



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers, City Hall, Dover, NH 03820
Meeting Date: **Thursday, November 15, 2012**
Meeting Time: **7:00 pm**

1. ATTENDANCE

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

Members Not Present: Frank Landford, Joshua Cote (Alternate).

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

The Chair called the meeting to order at 7:05 p.m. The Chair opened the meeting, introduced the Board and staff members to the audience, and described the process used to hear cases.

Chair Reid advised the audience that case 4A has requested a continuance until the December 20, 2012 meeting date. Otis Perry suggested that case 4A be heard ahead of the other cases.

2. APPROVAL OF PRIOR MINUTES OF OCTOBER 18, 2012

Motion: O.Perry motioned to accept the October 18, 2012 minutes. Seconded by J.Kelley.

Vote: U/A.

3. HEARING – CONTINUED FROM OCTOBER 18, 2012

A. ~~* Z 12-23 Changing Places, LLC (Owner: Estate of Rita T. Taylor), 72 Durham Road (Tax Map I, Lot 12), located in the Low Density Residential (R-20) District and the Suburban Density Multi-Residential (RM-SU) District. Applicant proposes to construct a twenty (20) unit townhouse residential development in addition to the existing residence for a total of twenty-one (21) units. Applicant requests a variance from **Section 170-12.A** of the Zoning Ordinance and the R-20 and RM-SU District Tables of Use and Dimensional Requirements to permit +/- 6,331 sq. ft. of land per unit where a minimum of 10,000 sq. ft. is required.~~

Motion: O.Perry motioned to postpone the case until the December 20, 2012 meeting with the understanding that this would be the last postponement. Seconded by J.Stone.

Discussion on the motion.

J.Kelley questioned why we are limiting the number of postponements.

O.Perry and J.Kelley discussed the reasons.

The Chair commented that it is unfair to have the abutters attend two meetings and have those meetings continued with no notice to the abutters.

Board discussion ensued.

Atty. James Schulte confirmed that he will be ready to go for the December 20th meeting. Schulte stated the reason for the delay was they were trying to reach out to those most affected. They met with the Board of Directors last week, which led to some issues they are now trying to resolve. He understands there are



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other owners in addition to the board members that would like to be involved and time is needed to schedule that.

Alfred Catalfo, 78 Durham Road, stated that he came down for both meetings. He has not been contacted by anybody in two months and wants that on the record.

Chair Reid called for a vote on the motion on the floor. Vote: U/A.

4. HEARING – CONTINUED FROM SEPTEMBER 20, 2012

* Z 12-09 Robert F. 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.

Motion: O.Perry motioned to remove from the table. Seconded by C.Prior. Vote: U/A.

Robert Fisher represented the applicant. He provided an aerial survey of the property, which was provided by the Community Services Dept. Fisher discussed the parking which would be behind the lunch cart towards the end of the property. He did not indicate the actual parking or the roped off areas. He indicated the hours of operation would be 11 a.m. to dusk year round. The food items have not been chosen yet and would be provided by the actual vendor.

S.Reid questioned Fisher as to why this location was chosen.

Fisher confirmed there is heavy traffic on that road and there was previously a lunch cart located across the street 5-10 years ago. The cart was later moved to this location and it has not been used since. In 2000, Mr. Hentzel applied for a variance for the lunch cart and it was denied.

W.Colbath confirmed with Fisher the hours of operation would be 11 am to dusk. He was concerned that during the summer, dusk is much later asked about extended hours.

Mr. Fisher stated that he is willing to limit the hours of 11 a.m. to dusk, but no later than 8 p.m., if that is the will of the Board. He asks the Board for a reasonable response.

Discussion ensued between Board members about the lack of special conditions that warrant the variance.

Reason for Staff Recommendation

Staff believes that 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, if desired. A similar request was made to the ZBA in 2000 and was denied where the ZBA concluded that the application failed to meet all five (5) of the variance criteria.

Reid asked Corwin if food services are allowed in the R-20 zone. Corwin confirmed that eating and



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drinking establishments are not permitted in residential districts, however, it is allowed in all four of the commercial districts, including the I zone, which is across the street, the Cochecho Waterfront District and the downtown.

Public hearing closed.

S.Reid pointed out that the property is in a residential use zone, across the street is the I-2 zone.

J.Stone confirmed with the Board that the area is very busy and questioned traffic concerns.

T.Corwin advised if the Board grants the variance, he would suggest it go to the TRC for a traffic review.

C.Prior feels that because the truck is mobile, he suggested that the lunch cart be moved to a zone that does permit such a use.

O.Perry stated that the hardship has changed since the Simplex time. He does not support the variance.

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

5. HEARING – NEW

- A. * Z 12-24 Phil & Donna Rinaldi, 13 Riverdale Avenue (Tax Map I, Lot 74-Z), located in the Medium Density Residential (R-12) District, propose to remove the existing home and construct a new single family dwelling. Applicants request a variance from **Section 170-12.A** of the Zoning Ordinance and the R-12 District Table of Use and Dimensional Requirements to permit the proposed single family dwelling to be located not more than fifty (50) ft. from the front lot line, where a build to line of not closer than five (5) ft. and not further than twenty-five (25) ft. from the front lot line is required.

Chair Reid appointed alternate Jennifer Stone to vote on the case.

Phil Rinaldi presented his case. He and his wife Donna have lived at 14 Riverdale Avenue for the past 38 years. They purchased the property across the street at 13 Riverdale Avenue and removed the existing home. He submitted a signed petition from neighbors who support the variance.

S.Reid confirmed that trees would need to be cut down to allow the 25 ft. front line as required.

Robert Bryan, 18 Riverdale, pointed out that all of the homes have at least a 40-60 foot setback and stated that he felt the 25 foot requirement was not well thought out by the City.

Reason for Staff Recommendation

Tim Corwin explained that the applicants wish to locate the proposed home 50 ft. from the front lot line in order to maintain a large landscaped front yard in keeping with the character of the neighborhood. Although our calculations place the average setback for the abutting properties closer to thirty-five (35) feet, it is our view that the request is a reasonable one which will have no discernible negative impact on the neighborhood. The purpose of the “build to” requirement is to encourage homes to be located closer



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to the street in order to maintain the integrity of older neighborhoods. Here, however, the applicants are asking to place the home in a similar location to the house that formerly occupied the lot, and it is clear that the abutting properties generally are set significantly farther back from the 25 ft. maximum setback requirement. Therefore, staff does not believe there is any relationship between the purpose of the build to requirement and its application to the subject property.

Recommendation

The Planning Department supports the variance request. There would be no negative impact for the neighborhood.

Motion: J.Kelley motioned to approve the variance. Seconded by O.Perry. Vote: U/A.

ADJOURN:

Motion: O.Perry motioned to adjourn at 7:37 p.m. Seconded by W.Colbath. Vote: U/A.