



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

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

1. ATTENDANCE

Members Present: Sam Reid (Chair), William Colbath (Vice Chair), Otis Perry, Frank Landford, Joshua Cote (Alternate), Chris Prior (Alternate), Jennifer Stone (Alternate)

Members Not Present: Jim Kelley

Staff Present: Bruce Woodruff (City Planner), Gail Pare (Recording Secretary)

Chair called the meeting to order at 7:02 p.m.

2. APPROVAL OF PRIOR MINUTES OF AUGUST 18, 2011

Motion: O.Perry made the motion to approve the minutes. C.Prior seconded. Vote: U/A

3. OLD BUSINESS

J.Stone, O.Perry, W.Colbath, S.Reid and F.Landford will vote on the case.

- 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.

At the July 21, 2011 Zoning Board meeting the board sustained the decision of the Zoning Administrator and Mr. Callaghan is seeking a rehearing.

W.Colbath questioned the order of the agenda.

O.Perry pointed out there is no logical order of the meeting. He stated that W.Colbath had recused himself from the original hearing.

W.Colbath had an issue with B.Woodruff sitting at the board table.

Chair Reid stated B.Woodruff is an advisor for the Zoning Dept. and not an adjudicated board member; the Chair noted that he is fine having B.Woodruff sit there. Mr.Colbath disagrees. Discussion continued regarding W.Colbath's recusing himself for tonight's request for a rehearing.

Rick Callaghan of 32 Horne St. presented a letter asking for a motion for a rehearing from the previous case from the July 21, 2011 meeting. He is making a couple changes, on page 1, item A 4th indented paragraph, - Transient tenancy is precluded by a ~ one (1) year is required by lease, should be replaced with: is precluded by a ~ one (1) year tenancy as required by lease. Also, on page 5, 3rd paragraph, this item should be "bolded" indicating this new information for this case. He further makes reference to any other bolded sections in the letter would also indicate new info for this case that the Board did not get last time.



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Mr. Callaghan has owned the property since 1976 and operated the building in the same manner since 1983. He described the residence as a building consisting of two units. Dwelling unit A is four individuals who rent and share seven rooms, four of which are rooms for sleeping purposes; dwelling unit B, has four rooms rented which two rooms are for sleeping purposes, giving a total building content of 11 rooms including a kitchen area for each dwelling unit, plus basements, personal storage. He stated transient tenancy is precluded by a one year tenancy as required by a (1) year lease. ZBA concluded it is a rooming house and have multiple signatures on each lease. Each tenant pays for their own utilities and optional services for one year which is required by most utility activations.

Mr. Callaghan stated he gave an abbreviated session at the July 21st meeting, and feels he wants to be more specific tonight.

The Chair feels the board needs to know what is new material in order to grant a rehearing or deny it.

Mr. Callaghan presented new info on Page 3, NH RSA 676.3 rules to the written record. There is new citation verbiage. There was no discussion on many of the items that were not disputed by the Zoning Board of Adjustment, which became fact. This case provides details: On Page 4, the explanation of Rooming House means any building in which not more than five (5) rooms are rented to not more than ten (10) persons. He went on to say that the NH supreme court recognizes the difference between a rooming house and an apartment. Apartment is usually looked at as a home. A rooming house is for resting, sleeping, and not cooking. He feels the board has made in error in calling it a rooming house. He states the Zoning Board made the decision on what the Zoning Administrator did not provide in arguments, yet he presented several definitions from different states, including Los Angeles. Furthermore, the states the Zoning Board used the L.A. standards to uphold the ZBA standards. On page 5, #3 repeats what he just said – that the Dover code was not used, nothing within the statute, and reaches outside the State of NH, and the City of Dover. In conclusion – for the above reasons, Mr. Callahan is requesting a rehearing. He feels the board made an error, and specifically the zoning administrator.

The Undisputed facts are, #6, #7 and #8. The Plea of the chair not to read entire list of facts was restated. The board stated there is a enough new information to grant a rehearing.

O.Perry asked if additional citations constitute new information and that he feels a rehearing is necessary.

Motion: O.Perry motioned to grant a de novo hearing to be heard at the October 2011 meeting. F.Landford seconded. Vote: U/A

- 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)

W.Colbath recused himself to join the audience. He approached the podium and spoke on the appeal for the case. He stated the timeline from 2006, when Mr. Georgikilas applied for a variance and continued to present the case.



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A lengthy discussion took place regarding the application.

W.Colbath spoke to the Board and further discussion took place.

B.Woodruff spoke.

O.Perry and J.Cote discussed the board cannot overturn the enforcement action or inaction authority of B.Woodruff.

W.Colbath stated a letter from B.Woodruff dated June 23, 2011, said he could appeal.

Motion: O.Perry motioned not to get involved with the details of the enforcement action and not to accept or hear the case. The motioned failed due to lack of a second.

Motion: C.Prior motioned to consult with the City Attorney. The motioned failed due to lack of a second.

W.Colbath withdrew the case without prejudice.

- 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)

The Civil Engineers (H.L.Turner Group Inc.) spoke on the project. The General Manager of F.W. Webb, the General Contractor (JM Coull Inc.), and Attorney Tom Keane, presented a short presentation. Existing conditions were explained as a single family home, shed, garage, and the property was once actively farmed. The Property is zoned B-4 hotel. The Property also includes large open spaces with appropriate buffers. There are large apartment complexes in the back of the abutting property. The proposed use for the property is a 40,000 s.f. warehouse, a 12,000 s.f. self service space, an 8,000 s.f. office space, and a 5,000 s.f. showroom. The building is not a general public retail space but for wholesaling to contractors. F.W.Webb has been in Dover for 36+ years They have researched approximately one dozen other sites. This area is commercial district and they are interested in this site. This use is not out of character for the district.

Public Hearing opened: Nobody spoke. Public Hearing closed.

The Chair requested architectural renderings.

The Engineers clarified the plan as a central hub for distribution and not a general public retail outlet.

B.Woodruff noted that staff recommends to approve the variance.

Motion: O.Perry motioned to grant the variance Seconded by W.Colbath. Vote: U/A.

Recessed at 8:25, resumed at 8:30.



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4. NEW BUSINESS

S.Reid, W.Colbath, O.Perry, C.Prior, J.Cote voting

- 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.

F.Landford recused himself from the case.

O.Perry had a past interest in the property, but not a current or direct. Not recusing himself.

M.Lassel, Lassel Architects, spoke on proposal.

W.Colbath asked questions about original approval from 2003. No action to vest that variance/special exception was taken back then.

E.Pettiford spoke about her facility. She and husband Ron Pfeiffer are current owners. She is a 40 year nursing veteran. The facility will meet state requirements. She explained that facility for residents is to "age in place", and also provide hospice care when needed. Elevators and new wing will allow for new hospice care and continued care for those aging so they can remain in the home when they age or near death. Currently there are 16 residents living at the home, which is a full house.

C.Prior asked about elevation drawings. The architect showed neighborhood drawings, a current barn in the back. The addition will be two stories. The existing building has a basement. The new building will have a laundry room, additional storage, pantry areas and have access to a kitchen upstairs. When done, the building will have three floors including stretcher access. The new fire rated building will have a horizontal egress. C.Prior also asked about the addition of 8 new beds and elevation.

M.Lassel noted that the variance requested on setbacks is consistent with neighborhood homes built in mid-late 1880's and the building reflects the current neighborhood style.

Both cases were discussed prior to the vote.

- 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.



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M.Lassel stated that the Special Exception asks for 4 additional new bedrooms (8 beds). There are currently 12 beds and there would be 16 beds which include 4 accessible bedrooms in a new fire rated wing, meeting code requirements. The new kitchen will meet code, providing 50% more dining space required by code. New living space, recreational group space, and new additional sitting/library space will also be added.

Public hearing opened

O.Perry asked if both public hearings could be heard at the same time addressing as one presentation.

F.Landford speaks on behalf of them, having been familiar with the facility personally. He states the proposal would be good for the community.

B.Woodruff noted that staff recommends the Zoning Board approve the variance.

The Chair asked questions on the Special Exception Form – there are three special requirements and five general criteria as required per B.Woodruff.

T.Clark, Building Inspector asked what is required as special exception: taxing city services, adequate parking, and sidewalks. The net increase also improves the overall building. No detrimental effect on abutting properties.

Public hearing closed

Motion: O.Perry motioned to grant the Dimensional Variance. J.Cote seconded. Vote: U/A

Motion: B.Colbath motioned to approve the Special Exception to allow an additional 4 bedrooms and 8 residents for a total of 12 bedrooms – 24 residents maximum. C.Prior seconded. Vote: U/A.

5. STAFF COMMENTS

6. OTHER BOARD BUSINESS

The Chair: publicly thanked B.Woodruff as this is his last meeting. He has accepted a Town Planner position in another municipality.

B.Woodruff mentioned the Law Lecture Series and informed the Board that the City would pay the registration fees if they are interested in attending.

7. ADJOURN

Motion: B.Colbath made the motion to adjourn at 9:10pm. C.Prior seconded. Vote: U/A