



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

1. ATTENDANCE

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

Staff Present: Bruce Woodruff (Zoning Administrator), Lisa Ertle (Recording Secretary)

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

2. APPROVAL OF PRIOR MINUTES OF OCTOBER 21, 2010 AND NOVEMBER 18, 2010.

The Chair deferred the action to vote on the approval of prior minutes to the end of the meeting.

Motion: O.Perry motioned to approve the October 21, 2010 minutes. W.Colbath seconded. Vote: 5-O. (C.Prior abstained)

Motion: O.Perry motioned to approve the November 18, 2010 minutes. W.Colbath seconded. Vote: 4-O. (J.Kelley and F.Landford abstained)

3. OLD BUSINESS

- A. Request for motion for rehearing regarding case Z10-15 Michael & Maureen Ryan, 15 Arch St., Tax Map 10, Lot 162, zoned RM-U, requests an Area Variance from the terms of Article IV, Section 170-11 and Section 170-12, to subdivide a parcel into 2 lots, creating one with frontage of sixty (60) feet, where a minimum of eighty (80) feet is required. The Variance was originally granted by the ZBA at their regular meeting held on November 11, 2010.

Mark Moeller, Attorney at Law, represented the clients William and Carol Boc. He stated that Attorney Christopher Wyskiel filed for a public rehearing on behalf of the clients. M.Moeller discussed the petition that was submitted for their clients. (Copy on file) They feel the conditions set forth by the Zoning Board of Adjustment, at the October 21, 2010, meeting need to be reconsidered.

Jim Schulte, Attorney at Law, represented the applicants Michael and Maureen Ryan. He addressed the concerns presented by the Attorney's office of Christopher Wyskiel. They are in agreement with the intentions derived from the conditions set forth by the ZBA. He noted all conditions were met to pass this variance and would like the Board to deny the re-hearing.

J.Kelley noted his concerns from the discussion of conditions for this application, from the October meeting. Discussion ensued from the Board members in regard to whether they felt, given the request, that the Board had erred or if there was any new evidence.

It was the general consensus that they had no made errors in the case.

Motion: O.Perry motioned to deny the rehearing. F.Landford seconded Vote: Unanimous approval.

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4. NEW BUSINESS

- A. Z 10-17 Elie Khoury (Owner: North Haverhill Management), 171 Silver St., Tax Map 11, Lot 3A, zoned B-3, thoroughfare business, requests a Variance from the terms of Article II, Section 170-6B, and Article IX, Section 170-32. C., 5. a., to install an electronic LED type gas price sign.

The Chair and C.Prior recused themselves as having a potential conflict of interest. The Vice Chair sat in for the Chair. W.Colbath stated to the owner that he has to have 3 unanimous votes, out of four, in favor of the application for this to be approved. The applicant, Elie Khoury, acknowledged. (He moved forward with the hearing.)

Public Hearing Opened

Elie Khoury, owner of business at 171 Silver Street, represented the application. He discussed the LED sign that they would like installed. F.Landford and E.Khoury confirmed that the sign will not be flashing, and will reflect only one price for a brand of gasoline. E.Khoury discussed the safety hazards that the current signs incur, and noted he was taking the neighbors into consideration.

Barbara Trow, of 192 Silver Street, opposes the LED sign. She discussed her concerns with the precedent for LED sign approval if this variance is passed, and noted the character of the neighborhood is mostly residential.

The Vice Chair read memos from citizens in opposition to this variance. (Copies in file)

B.Woodruff noted the applicant has asked for a sign permit that would allow him to install an electronic (with remote control), LED type Unleaded Gasoline price sign. He has stated that the pricing on the sign will change, possibly once daily, but no more often than that. Additionally, he state this sign shall not flash, change colors or have moving borders or characters. He indicated it will not change to show any other pricing other than the requested unleaded component. The portion of the sign permit that included the LED gasoline pricing was not approved because the definition in the Zoning Ordinance on "Flashing Sign" is clear in that it specifically includes "electronic changeable message boards or SIGNS of similar technologies, excluding those deemed necessary for the public safety and welfare by Federal, State or municipal authorities. [Added 03-21-07 by Ord. No. 01-2007]". The applicant was informed that he could either ask for relief from this section or appeal an administrative decision. The applicant feels that even though the sign is changeable, he won't be using it as a gimmick to get attention, he will only use it to change the pricing employing newer technology rather than the older number plates changed by hand. There are instances of LED and/or electronic signs throughout the City, but none of them (with the exception of grandfathered or court case examples with strict rules) change legally at all. There are two central issues: 1. the sign WILL change, albeit only once a day at most; and 2. Sign technology has changed, and although it is a community character mandate that signs not be obtrusive and overbearing (flashing, intensity, attention-getting, etc.), LED and/or new technology signs should be able to be used with strict controls if possible. The Planning Department is neutral on this application and therefore has no up or down recommendation, however, if the Board approves the variance, staff strongly recommend that specific conditions stating that the pricing on the sign will change no more than once every 24 hours, that it shall not flash, be animated, change colors or have moving borders or characters, that it will not change to show any other pricing other

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than the singular unleaded component, and that the intensity of the sign not exceed the maximum nits called out in the 2010 posted Zoning Amendments (just ratified Wednesday night by City Council).

Public Hearing Closed

O.Perry and B.Woodruff clarified the reasons that the Planning Department would not recommend the approval of the application. (As stated in the Staff Memo File P10-17, copy in file) O.Perry noted that it should be suggested to the Planning Department to look into the ordinance in regards to the new technology that can be used for the signs. J.Kelley agreed that the ordinance needs to be updated, and discussed his concerns with this application. F.Landford noted he has no concerns with this application. Discussion ensued on the zoning ordinance for sign permits.

Findings of Fact:

1. Did the Applicant provide proof that demonstrates the variance will not be contrary to the public interest? Yes. As per applicant's petition and presentation.
2. Did the Applicant provide proof that demonstrates how a variance observes the spirit of the ordinance? Yes. As per applicant's petition and presentation.
3. Did the Applicant provide proof that demonstrates how a variance will result in substantial justice? Yes. As per applicant's petition and presentation.
4. Did the Applicant provide proof that demonstrates the variance will not diminish the values of surrounding properties? Yes. As per applicant's petition and presentation.
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. As per applicant's petition and presentation. (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. As per applicants petition and presentation. (iii) Did the applicant demonstrate that the proposed use is a reasonable one? Yes. As per applicant's petition and presentation.

Motion: O.Perry granted the motion to allow the installation of the electronic LED typed gasoline price sign on the existing freestanding sign as presented in the application and testimony of the applicant with the following conditions: 1: the pricing on sign shall change no more than once every 24 hours; 2) The sign shall not flash, be animated, change colors or have moving borders or characters; 3) the sign shall not change to show any other pricing other than the regular unleaded component, and 4) the intensity of the sign not exceed the maximum nits as required in the Zoning Ordinance. F.Landford seconded. Vote: 3-1 (J.Kelley against) Motion passed to grant variance with conditions based on finding of facts by applicant's application and testimony, and restrictions of items proposed by Zoning Officer.

The Chair and C.Prior took their seats.

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- B. Z 10-18 Wentworth-Douglass Hospital (Owner: Wentworth-Douglass Hospital), 789 Central Avenue, Tax Map 37, Lot 1, zoned O Office, requests a Variance from the terms of Article IV, Section 170-12, A., Article IX, Section 170-32, H., and Sign Regulations contained in the Office (O) District Table of Use including applicable footnotes, to allow 2 signs where 1 is allowed, to allow 800 square foot area where 12 sq. ft. is allowed, to permit 2 temporary signs (banners) where none are allowed, and to permit said temporary signs to be erected 25 ft. above the ground where a maximum of 16 ft. is allowed.

Malcolm McNeill, Attorney at Law, represented the applicants. In attendance with him was Noreen Biel, Vice President for Community Relations, and Dan Dunn, Vice President of Chief Operations of the hospital. He discussed a letter of petition that was submitted to the Board of Adjustment from himself and the applicants. (Copy on file) The signs will be used in conjunction with a healthcare campaign from Wentworth Douglass Hospital. He discussed the explanations (written in the letter) of how the applicants meet the Variance criteria. M.McNeill noted that the abutters to this business are of similar fields, and they feel the signs are tasteful and does not interfere with the residential area nor diminish real estate value. The applicants agree to the staff recommendations, and believe all criteria for the variance exists.

F.Landford, M.McNeill confirmed that the signs will change about every three months, and will be of the same quality and theme. The booklet of the campaign that was submitted to the Zoning Board reflects the signs that will be used. (Copy in file)

B.Woodruff noted the staff is not opposed to this. He suggested the Board be clear that this is not a variance that runs with the land forever, that they are granting a unique circumstance for the temporary sign campaign for a year, and once it goes away they will have to come back before the Zoning Board. That would be their only recommendation besides obtaining a sign permit.

O.Perry and N.Biel confirmed the signs have been posted since the November 26, 2010. O.Perry confirmed with M.McNeill that the campaign will move forward even if signs are not posted. O.Perry and B.Woodruff discussed the allocation and sizing of signs that are required per zone according to the sign ordinance.

Public Hearing Closed

J.Kelley and M.McNeill discussed the concerns regarding the intentions of this campaign.

The Chair asked for clarification on the need for four variances. M.McNeill noted they requested more in preparation of potential problems, however the applicants could agree to strike one with consent that recommended conditions would not change with the consent from the Zoning Board. He noted that they are looking for a one year temporary variance. Discussion ensued on the image that will be portrayed, which will be quality and professionalism.

W.Colbath noted his concerns with the amount of signs that are being asked for. M.McNeill noted they can amend the application to say two additional signs.

Discussion ensued on the zoning location of this hospital.

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Motion: F.Landford motioned to grant the variance with the stipulations of the Planning Department. Discussion ensued on the variance that needs to be passed and the specific wording and conditions for approval. O.Perry motioned to grant the variance with the following conditions, 1). The banners shall only be up for one year from their installation (e.g. by November 30, 2011, 2) The applicant apply for and pay for sign permits, and 3) Any new requests that deviated from the banners proposed for approval also require variances to the sign ordinance. J.Kelley seconded. Vote: Unanimous approval.

Findings of Fact:

1. Did the Applicant provide proof that demonstrates the variance will not be contrary to the public interest? Yes. As per applicant's petition and presentation.
2. Did the Applicant provide proof that demonstrates how a variance observes the spirit of the ordinance? Yes. As per applicant's petition and presentation.
3. Did the Applicant provide proof that demonstrates how a variance will result in substantial justice? Yes. As per applicant's petition and presentation.
4. Did the Applicant provide proof that demonstrates the variance will not diminish the values of surrounding properties? Yes. As per applicant's petition and presentation.
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. As per applicant's petition and presentation. (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. As per applicants petition and presentation. (iii) Did the applicant demonstrate that the proposed use is a reasonable one? Yes. As per applicant's petition and presentation.

W.Colbath noted his concerns with the letters that were received on the previous case. Discussion ensued on procedures to follow when letters and email come in on cases.

The Board took up Agenda Item 2, refer back to the items for the motions.

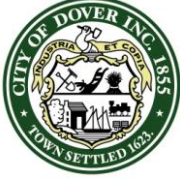
5. OTHER BOARD BUSINESS

B.Woodruff noted that Joshua Cote is a new ZBA alternate member, and noted that reelections are coming up in the month of January. He addressed the concerns from the Zoning Board in regards to the letters submitted for testimony to a public hearing. Discussion ensued.

A. Review Zoning change recommendations from staff

B.Woodruff presented the ZBA with small maps of the Spruce Lane neighborhood, Saint Charles Church property, Sawyer Mills, and the Tanglewood Drive area. These were areas that were found, as per the Board's request, where rezoning may need to be looked at. Discussion ensued on the lot lines off of Central Avenue, the Sawyer Mills residence zone, the possibilities for UMUD districts.

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B.Woodruff suggested that after these discussions, this could be sent to Planning Department for recommendations to the Planning Board. Discussion ensued on the types of variances that are brought to the Zoning Board. The Board suggested the following be sent to the Planning Department as recommendations: look into zones that receive the most requests for variances, and to look at modernizing the sign ordinance.

6. ADJOURN

Motion: W.Colbath motioned to adjourn the meeting at 8:40 pm. O.Perry seconded. Vote: Unanimous approval.

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