



**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, September 16, 2010**  
Meeting Time: **7:00 pm**

- 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).

*The Chair called the meeting to order at 7:00 pm.*

- APPROVAL OF PRIOR MINUTES OF AUGUST 19, 2010.**

**Motion:** O.Perry made the motion to approve the August 19, 2010 minutes. J.Kelley seconded. Vote: Unanimous Approval.

- Old Business - None**

- New Business**

- 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.

The Chair cited letters of approval from abutters submitted to the Planning Department.  
(Copies in file)

C.Wyskiel represented the applicant/landowner Anbelwold, LLC. The application is cosigned by the Pastor of The Restoration Church, a tenant of Anbelwold LLC occupying space at Strand Theater. C.Wyskiel clarified to the Board that the abutters have been notified of application, and the hours of operation for The Restoration Church will be on Sunday's and one evening during the week. He cited his letter of representation that was submitted to the Planning Department.  
(Copy in file).

Public Hearing Opened  
In Favor of the Request- nobody spoke.  
In opposition of the request:

Elizabeth Goldman, 44 Rutland Street, asked for the length of term for the resident of the theater, and a guarantee from the owner that the Strand Theater will not be changed. She noted her concern with advertising on the existing sign, and the importance of creativity and the arts in this community.

Resident living at 189 Central Avenue, feels the Strand Theater should be recognized as a historical landmark. He noted his concern of losing the characteristic of this building, and the sign associated with this building.

Resident living at 64 Broadway Street, noted he represented citizens who are advocating the preservation of the Strand Theater as a movie theater. He discussed the grass roots group that he represents, and the active role they have been taking with citizens in the area to ensure restoration



**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, September 16, 2010**  
Meeting Time: **7:00 pm**

of this theater. He noted his concern of losing this historic and cultural landmark, and feels that vibrant culture should be brought to this area.

Resident living at 30 Holiday Drive, discussed his position as a former pastor and explained how he felt about the meaning of religion within the civic uses part of the Code, and the importance of the history of this building. He feels that multiple uses for this building have to be explored, and suggested the use of film clubs renting space at the Strand Theater.

Resident living at 189 Central Avenue, feels there is a misunderstanding of the downtown sustainability for the City of Dover. He would like to know who the owner and the tenants of the building are.

Resident living at 27 Cushing Street, noted her concern with the image of the City of Dover. She feels that creativity in business needs to be brought to this town and is important. She noted her concern with available parking, and the impact on local businesses.

C.Wyskiel responded on the concern of parking, theater occupancy and available parking spaces, and feels there is plenty of parking. He noted his concern not accepting this site as a civic use, and briefly discussed taxes associated with churches. The length of term for the tenant is not determined, but the applicant is willing to keep the sign associated with the building. Discussion ensued on the staff recommendations from the Planning Department.

B.Woodruff noted the Planning Department did not authorize a certificate of use/occupancy for religious use at the Kaleo Coffeehouse. He stressed how involved staff discussions were with this issue and that there have been internal staff meetings as well as meetings with the principals in regards to this variance. He noted that staff did consider the possible increase in foot traffic on Sundays and that it might provide incentive and revenue to the building owner to redevelop the site. The Planning Department recommends that the application be disapproved. However, 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.
3. That the variance is limited to the testimonies, statements, and representations made at this hearing.
4. Property owner and user shall meet with Technical Review Committee (TRC).
5. Property owner and user shall meet with Building Official to determine any necessary life safety code improvements.
6. No exterior changes shall be made to the building except as may be deemed necessary for life safety issues in meetings with TRC or Building Official.
7. 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.



**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, September 16, 2010**  
Meeting Time: **7:00 pm**

Public Hearing Closed

J.Kelley and B.Woodruff discussed the Form Based Code and Zoning Amendments, particularly in regards to permitted uses.

The Chair confirmed that C.Wyskiel is representing the applicant and not the Restoration Church.

The Chair and C.Wyskiel confirmed the following: the hours of operation for the Restoration Church will be for Sunday use and one evening during the week, the owner would like to bring a cinema to this location, and will be preserving the exterior structural form of the building and sign.

J.Kelley and B.Deberto, of Anbelwold LLC, discussed the reasoning for the Strand Theater closure.

O.Perry and C.Wyskiel discussed the concerns of tax the property coming off the tax rolls, the change of terminology to assembly, and the hours of operation.

Discussion with the Board and C.Wyskiel ensued on staff recommendations and conditions.

### **Findings of Fact:**

1. Did the Applicant provide proof that demonstrates the variance will not be contrary to the public interest? Yes.
2. Did the Applicant provide proof that demonstrates how a variance observes the spirit of the ordinance? Yes.
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.
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. (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. (iii) Did the applicant demonstrate that the proposed use is a reasonable one? Yes.

**Motion:** O.Perry made the motion to grant the variance with all recommendations, both staff and applicant offered, and the proviso that condition #1 will expire if not used for 12 consecutive months. J.Kelley seconded. Vote: Unanimous Approval.

The Chair called a five minute recess at 8:20 pm. The meeting resumed at 8:25 pm.

- 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.



**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, September 16, 2010**  
Meeting Time: **7:00 pm**

Attorney Jim Schulte represented the applicant STF Development. The existing site is a parking lot covered with pavement and impervious gravel (which will be reduced by 30 percent). STF Development would like to develop a three-unit townhouse condominium within the square footage that zoning allows. He cited the special exception requirements that the applicant meets and will provide on site, as written in a letter he has submitted to the Planning Department.  
(Copy in file)

W.Colbath and J.Schulte clarified that there will be 3 units with 6 parking spaces.

Public Hearing Opened  
In Favor of the Request- nobody spoke  
In Opposition of the Request:

Aaron Brown, 135 Portland Ave, noted his concern with drainage, and would like to know where excess drainage will go and whether catch basins will be included. He said he is not necessarily against the development, but wants to make sure the street drainage will not adversely affect his property. The Chair and B.Woodruff confirmed there will be less water drainage going towards Granite Street due to the use of pervious surfacing that will be installed by the developer.

Brooke Buckovitch, 135 Portland Ave, asked if townhouse condominiums will be owner occupied or rental units, and asked if the parking lot can be installed further from her property line and would like screening provided.

Sandeep Haridas, 16 Magnolia Drive, noted his concern of further development in regards to property value, and the loss of privacy. He would like to see the trees existing on this property remain there, and would like to know what other types of screening will be used.

J. Schulte noted that he feels the applicant may be able to accommodate the abutter's concern of privacy by not removing the trees. These type of units are usually owner occupied, but occasionally get rented out. The applicant has not considered putting fencing in, but he may be willing to talk to the engineer on this concern. The Chair and J.Schulte discussed the use of trees on this property, and clarified that existing trees will not be removed.

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

Public Hearing Closed

**Motion:** O.Perry motioned to grant the special exception subject to the conditions set forth by the Planning Department. F.Landford seconded. Vote: Unanimous Approval.

### 5. Other Board Business - None

6. **Adjourn** O.Perry motioned to adjourn meeting at 8:47 pm. J.Kelley seconded.