



**CITY OF DOVER**

## ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting  
Meeting Location: Media Access Center, Rm 306 – McConnell Center, Dover, NH  
03820  
Meeting Date: **Thursday, June 21, 2012**  
Meeting Time: **7:00 pm**

### 1. ATTENDANCE

**Members Present:** William Colbath (Vice Chair), Frank Landford, James Kelley, Otis Perry, Jennifer Stone (Alternate), Chris Prior (Alternate)

**Members Not Present:** Sam Reid (Chair), Joshua Cote (Alternate)

**Staff Present:** Timothy Corwin (Assistant City Planner), Gail Pare (Recording Secretary)

The Vice-Chair called the meeting to order at 7:02 p.m. The Vice Chair opened the meeting and introduced the Board and staff members to the audience.

### 2. APPROVAL OF PRIOR MINUTES OF MAY 17, 2012

**Motion:** O.Perry motioned to accept the May 17, 2012 minutes as amended. Seconded by C.Prior.  
Vote: U/A

### 3. NEW HEARINGS

- A. \* ~~Z 12-09 Robert F. Fisher (Owner: Anne E. Revocable Trust), 49 Littleworth Road, Tax Map G, Lot 29, located in the Low Density Residential (R-20) District, requests a variance from Section 170-12.A of the Zoning Ordinance and the R-20 District Table of Use to permit a lunch cart on the property where lunch carts are not a permitted use in the R-20 District.~~

The Vice-Chair announced that case Z12-09 will be postponed. A letter was received from the applicant to postpone until a later date, which also requested a site walk. He suggested to board members to visit the site on their own prior to the next Zoning Board meeting. No date was suggested for a site walk.

J.Kelley suggested re-noticing the abutters.

**Motion:** F.Landford motioned to continue to a date to be determined. Seconded O.Perry. Vote: U/A

- B. \* Z 12-10 Sherri Santo (Owners: Stephen & Marilyn Carter, Stephen YC Mau Revocable Trust, Jason & Sheri Santo), 1-5 Crown Point Drive, Tax Map 16, Lots 15-1, 15-2, and 15-3, located in the Medium Density Residential (R-12) District, requests a variance from Section 170-33.A of the Zoning Ordinance to permit the construction of a six (6) ft. fence in the front yard (located along Back River Road and Crown Point Drive) where a maximum height of three (3) ft. is permitted.

*Chris Prior will be the alternate voting on this case.*

Jason and Sherri Santo, #5 unit owners, and representing other owners who were unable to attend spoke on behalf of the condominium association. (Units 1, 3, and 5 are the only units in the condominium association.) S.Santo passed out photos of the property showing the side view, rear view, and front view and explained they had already started to construct the fence when they were notified about a neighbors concern of the line of site. She gave a clarification of the back of the property vs. the front yard which faces Back River Rd. She presented a letter written by another resident who counted 100 cars driving past the condos during a 15 minute period. The



**CITY OF DOVER**

## ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting  
Meeting Location: Media Access Center, Rm 306 – McConnell Center, Dover, NH 03820  
Meeting Date: **Thursday, June 21, 2012**  
Meeting Time: **7:00 pm**

applicants are requesting a 6 ft. fence vs. a 4 ft. fence for safety and privacy issues. The specific concern is there are small children living at the property and they are directly exposed to the traffic on Back River Rd. She pointed out that the three residents will be moving the fence back an additional 3 ft. toward the front of the structure, which is approximately 6 feet from the sidewalk on Back River Rd. Both Mr. & Mrs. Santo recognize that they purchased a home on the busy street 7 yrs. ago, prior to having their child. Their intent was to live there for a couple of years and then sell it. They stated that the abutters' views will not be obstructed, and also that Doug Steele from the Dover Public Works has been out and reviewed the site.

W.Colbath confirmed that the Santo's are the owners of unit 5, but they are requesting the variance for units 1, 3, and 5 on behalf of the condominium association, which is just the three units.

J.Kelley asked why the City would allow this building to be built so close to the road and the sidewalk in the first place.

T.Corwin advised there were no fence regulations at the time the plan was approved.

W.Colbath stated the variance may have been granted by special exception. It was zoned UMUD at the time and density was very dense.

Planning Department staff research shows that a variance was approved by the Zoning Board of Adjustment on July 15, 2004 to construct a 3 family condominium unit to replace a 3 family unit apartment building that was removed due to its condition. (Z04-22) Previously, on November 26, 2002, the Planning Board, approved a site review for Millstone Properties reflecting three units on this lot, but the UMUD zone allowed only multi-family dwellings. (P02-54)

J.Kelley asked about the purpose of the regulation.

T.Corwin stated that the purpose is to 1) address line of site safety issues and 2) to address aesthetic concerns.

J.Kelley stated he feels the owners have been put in a position based on the City zoning that is nonsense. They should be allowed to put the fence as close to the road as possible to allow them maximum lawn space.

O.Perry asked about the City's right of way line in relation to the sidewalks and grass. He feels it is important that the fence not be in the City's right of way. He questioned when the building was sited, what setbacks were used and the distance to the building to the right of way. There is confusion as to what is considered the backyard. The most important issue is the site distance.

T. Corwin stated it is not the backyard based on the zoning ordinance. It's not in relation to where the front door is, but where the public right of way is.

Discussion ensued.

S.Santo stated they spoke to the community services department and as long as the owners signed a waiver if the fence should be damaged they would not hold the City accountable.



**CITY OF DOVER**

## ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type:	Regular Meeting
Meeting Location:	Media Access Center, Rm 306 – McConnell Center, Dover, NH 03820
Meeting Date:	<b>Thursday, June 21, 2012</b>
Meeting Time:	<b>7:00 pm</b>

O.Perry agrees with J.Kelley’s concern. He is leaning towards granting the variance with a 4 ft. height so the site line is not impeded.

S.Santo stated the fence would only go to the edge of the house and not to the driveway edge.

W.Colbath stated the building is not in the right of way. These condos were built in the UMUD district, and built to the lines and not in any violation. There were some clearances, but not much. They were built to the current zoning ordinance at that time. Discussion ensued with the applicants and W.Colbath about the right of way.

J.Stone asked if there are any regulations as to how close the fence can be to the house.

T.Corwin stated no there are not any regulations.

*Public hearing open*

Larry Clough, resident of 1 Mill Street spoke on behalf of the applicants. He voiced his concern for high traffic, and foot traffic on the sidewalks. He and his girlfriend frequently walk down Back River Rd. and have recently been hit by foreign objects thrown from moving vehicles. There are also reports of people walking through the yards on Crown Point Drive. The fence would certainly take care of those issues and provide privacy for the residents of that building. Esthetically, he feels the fence would enhance the property, but more importantly resolve safety concerns. He feels the 6 ft. fence would also be a benefit to the City by slowing down traffic that would normally leave Crown Point Drive without stopping completely and having the 6 ft. fence would make them stop.

*Public hearing closed*

T.Corwin stated the proposed fence ensures reasonable use of the property and ensures the safety of the occupants. The only issue staff has is with conditions. Since the applicants are already working with Community Services, which have agreed in placing the fence in the proper location, they will require the applicants adhere to and keep the fence 6 ft. off the sidewalk, which will cut into the limited open space they have. It was previously suggested it would be 4 ft. off the site line, which was not a requirement. If the Board feels the site line will be maintained, the staff would be satisfied with what the Board decides.

**Motion:** O.Perry motioned to grant the variance for a 6 ft fence with conditions. Seconded by J.Kelley.

Vote: U/A.

1. That the fence does not extend any further towards Crown Point Drive than the edge of the building as shown on the plan.
2. The fence will be located no closer than six (6) feet to the sidewalk along Back River Road.

*Jennifer Stone will be the alternate voting on this case.*

C. \* Z 12-11 Rensselaer Properties, Ltd., 142 Broadway, Tax Map 27, Lot 278, located in the Urban Density Multi-Residential (RM-U) District. The property currently contains a single family dwelling and two large detached outbuildings which are nonconforming as to minimum required side and front yard setbacks. Applicant proposes to renovate the outbuildings and to construct connections between them and the single family dwelling thereby creating a single structure on the lot. Applicant proposes to use the first floor of the existing structure for a



**CITY OF DOVER**

## ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting  
Meeting Location: Media Access Center, Rm 306 – McConnell Center, Dover, NH 03820  
Meeting Date: **Thursday, June 21, 2012**  
Meeting Time: **7:00 pm**

beauty shop and the remainder of the proposed consolidated structure as two (2) dwelling units. Applicant requests variances from **Section 170-12.A** of the Zoning Ordinance and the RM-U District Table of Use and Dimensional Requirements as follows: (a) to permit the first floor of the existing building to be used as a beauty shop where beauty shops are only permitted by special exception provided it qualifies as a customary home occupation, and (b) to permit the consolidated building to be located zero (0) feet from the side lot line shared with 69 Oak Street (Tax Map 27, Lot 279A) and nine (9) feet from the front lot line along Oak Street.

Steve McCusker, representing the owner John Turner gave an overview of the proposed plan and demonstrated on the photo connecting all three structures, utilizing the existing first floor as a beauty shop. (formerly a dental office until approximately one year ago). The structure would be converted into 2 residential units, and 1 commercial unit. He pointed to a large parking lot to the left of the property which was used by the dental office and residents of the residential unit in the past. He pointed out that aesthetically it adds value to the property, and there is opportunity to tie in roof lines by connecting into the garage and porch. He spoke about 6 parcels on Rose Street, primarily single family (R1, B3, and Industrial). In relation to the setbacks, a 9' setback currently exists due to the widening of Oak Street in the past. He shows that the garages are not really garages, they are more like outbuildings and due to the lack of street setback, they cannot be used as garages. He stated the footprint will not change. The garage doors will be removed, they will be framed out and windows installed. On the Broadway side and Oak Street, the only change is to add the two connectors to attach the buildings.

*Public hearing open.*

F.Landford asked about parking for the 2 residential units. He is concerned about residents trying to park in front of the building on Oak Street. He asked if the former parking area will be grassed or if something can be put in to block parking from that area.

S.McCusker stated there was not a plan to grass the area. That area follows the edges of the road and they were not planning on grassing it in. He said they could add mulch and landscaping instead of a lawn or something similar. It would be difficult to park there.

C.Prior asked if there were any floor plans to review. Is the lower outbuilding going to be one unit.

S.McCusker advised he was not prepared to bring them, but the floor plans are an open concept living area, second floor bedrooms, and with potential for loft. The beauty salon will be in the existing dental office, adding one additional residential space.

J.Kelley asked if the residents and beauty salon will park in the parking lot. He agrees with F.Landford that tenants will attempt to park in front of the door and unload groceries. He also questioned the joining of the roofs and the layout for the connection.

T.Corwin stated there are special conditions to the property. The two outbuildings are unusable as designed. What the applicants are proposing is a reasonable use request. He discussed the current use and the residential use of the building. Staff supports granting the variance. There will be two variances:

- 1) permit a commercial use on the first floor.



**CITY OF DOVER**

## ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting  
Meeting Location: Media Access Center, Rm 306 – McConnell Center, Dover, NH 03820  
Meeting Date: **Thursday, June 21, 2012**  
Meeting Time: **7:00 pm**

- 2) a dimensional variance subject to a certain setback requirements, and to add an addition to the principal building in the location where the outbuildings are already located.

J.Stone asked if you grant the variance now, and this business leaves, after one year, will the variance go away. She also indicated that the changes to the front of the building make the corner safer by not allowing parking on Oak Street.

T.Corwin stated the property maintains unique circumstances and the variance would go away when the property is vacated by the current business.

*Public hearing closed.*

**Motion:** O.Perry motioned to grant the variance to allow the beauty shop on the first floor and allow the garage to be converted into a residential unit with a dimensional variance subject to the removal of the asphalt that is in front of the current garages to the street right of way.

J.Kelley concerned about removal of pavement in front of the garages, and he doesn't feel grass or bulk mulch would work.

Discussion ensued about the need for a proposed impediment to parking on Oak Street.

T.Corwin stated it can be a condition of approval. He recommended a TRC review.

*Additional discussion ensued and vote did not take place.*

**Amended Motion:** J.Kelley motioned to grant the variance to allow the beauty shop on the first floor and allow the garage to be converted into a residential unit, with conditions:

- 1) remove the asphalt that is in front of the current garages to the street right of way.
- 2) parking will be prohibited on Oak Street and TRC review will oversee the method.

Seconded by motioned by F.Landford. Vote: U/A.

- D. \* Z 12-12 Mikula Family Revocable Trust, 52 Upper Factory Road, Tax Map E, Lot 52-B, located in the Rural Residential (R-40) District, requests a variance from **Section 170-12.A** of the Zoning Ordinance and the R-40 District Table of Dimensional Regulations to construct an 8 ft. by 32 ft. front porch addition to be located 16 feet from the front property line where a minimum front yard setback of forty (40) feet is required in the R-40 District.

*The applicants presented a plot plan, and also a letter from Scott Olsen, who is a neighbor.*

L.Mikula presented eight (8) pictures giving an explanation of setbacks and lack of privacy. The property was built in 1963 and they purchased it in 1973. When they purchased the home in 1973 they were not aware that their property was non-conforming with setbacks and feels they should be grandfathered.



**CITY OF DOVER**

## ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting  
Meeting Location: Media Access Center, Rm 306 – McConnell Center, Dover, NH 03820  
Meeting Date: **Thursday, June 21, 2012**  
Meeting Time: **7:00 pm**

She pointed out that due to recent development to the rear of the property, they have lost all privacy in their back yard. She said even if they installed an 8 ft fence, there would be lack of privacy because the abutting homes are all 2-story homes. She said the construction will be done by a professional contractor using quality materials.

J.Kelley asked about their privacy, the reason to request a front porch, and that they would move their socializing to the front porch.

Mr. & Mrs. Mikula advised, that the front porch will give them privacy facing a wooded lot which is owned by Joe Arnold.

W.Colbath asked why they didn't put the porch to the side of the house.

L.Mikula stated that setbacks are an issue and there is not enough room.

*Public hearing open.*

Joe Arnold, owns the lot across the street including a home. He spoke on behalf of applicants and has no objections to the variance. He and his wife plan on staying at their property.

Sean Labrie, lives directly across the street at 59 Upper Factory Rd. He is not sure why the City had concerns about the esthetics of the porch to the front. He feels it would bring a nice look to the house and the neighborhood. He questioned zoning changes, and he mentioned two other homes on the corner of Upper Factory that are even closer to the road, so he feels that the farmers porch would fit nicely into the neighborhood. He has no objection as an abutter.

*Public hearing closed.*

T.Corwin stated the City did not have concerns with esthetics but based on a recent site visit, it was already the closest house to the street, which would increase the nonconformity, but this was not a major point. Staff is not opposed to the application, but struggled with what the hardship was and it was not clear that a fence would not have address. Photos compelling that fence would not take care of privacy issue; staff is not opposed to the application.

J.Kelley asked about the back yard view to the neighbor with the trees. He questioned barriers that were planted on Pacific Drive, and that tree plantings are not working. The Planning Board required tree plantings, and he questioned where is the enforcement.

T.Corwin stated he can check with the Planning Department about when the development on Pacific Drive required natural buffers. Board discussion ensued.

**Motion:** C.Prior motioned to grant the variance. Seconded by O.Perry. Vote: U/A.

#### ~~4. APPROVAL OF REVISED ZBA APPLICATION FORM~~

Item 4 will be postponed until a later date.



**CITY OF DOVER**

## ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting  
Meeting Location: Media Access Center, Rm 306 – McConnell Center, Dover, NH  
03820  
Meeting Date: **Thursday, June 21, 2012**  
Meeting Time: **7:00 pm**

5. STAFF COMMENTS: N/A

6. ADJOURN

**Motion:** O.Perry motioned to adjourn at 8:38 pm. Seconded by W.Colbath Vote: U/A