



ZONING BOARD OF ADJUSTMENT

Draft Minutes

October 13, 2020 - 7:30 pm @ Community Development Department

Physical Location: 3 North Lowell Road (Community Development Department)

Live Broadcast: WCTV Channel 20 – Local Cable TV

Live Stream: <http://www.wctv21.com/>

Chairman Mike Scholz- present (remotely via Zoom at home and alone)

Vice Chair Bruce Breton- excused

Pam Skinner, Secretary- present (remotely via Zoom at home and alone)

Neelima Gogumalla, regular member- present (remotely via Zoom at home and alone)

Nick Shea, regular member- present (remotely via Zoom at home and alone)

Betty Dunn, alternate- present (remotely via Zoom at home and alone)

Kevin Hughes, alternate- present (remotely via Zoom at home and alone)

(attendance taken by roll call vote)

Staff:

Brian Arsenault- ZBA Administrator/ Code Enforcement

Anitra Lincicum- minute taker

Chairman Scholz read the following statement:

“As Chair of the ZBA, I find that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor’s Emergency Order #12 pursuant to Executive Order 2020-04, the public body is authorized to meet electronically. Please note that all votes that are taken during the meeting shall be done by roll call vote only.”

Let’s start the meeting by taking a roll call attendance. When each member states their presence, please also state whether there is anyone in the room with you during the meeting, which is required under the Right-to-Know law.”

Public Hearing

Chairman Scholz sat Mr. Hughes for Vice Chair Breton.

Case #29-2020: Parcel(s) 11-C-180

Applicant - DADE Realty Trust – Daniel J. Enxing

Owner - DADE Realty Trust – Daniel J. Enxing

Location – 19 Enterprise Drive

**Zoning District – Business Commercial A District and Cobbetts Pond & Canobie Lake
Watershed Protection Overlay District (WPOD)**

Variance Relief is requested from **Section 605.1**, to allow the use of a single family dwelling that is not a permitted use in the Business Commercial A district.

47
48 Ms. Skinner read the case into the record. The abutters' list was read by Chairman Scholz. Mr.
49 Enxing is the applicant and is representing himself. Mr. Enxing read the 5 criteria contained in
50 the public packet. Mr. Enxing stated that the neighborhood is now largely residential and he sees
51 the proposed use of the property as a residence is more aligned with the use of the properties in
52 the neighborhood. Now that Route 111 has moved, there are more residential uses for the
53 properties in the area.
54

55 Ms. Dunn asked a procedural question. Ms. Dunn sees that this residence has two frontages and
56 she asked if the abutters were notified. Mr. Arsenaault stated that the State of New Hampshire was
57 informed of the application. Ms. Dunn asked about Parcel 350 and Parcel 600; Mr. Arsenaault
58 stated that those parcels were not directly across the street. Ms. Gogumalla asked what the use of
59 the property was. Mr. Enxing stated that he purchased the property in 2017 and prior to that it
60 was used as a travel agency.
61

62 Ms. Gogumalla asked about the interior of the residence. Mr. Enxing stated that it is a small
63 home with a kitchen, living room and 2 bedrooms. The garage is a four bay garage. Mr.
64 Arsenaault stated that he took in the application as a mixed use property. Mr. Enxing stated that
65 he does not have any plans to use this property for a business.
66

67 Ms. Gogumalla asked what the other driveways in the area were for. Mr. Enxing reviewed the
68 use of the property and what the driveways and buildings were used for. Ms. Dunn stated that on
69 the right and left of this property, there are businesses. Hence, the property might be sandwiched
70 between two businesses. Mr. Enxing stated that there is no visibility near the other two properties
71 that could be businesses. Chairman Scholz stated the letter from the Conservation Commission
72 does like the additional storm water management and that the driveway will not increase in size.
73

74 Chairman Scholz opened discussion up to the public.
75

76 **A motion was made by Mr. Shea to go into Deliberative session at 7:57pm. Seconded by**
77 **Ms. Skinner. Roll call vote: Chairman Scholz, Ms. Skinner, Mr. Hughes, Mr. Shea and Ms.**
78 **Gogumalla- yes. Vote 5-0. Motion passes.**
79

80 Chairman Scholz stated that they have had properties come before the Board to change the use of
81 a property. Chairman Scholz does not believe this meets the first 2 criteria. He does not believe it
82 meets number 5 and his opinion is that this is spot zoning and it is something they would like to
83 avoid. The Board discussed the use of the property. The Board discussed that the buffering of
84 properties are often considered by the Planning Board. Mr. Shea does see the hardship. Mr. Shea
85 does see the challenge of visibility if a business were to be run from this location. Mr. Shea does
86 think the commercial viability has changed. Chairman Scholz stated that Route 111 was moved
87 several years ago and there may be other reasons that a property moved from a location.
88

89 **A motion was made by Ms. Gogumalla for Case #29-2020 to deny relief as requested.**
90 **Seconded by Ms. Skinner.**
91

92 **Ms. Skinner, yes: Reasons 1 (public interest), 2 (spirit of the ordinance), and 5 (hardship)**

93 **Shea, yes: Reason 2 (spirit of the ordinance)**
94 **Gogumalla, yes: Reason 5 (hardship)**
95 **Scholz, yes: Reasons 1 (public interest), 2 (spirit of the ordinance), 3 (substantial justice)**
96 **and 5 (hardship)**
97 **Hughes, yes: Reasons 1 (public interest), 2 (spirit of the ordinance), and 5 (hardship)**

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99

100 **Vote 5-0. Motion passes.**
101 **The Chair advised of the 30-day appeal period.**

102
103

There was a 5 minute recess.

104
105

Case #30-2020: Parcel 8-C-30

106 **Applicant - The Dubai Group, Inc. – Karl Dubai, PE**

107 **Owner - PK Sawyer, LLC**

108 **Location - 67 Rockingham Road**

109 **Zoning District - Business Commercial A District (CDA) & Wetlands Watershed**

110 **Protection District (WWPD)**

111

112 Variance relief is requested from **Section(s) 401, 402, 601.3, 601.4.6, 605.1, 702 and Appendix**
113 **A-1**; Specifically from **Sec. 401** to allow reversion and increase of the existing non-conforming
114 apartment use from 2 units to 4 units, where no increase in the extent of the non-conforming use
115 is allowed in the Commercial District A (CDA). And from **Sec. 402** to changing the use of the
116 existing building having both residential and office intermixed use to revert to full residential
117 use, where it shall not again be changed to a more non-conforming use in CDA. And from **Sec.**
118 **601.3** to allow a reconfiguration of 1,304 sf of 6 existing parking spaces within the WWPD to
119 972 sf of 6 parking spaces in the WWPD and 1,480 sf portion of proposed carriage style
120 residential building in the WWPD, where such use is not permitted. And from **Sec. 601.4.6** to
121 allow the portions (600 SF) of the existing septic system to remain and be rebuilt within the
122 WWPD, where such use is not permitted. And from **Sec. 605.1** to allow the residential use in the
123 existing and proposed buildings, where such use is not permitted in CDA. And from **Sec. 702**
124 **Appendix A-1** to allow the existing building a 30' front yard setback where 75' is required.

125

126 Ms. Skinner read the case into the record.

127

128 Chairman Scholz seated Ms. Dunn for this case.

129

130 **A motion was made by Ms. Skinner to waive the reading of the abutters' list. Seconded by**
131 **Mr. Shea. Roll call vote: Chairman Scholz, Ms. Skinner, Ms. Dunn, Mr. Shea and Ms.**
132 **Gogumalla- yes. Vote 5-0. Motion passes.**

133

134 Chairman Scholz read the letter of authorization into the record.

135

136 Mr. Karl Dubai, of the Dubai Group Inc. addressed the Board and is representing the applicant.
137 Mr. Dubai reviewed the current uses of the property. The WWPD are created by the mill pond
138 that the applicant would like to restore. The carriage house would be installed in order to pay for
139 the restoration. Mr. Dubai stated that he would like to rebuild the septic to make it safer. The

140 carriage house would be transitional to the proposed property next door. According to Mr.
141 Dubai, the property next door would be used as office space by the applicant. The carriage house
142 would be in a flat area. There is a garage in the front that would be removed and is not original to
143 the property. There would not be any more parking spaces in the WWPD in the proposed plan
144 according to Mr. Dubai. Mr. Dubai stated that they worked with staff and that this plan is a
145 redevelopment with master planning

146
147 Mr. Dubai reviewed the 5 criteria contained in the public packet. Mr. Dubai mentioned the
148 uniqueness of the property. Mr. Dubai also mentioned the difficulty in getting renters to rent in a
149 property that is not well maintained. Mr. Dubai stated that the use of the property is unique and
150 it is in the Business Residential A District. Mr. Dubai stated that the carriage house allows for
151 the plan to make this work for the applicant. Mr. Dubai does believe that the application does
152 meet the hardship criteria. Mr. Sawyer addressed the Board. Mr. Sawyer stated that the original
153 owner is the Meserve family and they look forward to preserving the property the same way they
154 were able to preserve 6 Range Road. The Sawyer family would like to preserve the property for
155 historical reasons. The Sawyer family bought the property in 2018.

156
157 Ms. Gogumalla asked why the property would need to be residential. Mr. Sawyer stated that the
158 property is not ideal for deliveries. Mr. Sawyer stated that it would be their preference to restore
159 one side for the residential and restore the other side for business. Business deliveries can be
160 difficult in the area and the property as a whole is very hilly. Mr. Sawyer stated that the
161 preference would be to rework it for commercial use. Ms. Gogumalla asked what the intended
162 use of the property was when it was purchased. Mr. Sawyer stated that there is residential space
163 and it is being rented currently.

164
165 Mr. Shea asked if the residential units would be 1 or 2 bedrooms. The apartments would be 2
166 bedrooms mostly. Lot 8-C-30 is the white house. According to Mr. Arsenault, there was one
167 ZBA application in 1991 for household occupation plus 1 small area with one beautician only;
168 this was part of state requirement.

169
170 Ms. Dunn stated that the building has been residential for as long as she can remember. This lot
171 has had a pre-existing non-conforming use. Ms. Dunn stated that someone has lived here for a
172 long time. Ms. Dunn asked Mr. Dubai how far he got with the Planning Board. Mr. Dubai stated
173 that he has gone through design review with the Planning Board and had been working with the
174 Conservation Commission, Design Review and HDC. Ms. Dunn asked if the applicant planned
175 to merge the lots; they do not. Chairman Scholz asked why Mr. Dubai did not ask the Planning
176 Board to rezone to an accepted use. Mr. Dubai stated that they could not do spot zoning.

177
178 Mr. Arsenault, Mr. Dubai and the Board discussed the necessary input from other Boards and
179 when that documentation might be obtained.

180
181 Ms. Dunn stated that she is concerned about the carriage house in proximity to the residence. Ms.
182 Dunn is concerned about buffering. Mr. Dubai stated that the buffers are applied. Chairman
183 Scholz asked about meeting with police and fire for public safety.

184

185 Mr. Dubay stated they he would be happy to go to TRC. Mr. Dubay would like to see the case
186 continued in order to get more input from the necessary committees and boards.
187
188 Ms. Gogumalla asked if the two lots belong to the same owners. Mr. Sawyer stated that they own
189 both of the lots currently. Mr. Sawyer stated that they have no intention of merging the lots.
190
191 Chairman Scholz read the letter from the Conservation Commission; the Conservation
192 Commission would like to see the final plan.
193
194 Chairman Scholz opened up discussion to the public.
195
196 Ms. Wendy Williams addressed the Board. Ms. Williams stated that the Technical Review
197 Committee never happened. Ms. Williams stated that the meeting minutes in question will be
198 given to staff so they can be used by the applicant. Ms. Williams is part of the two historical
199 committees in town. The next meeting will be November 5th.
200
201 Chairman Scholz stated that he is concerned about the safety of the building that they are trying
202 to restore and he would like the health, safety and welfare aspect of the application as well. Mr.
203 Shea does think it is important to get the historic perspective. The Board discussed the applicant
204 meeting with TRC. Mr. Shea suggested meeting with TRC separately in order to get the safety
205 input.
206
207 Mr. Arsenault mentioned the existing septic system. There is relief that is being requested and
208 the staff does not have a lot of information about the septic system. Mr. Arsenault stated they
209 need clarity about the septic system .
210
211 Mr. Dubay stated they are looking for relief on the existing septic system. The existing leech
212 field is in the WWPD. The applicant would be rebuilding those in their existing location. Mr.
213 Dubay stated they have the location in the WWPD. They would like to retain and rebuild them in
214 the WWPD.
215
216 **A motion was made by Ms. Gogumalla to continue Case #30-2020 to November 10th to the**
217 **first case of the evening. Seconded by Ms. Dunn. Roll call vote: Chairman Scholz, Ms.**
218 **Skinner, Ms. Dunn, Mr. Shea and Ms. Gogumalla- yes. Vote 5-0. Motion passes.**
219
220 **Public Meeting**
221
222 **Meeting Minutes-Review and Approve: July 14th & August 4th & September 8th & 15th & 22nd**
223 **& October 6th 2020**
224
225 **A motion was made by Mr. Shea to approve the September 8th draft minutes as amended.**
226 **Seconded by Ms. Gogumalla. Roll call vote: Chairman Scholz, Mr. Shea, and Ms.**
227 **Gogumalla- yes. Ms. Skinner and Ms. Dunn abstained. Vote 3-0-2. Motion passes.**
228
229 **ZBA Procedures Planning Sessions**
230

231 Land Use Conference, Mr. Arsenault got commitments from Board members that would like to
232 go to the virtual conference.

233

234 **A motion was made by Ms. Dunn to adjourn at 9:49pm. Seconded by Mr. Shea. Roll call**
235 **vote: Chairman Scholz, Ms. Skinner, Ms. Dunn, Mr. Shea and Ms. Gogumalla- yes. Vote 5-**
236 **0. Motion passes.**

237

238 Respectfully submitted by Anitra Lincicum

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