



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 15, 2011
Meeting Time: 7:00 pm

1. ATTENDANCE

2. APPROVAL OF PRIOR MINUTES OF AUGUST 18, 2011.

3. OLD BUSINESS

- A. Request for rehearing by the applicant for case Z 11-14 Richard Callaghan, 26 Horne Street, Tax Map 35, Lot 18, zoned R-12, owner Richard Callaghan, 32 Horne Street, appeals an administrative decision by the Zoning Administrator in a Notice of Zoning Violation letter to the applicant dated May 2, 2011 that the use on the property is a rooming house which is not allowed by right in the R-12 zone.
- B. * Z 11-16 William Colbath, 70 Silver Street, Tax Map 12, lot 79, zoned RM-U, appeals an administrative decision by the Zoning Administrator that enforcement action at 70 Silver Street regarding too many dwelling units has been satisfactorily concluded. (tabled from previous meeting)
- C. * Z 11-17 FW Webb Co., (Owners: Eileen E. Cecchetti and Gail Capuccilli) 218 Knox Marsh Road, Tax Map H, Lot 40B, zoned B-4, requests a variance from the terms of Article IV, Section 170-11 to allow a warehouse/wholesale distribution use in a commercial district. (tabled from previous meeting)

4. NEW BUSINESS

- A. * Z 11-19, Lassel Architects, (Owners: Elizabeth Pettiford and Ron Pfeiffer) 10 Summer Street, Tax Map 12, Lot 22, zoned RM-U, requests a variance from the terms of Article IV, Section 170-12B to allow an addition to the Wadleigh House elderly assisted living facility where lot size (9068 sq.ft where 10,000 sq. ft. is required), lot coverage (50% where 40% is the maximum) and setbacks (2 ft. 10 in. and 8 ft. 6.5 in. on the side where 10 ft is required and 3 ft. 7.25 in. in the rear where fifteen ft. is required) do not meet the minimums required by the Table of Uses and Dimensional Requirements and from Article X, Section 170-41 A, enlargement of a non-conforming structure.
- B. * Z 11-22, Lassel Architects, (Owners: Elizabeth Pettiford and Ron Pfeiffer) 10 Summer Street, Tax Map 12, Lot 22, zoned RM-U, requests a revision to an existing Elderly Assisted Care Home Special Exception to allow an additional four bedrooms (allowing up to 8 additional beds) in the new addition (see variance above) to the Wadleigh House assisted living facility in accordance with Article IV, Section 170-11, C, Article VI, Section 170-18, Article XII, Section 170-52 and the Elderly Assisted Care Home Special Exception criteria outlined in the RM-U Table of Uses and Dimensional Requirements, pg. 2.

5. 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, Monday-Thursday from 8:30 am to 5:30 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/pages/Dover-NH/City-of-Dover-NH-Planning/446789895351



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, August 18, 2011**
Meeting Time: **7:00 pm**

1. ATTENDANCE

Members Present: Sam Reid (Chair), William Colbath (Vice Chair), Jim Kelley

Members Not Present: Otis Perry, Jennifer Stone (Alternate), Joshua Cote (Alternate), Chris Prior, and Frank Landford

Staff Present: Christopher Parker (Planning Director), Gail Pare (Recording Secretary)

Chair called the meeting to order at 7:07pm. Three voting members present. Chairman Reid offered the public the option to postpone meeting due to lack of attendance by voting members of the board. Explained 3 affirmative votes or move to table until next month. As a courtesy, abutters will be notified by first class mail only.

2. APPROVAL OF PRIOR MINUTES OF JUNE 16, 2011 & JULY 21, 2011.

Motion: J.Kelley motioned to approve the June 16, 2011 minutes. Seconded by W.Colbath. J.Kelley states the spelling of his last name is incorrect and should be spelled Kelley with an "ey". Vote: U/A.

Motion: J.Kelley made the motion to approve the July 21, 2011 minutes. W.Colbath Seconded. Vote: U/A

3. OLD BUSINESS - NONE

4. NEW BUSINESS

- A. * Z 11-16 William Colbath, 70 Silver Street, Tax Map 12, Lot 79, zoned RM-U, appeals an administrative decision by the Zoning Administrator that enforcement action at 70 Silver Street regarding too many dwelling units has been satisfactorily concluded.

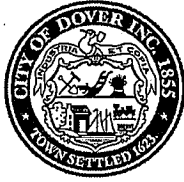
Chair announces that this item will be tabled to next month. There are only two members to consider the case, and there is no quorum. W.Colbath is a board member and cannot vote on this case.

- B. * Z 11-17 FW Webb Co., 218 Knox Marsh Road, Tax Map H, Lot 40B, zoned B-4, (Owners: Eileen E. Cecchetti and Gail Capuccilli), requests a variance from the terms of Article IV, Section 170-11 to allow a warehouse/wholesale distribution use in a commercial district.

Attorney Schulte, represents land owners, approached the podium and advised the Board that the owners asked to table the case until next month.

- C. * Z 11-18 Roland Royer, (Owner: Roland Royer), 14 Royer Lane, Tax Map L, Lot 73C, zoned R-20, requests a variance from the terms of Article IV, Section 170-12, to subdivide a parcel creating a lot with approximately 108' frontage, where 125' is required.

Public hearing opened



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Attorney Tanguay, who represented Roland Royer, spoke to Chris Parker before the meeting that when the notice came out in regards to frontage, he states application states it refers to frontage and lot size – the notice is not correct, however, he wants to move forward as the application submitted is correct. Mr. Royer does not want to postpone. There are two variance requests, to seek subdivision approval to create a 2-lot subdivision, where house lot #15 and #14 are located. Mr. Tanguay states the lots do not have the 20,000 s.f. required. Mr. Royer purchased two lots originally and now wants to subdivide and put them back into original 2-lot configuration where two homes would be on the original plans. A letter was submitted by Mr. McLoan, who has no objection to subdivision. Attorney Tanguay also submitted a letter from Bob McGuire Jr., Trustee of Spectrum Trust, which states he has no problem with the subdivision.

J. Kelley asked about Tax lots as one or two lots. B.Colbath asked about original 1951 plans. There are no plans on file at Registry of Deeds. No prior plans are available.

W.Colbath states the application is to have two non-conforming lots and it should have been advertised as two variance requests.

C.Parker stated the Planning Dept. supports the variance request and the lot sizes and subdivision is consistent with neighborhood lot sizes.

Public hearing closed

Motion: J.Kelley made the motion to grant the Variance, with two conditions:

1. Correct the lot number on the plan, and
2. The front of the new house and driveway have access off Royer Lane, which would be more appropriate.

W.Colbath seconded. Vote: U/A

- D. * Z 11-20 Mast Landing, LLC & Housing Initiatives of N.E. Corporation, (Owner: VC Dover Investments) NH Route 108 & Mast Road, Tax Map H, Lot 4-3, zoned B-4, requests a variance from the terms of Article IV, Section 170-28.2, Section F) 2) a) (i) to allow a non-residential building to be placed 26' feet off the property line where 50' is required.

Public hearing opened

Robert Bell, who represented Mast Landing, LLC & Housing Initiaves of N.E. Corporation, stated the proposed site consists of a mixed use zone combination residential/commercial and nonresidential development. This plan is to build a 60-unit congregate care facility. The proposed site has 30 feet of drop off in elevation, and the building will be built appropriate to land grading to get number of units viable to be successful. Letter submitted from Mr. & Mrs. Scott Torr which supports the application (in file). The Torr's lot is large and has a substantial wooded buffer which is several hundred feet abutting the proposed site.

The Chair asks anyone who is in favor or against this application to speak during the public hearing. No one else spoke.



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Chris Parker states Planning Dept supports the variance request as the building will bring a necessary use to the overall development plan. The spirit intent of the mixed use overlay district is to promote residential and commercial uses for elderly residents that are located within a close proximity. (Letter in file)

J. Kelley asks if there is any consideration from the Torr's to satisfy the project. (letter in file). The Torr's are not interested in selling any land. J.Kelley also asked about the buffer – parking is limited to upper and lower levels and no driveway between the two lots. There is a parking setback and not a pavement setback.

W.Colbath questioned the proposal shown and the land and it was discussed in detail.

Cindy Taylor – explained services, the assisted living complex, and low level services.

Public hearing closed

Board discussion ensued regarding the conceptual plan.

Motion: Jim Kelley move to grant the Variance. W.Colbath seconded. Vote: U/A

E. *Z 11-21 Anne Nichols K9 Kaos Residence/Fast Dogs Realty, 432 Sixth Street, Tax Map E, Lot 32, zoned ETP, requests a variance the terms of Article VIII, Section 170-33, A) to allow a fence to be erected between the right of way (Sixth Street) and the front of a residence, at a height of 6' where 3' is required. Additionally, the applicant requests to place a fence closer to County Farm Road than originally approved by the Planning Board.

Public hearing opened

Anne Nichols spoke about her plan, submitted for the case. W.Colbath expressed deep concern with the initial proposed plan and existing work already done. Craig Poole, owner of land that surrounds the property on Sixth St. spoke regarding his concerns. Mr. Poole stated he has no ill-will towards the owner of the kennel. He said the issue for him was not just the fencing on Sixth St., but deviation from the approved plan. Further discussion by the Zoning Board ensued. W.Colbath had additional issues and concerns regarding ongoing changes to the plan.

After a long discussion, Anne Nichols requested to withdraw her case without prejudice. The Board agreed to allow the withdrawal. She will reapply for the October meeting.

Public hearing closed

5. OTHER BOARD BUSINESS

Operating rules – adopt revised operating rules.

Motion: J.Kelley made the motion to adopt the revised operating rules. W.Colbath seconded. Vote: U/A

6. ADJOURN

Motion: W.Colbath made the motion to adjourn at 9:03 pm. J. Kelley seconded. Vote: U/A

Callaghan
32 Horne Street
Dover, NH 03820

AUG 23 2011

August 23, 2011

City of Dover, New Hampshire
Zoning Board of Adjustment
288 Central Avenue
Dover, NH 03820

RE: Motion for Rehearing

Dear Mr. Chairperson and Members of the ZBA,

We, Richard and Charlene Callaghan (Appellants), respectfully request a rehearing on the Dover Zoning Board of Adjustment's (ZBA) July 21, 2011 decision in the matter of Callaghan v. Dover, NH Zoning Administrator, an administrative appeal to the Dover Zoning Administrator's (ZA) decision regarding the USE of Appellants' 26 Horne Street property (26 HORNE).

A. BACKGROUND

Appellants have owned 26 HORNE since 1976 and have maintained 26 HORNE entirely as a rental property since 1983. 26 HORNE comprises of a BUILDING with two (2) DWELLING UNITS as described in the original Appeal:

BUILDING & USE DESCRIPTION (excerpt, amended by oral presentation)

In DWELLING UNIT A, four (4) individuals rent/share seven (7) ROOMS, four (4) of which are ROOMS for sleeping purposes.

In DWELLING UNIT B, two (2) individuals rent/share four (4) ROOMS, two (2) of which are ROOMS for sleeping purposes.

Included are a kitchen/eating area for each DWELLING UNIT, plus basement personal storage.

Transient tenancy is precluded by a ~ one (1) year is required by lease, which also includes legal and financial obligations between tenants, and the responsibility to obtain and pay for all utilities and optional services for one year which is required for most service activations.

On May 2, 2011, the ZA concluded that the use of 26 HORNE was in violation of the R-12 zoning restrictions because it was being operated by Appellants as a ROOMING HOUSE.

Further, the ZA offered to Appellants that the USE of 26 HORNE could be changed to a compliant USE if leases were administered as the ZA directed.

Appellants filed a timely appeal to the ZA's decision and it was heard before this ZBA on July 21, 2011. The Appellants argued that the written directive from the ZA:

1. is not supported or authorized by Dover Zoning Ordinance (DZO); and
2. does not reflect any reasonable interpretation of the code; and
3. does not have sufficient substantive evidence to support the directive given, and therefore, is an ultra vires action and cannot be enforced.

The ZBA concluded, by a 3/2 vote that the use of 26 HORNE was a ROOMING HOUSE and that the ZA's proposed corrective measures – namely, changing the administration of the rental leases by having multiple signatures on each lease – would make the USE not a ROOMING HOUSE and therefore compliant for the R-12 district.

B. SUMMARY OF MOTION ARGUMENTS

The Appellants hereby file a timely motion for rehearing based on the following arguments:
(Note: newly referenced law and citations are printed in **bold font**.)

- I. The ZBA has failed to provide the Appellants with a written decision which addresses the reasons for disapproval and provides, in detail, a description of how the Appellants may obtain a favorable decision. (NH RSA 676:3)
- II. The ZBA's July 21, 2011 decision was not based on the Undisputed Facts (Section E) and not supported by the record. (*Golf Course Investors of NH, LLC v. Town of Jaffrey*, NH S. Ct., April 12, 2011, Case No. 2010-167.)
- III. The ZBA has failed to address the underlying issue related to the ZA and ZBA having authority to impose upon a property owner a preferred method of administration for lease agreements.

For these reasons, in addition to those set forth in the original Appeal, we request that the ZBA grant this motion for rehearing and reconsider the record in its entirety before making a decision on this matter.

C. ARGUMENTS

- I. *The ZBA has failed to provide the Appellants with a written decision which addresses the reasons for disapproval and provides, in detail, a description of how the Appellants may obtain a favorable decision. (NH RSA 676:3.)*

Pursuant to NH State statute, the ZBA is charged with the duty to hear appeals "taken by any person aggrieved[] by any decision of the [zoning administrator]" concerning the zoning ordinance. (NH RSA 674:33, I(a) and NH RSA 676:5, I.) Such "decision[s] of the [zoning

administrator]” include “any decision involving construction, interpretation or application of the terms of the [zoning] ordinance,” but does not include “a discretionary decision to commence formal or informal enforcement proceedings”. (NH RSA 676:5, II(b).) After the ZBA has heard and decided such appeals, the minutes of the meeting together with a copy of the *written decision containing the reasons* shall be placed on file in the board’s office and available for public inspection within 5 business days of the vote. (NH RSA 676:3, II (*emphasis added*).) Additionally, under NH RSA 676:3, the ZBA’s written decision must, in detail, describe how the Appellants may obtain a favorable decision.

While the minutes of the meeting were dated as posted July 25, 2011 they were not available online until sometime thereafter, the Appellants have yet to be provided a copy of the *written decision containing the reasons* for the ZBA’s July 21, 2011 decision and answering the questions presented by the applicant.

Furthermore, the NH Supreme Court has noted that:

Although disclosure of specific findings of fact by a board of adjustment may often facilitate judicial review, the absence of findings, at least where there is no request therefore, is not in and of itself error. (*Thomas v. Town of Hooksett*, 153, N.H. 717 (2006), *citing, Pappas v. City of Manchester Zoning Board*, 117 N.H. 622, 625 (1977).)

Under this reasoning, because Appellants repeatedly requested specific findings of facts, both via the written appeal and oral presentation, which were not addressed by the ZBA, the ZBA may be found to have erred.

The Appellants have made repeated requests throughout this zoning process for information to support not only the ZA’s directive, but also now the ZBA decision. No such directly enforceable information has been provided with respect to the ZA’s finding that 26 HORNE is being used as a ROOMING HOUSE, nor has any information been provided to support the ZA’s and ZBA’s authority to direct Appellants regarding the administration of their lease agreements at 26 HORNE.

For these reasons, the ZBA has erred by not properly informing the Appellants of the reasons and corrections with respect to its July 21, 2011 decision.

- II. *The ZBA’s July 21, 2011 decision was not based on the undisputed facts and not supported by the record. (Golf Course Investors of NH, LLC v. Town of Jaffrey, NH S. Ct., April 12, 2011, Case No. 2010-167.)*

In *Golf Course Investors*, the Court affirmed the trial court’s decision to overturn the ZBA decision because the ZBA decision was not based on the record. Specifically, the Court notes that the ZBA “neither rendered factual findings nor resolved any factual disputes, either implicitly or explicitly.” (*Id.*) Furthermore, the Court concluded that “the trial court did not err when it conducted a *de novo* review to determine as a matter of law whether the undisputed facts

in the record could support [the ZBA's finding]." (*Id.*) Under this reasoning, the Dover ZBA's decision on July 21, 2011 is in error because it is not supported by the record. Appellants have provided the ZBA with substantial information which was further supported by statements from the ZBA Chair at the hearing (Audio Recording Time) (ART 00:39:21.) – namely, that the use of 26 HORNE is not a rooming house based on the DZO definition of a "ROOMING HOUSE":

ROOMING HOUSE means any BUILDING in which not more than five (5) ROOMs are rented to not more than ten (10) persons, said ROOMs being for a sleeping purpose for compensation.

Furthermore, the Appellant's justification that the use of 26 HORNE is not a rooming house is supported by the NH Supreme Court's decision in *Keene v. Blood*, 101 N.H. 466 (1958), where the Court debated the issue of what constitutes a rooming house vs an apartment. The Court concluded that:

"Generally speaking, however, the rooming-house proprietor furnishes bedrooms or sleeping accommodations, used principally as a place to rest, sleep, for toilet and dressing. A rooming house is usually a house where bedrooms, as such, are furnished. It is not ordinarily expected that housekeeping, light or heavy, or the preparation or enjoyment of meals, will take place there, or that the room will be used to any considerable extent as a sitting room. An apartment, however, is usually looked upon as a home. It may consist of a single main room; but its term implies that housekeeping, including necessary accumulation and preparation of food, and cooking, will be conducted there." (*Id.*, citing *Cedar Rapids I. Co. v. Commodore H. Co.*, 205 Iowa 736, 740; *Evans v. Roth*, 356 Mo. 237; *Sitzler v. Lathers* (App. Div.) 229 N. Y. S. 47.)

This distinction, with respect to furnishing of rooms, is precisely what Appellants and the ZBA Chair (ART 01:24:00) have indicated distinguish the use at 26 HORNE as an apartment rather than a rooming house. Furthermore, this conclusion by the Court supports the Appellants' argument that the use of a property, with respect to a rooming house, is not determined by the administration of the lease agreements associated with that property.

The ZA has put forth several definitions from various states and municipalities which he has relied on to interpret the Dover Zoning Ordinance (DZO) with respect to the definition of "ROOMING HOUSE". However, none of these sources have direct (or indirect) applicability to the municipality in question: Dover, NH. Appellants have referenced several applicable codes and ordinances which may be construed together to clarify the DZO definition of "ROOMING HOUSE", if it is deemed unclear as written in the DZO, and determine that 26 HORNE is not operated in such a manor.

For these reasons, Appellants believe that the ZBA erred by not arriving at a decision which could be supported by the record. Upon second review of the record, including the NH Supreme Court case cited above and the oral presentation, the Appellants respectfully request that the

ZBA find that 26 HORNE is not being operated as a rooming house and is, therefore, not in violation of the R-12 zoning.

III. The ZBA has failed to address the underlying issue related to the ZA and ZBA having authority to impose upon a property owner a preferred method of administration for lease agreements.

"[S]ince the power of a [municipal] agency is derived from the state enabling act, a condition may be imposed only if it is authorized by statute.... [A]bsent a legislative grant, an attempt to exercise such authority is ultra vires and void." 83 AM. JUR. 2d *Zoning and Planning* § 562, at 450 (1992) (footnotes omitted).

The Dover ZA is charged with the interpretation and enforcement of the DZO, comprising Chapter 170 of the Dover, NH Code. (Chapter 170-47.) In such a role, the ZA is subject to the "interpretation clause" of the DZO, Chapter 170-4, which states:

[t]he provisions of this chapter shall be interpreted to be the minimum requirements adopted for the promotion of the health, safety, morals and the general welfare of the City of Dover. The provisions of this chapter are not intended to repeal or in any way impair or negate any other lawfully adopted ordinance, regulation or rule. Whenever the regulations made under the authority hereof differ from those prescribed by any ordinance or regulation, that provision which imposes the greater restriction shall govern.

This "interpretation clause" implies that the DZO should be construed with "any other lawfully adopted ordinance, regulation or rule[.]" such as those provided by Appellants in the original Appeal. Based on the motivation for the DZO – "the promotion of health, safety, morals and the general welfare of [Dover]" – it would seem appropriate to interpret the DZO in accordance with building and life safety codes, for example, that have been adopted by the City of Dover and/or the State of New Hampshire, as applicable to 26 HORNE. As noted above, the ZA did not rely on any of these relevant sources, but instead looked to and interpreted the DZO in conjunction with other municipal zoning ordinances which have no present bearing on or relationship to the DZO. Furthermore, this exercise by the ZA has still failed to provide substantive authority which allows either the ZA or the ZBA to direct the administration of a property owner's lease agreements.

Moreover, under Chapter 170-52, the ZBA is also charged with interpretation and enforcement of the DZO while being similarly subject to the above identified "interpretation clause". In its July 21, 2011 decision that not only was 26 HORNE being used as a rooming house, but that it could be brought into compliance by simply changing the administration of lease agreements, as recommended by the ZA, the ZBA failed to identify, upon request from Appellants, the authority under which the decision was made.

In fact, nothing in the record presented by the ZA or the ZBA indicates that either have the authority to direct the administration of a property owner's lease agreements. The DZO is silent with respect to lease agreements and their administration. Additionally, the ZBA Chair notes that the signing of a lease agreement, regardless of its format, does not change the use of the leased property (ART 01:24:00). Consequently, the ZA's proposed corrective measure is ineffective to resolve his finding that 26 HORNE is used as a rooming house.

Therefore, the ZBA has not properly addressed the underlying authority issue with respect to lease administration. Appellants request that the ZBA, upon review of the record, find that the ZA does not have the authority to direct how leases are administered or to use such as presumed authority to change the use of a property.

D. CONCLUSIONS

For the above articulated reasons, the Appellants respectfully request that the ZBA rehear this appeal and, on consideration of the full record before it, conclude:

1. that the ZBA has not properly provided the Appellants with a written notice of its July 21, 2011 decision; and
2. that the ZBA has not addressed or included any of the undisputed facts, which would by application, overrule the directive of the ZA; and
3. that 26 HORNE cannot qualify as a ROOMING HOUSE, and therefore not in violation of R-12 zoning as found by the ZA; and
4. that the ZA's directive regarding lease administration was beyond his scope of authority, therefore unauthorized, and the ZBA erred by supporting the ZA's directive; and
5. that the administration of a property owner's lease agreements, whereby who signs the lease, can change the USE of the leased property.

E. UNDISPUTED FACTS

Callaghan "The ZA has not addressed many of our arguments in his Staff Memo or in any other correspondence or deliberation, therefore we assume the ZA is in agreement with our arguments that were not addressed." (ART 0:19:10)

From the Appeal to an Administrative Decision

1. Applicability:
 1. The USE of 26 HORNE cannot be deemed a ROOMING HOUSE under the current DZO, as it is grandfathered under the APPLICABILITY clause in the 1987 amendments.
 2. The burden of proof with respect to the compliance of 26 HORNE prior to 1987 has shifted to the enforcing authority because it's unreasonable to expect the Appellant to have knowledge of compliance without having access to the necessary relevant code.
2. Dwelling Structure:
 1. 26 HORNE is not a MOBILE HOME

2. This term is inapplicable and unenforceable as it is not defined in the DZO

3. Rooming House:

1. 26 HORNE does not meet the definition of a ROOMING HOUSE under the DZO because it exceeds the number of ROOMS, as written in the definition, i.e., 26 HORNE contains six (6) ROOMS for sleeping purposes.
2. 26 HORNE does not meet the definition of a ROOMING HOUSE under the DZO because the total number of ROOMS rented are not intended solely for sleeping purposes, i.e., each DWELLING UNIT also contains rooms for eating and cooking, as well as common living areas

4. Interpretation:

According to NH RSA, when applying the language of the ordinance, the DZA may not make a decision on a discretionary basis, but must be based on a strict interpretation of the terms of the ordinance.

5. Application of NH RSA:

1. 26 HORNE is not a ROOMING HOUSE, as it is distinguished by the NH RSA and, instead, find that 26 HORNE meets the definition of a RENTAL UNIT under the NH RSA.
2. The definition of TENANT or TENANCY under the NH RSA exempts "rooming or boarding houses which are rented to transient guests for fewer than 90 consecutive days," ROOMING HOUSES are those which are rented to transient guests for fewer than 90 consecutive days. The Appellant further proposes that, based on the definition of TENANT or TENANCY, occupants which rent for longer than 90 days are considered non-transient.
3. 26 HORNE is not a ROOMING HOUSE, in consideration of the definitions established under NFPA Code 1, because it qualifies as a TWO-FAMILY DWELLING

6. Application of Dover Housing Code:

1. The Dover NH Housing Code does not explicitly define a ROOMING HOUSE, its ~~definition of ROOMING UNIT may be applied analogously because a ROOMING~~ UNIT, similar to a ROOMING HOUSE, does not permit rooms for cooking or eating purposes.
2. The Dover NH Housing Code definition of DWELLING UNIT is analogous to the DZO because the rooms for cooking and eating purposes under the DZO can be considered analogous to "housekeeping facilities" under the Dover NH Housing Code.
3. 26 HORNE does not comprise any ROOMING UNITS because the physical characteristics of 26 HORNE comprise rooms for cooking and eating purposes, which are prohibited from ROOMING UNITS under the Dover NH Housing Code, and instead constitute two (2) DWELLING UNITS. Consequently, the Appellant also requests that the ZBA agree that 26 HORNE is not a ROOMING HOUSE.

7. Rental of Common Space:

1. The language “but you cannot rent individual rooms with common space to renters”, or similar words or variants, is not found in DZO and, therefore, cannot be enforced.
 2. The DZA’s directive with respect to the renting of “individual rooms with common space to renters” is unsubstantiated and, therefore, unenforceable.
8. DZA Authority:
1. Nothing in the DZO addresses or directs the administration of lease agreements, thereby not providing the DZA with the authority to make such directives.
 2. The directives of the DZA with respect to lease administrations are beyond the power of the DZA and cannot be enforced.
 3. The DZA’s written directive to have separate leases for each unit is arbitrary and an ultra vires action...

Respectfully,



Richard Callaghan



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT – STAFF MEMO (Z11-19 & 22)

Application Type: Dimensional & expansion Variance and Special Exception
Applicant(s): Lasssel Architects
Owner(s): Elizabeth Pettiford & Ron Pfeiffer
Location: 10 Summer Street, (Tax Map 12, Lot 22)

INTENT: To obtain a dimensional and expansion Variance to construct an addition to the Wadleigh House elderly assisted living facility where lot size (9068 sq.ft where 10,000 sq. ft. is required), lot coverage (50.5% where 40% is the maximum) and setbacks (2 ft. 10 in. and 8 ft. 6.5 in. on the side where 10 ft is required and 3 ft. 7.25 in. in the rear where 15 ft. is required) aren't met, and approval of an enlargement of a non-conforming structure. The second request is a special exception application to increase the number of residents and bedrooms within the existing home.

LOTS/UNITS PROPOSED: up to eight new residents (beds) in four new bedrooms

AGENDA ITEM #: 4-A & B

ZONING DISTRICT: RM-U

EXISTING LAND USE: Elderly Assisted Care

PROPOSED LAND USE:
Elderly Assisted Care

SURROUNDING LAND USE: single family dwelling

PREVIOUS ZBA ACTION: Variances and Special Exceptions granted in 2003 and 2009

PLANNING BOARD APPROVAL REQUIRED: Yes

ATTACHMENTS: March 20, 2003 and May 20, 2010 ZBA Minutes (Excerpt)

APPLICATION IS COMPLETE: Yes, pending some notice/abutter fees (update at meeting)

NOTICES AS REQUIRED: Yes

STAFF RECOMMENDATION:
The Planning Department supports the Variance but does not voice the same level of

support for the Special Exception request.

Summary of Request and Background

The applicant's property is located on the south side of Summer Street, and has operated as an Elderly Assisted Care Facility for many years. In 2003 the owner received a variance to exceed the maximum lot coverage of 40% by 2%. At the same time the owner was granted a Special Exception to allow up to 18 residents to live within the expanded facility.

That expansion was not begun. In 2009, the Board reaffirmed the original Variance, which expired as it had not been acted upon in the four (4) year period allowed for in Chapter 170 ((Section 52 C) 4)). The owners are now reappearing to request that they be allowed to construct a facility that exceeds the maximum lot coverage by 10.5%, and are seeking to have up to 24 residents.

Reason for Staff Recommendation

Staff believes that the requested Variance should be granted as the building will be expanded in a more thoughtful and meaningful manner which will better serve the residents and will be more aware of life safety needs and concerns. However, the 2003 Special Exception was granted with a condition that stated, "The number of residents shall never exceed 18". This is pretty clear and staff believes that as it was the same owner, there should be no ambiguity.

In reviewing the minutes from the March 20, 2003 ZBA meeting, there was concern about the number of residents in the structure even with expansion. Concerns focused on livability and comfort for the residents, both in the residence and without. Additionally, a condition was placed that the shed on the property was to be removed. This condition was subsequently removed in 2009 by the Zoning Board. If the applicant or his representative can clearly show and/or explain that the number of bedrooms/beds requested in the addition will be an improvement to the quality of life and comfort for all the residents, then staff would feel more comfortable with a positive recommendation as to the proposed increase.

Recommendation

The Planning Department recommends the Zoning Board hold the public hearing, and approve the Variance, but deny the Special Exception absent concise evidence (such as data comparing the before and after square footage per resident by personal space and by common space) showing improvement in living area, safety and comfort amenities.

March 20, 2003
28 Minutes

FINDINGS OF FACT

1. It is the Board's **CONCLUSION** that, if the applicant complies with the strict letter of the ordinance, he/she does face an unnecessary hardship. This **CONCLUSION** is based on the following **FINDINGS OF FACT**: The Zoning Ordinance provides for permanent change and this request is for a temporary use.

2. It is the Board's **CONCLUSION** that, if granted, the variance will deliver substantial justice. This **CONCLUSION** is based on the following **FINDINGS OF FACT**: It will allow the property owner to use his land in a reasonable manor, which will be consistent with zoning.

3. It is the Board's **CONCLUSION** that, if granted, the variance will be in harmony with the spirit and intent of the zoning ordinance. The **CONCLUSION** is based on the following **FINDINGS OF FACT**: The spirit and intent is to limit one residence per lot and this application provides for that.

4. It is the Board's **CONCLUSION** that, if granted, the variance will not result in a diminution in value of surrounding properties. This **CONCLUSION** is based on the following **FINDINGS OF FACT**: This is only a temporary use and the new/final change will be an improvement.

5. It is the Board's **CONCLUSION** that, if granted, the variance will not be contrary to the public interest. This **CONCLUSION** is based on the following **FINDINGS OF FACT**: The new structure will improve the neighborhood appearance.

THEREFORE, based upon the foregoing, **IT IS ORDERED** that the application for the Z 03-3 Edward Heaphy, Leighton Road, a/k/a Assessor's Map 8, Lot 25-B, requests a variance from the terms of Article II, Section 170-6, definition of "Lot" to construct/install a second principal building (single family dwelling) on a lot be **GRANTED**. Motion: Corte made the motion for the following conditions: (1) Upon completion and occupancy permit for the relocated house, the original house shall be vacated within 30-days. (2) The original house shall be removed within 6 months of the relocated house occupancy. Cummings seconded the motion. Vote U/A.

8:17 PM, Colbath called for a five-minute recess.

* Z 03-5 Elizabeth and Ronald Pfeiffer, 10 Summer Street, a/k/a Assessor's Map 12, Lot 22, zoned RM-10 requests: 1) a variance from the terms of Article V, Section 170-16 to construct an addition that would result in 42% lot coverage where a maximum of 40% is allowed; and (2) a special exception under the terms of Article VI, Section 170-25.3 to increase the number of residents and bedrooms within an Elderly Assisted Care Home.

Colbath resumed as Chairperson. Tom Dolbec stepped down due to a conflict of interest.

Attorney Bill Tanguay, of McNeil Taylor and Gallo, was present to speak on behalf of the applicant. He stated that he understands that there are only 4 voting members present to vote on the request, and they wish to proceed with their request. He stated that by proceeding tonight,

2305, 06 Nov 1971
2 sketches AS

the board gets their first opportunity to deal with the newly enacted Elderly Assisted Care portion of the Dover ordinance and the special exception that is contained therein. The applicants own and operate the Wadley house, which is an elderly assisted living facility on Summer Street here in Dover. He stated that there are 12 elderly people living in the house. He stated that the Pfeiffer's have had this house for 7 years and over that time they have come to realize the difficulties of operating this type of facility for elderly assisted living. He stated that when they first came to Dover 7 years ago, there was very little flexibility in the Zoning Ordinance with regard to elderly housing, there was nothing in the ordinance to recognize the unusual characteristics that are required for elderly folk to live. He stated that they are the only facility in Dover that is doing what they are doing. He stated that they are a small assisted living facility, adding that everything else in Dover is much bigger, mentioning the Wentworth Home, and a boxy facility that is outside of town.

He stated that right across the street from this property is the back yard to the Woodman Institute, which for a lot of elderly folk provides them with a great deal of connection to the City and the history of the City. He stated that clearly and appropriately the City appreciated the growing need for elderly assisted housing, and appreciated the difficulties of the existing Zoning Ordinance, which was trying to make one size fit all that just did not work. He stated that a committee was formed out of the Planning Board, which was called the Quality Of Life committee, and that was formed to study that particular need in Dover. Tanguay stated that out of that committee came the amended Zoning Ordinance, which allows through the use of a special exception, to increase the number that would normally be required. He stated that there are 12 elderly people residing at the facility at this time, however, they have been approved by the State for a total of 15 elderly persons. He stated that they are looking to expand to have 18 people in the facility and expand the dining room, and add a new common room. He went through the 3 requirements for a special exception and gave 3 reasons why it should be approved. He stated that this type of housing is desirable and needed. He stated that the residents do not have cars parked on the facility. He stated that this expansion would not overload the public utilities as the elderly take baths and limited showers. He stated that the increase is not detrimental to the surrounding properties. He stated that there is no one present to speak against this request. He stated that another requirement within the ordinance is that it conforms to the parking standard, which it did not until we went before the Planning Board, who granted them relief. He added that part of the way that was worked out was a condition that none of the residents that live there have cars. He stated that the last requirement is that the increase must be contained within or contiguous to the original structure, which it is. He stated that the facility as it currently exists is approved for 15 beds, where the City Ordinance talks about 12 as being the maximum, so in the very short term, the owners need a special exception from the board to allow 15 beds. He stated that they also proposed to add to the property. He handed out 2 sketches to the board, one of the outside of the building, and one of the new construction.

He stated that they would like to expand the facility to 18 beds and they want a special exception in order to do that. He stated that the dining area will be increased, and a great room will be created, as well as a bathroom and a set of stairs with a lift for the elderly residents. He stated that Phil Kindrick is the Architect and is present to answer any questions the board may have. He stated that one of their options is to go up, but they feel that that is not what is appropriate or needed. He stated that the spirit in the change in the ordinance was to help encourage this type

of facility, not to discourage it. He stated that to do this expansion they would be covering 42% of the lot, where the ordinance requires a maximum of 40% coverage. He stated that they do not believe that a variance is necessary, as the special exception ordinance as drafted gives this board the flexibility to do what is necessary in order to promote and encourage this type of housing. He stated that there are special exception standards as set forth, and they believe that if they meet those standards, they don't need a variance, however, he went through the requirements for the variance to be granted. He stated that the variance won't be contrary to the public interest as there is a new ordinance in place, and the purpose of the ordinance is to encourage elderly assisted housing, so in order to do that, they cannot be contrary to public interest.

He stated that the variance will be in harmony with the spirit and intent of the zoning ordinance, as the intent of the ordinance is to encourage this type of housing, and their request is consistent with their efforts to promote this kind of housing that makes sense. He referenced a court case which resulted in a decision which stated: Hence forth applicants for a variance may establish unnecessary hardship by proof that a zoning restriction as applied to their property interferes with their reasonable use of the property considering the unique setting of the property in it's environment.

Tanguay stated that applicant's no longer have to show that they are denied all the reasonable use of their property, but rather the new standard is that the applicant request a reasonable use of their property given what and where it is. He stated that the property blends in with the neighborhood, and will continue to after this is done. He stated that he is asking the board to take the first bite at recognizing and implementing the special exception component of the ordinance to do three things. (1) Grant the special exception for the property as it currently exists to have 15 beds. (2) Grant the special exception for 18 beds with the proposed expansion. (3) He stated that he does not believe that the board needs to grant a variance, but if it is required, they are asking the board to grant that variance for all of the reasons that he has set forth.

Phil Kindrick, Architect, went through the expansion with the board explaining the 2% over the allowed 40% coverage.

Callahan asked how many residents eat in the dining room. Mrs. Pfeiffer stated that they could fit about 14-15 people however it is a little tight. Kindrick stated that with the expansion they would be able to feed all of the 18 residents. Callahan asked what the total square footage of the dining room as expanded would be. Kindrick stated 377 square feet. Mrs. Pfeiffer stated that it is impossible financially for them to continue on with the 12 residents as everything has gone up like staffing and insurances, etc. She stated that they have tried to provide a quality home for people. She stated that their staff members have been there for long periods of time, and they try to give them competitive salaries and offer them insurance and vacation time. She stated that she has been a registered nurse for 35 years, and this is her life's work, and she loves what she does, and she feels that this is a great service to the community.

Parker asked if in the reconfiguration, the room that is currently the living room and the room next to it are going to become bedrooms? Mrs. Pfeiffer stated that that was a possibility. Parker asked if there was going to be new bedrooms on the second floor. Mrs. Pfeiffer stated yes. Parker stated that they understand that they do not want to build up, creating a third floor, but over the current living room, and the room adjacent to it, wouldn't it be possible to put a room on the second floor there? Kindrick stated that the current setback runs right threw the end of the living room. Parker asked if there was any reason why they could not remove the shed, as the

applicant is 180 square feet over the amount allowed, the shed is 73 square feet, so that would bring the amount over down to 41%. He asked if they could remove the shed and shave some off of the new addition. Mrs. Pfeiffer stated that the people that are currently on the second floor are doing pretty good, but there may become a time that they cannot go up the stairs anymore, and what does she tell them, that they have find another home. Parker asked what would happen to the library. Mrs. Pfeiffer stated that it would become a bedroom. Parker asked about the lift, as he did not see it on the plans. Kindrick stated that it is a chair lift that attaches to the chair rail.

Mr. Pfeiffer stated that he has had to turn away 150-200 in the past seven years. He stated that his neighbors are for the expansion. He stated that he is willing to tear the shed down. Corte asked how many parking spaces there were on the property. Tanguay stated that there are 6 spaces according to the Planning Board. Cummings asked what the total number of cars there are between the staff and residents on the average. Mrs. Pfeiffer stated that there are about 3-4 cars at the property daily. She stated that most family members come to visit for maybe an hour or so, or take their family member out to lunch. Tanguay stated that people come to take the residents out, as the residents are not bed ridden, and that St. Joes allows for overflow.

Callahan clarified that they currently have 12 people residing at the property, but they have been approved for 15 residents by the State.

Mrs. Pfeiffer stated that they have been approved by the State office of the Elderly and Adult Services. She stated that they take into consideration the size of the home, square footage etc. Clark went through the three approvals in 1997 and 1998 that the owners have had in the past for the property.

Callahan stated that the occupancy level is still conditional upon the expansion, adding that if the board does not give approval for the variance for the space determination they cannot get approval from the State for additional people. Callahan stated his concern is that if they approve the expansion of this building, which may not be necessary. He stated that if we approve all of this room, we are not really making a better quality of life for these individuals. He stated that what could happen later on down the road is they could say now we have the space, and go to the State for approval for 22 people, and then they come back to us for a variance as they were approved from the State for more residents. Colbath stated that he believes that there is more of a regulation involved rather than the number and size of bedrooms. Callahan stated that he would like to see the regulations on how the number of residents is determined, and the occupancy level as determined by the State with this expansion. Tanguay stated that they are looking for a maximum of 18 residents and they will stipulate that.

Motion: Callahan made the motion to accept the case. Corte seconded the motion. Vote: U/A.

PUBLIC HEARING OPENED

There was no one present to speak for or against the case.

PUBLIC HEARING CLOSED

Parker stated that the Planning Department is in favor for the special exception, but not the variance, as they do have second floor options, and they are willing to give up the shed. He stated that the neighborhood is at 23.49 %; they are at 33% now, and asking to go to 42%.

There was some discussion.

They board moved to the Findings of Fact.

FINDINGS OF FACT

1. It is the Board's **CONCLUSION** that, if the applicant complies with the strict letter of the ordinance, he/she does face an unnecessary hardship. This **CONCLUSION** is based on the following **FINDINGS OF FACT**: The Zoning Ordinance provides for permanent change and this request is for a temporary use.
2. It is the Board's **CONCLUSION** that, if granted, the variance will deliver substantial justice. This **CONCLUSION** is based on the following **FINDINGS OF FACT**: The ordinance unnecessarily restricts the use of the property to provide a pressing social need.
3. It is the Board's **CONCLUSION** that, if granted, the variance will be in harmony with the spirit and intent of the zoning ordinance. The **CONCLUSION** is based on the following **FINDINGS OF FACT**: Allow reasonable expansion for space to accommodate the needs of residents for quality of life.
4. It is the Board's **CONCLUSION** that, if granted, the variance will not result in a diminution in value of surrounding properties. This **CONCLUSION** is based on the following **FINDINGS OF FACT**: There was no evidence presented.
5. It is the Board's **CONCLUSION** that, if granted, the variance will not be contrary to the public interest. This **CONCLUSION** is based on the following **FINDINGS OF FACT**: This will be a benefit to the public by providing needed service expansion and increased quality of life for residents.

THEREFORE, based upon the foregoing, **IT IS ORDERED** that the application for the Z 02-5 Elizabeth and Ronald Pfeiffer, 10 Summer Street, a/k/a Assessor's Map 12, Lot 22, zoned RM-10 requests: ~~1) a variance from the terms of Article V, Section 170-16 to construct an addition that would result in 42% lot coverage where a maximum of 40% is allowed; and (2) a special exception under the terms of Article VI, Section 170-25.3 to increase the number of residents and bedrooms within an Elderly Assisted Care Home~~ be **GRANTED** with the following conditions: (1) The shed will be removed and not replaced. (2) The number of residents shall never exceed 18. **Vote U/A.**

Motion: Callahan made the motion to table the case. Corte seconded the motion.
Vote U/A.

The board now had to vote on the special exception.

Clark stated that water and sewer was not an issue as the home has an acceptable size service. Colbath stated that the parking has been addressed so that is not an issue. He stated that the health, human services, and City services have been addressed.

Motion: Callahan made the motion to approve the Special Exception. Dolbec seconded the motion. Vote U/A. Condition: The number of residents in that facility is limited to 18 forever.

Motion to adjourn at 10:00 by Colbath, and seconded by Mullan. Vote 5-0.

Respectfully submitted,

Jamie Nye

Jamie Nye
Secretary



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

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

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

Findings of Fact:

1. Did the Applicant provide proof that demonstrates the variance will not be contrary to the public interest? Yes. Other storage in the area, site is set back from road and ready market with 280 residential units.
2. Did the Applicant provide proof that demonstrates how a variance observes the spirit of the ordinance? Yes. Mostly in B-4 (allowed use) for RM-SU – it is an accessory use. Arbitrary zoning line in the middle of the lot.
3. Did the Applicant provide proof that demonstrates how a variance will result in substantial justice? Yes. Additional storage for existing units.
4. Did the Applicant provide proof that demonstrates the variance will not diminish the values of surrounding properties? Yes. Other storage units in the area.
- 5A. The Applicant was to provide proof that literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. (i) Did the Applicant demonstrate that special conditions of the property exist that distinguish it from other properties in the area? Yes. Two utility easements, conservation easement and wetlands. (ii) Did the Applicant demonstrate that no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property? Yes. Location of zoning boundary. (iii) Did the applicant demonstrate that the proposed use is a reasonable one? Yes. Accessory use possibilities and similar neighboring use.

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

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

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

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

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

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



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

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

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

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

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

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

Findings of Fact:

1. Did the Applicant provide proof that demonstrates the variance will not be contrary to the public interest? Yes. Allows care facility to better serve the elderly population.
2. Did the Applicant provide proof that demonstrates how a variance observes the spirit of the ordinance? Yes. 2% minimal intrusion doesn't significantly impact congestion.
3. Did the Applicant provide proof that demonstrates how a variance will result in substantial justice? Yes. Allows for better facility with additional capacity.
4. Did the Applicant provide proof that demonstrates the variance will not diminish the values of surrounding properties? Yes. Minimal intrusion and neighboring properties are similarly congested.
- 5A. The Applicant was to provide proof that literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. (i) Did the Applicant demonstrate that special conditions of the property exist that distinguish it from other properties in the area? Yes. The use – need more interior space and very small lot. (ii) Did the Applicant demonstrate that no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property? Yes. Similar congestion and minimal intrusion (iii) Did the applicant demonstrate that the proposed use is a reasonable one? Yes. Existing use.

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

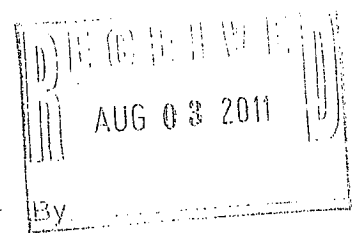
Motion: B.Colbath made the motion to approve the variance request. S.Reid seconded. Vote: Unanimous Approval.

Sam Reid stated that he is stepping down.

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

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

CASE # 711-19 DATE RECEIVED 8/3/11
 AMOUNT PAID \$ 324 TIME RECEIVED _____



**CITY OF DOVER
 ZONING BOARD OF ADJUSTMENT
 APPLICATION**

I. APPLICANT LASSEL ARCHITECTS PHONE #: (207)384-2049
 ADDRESS 370 MAIN ST/P.O. BOX 370, SOUTH BERWICK, ME 03908
 PROPERTY OWNER ELIZABETH PETTIFORD AND RON PFEIFFER
 ADDRESS 10 SUMMER STREET, DOVER, NH 03820
 PROPERTY LOCATION 10 SUMMER STREET, DOVER, NH
 BRIEF DIRECTIONS TAKE CENTRAL AVE. SOUTH FROM CITY HALL,
TAKE RIGHT ONTO SUMMER STREET (BY WOODMAN INSTITUTE)
 ZONE RMU ASSESSOR'S MAP 12 LOT #(S) 22

TYPE OF APPEAL: (Please check off one)

- | | | |
|--|-------------------|-------------------------|
| <input checked="" type="checkbox"/> VARIANCE | ARTICLE <u>IV</u> | SECTION <u>170-12.B</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: WADLEIGH HOUSE - PROVIDE A NEW
ADDITION WITH BEDROOMS AND MORE FUNCTIONAL LIVING ROOM
AND DINING SPACE. THE BEDROOM ADDITION WILL BE FIRE SEPARATED.
THE KITCHEN WILL BE RELOCATED AND UPGRADED. TWO NEW MEANS
OF EGRESS WILL BE PROVIDED FROM THE BUILDING FOR A SAFER
ENVIRONMENT ALONG WITH THE INSTALLATION OF AN ELEVATOR FOR
HANDICAP ACCESS BETWEEN FLOORS.

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 | \$ <u>100.00</u> |
| \$25.00 APPEAL FROM ADMINISTRATIVE DECISION | \$ <u>-</u> |
| \$100.00 EQUITABLE WAIVER | \$ <u>-</u> |
- D. Certified letters fee:
- | | |
|---------------------------------------|------------------|
| # of abutters <u>6</u> X \$8.00 = | \$ <u>48.00</u> |
| Applicant & Owner <u>2</u> X \$8.00 = | \$ <u>16.00</u> |
| Foster's newspaper public notice | \$ <u>60.00</u> |
| TOTAL | \$ <u>324.00</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.

THE ADDITION WILL PROVIDE 4 NEW BEDROOMS ALLOWING FOR ADDITIONAL RESIDENTS TO BE CARED FOR HERE. RENOVATION WORK WILL PROVIDE CODE COMPLIANT KITCHEN, EGRESS AND BASEMENT ACCESS. THE LAYOUT IS CONSISTENT WITH OTHER PROPERTIES IN THE AREA.

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

THE RENOVATIONS AND ADDITIONS WILL MAKE THE BUILDING SAFER FOR CURRENT RESIDENTS AND PROVIDE SPACE FOR NEW RESIDENTS (A GROWING COMMUNITY NEED). THE DESIGN IS CONSISTENT WITH BUILDING TYPES AND FORMS IN THE NEIGHBORHOOD.

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

THE VARIANCE WILL ALLOW WADLEIGH HOUSE TO REMAIN A VIABLE RESIDENCE AND COMMUNITY MEMBER. THE PROPOSED WORK WILL CREATE A MUCH SAFER FACILITY.

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

THE WORK WILL INCREASE THE VALUE OF THE PROPERTY. THE USE WILL REMAIN THE SAME AS IT HAS BEEN FOR MANY YEARS.

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

DOWNTOWN ASSISTED LIVING FACILITY UNIQUE TO DOVER

(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

THIS IS AN ALLOWED USE IN THIS ZONE

(iii) the proposed use is a reasonable one.

THE USE WILL REMAIN THE SAME (ASSISTED LIVING).

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.

ASSISTED LIVING IS A NEEDED ASSET IN OUR COMMUNITY. THIS FACILITY PROVIDES CARE WITHIN THE URBAN CORE OF THE COMMUNITY, WHICH IS CONSISTANT WITH THE MASTER PLAN. A VARIANCE WAS GRANTED IN 2003 FOR AN ADDITION TO THE MAIN ENTRY SIDE OF THE HOUSE AND TO ALLOW UP TO 12 BEDROOMS AND ADDITIONAL LOT COVERAGE. THIS VARIANCE WAS RENEWED IN MAY OF 2010.

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

THE CURRENT RESIDENTS DO NOT DRIVE AND (2) OF THE PARKING SPACES ARE BEING REMOVED. PARKING IS TYPICALLY USED BY STAFF AND VISITORS, LARGELY DURING THE DAYTIME WHEN STREET PARKING IS AVAILABLE.

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.

THE PROJECT PROVIDES NO MORE THAN 6-8 NEW BEDS WHICH WOULD BE A MINOR IMPACT ON THE EXISTING PUBLIC SERVICES.

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

Ronald Pfeiffer Elizabeth Lestford
Signature of Applicant*

Ronald Pfeiffer Elizabeth Lestford
Signature of Owner*

*Both Signatures Required

<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>	
_____ Signature of Applicant	_____ Date



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT – ABUTTER NOTICE

Meeting Type: Regular Meeting
 Meeting Location: Council Chambers – 288 Central Avenue, Dover, NH
 Location: 03820
 Meeting Date: Thursday, September 15, 2011
 Meeting Time: 7:00 pm

INTENT: To obtain a dimensional and expansion Variance to construct an addition to the Wadleigh House elderly assisted living facility where lot size (9068 sq.ft where 10,000 sq. ft. is required), lot coverage (50% where 40% is the maximum) and setbacks (2 ft. 10 in. and 8 ft. 6.5 in. on the side where 10 ft is required and 3 ft. 7.25 in. in the rear where 15 ft. is required) do not meet the minimums required by the Table of Uses & Dimensional Requirements and from Article X, Section 170-41 A, enlargement of a non-conforming structure.

LOTS/UNITS PROPOSED: N/A

AGENDA ITEM #: 4-A

ZONING DISTRICT: RM-U

FILE: Z11-19

APPLICANT(S): Lasssel Architects

OWNER(S): Elizabeth Pettiford & Ron Pfeiffer.

LOCATION: 10 Summer Street, (Tax Map 12, Lot 22)

ACREAGE: 9,068 Sq. Ft. or 0.23 acre

EXISTING LAND USE: Elderly Assisted Care

PROPOSED LAND USE: Elderly Assisted Care

SURROUNDING LAND USE: single family & multi-family dwelling

ZONING HISTORY: Zoned RM-U since 2009

PREVIOUS ZBA ACTION: Variances and

Special Exceptions granted in 2003 and 2009

ATTACHMENTS: None

PLANNING BOARD APPROVAL REQUIRED: Yes

Dear Property Owner: As an owner of abutting property, which is either adjoining or located directly across the street from the subject parcel, you are hereby notified of the public hearing on the bolded item below. The full Zoning Board of Adjustment agenda is as follows:

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- B. * Z 11-16 William Colbath, 70 Silver Street, Tax Map 12, lot 79, zoned RM-U, appeals an administrative decision by the Zoning Administrator that enforcement action at 70 Silver Street regarding too many dwelling units has been satisfactorily concluded. (tabled from previous meeting)
- C. * Z 11-17 F.W Webb Co., (Owners: Maileen E. Cecchetti and Gail Capuccilli) 218 Knox Marsh Road, Tax Map 11, Lot 40B, zoned B-4, requests a variance from the terms of Article IV, Section 170-11 to allow a warehouse/wholesale distribution use in a commercial district. (tabled from previous meeting)

4. New Business

- A. * Z 11-19, Lasssel Architects, (Owners: Elizabeth Pettiford and Ron Pfeiffer) 10 Summer Street, Tax Map 12, Lot 22, zoned RM-U, requests a variance from the terms of Article IV, Section 170-12B to allow an addition to the Wadleigh House elderly assisted living facility where lot size (9068 sq.ft where 10,000 sq. ft. is required), lot coverage (50% where 40% is the maximum) and setbacks (2 ft. 10 in. and 8 ft. 6.5 in. on the side where 10 ft is required and 3 ft. 7.25 in. in the rear where fifteen ft. is required) do not meet the minimums required by the Table of Uses and Dimensional Requirements and from Article X, Section 170-41 A, enlargement of a non-conforming structure.
- B. * Z 11-22, Lasssel Architects, (Owners: Elizabeth Pettiford and Ron Pfeiffer) 10 Summer Street, Tax Map 12, Lot 22, zoned RM-U, requests a revision to an existing Elderly Assisted Care Home Special Exception to allow an additional four bedrooms (allowing up to 8 additional beds) in the new addition (see variance above) to the Wadleigh House assisted living facility in accordance with Article IV, Section 170-11, C, Article VI, Section 170-18, Article XII, Section 170-52 and the Elderly Assisted Care Home Special Exception criteria outlined in the RM-U Table of Uses and Dimensional Requirements, pg. 2.

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, Monday-Thursday from 8:30 am to 5:30 pm. You may also view materials at www.dover.nh.gov, a map showing project locations can be found at www.dover.nh.gov/planning.html. Follow us on Twitter @DoverNHPlanning and find us on Facebook at www.facebook.com/pages/Dover-NH/City-of-Dover-NH-Planning/446789895351

CASE # 2-11-22 DATE RECEIVED 9-7-11
 AMOUNT PAID \$ \$124.00 TIME RECEIVED A.M.

SEP - 7 2011

CITY OF DOVER
 ZONING BOARD OF ADJUSTMENT
 APPLICATION

I. APPLICANT LASSEL ARCHITECTS PHONE #: (207) 384-2049
 ADDRESS 370 MAIN ST / P.O. BOX 370, SOUTH BERWICK, ME 03908
 PROPERTY OWNER ELIZABETH PETTIFORD AND RON PFEIFFER
 ADDRESS 10 SUMMER STREET, DOVER, NH 03820
 PROPERTY LOCATION 10 SUMMER STREET, DOVER, NH 03820
 BRIEF DIRECTIONS TAKE CENTRAL AVE. SOUTH FROM CITY HALL,
TAKE RIGHT ONTO SUMMER STREET (BY WOODMAN INSTITUTE)
 ZONE RMU ASSESSOR'S MAP 12 LOT #(S) 22

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"/>	<u>SPECIAL EXCEPTION</u>	ARTICLE <u>VI</u> <u>XII</u>	SECTION <u>176-25.3</u> <u>170-52.2</u>
<input type="checkbox"/>	ADMINISTRATIVE DECISION	ARTICLE	SECTION
<input type="checkbox"/>	EQUITABLE WAIVER	ARTICLE	SECTION

Describe briefly your plans for this property: WADLEIGH HOUSE - PROVIDE A NEW
ADDITION WITH BEDROOMS AND MORE FUNCTIONAL LIVING ROOM
AND DINING SPACE. THE BEDROOM ADDITION WILL BE FIRE SEPARATED.
THE KITCHEN WILL BE RELOCATED AND UPGRADED. TWO NEW MEANS OF
EGRESS WILL BE PROVIDED FROM THE BUILDING FOR A SAFER ENVIRONMENT
ALONG WITH THE INSTALLATION OF AN ELEVATOR FOR HANDICAP
ACCESS BETWEEN FLOORS.

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	\$	
\$100.00 SPECIAL EXCEPTION	\$	100.00 (PAID) B
\$25.00 APPEAL FROM ADMINISTRATIVE DECISION	\$	
\$100.00 EQUITABLE WAIVER	\$	
- D. Certified letters fee:

# of abutters <u>6</u> X \$8.00 =	\$	48.00
Applicant & Owner <u>2</u> X \$8.00 =	\$	16.00
Foster's newspaper public notice	\$	60.00

TOTAL \$ 124.00

SPECIAL EXCEPTION REQUIREMENTS

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

ASSISTED LIVING IS A NEEDED ASSET IN OUR COMMUNITY. THIS FACILITY PROVIDES CARE WITHIN THE URBAN CORE OF THE COMMUNITY WHICH IS CONSISTENT WITH THE MASTER PLAN. A SPECIAL EXCEPTION WAS GRANTED IN 2003 THAT ALLOWED FOR UP TO 18 RESIDENTS, AND THE HOME WOULD LIKE TO INCREASE THAT NUMBER TO 24, GIVEN THAT IMPROVEMENTS WILL BE MADE TO THE LIVING AND DINING SPACES AND EGRESS. THE CURRENT NUMBER OF BEDROOMS IS 10, AND THE ADDITION WOULD PROVIDE 4 NEW BEDROOMS FOR A TOTAL OF 14. THE NUMBER OF RESIDENTS (CONT. BELOW)

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

THE CURRENT RESIDENTS DO NOT DRIVE AND (2) OF THE EXISTING ON SITE PARKING SPACES ARE BEING REMOVED FOR THE ADDITION. PARKING IS TYPICALLY USED BY STAFF AND VISITORS, LARGELY DURING THE DAYTIME WHEN STREET PARKING IS AVAILABLE. THERE WOULD BE 1-2 OVERNIGHT STAFF.

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.

THE PROJECT PROVIDES NO MORE THAN 8 NEW BEDS WHICH WOULD BE A MINOR IMPACT ON THE EXISTING PUBLIC SERVICES.

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

Elizabeth Pettiford
Paul B. Cliffe
 Signature of Applicant*

Elizabeth Pettiford
Paul B. Cliffe
 Signature of Owner*

*Both Signatures Required

<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>	
_____ Signature of Applicant	_____ Date

#1 (CONT) PER BEDROOM IS GOVERNED BY STATE LAWS (DHHS HEALTH FACILITIES ADMINISTRATION He-P 805 AND LIFE SAFETY CODES).



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT – ABUTTER NOTICE

Meeting Type: Regular Meeting
 Meeting Location: Council Chambers – 288 Central Avenue, Dover, NH
 Location: 03820
 Meeting Date: Thursday, September 15, 2011
 Meeting Time: 7:00 pm

INTENT: To obtain a Special Exception to have an additional four bedrooms (allowing up to 8 additional beds) in the new addition (see variance case Z11-19) to the Wadleigh House assisted living facility.

LOTS/UNITS PROPOSED: N/A

AGENDA ITEM #: 4-B

ZONING DISTRICT: RM-U

FILE: Z11-22

APPLICANT(S): Lassell Architects

OWNER(S): Elizabeth Pettiford & Ron Pfeiffer

LOCATION: 10 Summer Street, (Tax Map 12, Lot 22)

ACREAGE: 9,068 Sq. Ft. or 0.23 acre

EXISTING LAND USE: Elderly Assisted Care

PROPOSED LAND USE: Elderly Assisted Care

SURROUNDING LAND USE: single family & multi-family dwelling

ZONING HISTORY: Zoned RM-U since 2009

PREVIOUS ZBA ACTION: Variances and Special Exceptions granted in 2003 and 2009

ATTACHMENTS: None

PLANNING BOARD APPROVAL REQUIRED: Yes

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