



**CITY OF DOVER**

## ZONING BOARD OF ADJUSTMENT - MINUTES

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

### 1. ATTENDANCE

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

**Members Not Present:** Otis Perry, Joshua Cote (Alternate), Chris Prior (Alternate).

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

The Chair called the meeting to order at 7:00 p.m. The Chair opened the meeting, introduced the Board and staff members to the audience, and described the process used to hear cases.

Chris Parker, Director of Planning, thanked the Board members for volunteering and personally thanked William Colbath for his many years of service to the City. Mr. Colbath is retiring from the ZBA at the end of 2012.

### 2. APPROVAL OF PRIOR MINUTES OF NOVEMBER 15, 2012

**Motion:** J.Kelley motioned to accept the November 15, 2012 minutes. Seconded by W.Colbath. Vote: U/A.

*The Chair appointed Jennifer Stone (alternate) to vote on all cases this evening.*

### 3. HEARING – CONTINUED FROM NOVEMBER 15, 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:** W.Colbath motioned to remove from the table. Seconded by J.Kelley. Vote: U/A.

Atty. James Schulte represented the applicant and gave an overview of the proposed plan. Since the last meeting, the applicant has reduced the number of units from 21 to 16 following a meeting that was held with abutters. He noted they are allowed by right to have 12 units. The units will be built on slabs and will be developed as multi-use residential. He discussed the possibility of building 12 units with 4 bedrooms; but their preference is to have 16, 3-bedroom units, which attract a different type of user. He explained that there are not a lot of 4 bedroom apartments available in the City. These types of units generally attract families with children. Two and three bedroom apartments attract younger couples, singles, and retirees. Atty. Schulte explained that due to the wetlands there is limited space to construct; therefore there will be 7 units in one building, and 9 units in the other building. He stated that the Planning Board will deal with concerns about drainage and driveway issues. With the new revisions the driveway would move a little further south. Groundwater issues were discussed, and in fact Atty. Schulte stated that they will be improving the groundwater drainage near the Garrison. He compared about a dozen projects in the vicinity with densities far greater than the proposed project. He discussed the impact of the size of the units including a larger number of smaller units. He reviewed



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the criteria to be met for the variance. A letter was presented that was written by Peggy Carter from Coldwell Banker giving her professional advice on the development and sales analysis. When comparing the value of purchase, Schulte stated that it is less expensive to purchase a unit than it is to rent a unit of the same size. There is a good market for existing units and there is a real market for purchasing units because of purchase trends.

J.Kelley asked Atty. Schulte to confirm the number of bedrooms in the units.

Atty. Schulte confirmed they propose 3 bedrooms vs. 4 bedrooms and stated that the preferred market would be to young couples, groups of people, and older couples downsizing who want two or three bedrooms. It typically excludes children. The target market would change to families or student housing if the variance was not granted. If you go to four bedrooms you would expect children or student rentals.

J.Kelley stated the objective is rentals and the target is UNH students. He asked why a realtor gave the opinion and not an appraiser.

Atty. Schulte explained that the appraiser's job is similar to the assessor. Appraisers don't look at what will happen down the road but only how much it will sell for. A realtor's function is different.

S.Reid confirmed that the applicant met with the abutters and some still have concerns. He asked about screenings along the boundaries, and drainage in the roads; he asked if the applicant would agree to the condition of limiting to unit sizes to three bedrooms.

Atty. Schulte stated that they would cooperate with the abutters and the Planning Board with the various concerns. Drainage systems and concerns were discussed. A drainage analysis and design will be presented to the Planning Board when the time comes. He also confirmed that the applicant has agreed to a condition of limiting the unit size to three bedrooms.

J.Kelley asked T.Corwin about the asked about the density of the extra 4 units, and going against the zoning density.

T.Corwin discussed the proposed density and that they worked with the applicants. They felt it was a reasonable request.

Atty. Schulte discussed there are 6 residential zones in the city, and some zones don't fit.

*Public hearing open.*

Robert Sylvester, 56 Durham Road #7, asked about the public interest, the town and the surrounding abutters. The interest of the neighborhood would be better with 20, 2 bedroom units vs. the larger units. He mentioned that Mr. O'Neil discussed having foliage to the water and is concerned about possible water drainage.

Dean Trefethen, 5 Cielo Drive, Mayor and Planning Board representative; has been asked by abutters to speak on behalf of the citizens of Dover. He stated that he has nothing against Changing Places. The issue tonight is density and that they are allowed 12 units by right. He asked for clarification if the plans include the existing house. There are many issues, many which will be addressed by the Planning Board. He is asking the Board to



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look at the character of the neighborhood, which are mostly single family homes. He feels 12 units are “right”. The standards have changed. The change is in the wetlands. We need higher standards because the water needs to go somewhere and not on the neighbors land. He stated that there is no hardship, and asked what the reason to need more units is. The number of bedrooms has nothing to do with the request and it’s already zoned multi-family.

Charlotte Courtemanshe, current president of the Garrison Condo Association stated that most of the units have sump pumps running year-round. The units have French drains. Residents are concerned with traffic, and looking at a plastic fence. They are concerned about the large number of rentals which may have adverse effects. They do not support the density of that property.

Guiseppe Bellan, 56 Durham Road #5, spoke about the density and the effect it has on the Garrison. He handed out pictures and how it affects the road and the drainage issues. He stated that felt there is no hardship.

Rita Taylor, 68 Durham Road, stated that she is a direct abutter. She discussed the definition of “townhouses” and that people usually own them, which are cared for and not rented. She stated that she grew up on the property which is all clay soil, which will not drain. She is concerned about traffic, drainage, and who will rent them, and that the property will not be maintained.

Albert Catalfo, owns 82 and 72 Durham Road, is concerned about taxes, safety of the pedestrians, that there are no sidewalks, water and drainage. He feels Route 108 is over populated. He commented that the building would have a negative impact on his property due to the building heights.

Dave Nollet, 56 Durham Road #4, spoke about the beauty of the property and that the owners have pride in their units. As a covenant, only 9 units can be rented in the Garrison. He is concerned about renting to college students and the consequences it poses.

Atty. Schulte clarified that for a portion of the property RMSU, the variance only applies to the back portion of the property and not to the front. He stated the house out front may stay the way it is, or it could be converted to a duplex. He confirmed the target market would change with 16 units. All the issues are identical with 12 units vs. 16 units.

S.Reid asked about the lack of hardship.

Atty. Schulte stated that there is a hardship due to the lack of buildable area, which is more costly planning for the roads.

J.Stone asked why 16 units vs. 12 units

Atty. Schulte confirmed there are different circumstances based on unit sizes and target market areas and having families in there would cause a negative impact on the revenues for the city (for example schools, recreation, etc.)

### **Staff Recommendation:**

The Planning Department supports the variance request. Tim Corwin thanked the abutters for their comments,



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concerns and for coming out tonight. The Planning Board will address the many concerns of the abutters if the variance is approved. T.Corwin suggested two conditions:

- Limit the number of bedrooms
- Limit the number of units on the entire property to 18 units. This includes 16 townhouse style units and the current single family home which may be converted to a duplex.

J.Stone confirmed with T.Corwin about the square foot limit to stay within the 10,000 sq. ft.

T.Corwin explained that there is no limit to the size of the house, except for height limits.

F.Landford confirmed with Atty. Schulte that the client is acceptable to 16 units plus duplex.

*Public hearing closed.*

F.Landford said he would rather see 16 three bedrooms units, vs. 12 four bedrooms; traffic would be the same. He feels that ownership vs. rental is up to the builder.

J.Kelley does not feel there is a hardship and does not support the variance. He stated that 12 is enough.

J.Stone agrees and feels it would set precedence. She sees no valid hardship.

W.Colbath mentioned the potential devaluation and agrees with the abutters, that the impact is more with the additional units.

S.Reid commented that the focus is not on the hardship, but more on how it affects the neighborhood.

Board discussion ensued.

**Motion:** J.Kelley motioned to decline the variance. Seconded by J.Stone. Vote: 2/3 (Landford, Colbath, Reid objected to the motion.) The Variance was denied.

*There was a brief recess.*

#### 4. HEARING – NEW

- A. \* Z 12-25 Thornwood Commons, LLC and Varney Brook Lands, LLC, Thornwood Lane (Tax Map M, Lot 4), located in the Executive Technology Park (ETP) District, and subject to the Residential-Commercial Mixed Use (RCM) Overlay District, has approval to construct 62 residential units which were approved as part of development plan that also included non-residential structures. Per the RCM Overlay District requirements, only 50% of the residential units may be occupied prior to construction of a portion of the non-residential structures. To date, none of the proposed non-residential structures have been constructed. Accordingly, the applicant requests a variance from **Section 170-28.2.E** of the Zoning Ordinance to allow 46 residential units (approx. 75% of the total 62 permitted) to be constructed and occupied where only 31 residential units (50% of the total 62 permitted) are allowed to be occupied prior to construction of the non-residential structures.



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Atty. James Schulte represented the applicants. He compared two properties in the district (Cielo Drive, near the Hannaford Supermarket and the congregate care facility). Thornwood acquired the right to build 48 units. The economy has changed since 2006 and the commercial developer on the front parcel had requested an extension of his timing which was approved by the Planning Board. A joint committee was set up to review what is economically viable for the project. The committee will meet in January 2013. There have been many changes to the property including cleanup of the previous environmental issues. Thornwood is trying to reasonably finish and complete this project for the benefit of the property owners as well.

S.Reid asked Atty. Schulte why all 48 units were not requested in the variance.

Atty. Schulte confirmed that they can wait and a new plan would be in place which would allow for 100 residential units later.

J.Kelley commented that he remembers it to be a mix of residential and commercial. He questioned Chad Kageliery's intentions with the project.

Atty. Schulte stated that the intention of the developer is working on what is developable and sellable at this time and he has one year to decide what he will do.

J.Kelley asked when the project is increased, would there be an increase in trash and recyclables.

Atty. Schulte responded that it would be a private road owned by the association and that they can hire a private trash pickup service.

J.Stone asked when is the anticipated date of construction for the commercial entity and what would happen if the commercial portion doesn't happen.

Atty. Schulte responded that Chad Kageliery hopes to have completed plans by the end of 2013 and start the development. He also commented that the residential streets would remain private.

T.Corwin stated that when the homes that are built they would become legal non-conforming based on new zoning. He discussed that density has also changed in that zone.

Discussion ensued.

*Public hearing open.*

Craig Williams, 154 Middle Road, said that he is impacted by lights shining onto his land; he does not see any additional impact with issuing the variance. The homes will be built eventually, and it is a fair request. He supports the variance.

Kent Howard, 2 Jacqueline Drive, spoke against the variance. It creates two hardships. The first is the continuation of Thornwood Road to Middle Road, which will increase the traffic that uses Middle Road. There would be noise concern, marketability concern; it has been more than two to three years and they expected the construction to be completed by now. It will impair their peaceful enjoyment of their home and the quiet neighborhood experience. He is concerned about the traffic pattern if the road is continued through to



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Thornwood Road. The second hardship is the overall traffic flow and congestion. He sees a good compromise and feels a provision be made for the extension. He would like to see the completion of the project earlier rather than later.

Atty. Schulte discussed the portion of the road that is not built and that it is not owned by Thornwood Commons. There was a master plan for residential and commercial. The residential portion was sold off to Thornwood Commons. He stated that if the variance is granted, 46 of the 48 units will be completed sooner, and construction will eliminate the construction noise earlier; there would be a hiatus for a year until the commercial construction resumes.

J.Stone confirmed with Atty. Schulte that Thornwood Commons bought the 22 acres on the Middle Road end and that is all that can be built on.

### **Staff Recommendation:**

The Planning Department, per the Planning Staff memo, supports the variance request with the following conditions:

- No more than 46 units can be occupied before construction of the required non-residential portion of the project.
- Amend the Developer's Agreement to reflect the variance.
- ~~The applicant obtains Planning Board approval for any changes to the lot line as shown on the approved plan.~~

Atty. Schulte agreed with the conditions of the approval. He questioned condition #3 about the lot lines.

T.Corwin clarified what he meant with the condition.

Robert Stowell, Trittech Engineering, who prepared the plans, explained that lot lines were not identified on the plans. He confirmed that when the buildings are sold, an asbuilt plan included limited common area which is recorded at the time of closing, would be filed with the registry of deeds and building locations filed with the building inspector.

Atty. Schulte suggested with Board permission, he would confirm with the Director of Planning as what is needed by them.

Board discussion ensued. After discussion T.Corwin agreed to remove condition #3 as a recommended condition of approval.

*Public hearing closed.*

**Motion:** F.Landford motioned to approve the variance for the 46 structures with two conditions as recommended by the Planning Dept. Seconded by S.Reid. Vote: U/A.

*Discussion after the motion.*



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J.Kelley commented that he voted in favor of the variance and is comfortable with Mr. O'Neil's work. He would like to see this project completed as soon as possible.

J.Stone commented she voted to approve but would have liked to have seen representation on the commercial entity.

W.Colbath commented that it started out as one lot and that the Planning Board should not have allowed the property to be split into two lots.

### **5. RE-HEARING REQUEST – Z 12-09 ROBERT E. FISHER, 49 LITTLEWORTH ROAD (TAX MAP G, LOT B)**

S.Reid presented the letter submitted by Attorney Robert E. Fisher requesting a re-hearing on the above mentioned case. Due to a number of reasons that Atty. Fisher stated in his letter, S.Reid supports the request for a rehearing. He acknowledged that he did not complete the finding of facts sheet because of lack of testimony. He will ask that the Planning staff to propose some findings of facts before the meeting on January 17, 2013.

**Motion:** F.Landford motioned to approve the re-hearing request. Seconded by J.Stone. Vote: U/A.

### **6. ADJOURN:**

**Motion:** J.Stone motioned to adjourn at 9:52 p.m. Seconded by W.Colbath. Vote: U/A.