



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers, City Hall, Dover, NH 03820
Meeting Date: **Thursday, September 20, 2012**
Meeting Time: **7:00 pm**

1. ATTENDANCE

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

Members Not Present: James Kelley, Joshua Cote (Alternate)

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

The Chair called the meeting to order at 7:01 p.m. The Chair opened the meeting and introduced the Board and staff members to the audience, and described the process used to hear cases.

2. APPROVAL OF PRIOR MINUTES OF AUGUST 16, 2012

Motion: F.Landford motioned to accept the August 16, 2012 minutes. Seconded by Chris Prior.
Vote: U/A

3. Case Z 12-15, Friends Forever Real Estate, LLC, 16 Summer Street, Tax Map 12, Lot 23 .

A. Consideration of Withdrawal of Application.

Sam Reid recused himself from the case and Vice Chair William Colbath stepped in.

T.Corwin gave an update to the procedure of this case. The rehearing request was on tonight's agenda. Corwin was informed that the applicant subsequently withdrew their application. They will not pursue the purchase of the property at 16 Summer Street.

Staff recommendations:

Staff recommends the Zoning Board consider voting to vacate the variance given last month without prejudice, in light of the withdrawal request. The decision to vacate due to the applicants withdrawal would not prevent another person from filing an application for a variance later.

Motion: O.Perry motioned to vacate the decision without prejudice. Seconded by F.Landford. Vote: 5/0

B. Consideration of Rehearing Request

Motion: O.Perry motioned to table. Seconded by F.Landford. Vote: U/A.

Sam Reid returned as Chair.

4. HEARING – CONTINUED FROM JUNE 21, 2012

- A. * Z 12-09 Robert E. Fisher (Owner: Anne E. Tucker 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 and Dimensional Requirements to permit a lunch cart on the property where lunch carts are not a permitted use in the R-20 District.



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers, City Hall, Dover, NH 03820
Meeting Date: **Thursday, September 20, 2012**
Meeting Time: **7:00 pm**

Atty. Robert E. Fisher, 23 Hillcrest Drive, represented for the applicant. He made a correction that the land owner is Anne Tucker, of the Anne Tucker Revocable Trust. There was a previous variance request in 2000 which was denied (Z 00-9). He stated that the new law is RSA: 33: b which calls for a balancing act. You are required that the use not be contrary to public interest. To grant the variance will do substantial justice by putting the land to use; it will not under value the other properties. An industrial park is across the street and adjacent to the owner is a 2-3 unit apartment unit. The lot is substantial in size, and it has an extensive gravel driveway. The lunch cart is a converted school bus and if the variance is granted it will be placed on the gravel driveway. He sited a couple of similar cases taken to the Supreme Court. The property sits off a major thoroughfare, and is across from the industrial park. This is a public interest argument. There is no requirement under the new standard to show any economic loss. He requests a site visit.

S.Reid confirmed with Fisher that this is a multi-family dwelling on 1.35 acres and the lunch truck is not in operation.

C.Prior asked if there are any children residing in the multi-family. He asked about the safety of the children and the issues that a lunch cart and increased traffic to the property would cause.

R.Fisher stated that one unit has two children, one of which is in junior high, and one a little younger. There is also a tenant, but he is not sure they have children. He is suggesting installing a fence for safety issues, and also a sign to direct the customers to park in an appropriate area, away from where the tenants live. Separate picnic tables would be set up for the lunch cart.

W.Colbath asked about a proposed traffic pattern. Fisher stated it is a big circular driveway, and he proposes the entrance on the side closest to Rte. 155, which could be the entrance and exit. If directed, he could change the location of the entrance, but feels this may adversely affect the tenants.

Public hearing open.

Staff Recommendations:

T.Corwin stated that staff believes there are no special conditions of the property that distinguishes it from any other property similarly zoned. The property is already being used for a multi-family residence, and there are several other uses permitted in the R-20 District that the property could be used for. A similar request was denied in 2000 where the ZBA concluded that the application failed to meet all five (5) of the variance criteria.

S.Reid confirmed with Corwin that eating establishments are not allowed in the R-20 District.

O.Perry asked about parking requirements and if this variance is allowed, would it be required to go to the Planning Board to show parking studies.

T.Corwin stated he does not feel it would normally have to go to the Planning Board. The Board could require the plan to go to the TRC.

J.Stone asked about specific hours of operation.



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers, City Hall, Dover, NH 03820
Meeting Date: **Thursday, September 20, 2012**
Meeting Time: **7:00 pm**

R.Fisher stated it is a primarily a lunch and ice cream truck. The hours would not be too early in the morning, and not too late at night. Fisher then stated that a traffic study and going to the Planning Board is out of the question due to the expense. He offered to draw a site map for specific locations of the parking, picnic tables, and delineate the areas of the lunch cart vs. the residential units. He would list the proposed hours of operation as well. He is requesting that the ZBA table the item so he can submit additional information. He does not want to see the Board deny the request due to the lack of information or understanding.

O.Perry suggested recessing the public hearing and continue it at the next meeting.

T.Corwin suggested to R.Fisher to submit the following information for the Board.

- location of driveway
- proposed entrances, exits, and parking
- days and hours of operation
- actual location of the lunch cart in reference to the sidelines
- location of picnic tables
- suggestions to address any safety concerns to children.

R.Fisher stated that he would not operate the lunch cart, but someone would be hired to run it. He was considering the hours of 11 a.m. to 9 p.m. in the summer, and 11 a.m. to 7 p.m. in the winter.

Recess the public hearing.

Chris Prior will sit it on the case.

Motion: O.Perry motioned to table the application until a later date. Seconded by C.Prior. Vote: U/A.

5. HEARINGS – NEW

- A. * Z 12-16 Alex & Anne Krieger, 53 Three Rivers Farm Road, Tax Map N, Lot 3A, located in the Rural Residential (R-40) District. The subject property is improved with a single family dwelling, and a second single family dwelling is currently under construction. Applicants propose to occupy the dwelling under construction as a weekend home and to rent out the existing dwelling as a residence. Therefore, applicants request a variance to permit two (2) principal buildings on a lot where only principal building is permitted per the definition of “lot” set forth in **Section 170-6** of the Zoning Ordinance.

The applicants Alex & Anne Krieger spoke to the Board and requested a continuance until the next ZBA meeting, so they can properly speak to the abutters about their plans.

Motion: O.Perry motioned to continue until the October 18, 2012 meeting. Seconded by F.Landford.
Vote: 4/1.

- B. * Z 12-17 Darryl Rahn (Owner: Studio 590, LLC), 590 Central Avenue, Tax Map 30, Lot 125A, located in the Office (O) District, requests a special exception per **Section 170-12.A** of the Zoning Ordinance and the O District Table of Use and Dimensional Requirements to permit a jewelry retail store in the unit currently occupied by a hair salon.



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers, City Hall, Dover, NH 03820
Meeting Date: **Thursday, September 20, 2012**
Meeting Time: **7:00 pm**

Atty. Jeff Merrill, represented the applicant Darryl Rahn. He stated that Mr. Rahn would like to move his business from 270 Central Avenue to 590 Central Avenue. There are currently 20 parking spaces on site, 8 of which are required. He has agreed to install a 7 ft. fence to the side of the abutters. The store will occupy approximately 750 s.f. of the 1950 s.f. space. Hours of operation will be from 10 am to 5 pm, M-F, and 10 am to 3 pm on Saturday, closed on Sunday.

Public hearing open.

Staff believes that, per the information presented in the application, the applicant's proposed retail jewelry store meets the six (6) special exception criteria for retail stores in the Office District (as set forth in the Table of Use). The use of this building for a retail store is consistent with how the property and building have been used in the past and present, and the property is compatible with the surrounding uses, a mix of commercial and residential.

T. Corwin recommended that the Board condition its approval and request the applicant submit to Tim Corwin a screening plan to show the installation of the screenings.

W. Colbath asked if the special exception is granted, does it open up other requests for the same.

T. Corwin stated that if others request a special exception, they would have to reapply and that each case would be unique.

Public hearing closed.

Staff Recommendations:

The Planning Department recommends the Board approve the special exception.

Jennifer Stone will sit in on the case.

Motion: O. Perry motioned to grant the special exception with the condition that, prior to the issuance of a Certificate of Occupancy, the applicant provide Planning Department staff for their review and approval a plan showing the location and type of screening proposed for the property as is required by Section 170-44.F of the Zoning Ordinance together with a timeline as to the installation of said screening. Seconded by W. Colbath. Vote: U/A.

- C. * Z 12-18 David A. Goodwin, 37 Dover Neck Road, Tax Map M, Lot 79B, located in the Rural Residential (R-40) District. The subject property is improved with a Quonset hut and wooden office building, both which are currently used as a training facility for the carpenters' union. The applicant proposes to remove the Quonset hut and use the wooden office building as a small scale printing business with up to three (3) employees. Applicant requests a variance from **Section 170-12.A** of the Zoning Ordinance and the R-40 District Table of Use and Dimensional Requirements to permit the wooden building to be used as a printing business with up to three (3) employees where printing business is not a permitted use in the R-40 District.



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers, City Hall, Dover, NH 03820
Meeting Date: **Thursday, September 20, 2012**
Meeting Time: **7:00 pm**

Atty. James Schulte represented the applicant. He stated that the lot is 3.75 acres. He gave a brief overview of the previous use of the property. Mr. Goodwin has run a printing business off Littleworth Road for many years. Due to the changing times, there is less need for print services. His proposal is to upgrade the property and operate a small print shop. There are very few walk-in customers, and much of his business is repeat business, primarily done by phone. Two or three times per week UPS will deliver/pickup. Mr. Goodwin delivers much of the orders himself. There is very little traffic, and there will be no signage. The Quonset hut contains old equipment from the carpenter's union and would not be removed until next year. At that time, the Quonset hut would be removed also. The proposed hours of operation would be Monday-Thursday 8 a.m. to 3:30 p.m. A second basis for the variance is the definition of personal services establishment, but the definition does not help. The cost of the materials on an annual basis is about 28% of the volume of business that he does. Mr. Goodwin's business is a customized print shop with very little traffic.

O.Perry confirmed that he would have up to two employees, including himself, for a total of three.

Public Hearing open.

Joyce Bowden, 374 Middle Road, is a direct abutter to Mr. Goodwin's home and 200 feet to the rear of the property. She stated there are other abutters within 200 feet who were never notified. She stated that this is a request of convenience. He recently purchased the property knowing it didn't meet the criteria and then applied for a variance. With today's EPA standards, and no City water/sewer, she is concerned with the waste water from the discharge of waste ink getting into the ground water and into the wetlands. She spoke about the wetlands behind the house. She spoke about the idea of having a subdivision out back. She cautioned that the land out back is all wetlands. He purchased the property and is trying to expand a non-conforming use, which the EPA considers a hazard. There is no hardship, he created his own hardship. She also questioned how many people were notified about this meeting, and feels that many people that should have been notified were not.

T.Corwin stated the applicant can ask for a continuance and re-notice abutters; or if they continue with the hearing tonight and the Board grants a variance, then they are subject to the possibility of a rehearing request being submitted.

Linda Osburn, 366 Middle Road, stated she is within 200 feet and was not notified.

Recess the public hearing.

Motion: O.Perry motioned to continue to the October 18, 2012 meeting. Seconded by C.Prior seconded.
Vote: U/A.

- D. * Z 12-19 Vincent A. Duffy (Owner: 23 Atkinson St., LLC), 23 Atkinson Street, Tax Map 9, Lot 17, located in the Urban Density Multi-Residential (RM-U) District, requests a variance from **Section 170-12.A** of the Zoning Ordinance and the RM-U District Table of Use and Dimensional Requirements to permit the first floor of the building to be used as an office for a psychotherapy practice.

Vincent Duffy stated he purchased this building a month ago. He is relocating his practice to this building. The building is approximately 1500 s.f. and includes a handicap ramp. He is a clinical social worker and some clients



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers, City Hall, Dover, NH 03820
Meeting Date: **Thursday, September 20, 2012**
Meeting Time: **7:00 pm**

may have disabilities and some are elderly. There is an adequate 12 space parking lot behind the building. The property is presently zoned as a 3-unit residential. He will use ½ of the first floor for two offices and modifications will include adding a door on the left hand side of the building on St. Thomas Street. The two offices will be side by side, one for him and one for another therapist. The rest of the building will be residential.

O.Perry confirmed with Duffy that there will be two individual therapist offices on the first floor, and the remainder of the building will be a one bedroom on the second floor and a studio apartment on the third floor.

Public hearing open. Nobody spoke. Public hearing closed.

Staff Recommendations:

Staff believes that the property is unique in that the first floor is outfitted for commercial purposes and has been used for commercial purposes for many years. The property is improved with a large parking lot that also supports a commercial use of the property. The commercial use of the property is also compatible with the uses permitted in Central Business District (CBD) which is located directly adjacent to the property. In the CBD, located directly across both Atkinson Street and St. Thomas Street, commercial on the first floor is not only permitted, but is in fact a requirement (the CBD General and Mixed Use prohibit residential on the first floor). Staff believes the proposed office use is a modest and reasonable use of the first floor of this building and will have significantly less impact on the neighborhood than the most recent daycare use.

The Planning Department recommends the Board approve the variance.

Jennifer Stone sat in on the case.

Motion: O.Perry motioned to grant the variance as recommended. Seconded by F.Landford. Vote: U/A

6. STAFF COMMENTS:

T.Corwin stated that the NH Local Government Center sponsors a Law Lecture Series in the fall. The topic is procedural basics for Planning Boards and Zoning Boards. The lecture will be held on Monday, October 24th, at 7 p.m. at the Newington Town Hall. There is a fee to enroll; however, the City would cover the fees for the lecture. Corwin feels it would be beneficial and would like to see ZBA members attend. Anyone interested in attending should let Tim Corwin know by next week.

7. ADJOURN:

Motion: O.Perry motioned to adjourn at 8:22 p.m. Seconded by J.Stone. Vote: U/A.