

**CITY OF
DOVER**

ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
Meeting Location: McConnell Center, Room 306, Dover NH 03820
Meeting Date: **Thursday, August 21, 2014**
Meeting Time: **7:00 pm**

1. ATTENDANCE

Members Present: Sam Reid (Chair), Otis Perry (Vice Chair), Frank Landford, Chris Prior, Bob Hall (Alternate)

Members Not Present: George Reagan (Alternate)

Staff Present: Timothy Corwin (Assistant City Planner), Diane Britt (Recording Secretary)

The Chair called the meeting to order at 7:01 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 MEETING MINUTES OF JUNE 19, 2014 AND JULY 17, 2014

S.Reid stated that action on the June minutes had been deferred at the last meeting due to requests to add additional detail to these minutes.

O.Perry confirmed with T.Corwin that the June minutes included in the packet for tonight's meeting are the final version of the June minutes that contain B.Hall's comments from the July meeting.

Motion: B.Hall made a motion to accept the June 19, 2014 Regular Meeting Minutes. Seconded by O.Perry. Vote: 4/0 (C.Prior abstained)

Motion: O.Perry made a motion to accept the July 17, 2014 Regular Meeting Minutes. Seconded by F.Landford.

T.Corwin stated he provided board members with a copy of B.Hall's email sent to staff that contained his comments on the July minutes, and asked the board to read the email and see if they agree with the proposed changes.

B.Hall stated he watched the video of the meeting to confirm his comments and feels that they are important points which should be included in the minutes.

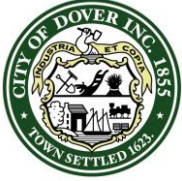
Discussion ensued regarding amending the motion or deferring action on the July minutes until the next meeting.

O.Perry withdrew his motion. F.Landford withdrew his second.

Motion: O.Perry made a motion to defer action on the July Regular Meeting Minutes until the next meeting. Seconded by B.Hall. Vote: U/A

3. HEARINGS

- A. *Z14-18 STF Development Corp., 35 Dover Point Road (Tax Map K, Lot 37), located in the Medium Density Residential (R-12) District, requests a variance from Section 170-12.A of the Zoning Ordinance and the R-12 District Table of Use and Dimensional Requirements to permit (a) 28 multi-family units where multi-family is not a permitted use in the R-12 District, (b) office uses in the proposed building at the front of the lot where office is not a permitted use, (c) a building height of forty (40) ft. where thirty-five (35) ft. is the maximum permitted, and (d) one (1) sign for the office use that would conform to the requirements of the Thoroughfare Business (B-3) District; and from Section 170-6, definition of "Lot", to permit more than one (1) principal building on the lot.



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T.Corwin stated the last portion of the above, “and from Section 170-6...” is not for Zoning Board consideration, and would be permitted with Planning Board approval.

Public Hearing Open

Attorney James Schulte represented STF Development Corp. He gave handouts to board members. He explained that in 2005 a variance was obtained by them to build a congregate care building with 28 units. The property was not able to be developed as congregate care due to changes in federal funding requirements as well as other reasons, and another variance was obtained in 2012 to have 32 residences in the building. At that time as a condition of approval the building was to be only residential. There was a provision that units on the ground floor were to be age restricted to 55 or over. They got site review approval from the Planning Board and excavation was started for the foundation but it did not proceed any further. He described the businesses, condominiums and developments in the area and stated this property is at the end of the R-12 zone and is surrounded by commercial uses. They have modified their proposal to be mixed use with office space on the ground floor and residential units above. The proposed building is to be 100 x 60 feet and the highest point of the building would be 37-1/2 feet. He explained the parking plan for the residents and the office space. He explained their reasons for requesting multi-family use, office use, height of building, and the sign for the office use. He stated this proposal would fit in with the character of the neighborhood.

O.Perry asked that the record show that in the past he assisted the owners to get funding for the congregate care building. He has not been associated with this project since.

C.Prior confirmed with J.Schulte that the property line might need to be adjusted with the Planning Board in order to meet the setback from the property line.

There was discussion about density, the number of one and two bedroom units being proposed, and the amount of parking could be reduced in order to meet the open space requirement.

C.Prior noted that on the plan the building as designed and submitted is encroaching on the side setback.

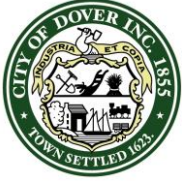
T.Corwin stated that this plan will be in our file and in the future it could create confusion. As a condition of approval, he suggested that the applicant submit a revised conceptual plan that does not have the obvious inconsistencies, with notes that a CUP may be applied for regarding reduced parking, and that the applicant will meet the side setback or apply for a minor lot line adjustment.

B.Hall stated he is not sure what the applicant is asking for because of the difference of what was submitted and what was handed out tonight.

J.Schulte went over the applicant’s four requests for 28 residential units, office use, signage, and the height of the building.

There was discussion if the variance is granted tonight it would replace any previous variance and that the applicant would accept that, and that the applicant does not want an internally lit sign.

T.Corwin stated that two emails were received by staff from Chris Wayne of 26 Dover Point Road and Christina Wong of 26 Dover Point Road, who are concerned that 28 residences would put a burden on Dover Point Road.



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Marilyn Follansbee, 25 Dover Point Road, stated when the first condominiums went in she had no objection. What she does not like is a big building out front. She was told no businesses would go in there. She would like to see the height of the building to stay within 35 ft. The sign will be in good taste. She fought hard to keep businesses off that side of Dover Point Road. She stated the gas station is an abomination.

David Martin, 10 Linda Avenue, stated he supports the variance that was given in 2012. He opposes allowing commercial use on the first floor and supports age restricted residences on the first floor.

STAFF RECOMMENDATION

T.Corwin stated that staff supports the requested variances. He read the portion of the Staff Memo that states the reasons for the staff recommendation. He drafted some proposed conditions and read them for the board's consideration. For the office use he suggested a condition that the office be limited to the ground floor of the mixed use building. For the sign variance, the suggested condition is that it be no larger than 75 sq. ft., have no internal illumination, and that each tenant panel on the proposed sign shall obtain a sign permit. For the height variance, he suggested a condition of approval that states that the variance is granted for the proposed mixed use building only, and the mixed use building is permitted to be no taller than 37-1/2 ft., and shall be designed consistent with the architectural renderings provided by the applicant. Conditions of approval that are applicable to all four variances are: (1) the applicant shall provide an updated site plan to the Planning Department and he suggested removing all the notes except for the one which states that the project complies with the applicable side yard setback or shall seek relief if required, and (2) these variances replace all prior variances for this property and the applicant agrees to abandon the previous variances.

There was discussion regarding the side setback issue and that the applicant has not requested and the board is not granting any relief for the side setback.

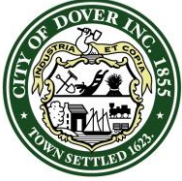
Public Hearing Closed

T.Corwin stated that by not approving the concept tonight the board is significantly reducing the future development potential that is available as a practical matter with the existing variance.

Motion: C.Prior made a motion to replace any prior existing variance with the following: To grant a variance (a) to permit 28 multi-family units, (b) to permit office use in the proposed building at the front of the lot with commercial use on the first floor only, (c) to permit the building height of that building containing the office use to a height not to exceed 37-1/2 ft. and having a roof line consistent with the surrounding dwellings, and (d) to permit one sign for the office use that would conform with the requirements of the B-3 district not to exceed 75 sq. ft. and not to be internally illuminated.

Discussion ensued regarding other conditions to be added. Additions are that (1) each tenant panel will apply for a sign permit, and (2) a final updated site plan will be provided to the Planning Department depicting accurate notes. Seconded by B.Hall with the appropriate comments that were made. Vote: 5/0 - Passed

- B. *Z14-19 Robert C. Carrier, 2-4 Florence Street (Tax Map 27, Lot 171), located in the Medium Density Residential (R-12) District, requests a variance from **Section 170-12.A** of the Zoning Ordinance and the R-12 District Table of Use and Dimensional Requirements to permit the construction of an attached carport within 5 feet of the rear lot line where a minimum setback of 30 feet is required.



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Public Hearing Open

Robert Carrier, 2 Florence Street, stated he would like to construct a carport to ease the parking. He has a two-car garage that is attached to the existing duplex and the carport would be constructed to the left of this. Because of how the duplex was constructed on the lot he needs a variance for the rear setback. On the perimeter of his lot is a six-foot fence, so there is no obstructed view or anything that the neighbors would complaint about. There would be a small amount of paving in the area which would be incorporated into his existing driveway.

C.Prior confirmed with R.Carrier that the carport will be attached to the existing two-car garage, and it would be 14 ft. wide to accommodate one car.

R.Carrier stated it would have a shingled roof and the underneath would be concealed probably with perforated vinyl covering, and have a clapboarded gable end.

S.Reid confirmed with R.Carrier that the closest neighbor's house which is on the Broadway side is about 60 feet from the carport.

O.Perry asked what side of the house this carport would be on.

R.Carrier stated when facing the duplex the carport will be off the garage on the left side of the house. He also stated that he did not want to have a massive garage next to the house, but wanted some open space with a roof over it.

B.Hall confirmed with him that he is presently parking there. R.Carrier stated he would continue to do that if the variance is not granted.

Dave Martin, 10 Linda Avenue, stated he thinks 5 ft. is adequate and he would recommend approval.

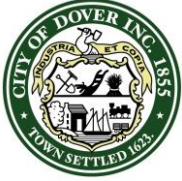
STAFF RECOMMENDATION

T.Corwin stated staff supports this request for the reasons stated by the applicant. There is clearly a unique configuration of the lot that prevents the carport from being constructed without a variance. There is a solid 6 ft. vinyl fence that separates the property and impact would be very minimal. He stated an email from an abutter was received by the Planning Director in support of the variance request.

Public Hearing Closed

Motion: O.Perry made a motion to grant the variance because the applicant has met all the conditions for the variance. Seconded by B.Hall. Vote: 5/0

- C. *Z14-20 Barlo Signs/Convenient MD (Property Owner: Prime Circle LLC), 15 Webb Place (Tax Map D, Lot 2A), located in the Thoroughfare Business (B-3) District, requests a variance from Section 170-32.A of the Zoning Ordinance and the B-3 District Table of Use and Dimensional Requirements to permit (a) a 147 sq. ft. wall sign where the maximum size wall sign permitted is approximately 75 sq. ft., based on the tenant's linear business frontage of approximately 75 ft., (b) total sign area of 241.6 sq. ft. where approximately 149 sq. ft. is permitted by right, and (c) a total of three (3) signs where only two (2) are permitted by right per tenant.



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Public Hearing Open

S.Reid asked for clarification as to what “by right” meant.

T.Corwin stated it is “by right” under the Zoning Ordinance.

Tim Sullivan, of Barlo Signs from Hudson, New Hampshire, represented the applicant. He stated three variances are being sought. The property is on the corner of Indian Brook Drive and Central Avenue next to Five Guys. It is a congested area of town and traffic counts are about 25,000 vehicles in each direction at that intersection per day. He stated the entrance is well down Central Avenue where it loops around and comes in the back part of the property. They are proposing a wall sign which will be 147 sq. ft. for proper visibility from the intersection which is about 200 ft. back from the majority of the traffic. He said he feels the sign is in keeping with the sizes of other signs on the property. The letter height will be similar to that on the Five Guys’ sign. Convenient MD will occupy about 5,800 sq. ft. and will have about 45% of the overall frontage of the plaza. The second variance is for signage on the Indian Brook Road side, the main thoroughfare when getting off the highway, which would be an 80 sq. ft. sign. He explained that a variance was granted in the past for a 75 sq. ft. sign at the front of the property but he feels this is too small. It will be an internally illuminated sign. The third variance is for a panel on the tenant directory.

Max Puyanik, CEO of Convenient MD, stated they are an urgent care practice, non-hospital affiliated, there are facilities in Windham and Concord, and they are in the process of opening up in some other communities. He gave an overview of the doctors, nurses, radiology technologists and medical assistants who work for the company, the patients who come to their facilities, and the scope of their urgent care services. He stated patients will typically travel some distance to be seen at their facilities because they offer a very cost effective alternative to emergency room visits. He explained that their patients are usually in some degree of stress and many times are not familiar with the area, and that is the reason signage is so important. He stated the company gives back to the community in many ways.

O.Perry asked what the hours of operation would be.

M.Puyanik stated they are open 9 a.m. to 9 p.m. 7 days a week.

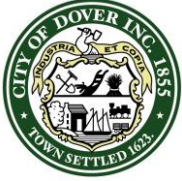
S.Reid asked for clarification of the three variances that were obtained previously for that location.

T.Sullivan stated the variances were for three signs.

C.Prior stated there was a variance for the sign on Indian Brook Road.

F.Landford stated it was for the front sign, the sign on Indian Brook Road and for the sign on the directory.

T.Corwin explained it was a single variance to permit the three signs in the past. He stated to do what they want to do they are requesting three variances that would permit a 147 sq. ft. wall sign above the entrance and would permit a total sign area between the two signs of 241.6 sq. ft.



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There was discussion regarding the requirement in the B-3 zone that all signs together cannot be more than 2 sq. ft. per 1 ft. of business frontage. The total square footage for the signs in the previously granted variance did not exceed this. It was confirmed that if the variance is not approved tonight the applicant could install signs as per the previously granted variance. It was confirmed that the previous variance was for three signs.

O.Perry asked the applicant if there was a way to redesign the front sign to take up less space.

T.Sullivan stated that “Convenient” is part of their trademark for their locations.

S.Reid stated he was concerned about granting this variance when others have abided by the regulations in the past. He questioned whether there was a hardship with the three signs and the square footage.

T.Sullivan responded that signage was important to people trying to find an urgent care facility, whereas retail establishments did not have that concern.

B.Hall stated he thought most people would be able to find the facility with the lit sign along with the tenant directory and he did not see the need for the larger sign.

T.Sullivan stated the panel in the tenant directory is under 2 ft. tall and the letters are 8 and 6 inches in size. The sign is positioned beyond where the proper turn would be and is unreadable from the intersection.

B.Hall asked if they did not have a sign on the Indian Brook Road side of the building, then what size could they make this sign.

T.Corwin explained that each wall sign can only be 1 sq. ft. per 1 ft. of business frontage. The length of their frontage at the property would allow them to have a wall sign three times the size of the other three tenants.

C.Prior wanted to know in the B-3 zone on Indian Brook Road what the maximum signage for all tenants in that building would be.

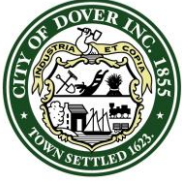
T.Corwin stated the tenant on the corner is the only one permitted by right to have an extra sign. The size of each tenant’s sign is dictated by their frontage along Indian Brook Road. Theoretically, the applicant could take one of the two signs that they are permitted by right and put it on the Indian Brook side.

O.Perry asked T.Corwin if they stay within the size limits by right are they allowed three signs by the previous variance?

T.Corwin confirmed that the sign package under that variance allowed for a 75 sq. ft. sign on the front of the building (the maximum they are permitted under the ordinance), and on the Indian Brook side for that unit they were allowed a 60 sq. ft. sign, and the panel sign.

T.Sullivan suggested that a condition of approval could be based on an urgent care facility.

S.Reid stated that variances run with the land and are not tied to an entity, so that would not be possible.



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STAFF RECOMMENDATION

T.Corwin stated the purpose of the variance process is to account for unique conditions of a property. There may be certain properties where there are unique characteristics of the property and it does not make sense to apply any particular zoning ordinance provision to that property. Everything he has heard here was related to this applicant and that is not what the variance process is intended to address. Once a variance is granted it runs with the land regardless of the tenant. The Planning Department's view is because they are an urgent care business is immaterial to the request. They stated they want to emphasize their trademark, but the Zoning board is not here to facilitate their business plan of promoting their brand. This application suggests a zoning amendment, not variance relief. He stated he thought this site does not meet their needs. The Planning Department does not see anything unique about the access to the building and directional signs are allowed at the entrance and exit. If the variance is granted, the wall sign will be six times the size of other signs on the building. Previous tenants have never requested bigger signs through a variance. That is clear evidence that there is nothing unique about this property. It is not appropriate for the variance process and the Planning Department is strongly opposed.

M.Puyanic stated he is aware of other towns who include conditions for approval for variances and suggested that the variance could be conditional upon an urgent care use. He stated other towns have not been as restrictive on signage. He thinks the location is appropriate but the entrance is their concern because it is not close to the front of the building.

S.Reid asked T.Corwin to address his first concern regarding a condition of approval tied to the use.

T.Corwin stated the issue is that the variance is driven by the needs of this tenant, not by the unique characteristics of the property.

Public Hearing Closed

S.Reid stated that the number of letters in their trademark limits the visibility of the sign to some extent.

C.Prior stated he thought the sign on Indian Brook Road is far more important than the sign on the front because of patients coming off the highway.

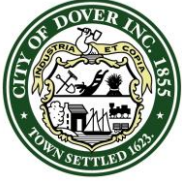
B.Hall stated he agreed and thought the sign at the front of the building won't be pulling people in from the intersection as much.

Motion: O.Perry made a motion to deny the variance based on the testimony given that did not prove evidence of a hardship. Seconded by C.Prior. Vote: 5/0 - Denied

- D. *Z14-21 FMX, LLC, 1 Education Way (Tax Map E, Lot 31), located in the Executive Technology Park (ETP) District, requests a variance from **Section 170-32.A** of the Zoning Ordinance and the ETP District Table of Use and Dimensional Requirements to permit two (2) signs where only one (1) sign is permitted by right.

C.Prior recused himself because knows several people who work at Formax.

Public Hearing Open



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T.Corwin stated he would like to give context about the way the hearing notice was drafted. He thinks it suggests a greater amount of relief than is being considered. If Education Way were a public street no variance would be needed and it would be permitted by right, but Education Way is not a public street.

Ryan Lindsay, a member of FMX, LLC and an owner of Formax, stated he would like to put two identical signs on the building because of the way the building is situated and he thinks one at each corner is needed for it to be viewed properly. The signs will be relatively small at 35 sq. ft. each and will be halo-lit.

STAFF RECOMMENDATION

T.Corwin stated that the area of the two signs together is less than what they would be permitted to have by right for a single sign on Sixth Street.

There was discussion about having one large sign on Education Way, that the size of the sign is governed by frontage, and that the company only has frontage on Sixth Street.

Public Hearing Closed

Motion: O.Perry made a motion to approve the variance for two signs with the design, location and size as shown on application. Seconded by B.Hall. Vote: 4/0

4. REVIEW OF ZONING BOARD OF ADJUSTMENT RULES OF PROCEDURE

S.Reid asked the board to decide if the rules of procedure could be deferred until the next meeting.

T.Corwin handed out two documents - Document #1 is the final draft with the City Attorney's edits and Document #2 is the final City Attorney's version with all the changes accepted.

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

S.Reid mentioned the legal seminars scheduled for September 3, 10 & 17, 2014 being held from 7-9 p.m.

T.Corwin explained the sign up procedure and gave more details about these seminars.

S.Reid announced that Jennifer Stone has resigned because she accepted a job in the Dover school system. Josh Cote resigned as well because he is busy with school. He stated B.Hall has submitted a request to be a full member.

T.Corwin stated he knows of someone who has submitted an application to be appointed to the Zoning Board of Adjustment and the Appointments Committee will be meeting soon to discuss that.

B.Hall stated he likes the aerial and street views that are being added to the variance packages.

5. ADJOURN

Motion: O.Perry made a motion to adjourn at 9:14 p.m. Seconded by C.Prior. Vote: U/A