



**CITY OF DOVER**

## ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting  
Meeting Location: Council Chambers, City Hall, Dover, NH 03820  
Meeting Date: **Thursday, July 18, 2013**  
Meeting Time: **7:00 pm**

### 1. ATTENDANCE

**Members Present:** Sam Reid (Chair), Frank Landford, James Kelley, Chris Prior, Bob Hall (Alternate)  
**Members Not Present:** Otis Perry (Vice Chair), Jennifer Stone (Alternate), Joshua Cote (Alternate)  
**Staff Present:** Timothy Corwin (Assistant City Planner), Gail Pare (Recording Secretary)

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

### 2. APPROVAL OF PRIOR MINUTES OF THE JUNE 20, 2013 MEETING

**Motion:** B.Hall motioned to accept the June 20, 2013 meeting minutes. Seconded by F.Landford.  
**Vote:** 4-0. Sam Reid recused himself as he was not present at the June meeting.

### 3. HEARING – CONTINUED FROM JUNE 20, 2013

- A. \* Z 13-10 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.

R.Fisher represented the owner and discussed his request for a variance. He stated for the record, he does not own the land but owns the lunch cart which he acquired in lieu of legal services rendered. He feels that the variance should be approved for the following reasons: There is no opposition to the lunch cart, the land can accommodate it. He stated that he would agree to place the lunch cart on the property in any area the City feels would be appropriate, and that there is land in the middle which could also be used. He would accept limitations regarding the hours of operations, and he pointed out the general use of the neighborhood includes a mixed use of commercial and residential and an industrial park across the street.

R.Fisher confirmed for B.Hall that the lunch cart is a converted school bus and it is a permanent location and would not be moving. The owners have agreed to the placement of the lunch cart on their land.

B.Hall asked about utilities. R. Fisher said just electric, no need for sewer. He has to deal with the Health Inspector and he would dictate what they would need and if he states that they need a bathroom it would be dealt with at that time. Water is not necessary; they would have a water dispenser on site.

R.Fisher confirmed for S.Reid that the structure is a two family building with families living in the structure.

C.Prior asked what the number of allowed units is by law. Mr. Corwin can answer that, but he stated he believes up to four families.

*Public Hearing Open. Nobody spoke. Public Hearing Closed.*

### REASON FOR STAFF RECOMMENDATION



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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.

T.Corwin confirmed for S.Reid that he prepared a draft finding of fact and that the Board could choose to adopt or not adopt any of the facts. He added that the finding of fact #8 is relative to the 2000 variance. The variance criteria has changed since 2000 and now feels that fact #8 not be adopted into the decision on this case.

S.Reid commented that in light of the Simplex case and cases after that and referenced the Supreme Court; he agrees with T.Corwin that fact #8 not be adopted as a fact in this matter. Fact #8 has been removed as a finding of fact.

R.Fisher reminded the Board of a court case in reference of a woman who owns a 2 acre lot who wanted to have a couple of horses which was not allowed by the ordinance. The Supreme Court stated that the City must permit it. The Supreme Court says it is permissible. He said he doesn't have to prove any special conditions to justify the use; rather he has to prove the use is not contrary to public interest. He stated that he would provide plans and incur the expense of a detailed plan if the Board should request it. He felt that Planning Staff should have requested it and he will comply with any requests of the Board now.

S.Reid reminded R.Fisher that it is not the burden of the Planning staff, but it is up to the applicant to provide a detailed application packet for the Board to make a decision on a case.

C.Prior asked had he not acquired the lunch cart would he be here today to ask for a variance.

R.Fisher replied probably not.

S.Reid asked R.Fisher if he read the draft findings of fact drafted before the June meeting.

R.Fisher said yes, he had read it and he agrees with numbers 1-5, but they are irrelevant. He disagrees with #6, because this property is in a commercial district and not a residential district. He disagrees with #7 and stated that this district is commercial.

Board discussion was held regarding the owner of the property that has a crane business, and the impact of property values.

R.Fisher stated that there is no evidence that the value of the properties would be diminished. He stated that #4 is no longer applicable under the Simplex case.

J.Kelley commented about the specifications of the Zoning and that they do change with time; he asked T.Corwin if the Zoning could be modified.

T.Corwin stated that there may be a legislative reason to update the specifications of the zone. He commented that the property is across the street from an Industrial zone.



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T.Corwin confirmed for B.Hall that the Zoning Board of Adjustment is allowed to consider diminished property value; if there is evidence of it, the Zoning Board is allowed to use their experience and common sense when discussing and granting a variance.

*Public Hearing Closed.*

S.Reid stated that he has read the findings of facts. He stated that the Board is aware that the property is in the R-20 district and that eating and drinking are not allowed, and he is across the street from the I-zone.

B.Hall commented that the property is not empty and that the current use is residential.

C.Prior commented that the property in its current state is already being used for what zoning has allowed.

J.Kelley feels that there is no reason to upset the residential use and that there are other suitable locations he could use.

S.Reid asked if we adopt the findings of fact they can be used in the decision.

Board discussion ensued about the lunch cart diminishing property values in the area.

**Motion:** B.Hall motioned to accept the findings of fact. Motion on the table. Discussion ensued.

**Motion:** C.Prior motioned the request to deny using the finding of facts as provided as the reason for denial. Seconded by B.Hall. Discussion ensued.

T.Corwin suggested going through the individual finding of facts.

Board discussion ensued on each of the 5 criteria.

C.Prior stated that he has mixed feelings about the variance request.

F.Landford feels it does not fit the spirit of the ordinance.

B.Hall commented that it is zoned residential and its use is primarily residential.

Robert Fisher left the meeting at 7:39 p.m.

**Vote:** The motion passed unanimously to deny the variance.

#### 4. HEARINGS – NEW

- A. \* Z 13-08 New England Veterinary Cremation Services (Owner: Jewett Commercial Park LLC), 24 Crosby Road, Unit 3 (Tax Map G, Lot 31-3) located in the Rural Restricted Industrial (I-2) District, requests a variance from Section 170-12.A of the Zoning Ordinance and the I-2 District Table of Use and Dimensional Requirements to permit a pet crematory where a pet crematory is not a permitted use in the I-2 District.



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Chris Flint identified himself as 50% owner in the NEVCS. His partner is Ken Myers. C.Flnt has been in the veterinary business for 24 yrs; his partner K.Myers his entire life. He stated that the need of this service is growing. He explained that due to several environmental issues, this is the best way of disposing of the remains of a pet. This would be a service to veterinarians only and they do not solicit to the general public. The animals are bagged by the veterinarians and stored until they are cremated. They chose Matthews Equipment because they are the best. There are very little environmental impacts. The machines meet the federal guidelines. He handed out the environmental statistics about the particular equipment. The temperature of the machine is about 1600°F so there is no smoke, no odor, and no environmental issues. The van would pick up the animals from the veterinarian, deliver them, and then cremate them. There are private and mass cremation options. Private remains are given back to the owners; mass cremation ashes would go to a pet cemetery or can go to a landfill as there are no environmental issues.

C.Prior asked about the neighbors in the industrial park and if there are any concerns.

C.Flnt stated that the machines are quiet; there is no smoke, and no odor.

B.Hall asked about regulations either local or state.

C.Flnt stated this is a state issue, and the volume the machine does is monitored through state reports.

The Matthews Company monitors the machine electronically for temperature and safety through a monitoring system. It is monitored by computer by the home office.

B.Hall asked if there are any local issues with the Conservation Commission and any other means in regards to the omissions.

T.Corwin stated he could not find anything locally about omissions monitoring.

J.Kelley asked T.Corwin if a human crematory is allowed.

T.Corwin confirmed for J.Kelley that it is allowed as an accessory use to a funeral home.

S.Reid feels it is federal due to the Clean Air Act legislation.

C.Flnt stated NH does not have any regulations. The fail safe and monitoring put in place is old, but Matthews is the oldest and the best in the industry and they are confident with the machine.

D.Choate, of Colliers International is the marketing agent for Jewett Park. He stated that the tenant mix is diverse; adjacent to this unit is a propeller company, a landscape company, and light manufacturing.

C.Flnt mentioned that Dover Veterinary office has a crematory in their building.

F.Landford questioned the no smoke/no odor.

C.Flnt responded that when the machine runs to manufacturing standards there is no smoke or odor.



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*Public hearing open.*

Jennifer Hall works at GlobalPak, which rents unit 1 and 2 in the same building. They are concerned about odors. They run a sales office. After listening to the presentation she feels confident that there would be no issues.

David Choate clarified that the previous tenants of units 3 and 4 were a janitorial firm. He stated that the odors from the crematory would be less offensive than the chemicals in the cleaning supplies. Every community in NH does not have an ordinance about a pet crematorium. He feels that this particular use would not diminish the value of properties in an industrial zone.

F.Landford questioned the animal storage.

C.Flint stated that there are on-site freezers, which hold the animals and they are cremated the same day or the next day.

### **REASON FOR STAFF RECOMMENDATION**

Although a pet crematory is not specifically listed as a permitted use in any zoning district, Staff believes that it is important to accommodate all lawful uses within the City of Dover. The proposed location is well suited to this type of use since it is an industrial property surrounded by industrial uses.

The Planning Department recommends the Board approve the variance as requested.

**Motion:** B.Hall motioned to approve the variance provided that there are no noxious fumes omitted from the facility and that the equipment shall be maintained and operated according to the manufacturer. Seconded by J.Kelley. Vote: 5-0.

### **5. ADJOURN:**

**Motion:** J.Kelley motioned to adjourn. Seconded by B.Hall. Vote: 5-0