foster for the form's preservation.

Variance Justification

By reference, the following is intended to supplement page 2 of 5 of the ZBA application. While effort is made to categorize the justifications for granting the variance under the five elements required by NH law and the City's form application, the points made apply to many, if not all, of the numbered/required conditions to be met. It is reasonable and legal to grant the requested variance.

1. The variance will not be contrary to public interest. The public interest is served by preserving the Strand Theater. Granting the variance will help preserve the Strand Theater. For reasons relating to depressed economic conditions, the Strand has ceased being used as a commercial movie theater. The property owner has been unsuccessful in finding a replacement tenant or owner to make a full time, similar related commercial use.

The Church's limited use of the theater will help preserve the theater's external, street scape form and, more importantly, its internal theater form.

2. Granting the variance observes the spirit of the ordinance. The proposed CBD purpose statement (quoted above) succinctly summarizes the spirit of Form Based Code zoning. Granting the use variance preserves the external and, more importantly, internal form of the Strand Theater. Historic street scape and sign marquees will be preserved. Zoning directs a decreased emphasis on the functions contained within.

The part-time limited function sought to be contained within a preserved Strand Theater is reasonable and will economically help the owner of the property in its continued search for other commercial users consistent with the preserved form.

3. Granting the variance will result in substantial justice. The above points are equally relevant to this requirement. Further, granting the use variance will allow a mixed commercial/non-profit religious use of the property consistent with Federal and State constitutional law.

It is beyond the scope of this application supplementing letter to survey Federal and State constitutional religion practicing guarantees, and the limits imposed upon governmental regulation by the constitutionally required separation of church and state. Dover has a constitutional right to zone, but within reason with respect to religious uses. Exhibit 5 evidences Congress' caution to State and local governments regulating land use, and its establishment of a Federal claim and remedy for persons who are constitutionally injured.

Dover's proposed "Civic Building" zoning definition change seeks to further advance vibrant downtown development emphasizing tax base expansion (what Planning Staff and Dover's Planning Board would presumably advance to be a compelling governmental interest). But an outright prohibition of all religious uses is not necessarily "the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. §2000cc-1 (a)(2). Exhibit 5.

Complete prohibition of religious use of the Strand is excessive. Granting the use variance is much less restrictive than an outright denial of the requested part-time limited use. Granting the variance will facilitate internal (to the preserved form) use (upon which Dover zoning specifically directs a decreased emphasis) which will economically assist Anbelwold, as property owner, to seek alternative commercial users also desiring to preserve the structure in its present form. Denial of the variance is unnecessary to preserve or expand Dover's downtown tax base. The Church will pay rent. Anbelwold will pay taxes. The use will bring people downtown Sunday mornings. Granting the variance appropriately balances competing private and governmental interests to facilitate an entirely reasonable use.

4. Granting the variance will not diminish the value of surrounding properties. To abutters, there will be essentially no difference in the manner the property has been historically used. There can be no adverse impact on abutting property values.

As a movie theater, commercial invitees park their cars in available on-street or in municipal parking lot spaces, enter the building and sit in seats and watch movies. The only difference in use facilitated by the variance is the time (Sunday mornings . . . when there is less business demand for available parking), and what people see and hear in their seats once inside (completely indiscernible to abutters or anyone outside).

Sunday use can actually have a positive impact on surrounding values. Movies were not shown on Sunday mornings. Drawing congregation members to downtown Dover on Sunday mornings can have the positive effect of churchgoers' pre and post-service use of breakfast and lunch restaurants, bakeries, downtown stores, and even other merchants located through out the City (imagine the family who might not otherwise come to downtown Dover on Sunday, running errands on Portland Street or the Miracle Mile after church).

5. Enforcement of the proposed zoning change (civic building definition amendment) would result in unnecessary hardship.

(I) The property's special conditions distinguish it from others in the area. The Strand Theater is a one of a kind for Dover. Precious few similar historic theater halls exist in northern New England. Its preservation should be encouraged (addressed above), but economically viable traditional renters/ owners cannot be assumed to exist, especially in trying economic times, and especially in the face of the state of the art competing strip mall movie theaters. The property's special conditions must be taken into consideration with all the points made above, to acknowledge the reasonableness of the

use facilitated by granting the variance, and the appropriateness of that use's preserving this unique property and its historical street scape.

(ii) No fair and substantial relationship exists between the general public purposes of the proposed "civic building" definition change, and the specific application of the that change to the Strand Theater. The proposed definitional change seeks to discourage religious uses within the commercial portion of the CBD. This may be a legitimate governmental goal when considering new construction, or infill reconstruction. But as applied to the Strand Theater (a property form uniquely inviting large group assembly) whose historic internal architecture severely limits alternative commercial uses, goals of promoting form based code zoning and tax base preservation are not met by applying the proposed "Civic Building" definition change to deny the variance.

Applying the proposed zoning change to this property (so as to deny the use variance) may result in continued non-use of the property, and more unfortunate economic consequences risking even the loss of the property as a theater (if ever rehabbed with CBD promoted mixed street level commercial uses with upper story residences and/or offices).

(iii) The proposed use is reasonable. It is. Without reiterating all that is stated above, let me just explain Exhibits 3 and 4. On the identified date and times, members of the Church surveyed available parking in the general neighborhood surrounding the Strand last Sunday when congregation members would be expected to come to Dover to go to church. The process and count can be more fully explained at public hearing, but the point made is that there is more than enough parking in the area to accommodate the intended Sunday morning use facilitated by granting the variance.

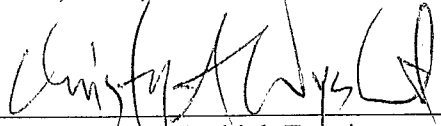
For all the above reasons, to be further explained and discussed at hearing, the requested use variance should be granted, with or without the above suggested conditions.

Respectfully submitted,

ANBELWOLD, LLC

By its attorneys,

WYSKIEL, BOC, TILLINGHAST & BOLDUC, P.A.

By: 

Christopher A. Wyskiel, Esquire

Enclosures



CITY OF DOVER

ZONING BOARD - STAFF MEMO FILE #Z10-12

Application Type:	Use Variance
Applicant(s):	Rose Realty, LLC (Restoration Church)
Owner(s):	Ambelwold LLC
Location:	18-20 Third St. (Assessor's Map 6, Lot 37) former Strand Theater

INTENT: To obtain a Use Variance to allow a church use in the Central Business District-Commercial where such uses are not allowed.

LOTS/UNITS PROPOSED: 0 Lots

AGENDA ITEM #: 4-A

ZONING DISTRICT: CBD-Commercial (Central Business District)

EXISTING LAND USE: Vacant Movie Theater

PROPOSED LAND USE: Church Services at least three days a week

SURROUNDING LAND USE: Commercial, Retail, upper floor residential, Restaurant & Office

PREVIOUS ZBA ACTION: None

PB APPROVAL REQUIRED: No, possible TRC

ATTACHMENT: application and narrative from applicant's attorney

APPLICATION IS COMPLETE: Yes

NOTICES AS REQUIRED: Yes

STAFF RECOMMENDATION: The Planning Department recommends that the application be disapproved.

church services because the recently posted (June 22, 2010) amendments to the 2009 form-based code does not specifically allow church uses in the district because the definition of "Civic" has changed to exclude the term religion from the definition. Even though the posted amendments haven't been voted up or down by the City Council, state law is clear that once posted, zoning changes must be met unless not approved by the governing body.

Reason for Staff Recommendation

The requested action is not totally consistent with the Master Plan and zoning ordinance which guides development in the City of Dover and specifically within the downtown CBD. It is not entirely supportive of the community's goals and vision for long term growth, vitality and sustainability within the downtown district. Form is very important for the fabric of a traditional downtown and this theater building and its use (function) as a movie house or theater is a part of this community. In this instance, form and function are almost inseparable. The requested use, by lease, of the Strand for church services could be accomplished in other nearby properties located just outside the CBD-commercial zoning district, possibly in structures whose form more closely fits with this use.

The time when a church organization would search for a structure that met the form of a church is most likely over. Today, church organizations seek out other venue's as a possible means to entice participants to attend. Therefore, staff's position on this case centers on the idea of form and function being very important not to separate.

Recommendation

The Planning Department recommends the Zoning Board accept the application, hold the public hearing. If the Board approves the variance, staff would suggest the following conditions in addition to the applicant's proposed conditions:

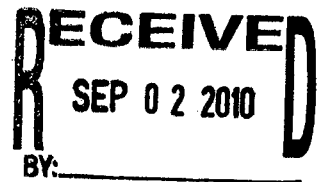
Conditions:

1. That should the church use cease at any time in future, the variance would be extinguished.
2. That the "accessory" type use of limited church services and functions return to the Zoning Board if said use becomes or is planned to be the principle use in the theater portion of the building.

Summary of Request and Background

The use variance is needed for the applicant to use the vacant Strand Theater building for

CASE # 210-13 DATE RECEIVED 9/2/10
 AMOUNT PAID \$ 256 TIME RECEIVED _____
 CR # 4114



CITY OF DOVER
 ZONING BOARD OF ADJUSTMENT
 APPLICATION

I. APPLICANT STF development Company, Inc. PHONE #: 742-2121
 ADDRESS 242 Central Avenue, Dover, NH 03820
 PROPERTY OWNER Granite Second Realty Trust
 ADDRESS 4 Granite Street, Dover, NH 03820
 PROPERTY LOCATION Granite Street
 BRIEF DIRECTIONS Last lot on right on Granite Street
 ZONE RM-U ASSESSOR'S MAP 25 LOT #(S) 51A

TYPE OF APPEAL: (Please check off one)

<input type="checkbox"/>	VARIANCE	ARTICLE _____	SECTION _____
<input type="checkbox"/>	VARIANCE (Physical Disability - RSA 674:33-V)	ARTICLE _____	SECTION _____
<input checked="" type="checkbox"/>	SPECIAL EXCEPTION	ARTICLE <u>VI</u>	SECTION <u>170-18</u>
<input type="checkbox"/>	ADMINISTRATIVE DECISION	ARTICLE <u>XII</u>	SECTION <u>170-52 C 3</u>
<input type="checkbox"/>	EQUITABLE WAIVER	ARTICLE _____	SECTION _____

Describe briefly your plans for this property: To construct a three unit townhouse
condominium building with parking.

II. REQUIREMENTS SUBMITTED: (Please check off)

- A. Plot plan drawn in accordance with a boundary line survey to scale not less than 1" = 40', (9 copies). They need to include the lot dimensions including area in square feet, and also the size and location of existing and proposed buildings if applicable, including setbacks. X
- B. List of abutters including addresses and map and lot number of parcels who adjoin or are directly across the street or stream from property. X
- C. Application fee of:

\$100.00 VARIANCE	\$ _____
\$100.00 SPECIAL EXCEPTION	\$ <u>100.00</u>
\$25.00 APPEAL FROM ADMINISTRATIVE DECISION	\$ _____
\$100.00 EQUITABLE WAIVER	\$ _____
- D. Certified letters fee:

# of abutters <u>10</u> X \$8.00 =	\$ <u>80.00</u>
Applicant & Owner <u>2</u> X \$8.00 =	\$ <u>16.00</u>
Foster's newspaper public notice	\$ <u>60.00</u>
TOTAL	\$ <u>256.00</u>

SPECIAL EXCEPTION REQUIREMENTS

1. Explain how the requested use would be essential or desirable to the public convenience or welfare.

See attached.

2. Detail how the requested use would not create undue traffic congestion or unduly impair pedestrian safety.

See attached.

3. Describe how the requested use would 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.

See attached.

THIS SECTION OF THE APPLICATION MUST BE COMPLETED BY ALL APPLICANTS

IV. As applicant of standing of this request, I certify that the information herein is complete and accurate.

IMPORTANT
PROPERTY IDENTIFICATION SIGN
MUST BE POSTED ON THE PROPERTY
FOR THE 5 DAYS PRIOR TO HEARING.
FAILURE TO POST MAY RESULT IN
APPLICATION NOT BEING ACCEPTED

Signature of Applicant* (with handwritten signature)

Signature of Owner* (with handwritten signature)

*Both Signatures Required

The applicant waives the requirement of holding a hearing within thirty (30) days of receipt of the application, pursuant to RSA 676:7, II:
Signature of Applicant Date 9/2/10

LIST OF ABUTTERS

Map 25, Lot 45	Atlantic Ridge II Condominium Association 16 Magnolia Drive Dover, NH 03820
Map 25, Lot 45-1	Yan Lu 10 Magnolia Drive Dover, NH 03820
Map 25, Lot 45-2	Mr. and Mrs. Michael J. Meroff 12 Magnolia Drive Dover, NH 03820
Map 25, Lot 45-3	Mr. and Mrs. Adam C. Henker 14 Magnolia Drive Dover, NH 03820
Map 25, Lot 45-4	Sandeep Haridas 16 Magnolia Drive Dover, NH 03820
Map 25, Lot 46	Leonard A. Silver, Jr., Trustee 6 Granite Street Dover, NH 03820
Map 25, Lot 47	Mustang Property, LLC PO Box 395 Dover, NH 03820
Map 25, Lot 49	Mr. and Mrs. Brooke S. Buckovitch 135 Portland Avenue Dover, NH 03820
Map 25, Lot 50	Nathan Dickey, Trustee 43 Cushing Street PO Box 330 Manchester, NH 03105-0330
Map 25, Lot 51	Todd Horn 133 Portland Avenue Dover, NH 03820

SPECIAL EXCEPTION REQUIREMENTS

1. **Explain how the requested use would be essential or desirable to the public convenience or welfare:**

The zoning ordinance allows for the construction of three to four family dwellings provided that a special exception is granted. There is a strong demand for housing units of this size and price range. Similar units exist within close proximity to this location.

2. **Detail how the requested use will not create undue traffic congestion or unduly impair pedestrian safety.**

The units to be built in this project will not significantly add to the traffic on Granite Street and will generate less traffic than other uses which are permitted in this zone and less traffic than has been the case with the business use of other properties on Granite Street. These residential units will be located at the end of a dead end street where there is little if any pedestrian traffic.

3. **Describe how the requested use would not overload any public water, drainage, or sewerage system or any other municipal system to such an extent that the requested use or and 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 existing City water and sewer utilities in this area are adequate to accommodate these residences. The land slopes down toward Portland Avenue, and drainage will be provided for as part of the site review process. This residential use is a permitted use in this area, and similar projects exist in close proximity to this site.

SECTION 170-25.1 REQUIREMENTS

- A. **The specific site must have an amount of open space either landscaped or left natural, at least equal to the average amount of open space on all developed lots within the RM-U District that are wholly or partly within 200 feet of the subject parcel.**

The applicant has requested a variance from this requirement. The property is currently fully covered by paving which is an impervious surface. This proposed development will reduce the impervious surface to less than 50% coverage.

- B. **Off street parking, in accordance with Chapter 149, Site Review, shall be provided so as to avoid vehicles backing out into the street. Two parking spaces per unit shall be required.**

The site plan for this project shows that each unit will have two parking spaces and that no vehicle would back out into the public street.

C. Parking lots shall be at least five feet from a side property line and ten feet from a front property line.

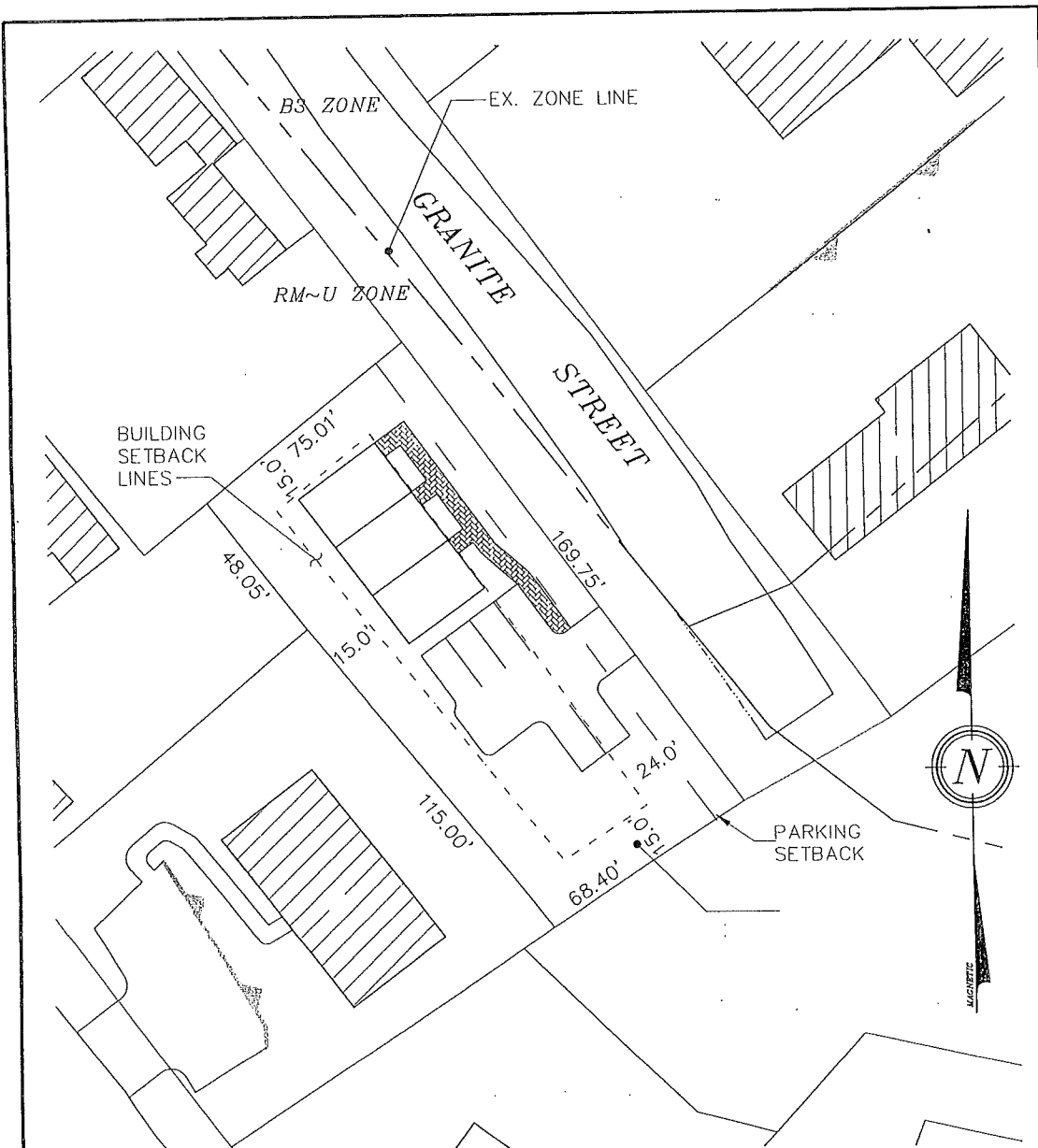
The site plan shows the proposed parking spaces for these units. The parking areas are typical for this type of project and will meet setback requirements.

D. Parking area shall be screened from the street and from abutting lots.

Screening will be provided as required by the site review process.

E. Structures shall be at least twenty (20) feet from a front property line, fifteen (15) feet from a rear property line, and fifteen (15) feet from a side property line.

The structures will meet all required setbacks.



APPROXIMATE EXISTING IMPREVIOUS = 8743 Sq.Ft.
 APPROXIMATE LOT AREA = 11,250 Sq.Ft.,
 EXISTING IMPERVIOUS LOT COVERAGE = 77.72%

PROPOSED IMPERVIOUS AREA = 3,499.03 Sq.Ft.
 APPROXIMATE LOT AREA = 11,250 Sq.Ft.,
 PROPOSED IMPERVIOUS LOT COVERAGE 31.10%

THIS IS NOT A BOUNDARY SURVEY

ZONING : RMU
 TAX MAP :25
 LOT :51A

CONCEPTUAL PLOT / LAYOUT PLAN
 FOR
 STF DEVELOPMENT COMPANY INC.
 GRANITE STREET
 DOVER, N.H.
 TAX MAP 25, LOT 51A

BERRY SURVEYING & ENGINEERING

148 SECOND CROWN POINT RD.
 BARRINGTON, N.H. 332-2863

SCALE : 1 IN. EQUALS 40 FT.

DATE : AUGUST 25, 2010

FILE NO. : DB 2010 -115

RECEIVED
 SEP 03 2010
 By _____



CITY OF DOVER

ZONING BOARD - STAFF MEMO FILE #Z10-13

Application Type:	Special Exception
Applicant(s):	STF Development Co., Inc.
Owner(s):	Granite Second Realty Trust
Location:	4 Granite St. (Assessor's Map 25, Lot 51A)

INTENT: To obtain a Special Exception to allow the construction of a three-unit residential structure on the property where a two-unit structure is allowed by right.

(X) Yes () No

Will the requested use not create undue traffic congestion, or unduly impair pedestrian safety?

(X) Yes () No

LOTS/UNITS PROPOSED: 0 Lots

AGENDA ITEM #: 4-B

Will the requested use 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?

(X) Yes () No

ZONING DISTRICT: RM-U

EXISTING LAND USE:

Vacant Lot – Parking Area

PROPOSED LAND USE:

Three Unit Townhouse Condominium

Specific Special Exception Criteria

Three- or four-family dwellings and conversions of existing dwellings to three (3) or four (4) units shall be subject to the following regulations:

SURROUNDING LAND USE:

Auto Body shop and multi-family structures

A. The specific site must have an amount of open space, either landscaped or left natural, at least equal to the average amount of open space on all developed lots in the RM-U District that are wholly or partly within two hundred (200) feet of the subject parcel. Existing parking areas, either gravel, paved or unpaved, shall not be considered to be open space.

(X) Yes () No

PREVIOUS ZBA ACTION: None

PB APPROVAL REQUIRED: No

ATTACHMENT: Application

B. Off-street parking, in accordance with Chapter 149, Site Review, shall be provided as to avoid vehicles backing into the street. Two (2) parking spaces per unit shall be required.

(X) Yes () No

APPLICATION IS COMPLETE: Yes

NOTICES AS REQUIRED: Yes

C. Parking lots shall be at least five (5) feet from a side property line and ten (10) feet from a front property line.

(X) Yes () No

STAFF RECOMMENDATION:

The Planning Department recommends that the application be approved with the condition that the parking lot screening be added to a plan that is acceptable to the Planning Department.

D. Parking areas shall be screened from the street and from abutting lots.

(X) Yes () No

Summary of Request and Background

The plan submitted turns a parking area into a 3 unit condo building which actually increases the pervious surface area with more green space.

Please refer to the attached concept layout plan.

E. Structures shall be at least twenty (20) feet from a front property line; fifteen (15) feet from a rear property line and fifteen (15) from a side property line unless abutting a street, in which case, the distance from the side property line shall be twenty (20) feet.

(X) Yes () No

General Special Exception Criteria

Is the requested use essential or desirable to the public convenience or welfare?