



**CITY OF DOVER**

## ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting  
 Meeting Location: Council Chambers, City Hall, Dover, NH 03820  
 Meeting Date: **Thursday, June 20, 2013**  
 Meeting Time: **7:00 pm**

### 1. ATTENDANCE

**Members Present:** Otis Perry (Vice Chair), Frank Landford, James Kelley, Chris Prior, Jennifer Stone (Alternate), Bob Hall (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 7:00 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 MAY 16, 2013 MEETING

**Motion:** J.Stone motioned to accept the May 16, 2013 meeting minutes. Seconded by F.Landford. Vote: U/A.

### 3. HEARINGS – NEW

- A. Z 12-11(A) Rensselaer Properties, Ltd., 142 Broadway, Tax Map 27, Lot 278, located in the Urban Density Multi-Residential (RM-U) District, requests an amendment to a prior variance approval to permit office on the first floor of the building in addition to the beauty shop use previously approved under the variance.

*The vice-chair appointed Jennifer Stone (alternate) to vote on this case.*

Steve McCusker, Project Manager for the property explained the two previous variances granted; one (1) for reconstruction, which is now complete; and two (2) to allow for a beauty salon. The beauty shop did not go in. After all the construction was done, the owner thought that the commercial space would be better used as office space. The applicant is asking for an amendment to the original variance which would allow for office space on the first floor.

S.McCusker confirmed for Bob Hall that there would be up to five offices. He explained that there are five rooms which would have been used as spaces for the salon. The space has not been leased as of yet.

*Public hearing open. Nobody spoke. Public hearing closed.*

T.Corwin spoke to the request for the amendment, which staff supports.

J.Kelley commented about the previous variance request from 2012, and that there was a concern about parking on Oak Street at the time. It required curbing.

S.McCusker confirmed for J.Kelley that there would be no additional parking requested and that there is no door to enter the apartment from the Oak Street side. As part of the construction, a new and substantial stairway was built along the existing parking lot side which included ADA requirements. He stated that there is a sign stating no parking at any time. They had met with the public works and reviewed where a fence or plantings would be installed. Because of the tight space, they opted for neither, and installed a no parking sign.

T.Corwin commented that he would make sure that the TRC plan is followed through.



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S.McCusker confirmed for C.Prior that the total parking space allocation is about 15 spaces.

T.Corwin explained that the parking requirements are by square footage and with the office use it would be less restrictive.

**Motion:** J.Kelley motioned to amend the variance as requested. Seconded by F.Landford. Vote: 5-0

- B. Z 10-06A & B(A) JNM Realty Trust, 54 Dover Point Road, Tax Map K, Lot 20, located in the Thoroughfare Business (B-3) District, requests an amendment to a prior variance approval and from Section 170-12.A. of the Zoning Ordinance the B-3 District Table of Use and Dimensional Requirements to permit the second floor of the existing office building to be used for a maximum of two (2) residential units.

*The vice-chair appointed Bob Hall (alternate) to vote on this case.*

Atty. James Schulte represented the applicant and discussed the original plan for the property including offices and townhouses and the original need for the variance. There was an amendment to the site plan approval. There have been commercial tenants in the building for over a year but they are unable to rent the second floor units. The applicant is asking for an amendment to allow for two residential units on the second floor. This would lower the parking requirements. There are other properties in that area that have combined mixed-use residential/commercial spaces. He pointed out that these units would be rental units only and would not be sold.

*Public hearing open. Nobody spoke. Public hearing closed.*

T.Corwin spoke in support of the amendment; however, he questioned why the 2010 variance included a condition of approval restricting use of the building to residential only. He reviewed the file and could not find anything in the minutes or otherwise as to why the Zoning Board added that condition as part of their approval.

Atty.Schulte responded that the original thought was there would be a certain number of units on site and when they asked to separate the residential from the commercial units; they removed the third floor and reduced the height, and took that space and moved it over to the residential lot, anticipating they would rent the office space out; The condition was imposed not out of concern about having the mixed use, but more of a concern about having a certain number of units on the residential lot. With today's market they have been unable to rent the second floor commercial units.

**Motion:** B.Hall motioned to approve the amendment to the 2010 variance and to grant the variance. Seconded by F.Landford. Vote: 5-0

- C. Z 13-09 Stephanie Vocell (Owner: Theresa D. Sherlock), 20 Roberts Road, Tax Map L, Lot 96-H, 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 the following: (a) fifteen (15) chickens on the property where a maximum of six (6) are permitted; (b) four (4) ducks on the property where the keeping of ducks is not a permitted use in the R-20 District; and (c) the coop and fenced enclosure for the chickens and ducks to be located zero (0) ft. from the



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side lot line and sixteen (16) ft. from the rear property line where a minimum of twenty (20) ft. is required.

*The vice-chair appointed Jennifer Stone (alternate) to vote on this case.*

Stephanie Vocell presented her application for a variance. She stated that the current coop has been in the same location for 10-12 years and was built by her father. She stated that they currently have 15 chickens which they would like to keep.

Ms. Vocell confirmed for C.Prior that she has 15 chickens and she has had them for about three years.

J.Kelley questioned the vacant lot on the corner.

Ms. Vocell stated that the owner of the vacant lot also owns another property that runs down to the water. She stated that as far as she knows, the owner of the property intends to sell it.

Ms. Vocell confirmed for J.Stone that the chickens are contained within the coop and pen.

*Public hearing open.*

O.Perry read a letter of opposition submitted by Paul & Jennifer Malone, from 244 Dover Point Road. The letter summarized concerns with the location of the coop and enclosure and the piles of fecal matter and wet soiled bedding materials spilling over onto their property. They are concerned about their property values as well.

Ms. Vocell responded to the Malone's letter discussing the property line distances and the location of the coop. She stated that the piles are mostly leaves including compost which would be removed and doesn't believe that surrounding property values would be affected.

T.Corwin confirmed that he has been out there and that the chickens are kept in an enclosure. The Planning staff was recommended that there be no more than 12 fowl including up to 4 ducks. The applicant has requested 19 fowl (15 chickens and 4 ducks). Staff is recommending approval under the following conditions:

1. No more than a total of 12 chickens and/or ducks but no more than 4 ducks may be kept on the property at any time.
2. The applicant shall supply evidence to the Planning Dept. within 30 days of approval that 3 sq. ft. of coop is provided per animal and that at least 20 sq. ft. of fenced enclosure is provided for each animal per the requirements of the R-20 District.

B.Hall asked T.Corwin why ducks are not allowed in the ordinance.

T.Corwin commented that the definition of farm animals for family use include chickens, goats, and sheep. He does not know the intent of not allowing ducks and that the inclusion of ducks as a farm animal originates with State statute.



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J.Stone asked the applicant if the ducks and chickens habitat together and if the coop is already the correct size to allow for the increase of the chickens.

Ms. Vocell confirmed for J.Stone that may consider getting one duck. She commented she wanted to apply for the maximum number of what she wanted.

Bob Hall commented about the ongoing removal of the compost and the leaf pile. He stated that the applicant is thorough and he is impressed with the amount of work the applicant did on the application with the abutters and the research about raising chickens.

T.Corwin confirmed for B.Hall that if the variance is granted it is not limited to the current occupants, but a variance runs with the property.

Board discussion ensued regarding the variance request and that the City ordinance should be reviewed.

O.Perry stated that for the record there are 19 letters supporting the chickens. He went on to read the (5) criteria to be met for the variance.

**Motion:** C.Prior motioned to grant the variance with no more than 12 chickens. There was no second. This motion fails for lack of a second.

**Motion:** J.Kelley motioned to deny the request for a variance. There was no second.

Board discussion ensued.

J.Kelley stated that he is disturbed by the amount of fecal matter. He read the real estate letter presented and that it only states that there is no effect on property values whether there are 6 of 15 chickens. The person most concerned is the one closest to the property – the others are somewhat removed from the property. He also stated that the variance runs with the land and the neighbors are stuck with it.

C.Prior commented that there have been 15 chickens for a number of years without any concern.

T.Corwin explained there was a zoning complaint and that the application for a variance was a result of a neighbor across the street who complained about the chickens and the location of coop. There seems to be other issues but the Planning staff will not get involved in personal disputes.

C.Prior feels it becomes an enforcement issue and that the owner with (6) fowl could place the chickens anywhere she wants as long as it doesn't become a health issue for the neighbors.

J.Kelley commented that his thought process is that anyone in downtown Dover would then request a variance for additional chickens. The Board should be looking at if 12 or 19 fowl are okay, and waste is not excessive, then change the zoning ordinance to accommodate that number. He is not in favor.

J.Stone stated that she agrees with J.Kelley. If the increased number is okay, then the zoning should be changed so that people don't have to come in for variance each time. Secondly, the coop and enclosure is right on the



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property line so it doesn't conform. She stated that she doesn't have a problem with ducks and chickens, but if the ducks are not allowed, they are not allowed.

B.Hall and F.Landford commented they both share the same concerns.

O.Perry stated there are two parts to the variance. The first is for the number of fowl and the second is for the location of the coop.

**Motion:** J.Kelley motioned to grant the variance to keep the coop at the current location and to keep the number of fowl as per the current ordinance. Seconded by J.Stone. Vote: 4-1 (*C.Prior opposed.*)

Given the nature of the vote, O.Perry reviewed the five variance criteria with the Board.

**Motion:** J.Kelley voted to deny the variance for number of fowl above what the zoning ordinance permits. Vote: 4-1. (*Prior opposed.*)

- D. 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.

Robert Fisher asked for O.Perry to recuse himself due to alleged adversarial relationships from the past. He stated that the reason for the rehearing request was that the original finding of facts sheet mailed to him did not include any facts in the decision. He stated he provided maps of the property which he gave to staff in the fall. It shows it is a big lot which will easily accommodate the lunch cart. The map shows 4 cars parked on the driveway portion, with space between them, an empty space to the right and a space in the front of the lot. He reviewed Mr. Corwin's summary that there are other uses available within the ordinance; he stated that it is immaterial. He asked the board if this use is a permitted one under the current statute. He stated the Board is aware of the five criteria that it must consider. The most important factor is that there is absolutely no opposition with the location. There was no opposition at the last meeting and there is no opposition at this meeting. The public has been advised, and they don't object. The property can certainly handle the use of the property. He reviewed the criteria. The character of the neighborhood is a mixed use district and is across from the industrial park. There is a mix of commercial use and multi-family use in the area. He referenced the Simplex case and the new state statute in place. He stated that Mr. Corwin's recommendation doesn't provide any facts that would result in denial of the 5 points which Mr. Fisher needs to prove to acquire a variance.

Mr. Fisher again asked for Mr. Perry to sit out and stated that he is entitled to a fair hearing in front of a impartial board.

O.Perry stated that although he does not believe he is biased, he recused himself so as to not let it become an issue.

**Motion:** J.Kelley nominated F.Landford as chair for this case. Vote: 5-0.



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T.Corwin discussed the rehearing request from a previous meeting. At that time, the Board requested he prepare finding of fact based on the initial hearing. He explained that he prepared those and distributed to the Board for their reference and use.

J.Kelley commented that there is a lack of new materials for this meeting.

T.Corwin commented that no new materials were submitted for this case by the applicant. The rehearing request was granted. A letter was sent to Mr. Fisher for the hearing. The fees for the new hearing were paid but no materials were submitted. The old application from the first hearing was emailed to Board members.

C.Prior asked if a second mailing went out to all the abutters. He noted today that he drove by the property and there was no public hearing poster on the property and he was concerned that abutters were not properly notified.

R.Fisher stated that he was not advised he had to hang a sign and he was not given one. He stated that if he had been given one, he would have hung the sign up. He stated that the abutters list was verified and he assumed that the abutters were notified. He didn't want to see this delayed due to a technicality.

J.Kelley stated that if the poster was not posted, then this application is not complete.

**Motion:** J.Kelley motioned to postpone the case for one month. Seconded by C.Prior. Vote: 3-2 (Hall, Landford opposed). The applicant will be notified that he must post the sign at least 5 days prior to the meeting date on July 18, 2013.

#### 4. ADJOURN:

**Motion:** J.Kelley motioned to adjourn at 8:31 p.m. Seconded by C.Prior. Vote: 5-0.