



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers - 288 Central Avenue, Dover, NH 03820
Meeting Date: **Thursday, June 16, 2011**
Meeting Time: **7:00 pm**

1. ATTENDANCE

Members Present: Sam Reid (Chair), William Colbath (Vice Chair), Jim Kelley, Otis Perry, Frank Landford, Joshua Cote (Alternate)

Members Not Present: Jennifer Stone (Alternate), Chris Prior

Staff Present: Bruce Woodruff (Zoning Administrator), Michele Alexander (Recording Secretary)

Chair called the meeting to order at 7:04 p.m.

2. APPROVAL OF PRIOR MINUTES OF MAY 19, 2011.

W.Colbath and J.Kelley abstained as they were not present at the meeting.

Motion: O.Perry made the motion to approve the minutes as written. J.Cote seconded. Vote: (3-0) U/A

3. OLD BUSINESS

None

4. NEW BUSINESS

- A. * Z 11-12 Marcia Wentworth Revocable Trust, owner, 6 Brick Road, Tax Map 28, Lot 9-C, zoned Office, (applicant Changing Places, LLC) requests a variance from the terms of Article IV, Section 170-11 D, 170-12 A & the O Zone Table of Uses, footnote 5, to construct 24 - 2 bedroom apartments in 4 - three story buildings on one lot, where a maximum of four apartments are allowed.

Chair announced that the public notice did not indicate Marcia Wentworth Revocable Trust as owner, and that the owner/applicant had the choice to continue or table to the next meeting for corrected notice.

J.Schulte, attorney, representing the applicant said applicant would move forward tonight. He presented the proposed plan to the Board. He indicated the existing multi-family units in the surrounding neighborhood and pointed out the height of existing 3-4 story buildings. He discussed that the proposed project would entail widening of the entrance way to the lot by exchanging land with an abutter, and in addition an easement will be granted which will create a buffer from the project will be granted to the abutter approximately 20 feet in width. He noted that it would be possible to create a City street and sub-divide the property into six buildings with four units each. He explained the proposed development would be more compact and efficient, with four buildings with six units in each. He discussed that there were only a handful of single-family homes along Central Avenue, with mostly commercial and multi-family existing. He explained the proposed development was in the spirit of the zoning ordinance, would have less impact than other allowable use options, is in keeping with the character of the neighborhood, and that the land has little commercial potential therefore creating hardship as currently zoned.

J.Kelly asked for clarification on the site plan. J.Schulte clarified the multi-family homes were the striped areas indicated and explained the character of the buildings surrounding the project.



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Public hearing opened

Gregory Heal, 4 Floral Avenue, explained that he lived in the neighborhood and that he saw a sign posted about this meeting and a neighbor informed him about the proposed project. He said he was not notified as an abutter. He expressed concern about traffic on Brick Road, that the road is narrow, and would be difficult for passage for emergency vehicles. He is also concerned about water run-off, and he is concerned about impact on property values. He explained that neighborhood is quiet, with existing apartments facing away from his neighborhood, and with very little foot traffic currently. He has concerns about safety with increased population.

Chair explained that since he was not a direct abutter, he would not have received formal notice.

Valerie Ester, of 2 Floral Avenue, is concerned about light and noise, affecting the neighborhood and the natural environment. She hopes this will be taken into consideration by the Board.

Bruce Bellanger, an owner of an apartment building on Brick Road, is concerned about traffic and the impact on congestion and asked if a traffic study had been done. He asked for clarification on the proposed development because he had been late to this meeting. Chair reiterated statements made by Attorney Schulte and answered a question regarding a lot on the site plan with non-conforming frontage.

Morgan Brown, 12 Brick Road, is a home owner on the hill. She is concerned about lighting and the natural environment. She had a question about the density, and is concerned about impacts. She had a question about the proposed use in comparison to the allowed use if the property were subdivided.

F.Landford asked M.Brown if she lived in a single family home. She replied yes.

_____ 4 Brick Road, is concerned about traffic in the neighborhood. Parking is full at existing apartments he noted and there are noise impacts from the existing apartments.

J.Kelly asked the Zoning Administrator if apartment owners are responsible for adequate parking.

B.Woodruff noted that apartment buildings that pre-date current zoning regulations are unenforceable for current parking regulations provisions for on-site parking.

J.Schulte spoke, and he said adequate parking will be provided for the project. He explained the definition of multi-family, and reasons for the limit of 24 units for this lot size. If the variance was not granted the applicant would seek to subdivide creating the same density over a larger area of the land. Drainage is being provided according to the site regulations. He discussed screening would be maintained between abutting properties.

Chair asked J.Schulte to address light and noise. J.Schulte replied that regulations for downcast lighting will be adhered to. He explained that they hope to rent to a high-quality level of tenant, including employees of Wentworth Douglas.

B.Woodruff provided staff comments:



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B.Woodruff noted the traffic study would be considered at the time of Planning Board site review, and was not the purview of this decision. Lighting concerns would be addressed through City standards.

B.Woodruff explained the applicant's property has a conservation district in the form of steep slopes. These steep slopes are currently mostly wooded on the lot with the exception of a single family structure and driveway/yard area. The lot has a nonconforming frontage of 33 ft. It was created after a frontage variance was granted in 1984 (no conditions). The original lot had hundreds of feet of frontage on Ascension Ave. (Abbey Sawyer Lane). The lot contains 118,100 sq. ft. area or 2.711 acres. The lot contains sufficient total area to support what would be required to be six separate lots with city frontage, each with four units on the lot. This would require construction of a city street and there is currently not enough frontage (50 ft.) on Brick Road to do so.

The requested action may not be technically consistent with the Master Plan which guides development in the City of Dover; however the large area of the lot in the zone where the minimum size is 10,000 sq. ft., coupled with the very small frontage (created by variance with no conditions), and the average lot size in the neighborhood is significantly smaller and the greater depth of the O zone here makes this lot unique.

The Planning Department recommends the Zoning Board hold the public hearing, and approve the variance with the condition that both fencing and vegetal screening be required for the development (not just the parking areas) on the property boundaries that abut single family residential uses at Planning Board site review application time.

Public hearing closed.

J.Kelley spoke. He stated he respected the developer's proposal but questioned the Planning recommendations. B.Woodruff explained that impact to land would be lessened by this proposal. J.Kelley commented this then was the lesser of evils. B.Woodruff stated less impact.

J.Kelley asked when Brick Road would be improved. B.Woodruff stated off-site impacts would be addressed at the time of site plan review. J.Kelley asked about budget impacts and how they would affect Brick Road improvements. S.Reid clarified that the developer may bear some of the cost of improvements.

W.Colbath asked staff to clarify what 1984 variance request was for. B.Woodruff clarified it was a variance for road frontage.

W.Colbath asked for clarification on minimum lot size and asked staff if six lots were possible. B.Woodruff clarified the applicant's engineer would need to address this question. W.Colbath and O.Perry discussed approving a lesser number of units.

Motion: O.Perry made the motion to approve the variance with a maximum number of units of 12.
J.Kelley seconded. Vote: U/A

O.Perry added that staff conditions for vegetation and screening be included in the motion. J.Kelley stated he was concerned about erosion, and impact. S.Reid stated that an office could be there which could have equal or greater impact. O.Perry noted clustering the lot is good conservation practice, he also pointed out



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the single-family homes and multi-family homes in the neighborhood had commercial property in the area and doesn't feel 12 units would have detrimental impact for the neighborhood.

Chair re-opened the public hearing.

Attorney Schulte discussed a preceding case in which the Supreme Court ruled that the ZBA does not have the right to re-design a development by only approving a lesser number of units than requested in the application. B.Schulte also explained that B.Stowell has designed a plan for 5 lots with four units on each with a City Street, and could with a private street create 6 lots. He presented this concept plan.

Chair asked is there was any rebuttal from the public.

Valerie Ester spoke again about quality of life and land, and expressed concern about beauty and neighborhood character changing.

W.Colbath asked for clarification about lot sizes.

B.Stowell of Tri-Tech answered that the lots on the conceptual are all over 20,000 square feet. W.Colbath asked for clarification on the math of the conceptual. B.Stowell explained this was developed as a conceptual in accordance with subdivision regulations and the lots designed to meet the regulations. J.Kelley asked if the conceptual would have more impact than the proposed. B.Stowell answered the proposed had the least impact.

Public Hearing closed.

Motion: O.Perry moved to withdraw the motion. J.Kelley withdrew his.

S.Reid noted that the applicant would like to build the development which would have less impact. B.Woodruff said he came to the same conclusions of less impact with this proposal.

O.Perry noted he agrees with staff and agrees the proposed has less impact, more buffer space with the proposal, and thinks the proposed is a better plan and is keeping with modern planning practice of cluster developments. J.Cote stated he thinks that the cluster development is best use of land, but is concerned about 24 units maximum. O.Perry stated increased density is often granted for developments with less impact. S.Reid stated proposal has less impact than the conceptual presented. F.Landford stated minimum lots sizes should be larger in the City zoning ordinances, and that the public would have a chance to speak at the Planning Board meetings.

W.Colbath made a motion to deny the application. No one seconded. Motion died for lack of second.

Motion: O.Perry made a motion to approve subject to staff conditions. F.Landford seconded. Vote: (4-1) approved.

- B. * Z 11-13 Marcia Wentworth Revocable Trust, owner, 6 Brick Road, Tax Map 28, Lot 9-C, zoned Office, (applicant Changing Places, LLC) requests a variance from the terms of Article IV, Section 170-11 D, 170-12 A & the O Zone Table of Uses, footnote 5, to have residential apartments occupy



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the first floor in the four newly constructed three story buildings, where residential is allowed only on the second story or higher of newly constructed buildings.

J.Schulte, attorney for the applicant spoke. He explained the request was to build buildings with least impact, and to keep the height of the buildings lower. He explained lots on side-streets do not have offices typically and the neighborhood is primarily multi-family with little commercial in the area back from Central Avenue.

J.Kelley asked what is the incentive for underground construction. J.Schulte said lower cost, and accessibility for the tenants. He explained another reason was to keep the building low and keep the view-line.

Public hearing opened

There were no other comments from the public.

Chair requested staff comments.

B.Woodruff stated staff supported the application as a reasonable use.

Public hearing closed.

Motion: J.Kelley moved to approve the variance. O.Perry seconded Vote: (4-1)

F.Landford advised the public they could appeal the decision.

5. OTHER BOARD BUSINESS

A. Discussion on proposed Operating Rules Revisions.

B.Woodruff explained the process of developing the revisions, and noted sections of that draft that had been changed.

O.Perry asked for clarification on changes in relation to current operating procedures. B.Woodruff clarified.

Motion: F.Landford moved to approve the rules and adopt the rules at the next meeting. O.Perry seconded. Vote: U/A

6. ADJOURN

Motion: O.Perry made the motion to adjourn at 8:35 pm. J.Kelly seconded. Vote: U/A