



**CITY OF DOVER**

## ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting  
Meeting Location: Council Chambers, 288 Central Avenue, Dover, NH 03820  
Meeting Date: **Thursday, December 19, 2013**  
Meeting Time: **7:00 pm**

### 1. ATTENDANCE

**Members Present:** Sam Reid (Chair), Otis Perry (Vice Chair), Frank Landford, Bob Hall (Alternate), Jennifer Stone (Alternate)

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

**Staff Present:** Timothy Corwin (Assistant City Planner), Diane Britt (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 SEPTEMBER 19, 2013 AND OCTOBER 17, 2013 MEETINGS

**Motion:** O.Perry made the motion to accept the September 19, 2013 meeting minutes. Seconded by J.Stone. Vote: U/A F.Landford and S.Reid recused themselves as they were not at the September meeting.

**Motion:** J.Stone made the motion to accept the October 17, 2013 meeting minutes. Seconded by F.Landford. Vote: U/A

### 3. HEARINGS – NEW

- A. Z 13-20 Mark G. Phillips,** 385 Sixth Street (Tax Map D, Lot 16) (Property Owner: Weeden Family Revocable Trust) and 387 Sixth Street (Tax Map D, Lot 15) (Property Owner: Diane I. and Jeffrey A. Weeden), located in the Hotel/Retail (B-4) District, requests a variance from **Section 170-12.A** of the Zoning Ordinance and the B-4 District Table of Use and Dimensional Requirements to permit a self storage facility use where self storage facilities are not permitted in the B-4 District.

Mark Phillips, 35 Hodgdon Farm Lane, Newington, is the applicant and spoke stating his attorney was not able to be here with him tonight. He explained this land has been on the market for 12-15 years. The 27 acre Weeden farm was in the family for generations and is now held by 14 heirs. In the middle is the 5 acres bought by Diane and Jeff Weeden. He has a Purchase and Sales Agreement on both properties. He explained details of the easement obtained by the City for Venture Drive which goes through the property, the setbacks on the property, and the wetland and wetland buffer which all impact the property. He gave details of his proposed plan to build self storage on the property, with the building closest to the street resembling a barn and horse stables, and storage buildings behind that not visible from the street. He gave a handout to the Board which differentiated between a warehouse and a self storage facility, under state lien law.

S.Reid confirmed with M.Phillips that only a driveway could be built over the utility easement going through the property and that a structure could not be built over the easement.

J.Stone confirmed with M.Phillips that his plan is to build in phases, starting with the storage facility.

B.Hall confirmed with M.Phillips that the part of the proposed building resembling stables will be used for climate controlled storage.

F.Landford confirmed with M.Phillips that the first phase of building would be storage buildings and that not too much leveling of the land would need to be done for that. The commercial building will need significant leveling of



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the land in order to build that.

B.Hall confirmed with M.Phillips that there was significant developable space behind the proposed front commercial building and stated that he was trying to reconcile what was in the paperwork submitted by the applicant with what he visually observed while he was visiting the site.

M.Phillips went on to give more details of his plan, stating an estimate of tax revenue from the development when fully complete to the City of Dover, stating that storage does not create noise, waste, dust, odor or glare, and would not have a negative impact on the neighborhood.

Discussion ensued regarding the variance being requested, the fact that buildings on this property would be built in phases and that storage buildings could be built first and would not be shielded from view by the larger building, what could be built over the easement and the fact that there is significant usable space from easement to back of lot, and the fact that the building nearest the street would not have internal storage or a loading dock.

M.Phillips gave reasons for approval, i.e. storage generates taxes, there is no drain on city services, it would not be detrimental to neighborhood, it would not be a threat to wetlands, and the value of surrounding properties would not be diminished.

S.Reid stated that the Board would need to determine if the proposed use of the land is consistent with the spirit of the current ordinance, not a previous ordinance.

Discussion ensued regarding if other municipalities regarded storage as a retail business and the narrow configuration of the property limiting its use in strict conformance to the zoning ordinance. There were questions regarding the buildable area on the map that M.Phillips provided to board members, paving on the property with the wetlands, and water runoff studies by Beach and Jones.

### *Public Hearing Open*

Jeffrey Weeden, 387 Sixth Street, spoke in favor of granting the variance. He explained that he owns 5 acres which he bought from his grandparents 30 years ago who owned the land. He stated that they had received some money for the easement allowing the City to put a sewer line through it. This divided the land in half and, contrary to what they were told, it did not increase the value of the land. He feels this is a hardship case. He feels M.Phillips has done a nice job with his business.

Nancy Weeden Hager, who is part of the Weeden Family Trust, spoke in favor of granting the variance. She agrees with Jeffrey Weeden that the family has not been able to sell the property for 15-16 years because there is so little that can be done with this parcel. She gave a short history of the property, stating that originally it was farm land, then it was zoned I-4, and now is zoned B-4. She encouraged the Board to give this project consideration.

D.Barufaldi, Director of Dover Economic Development and represents DBIDA, spoke against this variance request. He stated this appears to be a request for a 21-building development, and not a request for a zoning variance, and the proper application could be for a change of zoning. He stated he checked with the Planning Department and the parcel was never zoned I-4. He felt two commercial buildings on Sixth Street would be a better allocation of that space. He gave statistics for Enterprise Park and stated usable land for development in Dover is scarce. He felt storage was not the highest and best use of this land.



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Nancy Weeden Hager spoke again. She stated the family went to the City asking for consideration of their parcel when there was talk that Enterprise Park was going to be expanded, and also for consideration of their parcel for the police station facility. With no buyer for 16 years, the City and the family need to meet halfway.

S.Reid read an email from Linda Merullo who was not in favor of this project, who encouraged the Board to not approve this request because it is not an allowed use in the area.

S.Reid read a letter to him from Christopher Parker, Director of the Planning and Community Development Department, who could not attend the meeting but wanted his testimony to become part of the public hearing and read into the record, stating that he did not believe it was a reasonable request. (Copy in file.)

T.Corwin stated that, in addition to this letter, the Planning Department submitted a staff memo recommending denial of the variance, which he read, after which he brought up five points:

- (1) The area was not zoned I-4 in past. Staff conducted a search and it has been zoned B-4 since 1988 when there was a major rezoning in the city. He sent an email with this info to M.Phillips. T.Corwin stated he believed they had a tax card from 2002 that was not presented to the Board that either had the property listed as I-4 or split zone but the zoning map is controlling and the property was never zoned I-4.
- (2) M.Phillips presented a definition of a self storage facility as set forth in Title 16 of the RSA. If he disagreed with the Planning Department's definition of self storage as "warehousing", he could have appealed that.
- (3) Regarding tax assessments, T.Corwin asked the Dover Assessor to provide tax assessments for the Microtel hotel, which was \$53,556, and the Hampton Inn which was \$106,790, which are permitted uses in the B-4 District. The amount of land that the self storage facility would cover is significantly more than a hotel.
- (4) The applicant made a case for dimensional relief, and the applicant could have asked the Board for relief from a buffer or setbacks for permitted uses in that district. The Planning Department fully supports the development of this property and wants to help the applicant. Buffers could be reduced and the property could accommodate an allowed use.
- (5) This applicant is really looking at a rezoning of the property, as C.Parker stated in his letter.

Discussion ensued regarding if there was adequate space on the front part of the property for a hotel, that the Board has no jurisdiction over the use of the easement area, compliance with five criteria for granting variance, and that only the physical characteristics of the property should be considered for the variance, not the nature of current ownership.

M.Phillips answered questions regarding other uses that he explored for the property and other projects that he has worked on in the past.

Aaron Brown, who owns Atrio Properties and has done marketing for the Weeden family for the over 10 years spoke. He has entertained at least 40 potential sales on this property but economically viable use of the property is the challenge. He stated he had possession of the erroneous tax card that showed the I-4 zone. He stated this parcel is an abutting parcel to the I-4 zone and if it was zoned I-4 this use would be allowed. He stated that the property would sell if the price was low enough. He stated that there was no one present to oppose the application other than representatives of the City.

*Public Hearing Closed*

S.Reid stated one option that the Board has is to defer action on this until next month and ask that findings of fact be drawn up to consider.

J.Stone felt that the applicant met the five criteria and she would be in favor of approving the variance.



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**Motion:** J.Stone made the motion to grant the variance. Seconded by F. Landford.

B.Hall stated he studied this case and does not feel this is a zoning issue. He thinks this needs to go to the Planning Board, as it is not a minor change but is a major change on a large property which if zoned differently could be much more valuable to the family and to the developers instead of force-fitting something on the property, which was what appeared to be happening.

J.Stone stated she thought the Board needed to be consistent about applicants meeting the five criteria, citing approval of a variance two months ago on Route 108. She stated because the property has not sold for 16 years it does demonstrate a hardship along with the easement going through it.

F.Landford stated he was in agreement with most of what J.Stone said. There is a hardship because of the easement. He asked why the City has not included it in the ETP if it is that important of a piece. He was in favor of this development as it is written.

O.Perry stated he was on the fence. He said if the variance was for the J.Weeden parcel and the parcel to the east of it going back, he could support the variance.

S.Reid stated it was inconsistent with the spirit of the ordinance and felt that the recourse would be to go before the Planning Board asking for it to be rezoned I-4. He stated factors that should not be taken into consideration for granting the variance.

**Motion:** O.Perry made the motion to amend the motion to grant the variance for the back part of the parcel but not the section to the east. There was no second. The motion fails for a lack of a second.

T.Corwin suggested that staff draft a memo and that a motion be made to defer action until the next meeting.

**Motion:** O.Perry made the motion to defer action until the next meeting. Seconded by B.Hall. Vote: U/A.

*Brief recess at 8:41 p.m. and meeting resumed at 8:47 p.m.*

- B. Z 13-21 James and Pamela Pidgeon (Property Owner: Kevin McDevitt)**, 103 Silver Street (Tax Map 10, Lot 117), located in the Urban 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 a “tea house” eating and drinking establishment in connection with the existing bed and breakfast use, where eating and drinking establishments are not permitted in the RM-U District, and to amend conditions of approval for the prior variance granted for the bed and breakfast use (Case H87-22), to permit the serving of lunch to the public.

James and Pam Pidgeon, 103 Silver Street, the applicants, stated that they opened the Silver Fountain Inn on July 1, 2013. Winter is slow for Bed & Breakfast. They knew of a tea house in Limerick, Maine and that is where the idea came from. There would be minimal impact to the area from the tea house. It will be by reservation only. There should be no parking or traffic issues. The tea house would be open for 4 hours, 11 a.m. to 3 p.m.

S.Reid asked if they had a menu. P.Pidgeon had a sample menu which was passed around to the board members. They explained it would be a three tier menu with sandwiches, salads and petit fours.



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S.Reid asked how the food would be delivered.

J.Pidgeon stated they would buy the food at BJs and prepare it themselves. There would be no fried food. The word "lunch" was discussed and it was decided it would be omitted and it would be called a "tea house".

P.Pidgeon explained the seating arrangement would be for approximately 18-20 people. There would be seating by reservation only each day.

There was discussion about the number of rooms in the house, the number of rooms for guests, the Pidgeons live on the property and own the business, the property is owned by someone else at the present time but the Pidgeon's goal is to own the property at some point in the future, and they have a liquor license so that guests may buy wine, but there is no bar and there will not be a bar in the future open to the public.

B.Hall confirmed with T.Corwin that by granting the variance it would not open the door for a use that was not intended and that conditions will be added to protect from this happening.

P.Pidgeon and J.Pidgeon stated they are happy to have the Board add conditions to the variance.

### *Public Hearing Open.*

Gloria Perrine, 107 Silver Street, stated that she and some of her neighbors that she has spoken to were concerned about children walking home and cars entering and leaving the inn. She would like a condition to be added to not allow a full service restaurant in future that would be open late.

Tom Nelson, 108 Silver Street, stated he has lived across the street from the inn for 13 years. His concerns have been addressed at this meeting. He feels it would be good for the neighborhood and he and his wife are in favor of granting the variance.

T.Corwin read the reason for staff recommendation for approval from the Staff Memo.

### **STAFF RECOMMENDATION:**

The Planning Department recommends the Board approve the variance for the tea house use subject to the following conditions:

- Hours of operation shall be limited to Monday through Friday, 11 AM – 4 PM.
- Parking shall be reviewed by the Technical Review Committee.
- Seating capacity shall be determined by Inspection Services with input from the Technical Review Committee, but in no case shall exceed 20 persons.

T.Corwin stated other conditions may be added at the Board's request.

O.Perry stated he would like to see a condition that the tea house only be allowed as an adjunct to the bed and breakfast.

Discussion ensued regarding enforcement of conditions, the days of the week and hours of operation for the tea house, attendance would be by reservation only, the menu would be consistent with exhibit A, and food would be delivered by personal vehicle or common carrier only.



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J.Stone confirmed with P.Pidgeon that the hours of operation would be 11 AM – 4 PM.

*Public Hearing Closed.*

O.Perry stated he would like to make a motion to approve the variance with the following conditions: Hours of operation 11 AM – 4 PM, parking to be reviewed by the Technical Review Committee, seating to be determined by the Building Inspection Services, no fried food to be serviced, use of the bed and breakfast be required for the tea house to operate, and the tea house would serve by reservation only.

B.Hall wanted to add that the menu be consistent with a traditional tea house menu.

**Motion:** O.Perry made the motion to approve with conditions. B.Hall seconded. Vote: U/A

- C. Z 13-22 Miguel Aponte-Rios/Ratchet Head, LLC (Property Owner: Jewett Management, Inc.), 30 Crosby Road, Unit 11 (Tax Map G, Lot 31-3), located in the Rural Restricted Industrial (I-2) District, requests a special exception under **Section 170-12.A** of the Zoning Ordinance and the I-2 District Table of Use and Dimensional Requirements for a “do it yourself” automobile garage club, which is permitted by special exception in the I-2 District as an “auto service” use.

Miguel Aponte-Rios, the applicant, spoke. He stated he has been a photographer and film maker for the past 25 years and about three years ago, when he became involved in motor sports in New England, he saw the need for a place to go where people could go to work on their cars, a space that could be rented by the hour, as well as a place to share knowledge.

S.Reid complimented the applicant on the booklet that he submitted with his application which the Board members have received.

B.Hall asked the applicant if there would be appropriate fire prevention equipment there, and if there would be enough parking.

M.Aponte-Rios stated there would be fire extinguishers on site and there would be a cabinet where flammables would be stored. He explained that there will be a website reservation system so the traffic coming and going will be controlled. If a vehicle has to be stored, it will be stored inside. He stated his organization is very organized and clean and very professional looking.

T.Corwin noted that the building, being a commercial building, has a sprinkler system.

B.Hall stated that there are different levels of fire suppression especially since there would be gasoline in the building.

T.Corwin asked M.Aponte-Rios if there were floor drains presently in the building.

M.Aponte-Rios stated they are in the process of installing one with an oil/water separator which he thought was required. Washing of cars will not be permitted in the building.

Kelly Jewett, owner of the property, stated that their plumber was meeting with someone to go over installation of an oil/water separator.



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S.Reid asked K.Jewett if she was familiar with what type of sprinkler system was in the building.

K.Jewett stated that it was a standard sprinkler system and that they have obtained two automobile special exceptions for that location and did not have to change the sprinkler system.

T.Corwin stated there is clear compliance with the special exception criteria and the Planning Department supports this application. He stated he left in the conditions in the staff memo that only two vehicles will be in the building at any one time and there will be no more than five vehicles at the site at any one time. T.Corwin stated he drove by the building and there appeared to be adequate parking.

S.Reid confirmed with M.Aponte-Rios that he understood the above conditions.

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

**Motion:** O.Perry made the motion to approve with conditions. Discussion on the motion.

B.Hall requested to add the following conditions: (1) A fire protective suppression system meet the requirements of the regulatory authority for fire suppression systems depending on the use of the building, (2) No partially built cars be parked at the parking lot, and (3) The appropriate oil/water separation system be installed.

Seconded by B.Hall. Vote: U/A

T.Corwin stated that an email was sent out yesterday regarding a workshop for 2/20/14 6 p.m. that he and the City Attorney are working on and he asked that board members put it on their calendar. The focus will be on the five variance criteria and recent case law. He stated there will also be a fall workshop.

B.Hall stated that the August Zoning Board meeting minutes are still draft and have never been approved because he and O.Perry were not there to vote, so it was put off.

T.Corwin stated he would look into that.

#### 4. ADJOURN

**Motion:** O.Perry made the motion to adjourn at 9:38 p.m. Seconded by B.Hall. Vote: U/A