



**ZONING BOARD OF ADJUSTMENT**

**Approved 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**

**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.

**Chairman Scholz sat Mr. Hughes for Vice Chair Breton.**

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

53  
54 Ms. Dunn asked a procedural question. Ms. Dunn sees that this residence has two frontages and  
55 she asked if the abutters were notified. Mr. Arsenault stated that the State of New Hampshire was  
56 informed of the application. Ms. Dunn asked about Parcel 350 and Parcel 600; Mr. Arsenault  
57 stated that those parcels were not directly across the street. Ms. Gogumalla asked what the use of  
58 the property was. Mr. Enxing stated that he purchased the property in 2017 and prior to that it  
59 was used as a travel agency.

60  
61 Ms. Gogumalla asked about the interior of the residence. Mr. Enxing stated that it is a small  
62 home with a kitchen, living room and 2 bedrooms. The garage is a four bay garage. Mr.  
63 Arsenault stated that he took in the application as a mixed use property. Mr. Enxing stated that  
64 he does not have any plans to use this property for a business.

65  
66 Ms. Gogumalla asked what the other driveways in the area were for. Mr. Enxing reviewed the  
67 use of the property and what the driveways and buildings were used for. Ms. Dunn stated that on  
68 the right and left of this property, there are businesses. Hence, the property might be sandwiched  
69 between two businesses. Mr. Enxing stated that there is no visibility near the other two properties  
70 that could be businesses. Chairman Scholz stated the letter from the Conservation Commission  
71 does like the additional storm water management and that the driveway will not increase in size.

72  
73 Chairman Scholz opened discussion up to the public.

74  
75 **A motion was made by Mr. Shea to go into Deliberative session at 7:57pm. Seconded by**  
76 **Ms. Skinner. Roll call vote: Chairman Scholz, Ms. Skinner, Mr. Hughes, Mr. Shea and Ms.**  
77 **Gogumalla- yes. Vote 5-0. Motion passes.**

78  
79 Chairman Scholz stated that they have had properties come before the Board to change the use of  
80 a property. Chairman Scholz does not believe this meets the first 2 criteria. He does not believe it  
81 meets number 5 and his opinion is that this is spot zoning and it is something he would like to  
82 avoid. The Board discussed the use of the property. The Board discussed that the buffering of  
83 properties are often considered by the Planning Board. Mr. Shea does see the hardship. Mr. Shea  
84 does see the challenge of visibility if a business were to be run from this location. Mr. Shea does  
85 think the commercial viability has changed. Chairman Scholz stated that Route 111 was moved  
86 several years ago and there may be other reasons that a business moved from this location.

87  
88 **A motion was made by Ms. Gogumalla for Case #29-2020 to deny relief as requested.**  
89 **Seconded by Ms. Skinner.**

90  
91 **Ms. Skinner, yes: Reasons 1 (public interest), 2 (spirit of the ordinance), and 5 (hardship)**  
92 **Mr. Shea, yes: Reason 2 (spirit of the ordinance)**

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

97  
98 **Vote 5-0.**  
99 **Motion passes.**

100 **The Chair advised of the 30-day appeal period.**

101  
102 There was a 5 minute recess.

103  
104 **Case #30-2020: Parcel 8-C-30**  
105 **Applicant - The Dubay Group, Inc. – Karl Dubay, PE**  
106 **Owner - PK Sawyer, LLC**  
107 **Location - 67 Rockingham Road**  
108 **Zoning District - Business Commercial A District (CDA) & Wetlands Watershed**  
109 **Protection District (WWPD)**  
110

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

124  
125 Chairman Scholz seated Ms. Dunn for Vice Chair Breton.

126  
127 Ms. Skinner read the case into the record.

128  
129 **A motion was made by Ms. Skinner to waive the reading of the abutters' list. Seconded by**  
130 **Mr. Shea. Roll call vote: Chairman Scholz, Ms. Skinner, Ms. Dunn, Mr. Shea and Ms.**  
131 **Gogumalla- yes. Vote 5-0. Motion passes.**

132  
133 Chairman Scholz read the letter of authorization into the record.

134  
135 Mr. Karl Dubay, of the Dubay Group Inc. addressed the Board and is representing the applicant.  
136 Mr. Dubay reviewed the current uses of the property. The WWPD was created by the mill pond  
137 that the applicant would like to restore. The carriage house would be installed in order to pay for  
138 the restoration. Mr. Dubay stated that he would like to rebuild the septic to make it safer. The  
139 carriage house would be transitional to the proposed property next door. According to Mr.

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

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

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

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

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

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

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

184 Mr. Dubai stated they he would be happy to go to TRC. Mr. Dubai would like to see the case  
185 continued in order to get more input from the necessary committees and boards.

186  
187 Ms. Gogumalla asked if the two lots belong to the same owners. Mr. Sawyer stated that they own  
188 both of the lots currently. Mr. Sawyer stated that they have no intention of merging the lots.

189  
190 Chairman Scholz read the letter from the Conservation Commission; the Conservation  
191 Commission would like to see the final plan.

192  
193 Chairman Scholz opened up discussion to the public.

194  
195 Ms. Wendy Williams addressed the Board. Ms. Wendy Williams, Chair of the Historic District  
196 Commission/Heritage Commission (HDCHC), and regular member for the Design Review  
197 Subcommittee (DRC) of the Planning Board, addressed the Board. Ms. Williams stated that the  
198 Technical Review Committee (TRC) meeting never happened and the joint meetings between  
199 HDCHC and DRC in 2019 were not understood to supersede an official meeting of those  
200 commissions. Ms. Williams explained that the proposal will be reviewed at the November 5,  
201 2020 HDCHC meeting with recorded motions and meeting minutes to submit to the case file for  
202 the applicant.

203  
204 Chairman Scholz stated that he is concerned about the safety within the building that they are  
205 trying to restore and he would like the health, safety and welfare aspect of the application to be  
206 discussed as well. Mr. Shea does think it is important to get the historic perspective. The Board  
207 discussed the applicant meeting with police and fire. Mr. Shea suggested meeting with TRC  
208 separately in order to get the safety input.

209  
210 Mr. Arsenault mentioned the existing septic system. There is relief that is being requested and  
211 the staff does not have a lot of information about the septic system. Mr. Arsenault stated they  
212 need clarity about the septic system.

213  
214 Mr. Dubay stated they are looking for relief on the existing septic system. The existing leech  
215 field is in the WWPD. The applicant would be rebuilding those in their existing location. Mr.  
216 Dubay stated they have the location in the WWPD. They would like to retain and rebuild them in  
217 the WWPD.

218  
219 **A motion was made by Ms. Gogumalla to continue Case #30-2020 to November 10<sup>th</sup> to the**  
220 **first case of the evening. Seconded by Ms. Dunn. Roll call vote: Chairman Scholz, Ms.**  
221 **Skinner, Ms. Dunn, Mr. Shea and Ms. Gogumalla- yes. Vote 5-0. Motion passes.**

222  
223 **Public Meeting**

224  
225 **Meeting Minutes-Review and Approve: July 14<sup>th</sup> & August 4<sup>th</sup> & September 8<sup>th</sup> & 15<sup>th</sup> & 22<sup>nd</sup>**  
226 **& October 6<sup>th</sup> 2020**

227  
228 **A motion was made by Mr. Shea to approve the September 8<sup>th</sup> draft minutes as amended.**  
229 **Seconded by Ms. Gogumalla. Roll call vote: Chairman Scholz, Mr. Shea, and Ms.**  
230 **Gogumalla- yes. Ms. Skinner and Ms. Dunn abstained. Vote 3-0-2. Motion passes.**

231  
232 **ZBA Procedures Planning Sessions**

233  
234 Land Use Conference, Mr. Arsenault got commitments from Board members that would like to  
235 go to the virtual conference.  
236  
237 **A motion was made by Ms. Dunn to adjourn at 9:49pm. Seconded by Mr. Shea. Roll call**  
238 **vote: Chairman Scholz, Ms. Skinner, Ms. Dunn, Mr. Shea and Ms. Gogumalla- yes. Vote 5-**  
239 **0. Motion passes.**  
240  
241 Respectfully submitted by Anitra Lincicum

Approved