



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, January 16, 2014**
Meeting Time: **7:00 pm**

1. ATTENDANCE

Members Present: Sam Reid (Chair), Otis Perry (Vice Chair), James Kelley, Frank Landford, Chris Prior, Bob Hall (Alternate), Jennifer Stone (Alternate), Joshua Cote (Alternate)

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.

The chair announced that case Z13-20, Mark Phillips is the applicant, 385 Sixth Street, was withdrawn and will not be heard tonight, and case Z14-03, the proposal by White Dove Properties, LLC, 24-26 Hanson Street, was also withdrawn and will not be heard tonight.

Scott Erickson, representing the Cricket Brook Condominium Association, stated he had prepared a letter voicing the association's concern in reference to case Z14-03 and asked if the case had been withdrawn altogether.

T.Corwin confirmed the application was withdrawn, stating the applicant is considering different avenues for the development of their property.

2. REMARKS BY CHRISTOPHER G. PARKER, AICP, DIRECTOR OF PLANNING AND COMMUNITY DEVELOPMENT

C.Parker stated he would like to thank the Board as a resident and as the Director of Planning and Community Development for the time and effort they put into preparing for meetings, and for the commitment they have made to serving the community by volunteering their time to serve on the Board.

3. APPROVAL OF PRIOR MINUTES OF THE DECEMBER 19, 2013 MEETINGS

O.Perry pointed out an error at the bottom of page 6: Kelly Jewett was identified incorrectly as the "wife" but she is the "property owner".

Motion: O.Perry made the motion to accept the December 19, 2013 meeting minutes as amended. Seconded by J.Stone. Vote: U/A. C.Prior recused himself as he was not present at the December meeting.

4. HEARINGS – CONTINUED FROM DECEMBER 19, 2013 MEETING

- 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.

As noted above, this case was withdrawn.

5. HEARINGS – NEW



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- A. * Z 14-01 River Valley Development Corp. (Property Owner: The Horizon Trust of New Hampshire), 1.1 acres of vacant land identified as Tax Map 38, Lot 9A-2, located between Dover Bowl and the Meineke Car Care Center at 899 Central Avenue in the Thoroughfare Business (B-3) District, requests a variance from **Section 170-12.A** of the Zoning Ordinance and the B-3 District Table of Use and Dimensional Requirements to permit the construction of a building to be located 25 ft. from the front lot line where a minimum setback of 50 ft. is required.
- B. * Z 14-02 River Valley Development Corp. (Property Owner: The Horizon Trust of New Hampshire), 1.1 acres of vacant land identified as Tax Map 38, Lot 9A-2, located between Dover Bowl and the Meineke Car Care Center at 899 Central Avenue in the Thoroughfare Business (B-3) District, proposes to construct a mixed use building containing twelve (12) residential units on the upper floors with commercial uses reserved on the first floor. The applicant requests (a) a special exception under **Section 170-12.A** of the Zoning Ordinance and the B-3 District Table of Use and Dimensional Requirements to permit multi-family dwelling units, and (b) a variance from **Section 170-12.A** of the Zoning Ordinance and the B-3 District Table of Use and Dimensional Requirements to allow twelve (12) multi-family dwelling units, where the permitted density of 5,000 sq. ft. per dwelling unit permits only 6 units on this lot.

Both cases were heard at the same time and voted on together.

S.Reid explained that Joseph T. Molle, the Chief Investment Officer of Unison Realty Partners, LLC, sent him a letter dated 1/16/2014 requesting continuance of the hearing because he had just recently received the notice of this request. S.Reid stated, according to T.Corwin, the notice was sent out in accordance with state law.

T.Corwin explained he also spoke with Mr. Molle and explained what recourse he had. He stated Mr. Molle's phone number was given to the applicants and they said they would contact him.

S.Reid asked the Board if they wanted to continue with the case tonight.

J.Kelley confirmed with T.Corwin that Unison Realty Partners, LLC, owns Shaw's Plaza and is an abutter.

T.Corwin stated that the abutter notice was mailed at least five days before the meeting date and it appeared the recipient received the notice on Tuesday when he spoke with Mr. Molle.

J.Kelley stated he understands the notice problem but agrees the case should be heard tonight.

S.Reid stated he spoke with T.Corwin before the meeting and they agreed that, particularly when dealing with "corporate America", five days is not sufficient.

T.Corwin stated he will look into the process and see if notices could be sent out 7 or 8 days before the meeting date.

Public Hearing Opened

Atty. F.X. Bruton, of Bruton & Berube, spoke on behalf of River Valley Development Corp. He introduced one of the principals, Mike Patenaude, who was in attendance, as well as Chris Berry, of Berry Surveying and Engineering. He stated he had an opportunity to speak with Mr. Molle today and address some of his concerns. He explained details about changes that the lot has gone through and details about the plan for commercial space on the first floor and a total of 10



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residential units on the second, third and fourth floors. He explained the variance request is for a front setback of 25 feet, where 50 feet is required but that would encroach on the wetlands. The second variance is a density request for 10 residential units, where 7 would be the allowed number. He also explained that the plan is to provide 30 parking spaces on the parcel and rent an additional 18 spaces from Dover Bowl. He stated this would provide ample parking for the commercial space and 2 parking spaces for each unit.

S.Reid pointed out that the agenda states the applicant is requesting a special exception, but since the application does not comply with the special exception requirements, he believed the applicant should withdraw that and proceed with a request for a variance.

Atty. Bruton stated that they were withdrawing the request for the special exception and they want to proceed with the request for the density variance.

S.Reid confirmed with Atty. Bruton that the two variances were to allow 10 residential units and a 25 foot front setback. He mentioned that the lot is not on a city street and there is no frontage but there is legal access to the right of way. He remembers that there was a case in the past where this was a problem, so he asked what Atty. Bruton's position was with respect to the need for the variance from the frontage requirements.

Atty. Bruton explained that the lot was created in a subdivision in 1970 with access and frontage by the right of way. It becomes a grandfathered lot in terms of the frontage issue, and noted that the applicant wants to make improvements to the right of way.

O.Perry confirmed with Atty. Bruton that the right of way is presently owned by Mr. Molle's company.

Discussion ensued regarding easement rights to the right of way for access and if it actually is being used for access, the condition of the right of way and the intent of applicant to improve it, and tractor trailers being parked overnight on the right of way.

F.Landford stated he had a problem with the survey map given to him which shows the lot to be located on Central Avenue, and he wanted to know the correct location of the lot and how far back from Central Avenue it was.

C.Berry apologized, stating that the inset map was incorrect. He stated the actual survey map was correct and the lot was approximately 200 feet from Central Avenue.

Atty. Bruton explained at length how the variance requests meet the criteria, that the project will meet all other zoning and planning criteria, and that the use is reasonable.

Discussion ensued regarding the reason for the 25 foot frontage setback variance request as well as the reason for the placement of the proposed building was to avoid wetlands, the buffer requirements and the density requirements.

J.Kelley asked why the building was not placed in accordance with the zoning frontage setback and less units built to meet code and avoid the variance requests.

T.Corwin explained the setback is off the right of way and not off a city street and the Planning Department felt there was no need to enforce the 50 foot setback on this property, and the Planning Department was comfortable with the project.



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O.Perry stated he felt the density and setback requirements were to provide open space, recreational space, and space for parking, and the size of the parking lot will be impacted by the number of units. He wanted to know what open space was left over per unit. He also wanted to know if the developer would restrict himself to two units on the top floor.

Atty. Bruton explained he wanted to separate two issues. He stated the concern with the wetlands relates to the 25 foot vs. the 50 foot setback, and it was felt that 25 feet of frontage, given this unique location, is appropriate. The density goes up and the building meets the height restriction. He explained they felt that the residential units would be extremely well suited for professional people, given the location and being above the commercial first floor. He verified that the plan was for two residential units on the top floor.

C.Berry told the Board that he did not have an exact figure for the open space available per unit, but he had calculated that an area of approximately 4500 square feet would be available for passive recreation. He stated during the planning process typically funds would be allocated for active recreation. He stated the applicant has another project that is similar to this one with 12 units, commercial on first floor, residential on second floor, and no children live there.

S.Reid confirmed with C.Berry that there is no final design but the right of way would be resurfaced, the subsection would probably be removed and rebuilt, and if the owner, abutters and users of the right of way agree, planting could be done on the sides. It has not been determined if curbing would be required, but resurfacing and lane delineation is important so that it would be used and viewed as a proper entrance.

Discussion ensued regarding the right of way being used as a shortcut, placement of a trash dumpster and the possibility of it taking away a parking space, who maintains the right of way and the need for an agreement with the owner to maintain it, what utilities are available to the site, and treating water runoff before it is sent to the wetlands. There was discussion regarding placement of the front of the proposed building.

Debbie Driscoll Davis, who represents Driscoll Realty, an abutter, stated that Driscoll Realty owns the lot behind Meineke and she pointed to a map to identify the lot for the Board. Driscoll Realty has a parking easement on top of the right of way that is owned by the owner of Shaw's Plaza, and also has head in parking along that right of way against their lot for almost the distance of their lot which they obtained from the owner of Shaw's Plaza years ago. They have land next to the lot being discussed tonight that is for sale. They are concerned that runoff from the lot could increase the wetlands onto their lot, which they think may have already happened, and they plan to have a wetlands study done in the spring. She stated the tractor trailers park on the right of way and only the owner of Shaw's Plaza can do something about that, and pointed to a map to show the Board where the tractor trailers are parking.

S.Reid asked for clarification as to the reason for her mentioning that they have a parking easement along the right of way.

D.Driscoll Davis stated it was because of the potential that the right of way may not be 50 feet wide at times.

J.Kelley confirmed with D.Driscoll Davis the reason she felt the wetlands have been impacted on their lot was because some trees and things that were removed from that lot in the past and other things were brought onto the lot, and after that happened, she feels it pushed the wetlands onto their lot.

J.Kelley asked T.Corwin about protection of wetlands in the hypothetical case that something was done to a lot to reduce the wetlands. He stated that it might be a wetlands violation under our ordinance, under state law, or it could be a zoning code violation.



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C.Prior confirmed with D.Driscoll Davis that the parking easement was on the paved right of way.

S.Reid stated that generally a right of way is 50 feet wide but the paved portion is 22-26 feet wide. Roads generally are not 50 feet wide.

C.Prior confirmed with D.Driscoll Davis that on the aerial view map the entire right of way is paved.

J.Kelley asked if there have been any discussion with Driscoll Realty about their lot.

D.Driscoll Davis explained when she received the abutter notice for this meeting, which was at the beginning of the week and did not give her much time to prepare, she contacted the broker handling this property to see if there was any interest in their lot. She believes at this time there was no interest.

Mark Bowen, owner of the Dover Bowl property since 1987, spoke next. He stated he talks to Mr. Molle quite often. He has been working with the applicants. He feels something should be done with the property. He feels there is plenty of room in the right of way for parking and for getting in and out. Many people have looked at the property and could not do anything with it.

F.Landford confirmed with M.Bowen that he is the owner of the parking lot in front of Dover Bowl which abuts the lot being discussed tonight and that the Shaw's Plaza owner owns the land that the right of way goes over.

C.Berry stated that the property did have a wetlands violation in the past, explaining that someone had moved material around which impacted the wetlands. He stated this happened before he was involved with this property. DES was involved and fill was removed, and the violation was taken care of. He stated, regarding treatment, that he is not allowed to increase the rate of flow onto someone else's property and that will have to be addressed.

O.Perry asked C.Berry to address traffic flow.

C.Berry stated the right of way was large enough to accommodate parking and still have ample space to pass.

STAFF RECOMMENDATION:

T.Corwin read the staff memo prepared for cases Z14-01&02 into the record.

T.Corwin stated that the Planning Department recommends that the Board approve the variance from the front setback requirements and the variance from the density requirements provided that no more than ten (10) dwelling units are constructed on the property.

J.Kelley asked T.Corwin if, in the staff recommendations, first paragraph, last sentence, a period could be inserted after the word "buffer" and the language "as much as possible" be removed. T.Corwin explained there will be some paved parking area in the buffer and the applicant will need to get a Conditional Use Permit for that.

Regarding O.Perry's question limiting the residential units to two bedroom units, S.Reid asked T.Corwin if, in the Planning Department's perspective, that suggestion is viable.

T.Corwin stated that the applicant was agreeable to that.



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Public Hearing Closed

Motion: O.Perry made the motion to approve both variances, with the condition that no more than ten 2-bedroom units be constructed, with commercial space reserved for the first floor. Seconded by C.Prior. Vote: U/A

- A. * Z 14-03 White Dove Properties, LLC, 24-26 Hanson Street (Tax Map G, Lot 20-41), located in the Urban Density Multi-Residential (RM-U) District, proposes to subdivide the property into two lots, one containing 10,000 gross sq. ft., of which 2,836 sq. ft. is located in the Conservation District, and the other containing 8,084 gross sq. ft., of which 2,413 sq. ft. is located in the Conservation District. Applicant requests a variance from **Section 170-12.A** of the Zoning Ordinance and the RM-U District Table of Use to permit the creation of a lot containing 8,084 sq. ft. where a minimum of 10,000 sq. ft. is required, and from **Section 170-27.D** to permit the creation of two lots that have an area outside the Conservation District of less the minimum required 10,000 sq. ft. lot size.

The above case was withdrawn.

6. ANNUAL ELECTION OF OFFICERS

The Chair entertained nominations for Chair.

C.Prior nominated Sam Reid for Chair. There were no other nominations for Chair. Seconded by J.Kelley. With a show of hands Sam Reid was elected as Chair of the Zoning Board. Vote: U/A

The Chair entertained nominations for Vice Chair. J.Kelley nominated Otis Perry for Vice Chair. There were no other nominations for Vice Chair. Seconded by J.Cote. With a show of hands Otis Perry was elected as Vice Chair of the Zoning Board. Vote: U/A

Staff Comments:

T.Corwin announced that he had parking passes for Board members and explained how these can be used.

O.Perry stated that, due to the abutters for tonight's meeting not receiving the notice in a timely fashion, he is requesting that notices be sent out a minimum of 10 days before the meeting date.

Discussion ensued.

T.Corwin said he would speak with Director Parker about this administrative change because deadline dates for applications are already posted and these may need to be changed.

T.Corwin reminded Board members that next month there will be a legal update at 6 p.m. and refreshments will be provided.

7. ADJOURN

Motion: O.Perry made the motion to adjourn at 8:20 p.m. Seconded by J.Kelley. Vote: U/A