

288 Central Avenue
Dover, NH 03820
(603) 516-6020

CITY OF DOVER

ETHICS COMMISSION

PRE-HEARING STATUS CONFERENCE

Date:

Case # _____

Case name: _____

Complainant _____ **Present** _____

Respondent _____ **Present** _____

Ethics Commission members present:

1. Introduction:

- a. The purpose of the conference is to discuss any procedural issues involved in this matter, to identify the witnesses and the documents that may be involved in the matter and to discuss the scheduling of the hearing. The conference is not the hearing, but preparation for the hearing. The members of the Ethics Commission are available to answer questions you may have about the procedure and the process of reaching a resolution of this Complaint.

1. The complainant is alleging a violation of the ethical provisions of the City of Dover occurring on ____.
 2. The Complaint reads:
- b. The Complaint is based on the following provisions of the charter or code of the City of Dover:
- c. The objection of the process is to conduct a fair and thorough hearing in a way that allows the Complainant and the Respondent to have ample opportunity to be heard and to present any testimony, facts or arguments that will allow the Ethics Commission to understand the issues and to reach a fair result. The following process will be used in a public hearing before the Ethics Commission in the following manner:
1. **All witnesses will be under oath.** The Complainant will go first with sworn testimony and the respondent will be given the opportunity to ask questions of the Complainant. The commissioners will also ask questions with the permission of the Chair.
 2. The **Complainant may present additional witnesses** who will testify under oath and be subject to questioning by the complainant, respondent and the Commissioners.
 3. The **Respondent will testify** or make a statement under oath; subject to questions by the complainant, and the Commissioners
 4. The **Respondent may present witnesses** who will testify under oath and be subject to questioning by the complainant, respondent and the Commissioners;
 5. **Each party may make a summary statement** at the end of the case with the complainant going first and the Respondent last.
 6. **Rules of evidence do not apply**, but the Chair has the ability to limit testimony in certain circumstances.
 7. **Documents** and other pieces of evidence will be marked as they are presented; parties who introduce documents may make exact copies of documents for use during the hearing, but all copies will be collected at the end of the hearing and retained by the Chair; only the official documents will be marked as evidence.
 8. The Complainant has the **burden of proof** to establish by **clear and convincing evidence** the allegations are true and an ethical violation has occurred
 9. **The Ethics Commission has the authority to advise the City Council** on these matters including advice on a remedy if applicable.
- d. **Question:** Do either the Complainant or the Respondent object to the involvement of any members of the Ethics commission, regular or alternates, in this matter?
- e. **Who will be presenting the matter for the complaining witness?**
- f. **Who will be presenting the matter for the respondent?**

g. What documents will be presented?

Complainant _____

Respondent _____

Additional documents:

If you have additional documents you want to present at the hearing, you should supply a copy of all your documents you plan to present to the Ethics Commission to the Ethics Commission through the office of the City Clerk. This means you should supply your documents by _____. Failure to provide timely copies may delay the proceedings or prevent you from introducing these documents to the Ethics Commission.

If you want to review additional documents intended to be presented by the other party which have not been disclosed to you today, you should check with the office of the City Clerk for any documents filed by the opposing party after the filing deadline.

You should bring five (5) extra copies of all documents you plan to present to the Ethics Commission to the hearing for distribution to the press and the public.

h. Who will be the witnesses?

Complainant _____

Respondent _____

You should give two (2) days written notice of any changes in your witness list by notifying the Ethics Commission in writing through the office of the City Clerk. If you want to receive an updated witness list from the opposing party you should check with the office of the City Clerk after the filing deadline for any changes to the witness list of the other party.

- i. How much time do you estimate the hearing will take?**

- j. Are there any pre-hearing matters that need to be addressed?**

- k. Are there any final questions you have about the procedure involved in this matter?**

Complainant _____

Respondent _____

Chair, or authorized member

Complainant

Respondent

DOVER CODE

**ETHICS, CODE OF
Chapter 22**

[Amended 09-20-2006 by Ord. No. 07-2006]

**ARTICLE I
ETHICAL STANDARDS**

- 22-1. Definitions.
- 22-2. Conflicts of interest.
- 22-3. Representation of private interests before city agencies.
- 22-4. Required disclosure by Council members; recusal.
- 22-5. Required disclosure by officers and employees; recusal.
- 22-6. Gifts.
- 22-7. Disclosure of confidential information.
- 22-8. Investments in conflict with official duties.
- 22-9. Incompatible employment.
- 22-10. Future employment.

**ARTICLE II
BOARD OF ETHICS; COMPLAINT PROCEDURE; SANCTIONS**

- 22-11. Ethics Commission established; purposes.
- 22-12. Scope of duties and authority.
- 22-13. Procedures; initial screening; referrals; hearings
- 22-14. Remedies.
- 22-15. Severability.

22-4. Required disclosure by Council members; recusal.

A Councilor, or a Councilor with a family member, who has a direct or indirect financial or other private interest, in any proposed legislation, or matter of official business before the City Council shall publicly disclose on the official records of the Council, the nature and extent of such interest. Such disclosures shall be made orally prior to the legislation or matter being discussed as part of a council meeting agenda, or a Councilor may elect to file a written specific conflict of interest disclosure statement with the City Clerk. The statement shall be read aloud into the record at all public meetings during which the legislation or matter is discussed. In the case of a nonpublic session, the statement shall be read aloud at the next public meeting.

A Councilor with a conflict of interest shall recuse himself or herself from further participation in the matter. Recusal means to immediately remove from discussion and voting. Recusal shall also mean the Councilor is required to physically vacate his or her seat. During a nonpublic session, the Councilor shall remove himself or herself from the meeting room.

22-5. Required disclosure by officers and employees; recusal.

An appointed officer, or employee who, whether paid or unpaid, has a direct or indirect financial interest or other private interest in any legislation or matter of official business in the City of Dover and who participates in discussion before or gives official opinion to the Council, or otherwise participates in the official business of the City of Dover, shall publicly disclose on the official record the nature and extent of such interest. Such disclosures shall be made orally prior to the legislation being discussed as part of a council meeting agenda, or the officer or employee may elect to file a written specific conflict of interest disclosure statement with the City Clerk. The statement shall be read aloud into the record at a public meeting.

Appointed officers and employees with a conflict of interest shall recuse themselves from further participation in the matter. Recusal means to immediately remove themselves from discussion and voting. Recusal shall also mean the officer or employee is required to physically vacate his or her seat. During a nonpublic session, the appointed officer or employee shall remove himself or herself from the meeting room. In the case of a nonpublic session, the statement shall be read aloud at the next public meeting.

ARTICLE II

ETHICS COMMISSION; SCOPE OF AUTHORITY; COMPLAINT PROCEDURE;
REMEDIES;

22-11. Ethics Commission established; purposes

A. There is hereby established an Ethics Commission consisting of five (5) commissioners who shall be Dover residents and appointed by the City Council. At least one commissioner shall be a former City Councilor or former School Board member as provided in C11-4 of the Dover City Charter. The purposes of the Ethics Commission are:

- i. To provide a forum to hear and accept complaints of violations of ethical standards of behavior for elected and appointed officers under the jurisdiction of the Ethics Commission
- ii. To encourage Dover elected and appointive officers, and all members of boards, commissions, committees and subcommittees to act in the best interests of the City and perform their duties and responsibilities according to the ethical provisions of the City Charter and City ordinances;
- iii. To require the disclosure of financial interests or other interests in matters affecting City business where the interests constitute a conflict of interest;
- iv. To prohibit those holding public office and volunteer positions in our City from using their positions for personal gain and to foster the use of such positions only to advance public interests
- v. To promote the integrity of City government ;

B. The commissioners shall serve for three (3) year staggered terms. The initial Ethics Commission shall consist of five (5) Commissioners with one Commissioner appointed for a one (1) year term, two Commissioners appointed for two (2) year terms, and two Commissioners appointed for three (3) year terms. Subsequent appointments shall be for three years unless the commissioner is appointed to serve out a term to fill a vacancy. The Appointments Committee shall solicit and screen the applicants. The Appointments Committee shall present a list of all the applicants who have applied for a position on the Ethics Commission to the City Council with the recommendations of the Appointments Committee. The City Council acting as a committee of the whole shall interview and select the applicants for appointment to the Ethics Commission either from the entire list of applicants or based on the recommendations of the Appointments Committee. The City Council may appoint three (3) alternate commissioners for one (1) year terms. Alternates shall be involved in the activities and decisions of the Ethics Commission only in the absence of a regular member or members.

DOVER CODE

22-12

22-13

documents in a timely manner at the request of the Ethics Commission where the request for documents is reasonably required to investigate and resolve the allegations.

G. The Ethics Commission shall not issue advisory opinions based on hypothetical situations. All opinions shall be rendered as decisions pursuant to the Complaint procedure stated in Section 22-13.

22-13 Procedures; initial screening; referrals; hearings

A. All Ethics Complaints shall be in writing on a form approved by the City Attorney, supplied by, and available at, the office of the City Clerk. All complaints shall be signed under oath before a notary public provided free of charge by the City Clerk's office and shall be filed with the City Clerk. Complaints shall only be received from residents of Dover, property owners in Dover and vendors who engage in business with the City of Dover. Each complaint shall be confined to a single subject matter and shall state facts constituting an alleged violation of the ethics provisions of the City Charter or City Code. The complaint shall name a specific person or persons who are alleged to have violated an ethical provision. The complaint shall also state the specific applicable provision of the City Charter or Code on which the complainant relies in making the Complaint.

B. All complaints shall only allege facts involving alleged ethical violations occurring during the one hundred eighty (180) calendar days prior to the filing of the Ethics Complaint, or the term of the present City Council, whichever is longer. In addition, all complaints shall require the complainant to certify under oath the following:

a. The complainant has read the provisions of Article X of the Dover City Charter;

b. The complainant has read the provisions of Chapter 22 of the Dover Code;

C. The City Clerk shall seal each Ethics Complaint and forward the Ethics Complaint to the Chair of the Ethics Commission within two (2) business days of the filing. The Ethics Commission shall meet in nonpublic session pursuant to RSA 91-A: 3 II (c). The Ethics Commission shall examine the contents of the Ethics Complaint and conduct an initial screening of the Ethics Complaint within twenty (20) business days after the filing of the Ethics Complaint with the City Clerk's office. The Ethics Commission shall take one of the following actions:

1. Refer the matter and /or any suspected criminal activity directly to the Police Department for investigation and possible prosecution as a criminal matter without further involvement by the Ethics Commission. There shall be no public disclosure of the Complaint by the Ethics Commission.

DOVER CODE

22-13

22-13

F. Fourteen (14) calendar days notice shall be provided to the parties for all hearings. The Ethics Commission may hold pre-hearing and other informal conferences prior to the evidentiary hearing to aid in the disposition of the proceeding. All hearings and informal conferences shall comply with the provisions of RSA 91-A.

G. The hearing shall not be subject to the rules of evidence. All evidence that will reasonably assist the Ethics Commission shall be admissible, but evidence that is irrelevant or immaterial, unduly repetitious, insulting, or harassing shall be excluded. The Ethics Commission may require, with reasonable written notice, the appearance of any official, board member or employee to appear before it to provide testimony.

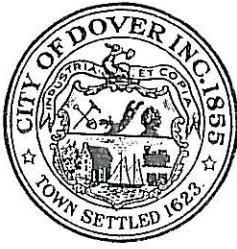
H. The hearing shall provide an opportunity for all parties to be heard and to present evidence. Witnesses shall testify under oath. Parties may engage in a brief opening and closing statement. Written memoranda may be required by the Ethics Commission.

I. An audio recording shall be made of the proceedings. All recordings and documents shall be stored with the City Clerk and maintained pursuant to state law.

J. The Ethics Commission shall issue a written report within thirty (30) calendar days of the hearing. The report shall include a determination whether the allegations contained in the complaint are actionable or not actionable. In addition, if the complaint is found to be actionable, the report shall include a recommendation on a remedy as provided in Section 22-14 for the City Council to consider. The Ethics Commission shall forward a copy of the decision and recommendation with specific findings to the parties and to the City Council. A copy of all reports and recommendations shall be available to the public in the City Clerk's office.

K. The complainant shall have the burden of proof. The standard of proof for the Ethics Commission to use for deciding matters before the Ethics Commission shall be clear and convincing evidence.

L. Clear and convincing evidence is an intermediate standard of proof that calls for more proof than that based on more probable than not, but less proof than that based on beyond a reasonable doubt. Clear and convincing evidence is defined in New Hampshire law as that evidence that establishes a factual conclusion to be highly probable, rather than merely more probable than not. It requires that the party having the burden of proof place in the trier of fact an abiding conviction that the truth of his/her factual contentions are highly probable. Otherwise, he/she has failed to prove it and is not entitled to relief.



CITY OF DOVER, NEW HAMPSHIRE ETHICS COMPLAINT

Please type of print legibly and attach additional pages, if necessary.

Date Filed: July 10, 2008

Your Name: James H. Schulte

Address: 660 Central Avenue, Dover, NH 03820

Your Telephone Number (603) 743-6300

Name of person about whom you are filing.

William C. Colbath

129 Silver Street

Dover, NH 03820

Type of Allegation(s). Check the appropriate box(es) below indicating the type of allegation(s) stated in this complaint.

ARTICLE X OF THE DOVER CITY CHARTER

- ELIGIBILITY FOR ELECTIVE OFFICE (10-1)
- CONFLICTS OF INTEREST (C10-2)
- DISQUALIFICATION FROM DECISION MAKING PROCESS(C10-3)
- PRIVATE USE OF CITY PROPERTY (C10-4)
- ACCEPTANCE OF GIFTS AND GRATUITIES (C10-5)
- DISPOSITION OF FEES (C10-6)
- MISUSE OF INFORMATION (C10-7)
- FUTURE EMPLOYMENT (C10-10)

CHAPTER 22 OF THE CITY CODE

- CONFLICTS OF INTEREST (22-2)
- REPRESENTATION OF PRIVATE INTERESTS BEFORE CITY AGENCIES(22-3)
- REQUIRED DISCLOSURE BY COUNCIL MEMBERS; RECUSAL (22-4)
- REQUIRED DISCLOSURE BY OFFICERS AND EMPLOYEES; RECUSAL (22-5)
- GIFTS (22-6)
- DISCLOSURE OF CONFIDENTIAL INFORMATION (22-7)
- INVESTMENTS IN CONFLICT WITH OFFICIAL DUTIES (22-8)
- INCOMPATIBLE EMPLOYMENT(22-9)
- FUTURE EMPLOYMENT (22-10)

*received 7/10/08
Ken Harte*

If your complaint alleges some form of misconduct that does not fall within the jurisdiction of the Ethics Commission, then your complaint will be forwarded to the City Manager, the Police Department or the City Council for processing.

Description of Facts.

Provide a specific description of the facts constituting the alleged violation(s), including dates or approximate dates.

See attached description of facts.

Witness Information.

Provide the name(s), business address(es) and telephone number(s) of person(s) you believe may have information that would assist the Commission in its evaluation of this complaint. Also, describe the information that you believe each of the persons listed can provide to support the allegations stated in this complaint.

James H. Schulte

Allan B. Krans, Sr., Esq., Dover City Hall

Thomas Clark, Dover City Hall

Kenneth Turgeon & Lisa Turgeon, 225 Green Street, Somersworth, NH 03878

ZBA members: Masi Denison, Frank Landford, Jim Kelly, Otis Perry,

Sam Reid, Chris Prior

All were involved in proceedings before the ZBA which are summarized in the description of facts.

Documentation.

Attach copies of any documents in your possession that relate to the allegations stated in this complaint. In addition, indicate below whether there are other records, not in your possession, that you believe may assist the Commission in its evaluation of this complaint.

ZBA minutes for April 17, 2008; May 15, 2008; June 19, 2008.

ZBA applications filed by Charles Cheney.

ZBA application filed by William C. Colbath.

Ex Parte Petition for Injunction filed by William C. Colbath.

Electrical Permit Application.

Additional Information.

Provide any additional information that you believe may assist the Ethics Commission in its evaluation of this complaint.

CERTIFICATIONS: (Please initial each certification)

- I CERTIFY THAT I AM A RESIDENT OF THE CITY OF DOVER, A PROPERTY OWNER IN DOVER OR I AM A VENDOR WHO HAS RESPONDED TO A BID SOLITICATION JHS (initials)
- THIS ETHICS COMPLAINT IS A PUBLIC DOCUMENT. I UNDERSTAND THAT I SHOULD HAVE NO EXPECTATION OF PRIVACY REGARDING THIS DOCUMENT OR THE PROCEEDINGS OF THE ETHICS COMMISSION. JHS (initials)
- I UNDERSTAND THAT KNOWINGLY MAKING WRITTEN FALSE STATEMENTS WHICH I DO NOT BELIEVE TO BE TRUE MAY SUBJECT ME TO CRIMINAL SANCTIONS PURSUANT TO RSA 641:3. JHS (initials)

DATE: 7/10/2008

James H. Schulte
Signature

NOW COMES James H. Schulte who after being duly sworn states that the above statements are true and accurate.

Danielle J. Paye Corbett

Notary Public



-----OFFICIAL USE ONLY-----

Received by the City Clerk's office _____

Received by the Ethics Commission _____

Completed form should be returned to:

City of Dover Ethics Commission
c/o City Clerk
288 Central Avenue
Dover, NH 03820

This complaint against William C. Colbath is based on the following circumstances in which Mr. Colbath has abused his position as Vice-Chairman of the Zoning Board of Adjustment in an attempt to advance personal issues, to advance the interests of a business customer of his, and to attempt to circumvent the statutory process for handling appeals to the ZBA.

Kevin Turgeon and Lisa Turgeon purchased property located at 55 Back River Road. The building had sustained some fire damage, but the building inspector and the insurance adjustor determined that the building could be repaired. The Turgeons commenced repairs and found that the building could not be safely lifted up to put a new foundation underneath it. The Turgeons obtained a building permit on February 22, 2008 which allowed them to "panelize" the structure by disassembling the building, storing the building components on site, and re-using those components to reconstruct the house on a new foundation. The building permit required that a majority of the old building be re-used in the new structure.

After the building had been disassembled and the new foundation had been excavated and poured, Charles Cheney submitted a petition to the ZBA which asserted that the building permit had not been complied with and should be revoked. Mr. Cheney signed that petition in his own name, but indicated at the ZBA meetings on April 17 and May 15 that he was acting on behalf of his father. Charles Cheney does not own any property in the neighborhood, but his father owns land which abuts the Turgeon land. Mr. Cheney acknowledged at the April and May meetings that he was not challenging the original decision to issue the building permit. His complaint was that the permit should have been revoked because he claimed that less than half of the building materials were being re-used. The building inspector visited the property and disagreed with Mr. Cheney's view as to the amount of building materials being re-used. When the building inspector refused to revoke the permit, Mr. Cheney filed his appeal with the ZBA.

At the April 17 meeting, the ZBA members voted not to accept the appeal from Mr. Cheney for several reasons, including the fact that it had not been clearly stated in the public notice that Mr. Cheney was not objecting to the issuance of the permit but was only objecting to the enforcement of the permit.

Mr. Cheney did not appeal the April 17 decision of the ZBA. Instead, he filed a new petition, again in his own name, which set forth his claim that the properly issued permit had not been enforced because not enough materials had been saved from the original building. This petition was considered by the ZBA at the May 15, 2008 meeting. Mr. Colbath sat as a member of the ZBA at that meeting. Earlier that evening, he participated in a non-public session of the ZBA which was held immediately before the public meeting on May 15, and which was called so that the ZBA members could meet with the City Attorney to discuss the Cheney petition and the procedure to be followed.

After hearing from Mr. Cheney, who confirmed that he was appealing from the decision not to revoke the permit, the ZBA voted 4 to 1 not to accept the case since Mr. Cheney was presenting an enforcement issue rather than an issue of interpreting the ordinance. William Colbath was the only person to vote against the motion not to accept the case.

Mr. Cheney has not appealed the decision of the ZBA.

On May 27, 2008, Mr. Colbath filed an appeal from administrative decision with the ZBA which asserted that the Turgeon building was "willfully removed (less than 10% panelized for reuse)" and that "the building permit should have been revoked". On the same day, Mr. Colbath filed an electrical permit application to perform work as an electrical contractor for Charles Cheney. Although Mr. Cheney did not appeal the ZBA decision which refused to accept his application, Mr. Colbath filed an appeal alleging the same issues which had been asserted by Mr. Cheney.

The Colbath application was considered by the ZBA on June 19, 2008. The chairperson asked the City Attorney to summarize the rules concerning who would be an "aggrieved person" who could file a petition with the ZBA, and the City Attorney explained that the person would have to have property which would be directly affected by the matter pending before the ZBA. Among other cases, he cited the Supreme Court decision in Goldstein v. Bedford, 154 NH 393 (2006), which held that a person who does not own property which would be affected by the ZBA action and whose only interest in the matter is as a concerned resident and taxpayer would not have standing to participate as a party before the ZBA or to file a petition with the ZBA.

When the ZBA chairperson asked Mr. Colbath to explain how he was an "aggrieved person" who was entitled to file an appeal with the ZBA, Mr. Colbath stated that because he participated as a ZBA member at the May 15 meeting, he was a participant who had standing to appeal the failure to revoke the building permit. He stated his position that the Board had made an error in May when it voted not to accept the Cheney application, and that he (Mr. Colbath) had a duty to correct that. When the chairperson asked Mr. Colbath to clarify his position, Mr. Colbath agreed that he did not have any property in the area which would be affected by the Turgeon building permit and therefore did not have standing as an abutter, but that because he had sat as a member of the ZBA at the May meeting he felt that he had standing to bring an appeal to the ZBA.

The other ZBA members stated that it was improper for a board member who voted in the minority to try to overturn the decision of the board by bringing a new application for the same issue which the board had denied. One member stated that if Mr. Colbath felt he was an aggrieved person who had standing to bring an appeal to the ZBA, then he would be prohibited from sitting as a board member on the case and he should have recused himself at the May meeting.

The ZBA then voted not to accept the application from Mr. Colbath.

Mr. Colbath then filed a lawsuit against Tom Clark, the City of Dover, and Mr. and Mrs. Turgeon which asserted that the ZBA incorrectly decided that he did not have standing, and requested that the building permit be revoked, that any construction activity be stopped, and that work done to date be removed. In his petition, Mr. Colbath stated that he has standing to bring the lawsuit is because he is the Vice Chairman of the ZBA.

Mr. Colbath has acknowledged that except for his status as a member of the ZBA he does not have any authority to challenge the actions of the building inspector or the actions of the ZBA. His entire claim is premised upon his claim that his position as a member of the ZBA entitles him to file an appeal with the ZBA from the majority vote of the ZBA on a matter where he sat as a board member and voted in the minority.

Mr. Colbath is improperly attempting to use his status as a zoning board member to challenge a decision of the ZBA with which he disagrees. He is seeking to obtain a private benefit or to pursue a personal interest, either for himself or for his business customer. Mr. Colbath is abusing his position as an officer of the City to circumvent the statutory processes which the ZBA is required to follow. Mr. Colbath is attempting to usurp the authority of the Zoning Board of Adjustment as an entity and to replace that authority with his claimed right to file appeals whenever the rest of the board votes in a manner which he disapproves. He is seeking to substitute himself for the Zoning Board of Adjustment in matters when his personal opinion is contrary to the votes of a majority of the board.

Any property owner, including a person who is a member of the ZBA, may file a petition with the ZBA to seek relief from the zoning ordinance with respect to his or her property. Any property owner, including a person who is a member of the ZBA, who has land that would be affected by a variance request for an abutting property may participate as a party before the ZBA. However, a member of the ZBA who is a property owner whose land is directly affected by a request for variance may not properly sit on the case as a member of the ZBA. And a member of the ZBA who does sit on a case as a member of the ZBA may not properly participate in the case as a party.

RSA 677 identifies those persons who have sufficient interest in a zoning board matter to participate as parties to the proceedings. Those persons include "a person whose rights may be directly affected by the outcome of the appeal . . ." (RSA 677:7); "Any person aggrieved by any order or decision of the zoning board of adjustment . . ." (RSA 677:4); and "the selectmen, any party to the action or proceedings, or any person directly affected thereby . . ." (RSA 677:2). Mr. Colbath does not have any property which would be affected by the building permit which was issued for 55 Back River Road. Mr. Colbath does not have any rights which would be directly affected by the outcome of the ZBA action. Mr. Colbath was not a party to the proceedings because he could not be both a party and the adjudicator. Mr. Colbath does not stand in the shoes of the City Council (which is the Dover equivalent of "selectmen"). As explained by the City Attorney, and as provided for in the decisions of the New Hampshire Supreme Court, Mr. Colbath is not an "aggrieved party" who may file a petition in this case. Mr. Colbath's only claim to standing is that he sat as a member of the ZBA at the April meeting and that his position as a member of the ZBA entitled him to file an appeal on the same issues which had been claimed by Mr. Cheney.

Mr. Colbath's persistent conduct in this matter appears to violate Charter Sections C10-2 and C10-3, and may be a violation of C10-7 (depending upon what was discussed at the non-public session conducted May 15, 2008). This conduct also appears to violate the following articles of the Code of Ethics: Sections 22-2; 22-3; 22-5; 22-9; and possibly section 22-7.



CITY OF DOVER

DOVER ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers - 288 Central Avenue, Dover, NH 03820
Meeting Date: Thursday, April 17, 2008
Meeting Time: 7:00 pm

1. ATTENDANCE

- Regular Members Present: Chair Masi Denison, Jim Kelley, Sam Reid, Frank Landford
- Regular Members Absent: Vice Chair Bill Colbath,
- Alternate Members Present: Otis Perry, Chris Prior
- Staff Present: Tom Clark, Building Official, Jean Glidden; Recording Secretary

Chair Masi Denison introduced the members of the Board.

2. APPROVAL OF PRIOR MINUTES OF MARCH 20, 2008

Motion: Kelley made the motion to accept. Reid seconded. Vote: U/A

3. OLD BUSINESS

Denison reminded the Board that case Z 08-04 538 B Middle Road has been withdrawn and will not be heard tonight.

Denison, Reid, Kelley, Perry, and Prior will be voting.

4. NEW BUSINESS

- A. * Z 08-05 Sabrina Flayhan-Sanborn (Applicant: David King), 40 ½ Broadway., a/k/a Tax Map 4, Lot 55, zoned RM-8, requests a Variance from the terms of Article V, Section 170-16, to demo a dwelling and construct a dwelling within four (4) feet from a front property line as it abuts a street where fifteen (15) feet is required and within two (2) feet from a side property line, where fifteen (15) feet is required.

Diana Saunders and David King approached the podium and stated that they are co-owners of the property. She stated that Sabrina could not make the meeting but they are all in the same company, which is Seasons Realty. She explained that they purchased the building 1 ½ years ago. They received a building permit to do an extensive renovation on the building; however, one of the tenants ruined the interior of the unit with major water damage. She stated that they are looking to demo the current building and build in the footprint of the existing building. If they built within the required setbacks, they would only have a 5 x 19 building envelope or a vacant lot if they cannot build. She stated that Tom Clark did an inspection and felt that there was sufficient damage.

Motion: Perry made the motion to accept. Reid seconded. Vote: U/A

Public Hearing Open

Diane Saunders mentioned the letters that were in the file stating that both direct abutters are in favor.

Denison read both letters for the record (copy in file).

Public Hearing Closed

Kelley questioned the building at 40 Broadway and asked if it would remain residential.



CITY OF DOVER

DOVER ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
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Meeting Date: Thursday, April 17, 2008
Meeting Time: 7:00 pm

Saunders explained the condition of the property and stated that by backfilling they would support the foundation at 40 and 40 ½ and in doing so would create two off street parking spaces.

Denison confirmed that two one bedroom one bath garden style units exist. The bottom unit was the one that was destroyed by extensive water damage.

Kelley asked Clark about the structural integrity. Clark said that the structural beams were showing signs of dry rot and the condition of the foundation is in an advanced state of disrepair. The building may crumble if lifted to repair the foundation and floor of the building.

Perry confirmed with Clark that due to a change in policy the Planning Staff does not have any recommendations at this time.

FINDINGS OF FACT: AREA VARIANCE

1. The applicant was to provide proof that special conditions exist and that literal enforcement of the ordinance would result in an unnecessary hardship.

- a) AREA: i. Did the Applicant demonstrate that an area variance is needed to enable the proposed use of the property given the special conditions of the property? Yes, Vote U/A. This conclusion is based on the following findings of fact: Size and shape of the lot require a variance to address adequate footprint.
- ii. Did the Applicant demonstrate that the benefit sought cannot be achieved by some other method reasonably feasible to pursue, without the area variance? Yes, Vote U/A. This conclusion is based on the following findings of fact: Size and shape of the lot require a variance to address adequate footprint.
2. Did the Applicant provide proof that demonstrates how granting the variance will result in substantial justice? Yes, Vote: U/A. This conclusion is based on the following findings of fact: Will not change the existing use of lot and will allow the lot to continue to be useable.
3. Did the Applicant provide proof that demonstrates how a variance would be consistent with the spirit and intent of the ordinance? Yes, Vote U/A. This conclusion is based on the following findings of fact: Footprint and location proposed was present when ordinance was passed.
4. Did the Applicant provide proof that demonstrates the variance will not result in a diminution in value of surrounding properties? Yes, Vote: U/A. This conclusion is based on the following findings of fact: Will improve the current state of a run down/vacant building. Written testimony from abutter.
5. Did the Applicant provide proof that demonstrates the variance would not be contrary to the public interest? Yes, Vote: U/A. This conclusion is based on the following findings of fact: Replacing a structure not in compliance with modern building codes within the existing footprint.

Therefore, based upon the foregoing, it is ordered that the application for the variance be granted with the following condition.

1. As per the application, replacement building will be the same size and footprint as existing building.

Denison, Landford, Reid, Kelley, and Perry will be voting.

Attorney Schulte handed out a motion to deny application to all Board members to review.



CITY OF DOVER

DOVER ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
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Denison stated that the applicant can present, we will allow a rebuttal and will then decide if we will actually accept the application.

- B. * Z 08-06 Charles Cheney, representing Don Cheney of 53 Back River Road requests an Appeal from an Administrative Decision as provided by Article XII, Section 170-52.C (2) (b) in connection with the issuance of a building permit (BP #08-26) at 55 Back River Rd, a/k/a Tax Map I, Lot 60, zoned R-12 to repair/renovate a fire damaged single family dwelling.

A lengthy discussion took place regarding the appeal and the issuance of the building permit. Cheney explained that he filed this appeal as he was informed by Mr. Parker that this is what normally is done. He proceeded to present his case and informed the members of the Board that he wrote Mr. Clark a letter and received a letter back in regards to the repairs & renovations to the dwelling. Attorney Schulte explained his motion to deny application. Members of the Board were concerned with what was actually advertised and the wording of "issuance" versus enforcement. In addition, is the date of the request past the thirty-day requirement and is there a technicality on the application of what was filled out and filed. They also felt that they should have received copies of the letters that Mr. Cheney spoke of and for those reasons it was decided by the Board to make a motion.

Motion: Reid made the motion to deny acceptance of the case. Landford seconded. Vote: 4 to 1 (Kelley opposed)

Denison informed the applicant that he could reapply, as there are too many technicalities that need to be addressed before the Board can accept the application.

5. OTHER BOARD BUSINESS

Denison said that she sent Reid some documents and forms. The Rules of Procedure are outdated and they are working on revising the forms in order to make more sense on how the Board operates. The goal is to finish a final version and distribute them in the packets for the next meeting for discussion. She also mentioned that in discussions with Mike Joyal and Chris Parker some changes would take place due to the budget and tax cap. One of the changes is that Tom Clark may not be available to the Board. She stated that she would inform the members as soon as she receives new information on the staff changes. Discussion continued regarding administration changes. Denison informed the Board that she has requested an Executive Session with Attorney Alan Krans to update them on some cases that were appealed to Superior Court. Kelley announced that he might not be able to attend the May meeting.

6. ADJOURN

Motion: Reid made the motion to adjourn at 8:24 p.m. Perry seconded. Vote: U/A

Table with 2 columns: Name and Term Expires. Includes Masi Denison, William Colbath, Frank Landford, Sam Reid, Jim Kelley, Ofis Perry, and Chris Prior.



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1. ATTENDANCE

- Regular Members Present: Chair Masi Denison, Vice Chair Bill Colbath, Sam Reid, Frank Landford
- Regular Members Absent: Jim Kelley
- Alternate Members Present: Otis Perry, Chris Prior
- Staff Present: Tom Clark, Building Official, Jean Glidden and Jennifer Bretz, Recording Secretary

Chair Masi Denison introduced the members of the Board.

2. APPROVAL OF PRIOR MINUTES OF APRIL 17, 2008

Motion: Reid made the motion to accept. Landford seconded. Vote: U/A

3. OLD BUSINESS - NONE

Colbath stated that he is stepping down on the next case. Denison, Reid, Kelley, Perry, and Prior will be voting.

4. NEW BUSINESS

- A. * Z 08-07 Ronald & Gloria Maxfield, 5 Danbury Ln., a/k/a Tax Map 25, Lot 76, zoned R-12, requests a Variance from the terms of 1) Article VII, Section 170-27 D, to subdivide a parcel creating one lot with an area of approximately 9,700 square feet outside the Conservation District where a minimum of 12,000 square feet is required and 2) Article V, Section 170-16 to construct a single family dwelling within ten (10) feet from a front property line as it abuts a street where a minimum of thirty (30) feet is required.

Kevin McEneaney represented the applicant. The lot size is 36,900 sq ft and contains a single family home. They would like to subdivide the property into 2 lots. It is an R-12 zone, the minimum lot size is 12,000 sq ft, 100 ft minimum frontage and the setbacks are 30 ft front, 15 ft side and rear. In 1987, the zoning ordinance changed. It stated that any slopes that were in an excess of 20% are considered a conservation district and therefore come under the conservation district rules. A stipulation, in those rules, is in order to subdivide a piece of property and make it buildable, the minimum zoning lot size requirement, outside of the conservation district, has to be met. On the lot they're trying to subdivide, at the rear of the lot, there's a steep slope in excess of 30%. The amount of area, outside of the conservation district is 9,740 sq ft. They're under by 2500 sq ft. Need 80% of the lot size requirements for the ordinance. The slope issue is actually a man made slope. In 1970's, the City of Dover had a sewer reconstruction project in town. They used that site for excess materials. He proceeded to explain the lot. Couple of other things to note, house could be converted to a duplex. They are willing to add a condition that the house would not be converted into duplex if the variance is passed. He proceeded to read the application as submitted in the file and mentioned the petition signed by the neighbors (copy in file). The neighbors directly affected by this on Danbury Ct, Deer Run and one on Cocheco have signed the petition in favor of the request.

Motion: Perry made the motion to accept. Reid seconded. Vote U/A

Public Hearing Open



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Parks Christenbury, 98 Cocheco St, stated that he is the abutter below their property. They are great neighbors. There has been some multi-family development off of Atlantic Ave. He believes it would be conducive to leave the neighborhood as single family homes. It would change the character of the neighborhood if there were duplexes in his area. He has two letters from abutters that disagree with this variance request (copy in file). They have concerns regarding drainage and privacy. Regarding the hardship, it would be in everyone's best interest if the house was set closer to the road. The closer the home is to Danbury St, it would be further away from Cocheco St. It would give the people on Cocheco St a relief from the drainage issues.

Denison proceeded to read the petition in favor of the variance and the three opposing letters (copy in file).

Clark explained that the 20% slope issue is something that needs to be revised in the ordinance. When created, in 1987, the intent was slopes down to rivers, waterways, lakes, etc. All that was written was 20% slope. Due to the extent of development, more slope issues are coming before the board.

Reid asks Christenbury if he believes there is validity to the concern from the Cocheco St abutters, regarding the drainage?

Christenbury states drainage is not coming from Danbury Ln., it's coming from a development on Deer Hill. The City allowed a private road and a private development at the very top of Cocheco St and 90% of the water issue is coming from the top of Cocheco St, which is where the Deer Hill development is located.

Reid confirmed with Christenbury that if the variance is granted he does not believe it would reduce his property value.

Public Hearing Closed

Prior confirmed with Denison that this still has to go before the Planning Board and the Conservation Commission and a potential condition that the proposed condition by the applicant is to remove the opportunity to make the residence a duplex.

Denison expressed concern with the opposing abutters. Discussion ensued regarding drainage.

Two variance requests will be voted on separately as listed on the agenda.

FINDINGS OF FACT: AREA VARIANCE

1. The applicant was to provide proof that special conditions exist and that literal enforcement of the ordinance would result in an unnecessary hardship.

a) **AREA: i.** Did the Applicant demonstrate that an area variance is needed to enable the proposed use of the property given the special conditions of the property? 1) Yes, Vote: U/A. This conclusion is based on the following findings of fact: The Maxfield's lot is larger than four other lots on Danbury Ln. The slope is man made. 2) Yes, Vote: U/A. This conclusion is based on the following findings of fact: The lay of the land requires encroachment on 30 ft setback.



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- ii. Did the Applicant demonstrate that the benefit sought cannot be achieved by some other method reasonably feasible to pursue, without the area variance? 1) Yes, Vote: U/A. This conclusion is based on the following findings of fact: The lot line adjustment was not available. The applicant tried to purchase additional property. The shape of the lot does not allow division in another way. 2) Yes, Vote: U/A. The building envelope would be mostly on a significant slope without a setback variance given the other variance was granted.
2. Did the Applicant provide proof that demonstrates how granting the variance will result in substantial justice? 1) Yes, Vote: U/A. This conclusion is based on the following findings of fact: The man made slope is forcing a variance. 2) Yes, Vote: U/A. This conclusion is based on the following findings of fact: Variance 1 necessitates the setback. Variance due to limiting building on a significant slope.
3. Did the Applicant provide proof that demonstrates how a variance would be consistent with the spirit and intent of the ordinance? 1) Yes, Vote: U/A. This conclusion is based on the following findings of fact: This slope is not typical of the slopes (natural, to water) that the ordinance was designed to protect. 2) Yes, Vote: U/A. This conclusion is based on the following findings of fact: The proposed setback is consistent with the other houses on the street.
4. Did the Applicant provide proof that demonstrates the variance will not result in a diminution in value of surrounding properties? 1) Yes, Vote: U/A. This conclusion is based on the following findings of fact: Testimony of abutters, including petition. Mr. Christenbury provided evidence that water/drainage issues are from another source than Danbury Ln. 2) Yes, Vote: U/A. This conclusion is based on the following findings of fact: Petition from neighbors. Retain character of the neighborhood.
5. Did the Applicant provide proof that demonstrates the variance would not be contrary to the public interest? 1) Yes, Vote: U/A. This conclusion is based on the following findings of fact: Keeps the character of single family neighborhood. 2) Yes, Vote: U/A. This conclusion is based on the following findings of fact: Keeps the character of single family neighborhood.

Therefore, based upon the foregoing, it is ordered that the application for the variance be granted with the following conditions:

1. Deed restriction on 5 Danbury Ln to remove the right to convert older building into a duplex.
2. This proposal will be heard by and approved by the Planning Board and the Conservation Commission.

Perry steps down. Prior, Colbath, Denison, Reid and Landford will vote.

- B. * Z 08-08 Dale & Mary Sylvia, 20 Linda Ave., a/k/a Tax Map I, Lot 80-W, zoned R-12 requests a Variance from the terms of 1) Article V, Section 170-16 to construct a rear addition within approximately twelve (12) feet from a side property line where a minimum of fifteen (15) feet is required and 2) Article X, Section 170-41 to construct an addition within eighteen (18) feet from a front property line as it abuts a street where a minimum of twenty-five (25) feet is required.

Dale Sylvia, 20 Linda Ave, applicant stated his plan is to remove the existing attached garage and replace it with a garage that meets current safety codes. The current garage has outdated electrical and needs a new roof. The existing property is a 3 bedroom, 1 bath. The proposed addition would be 3 bedrooms, 2 baths, office and a dining room. The property does not meet the current setbacks. The new addition would be running parallel with the existing garage but adding 10 ft. The remodeled structure would still be 12'6" away



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from the neighbors' property. In turn it would be 2'6" over the current setbacks. Neighbors stated that they are in favor of the request. Sylvia explained the hardships (as submitted with the application). These changes will not result in lower property values. The bank said it should increase the value by \$70,000. It will not be a burden on the City; this will increase the safety of the house.

Motion: Colbath made the motion to accept, Reid seconded. Vote U/A.

Denison asks Mr. Sylvia about the setbacks for PSNH and the slope.

Sylvia explains the map and the setbacks.

Prior asks if a second story is an option.

Sylvia states yes but financially not feasible. The family plans on living in the house during the renovations and with a 5 month old, we would not be able to do it. If they put a 2nd floor over the garage they would still have to replace the electric due to safety issues.

Public Hearing Open

Denison reads the letters from the abutters for the record.

Prior confirmed with Mr. Sylvia that only one abutter has seen the actual plans, however it has been explained to the others.

Public Hearing Closed

Reid stated that he does not see another alternative for the applicant.

Denison stated that the existence of the power line easement is significant for hardship, and a variance is their only option.

FINDINGS OF FACT: AREA VARIANCE

- 1. The applicant was to provide proof that special conditions exist and that literal enforcement of the ordinance would result in an unnecessary hardship. a) AREA: i.** Did the Applicant demonstrate that an area variance is needed to enable the proposed use of the property given the special conditions of the property? Yes, Vote U/A. This conclusion is based on the following findings of fact: Power line easement eliminates all other options.
- ii.** Did the Applicant demonstrate that the benefit sought cannot be achieved by some other method reasonably feasible to pursue, without the area variance? Yes, Vote U/A. This conclusion is based on the following findings of fact: Applicants tried several other methods (sale, negotiations with PSNH) but failed.
- 2. Did the Applicant provide proof that demonstrates how granting the variance will result in substantial justice? Yes, Vote: U/A.** This conclusion is based on the following findings of fact: Will allow reasonable expansion and upgrade to meet current building codes.



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3. Did the Applicant provide proof that demonstrates how a variance would be consistent with the spirit and intent of the ordinance? Yes, Vote U/A. This conclusion is based on the following findings of fact: Encroachment is small (3 ft). Lot is already nonconforming; increase in nonconformity is not significant.
4. Did the Applicant provide proof that demonstrates the variance will not result in a diminution in value of surrounding properties? Yes, Vote: U/A. This conclusion is based on the following findings of fact: Bank assessment of increase in property value after remodel. Neighbors are all in support.
5. Did the Applicant provide proof that demonstrates the variance would not be contrary to the public interest? Yes, Vote: U/A. This conclusion is based on the following findings of fact: Will allow dwelling to be in greater compliance with building/safety codes.

Therefore, based upon the foregoing, it is ordered that the application for the variance be granted.

Recess at 8:40. Resumed at 8:45pm.

Denison, Landford, Reid, Kelley, Perry and Colbath will be voting.

- C. * Z 08-09 KPRP/606 Sixth Street, LLC, 606 Sixth St., a/k/a Tax Map B, Lot 6-A, zoned R-40 requests a Variance from the terms of Article V, Section 170-16, Footnote 34 to subdivide a parcel creating a lot with approximately 39,600 square feet of contiguous upland where a minimum of 40,000 square feet is required.

John Berry with Berry Surveying and Engineering represented the applicant Derek Peters a partner with KPRP is here as well. They would like to subdivide the 2.46 acre lot into two lots. Lot 6a will have an area of 57,027 sq ft with 45,701 sq ft of the lot contiguous upland meeting the requirements of the ordinance. Lot 6A-1 will have an area of 50,228 sq ft of the lot contiguous upland not meeting the required 40,000 sq ft of contiguous upland by 388 sq ft. They are asking for the relief of the 388 sq ft. There is a total of 40,410 sq ft of upland on the proposed lot 6A-1. He proceeded to read the application, as submitted in the file.

Motion: Reid made the motion to accept case, Perry seconded. Vote U/A

Perry asks about setbacks.

Berry explains the maps.

Denison asks about moving house and septic.

Berry explains State of NH states that the well radius be completely or you could go 10 ft off of the property line. In this case, the existing well radius is more than 10 ft off of the property line. Have to show potential well that meets requirements. It does not have to be built, just planned.

Colbath states the house envelope cannot be in the 75 ft radius either. Is that correct?

Berry explains the septic leech field cannot be within 50 ft of well. Typical septic is 30 ft long 10 ft wide. There is ample room on the lot for development. Plans will be submitted to the state for their approval.



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Public Hearing Open - No one spoke - Public Hearing Closed

FINDINGS OF FACT: AREA VARIANCE

1. **The applicant was to provide proof that special conditions exist and that literal enforcement of the ordinance would result in an unnecessary hardship.**
 - a) **AREA: i.** Did the Applicant demonstrate that an area variance is needed to enable the proposed use of the property given the special conditions of the property? Yes, Vote U/A. This conclusion is based on the following findings of fact: Wetlands bisect the property. Difficult if not impossible to draw lot lines any other way.
 - ii. Did the Applicant demonstrate that the benefit sought cannot be achieved by some other method reasonably feasible to pursue, without the area variance? Yes, Vote U/A. This conclusion is based on the following findings of fact: Lot line adjustment not available to them. Ordinance requires contiguous upland.
2. Did the Applicant provide proof that demonstrates how granting the variance will result in substantial justice? Yes, Vote: U/A. This conclusion is based on the following findings of fact: Only short of required size of contiguous uplands by less than 1%.
3. Did the Applicant provide proof that demonstrates how a variance would be consistent with the spirit and intent of the ordinance? Yes, Vote U/A. This conclusion is based on the following findings of fact: A conforming dwelling meeting all other zoning, septic, etc. Requirements can be placed on the lot.
4. Did the Applicant provide proof that demonstrates the variance will not result in a diminution in value of surrounding properties? Yes, Vote: U/A. This conclusion is based on the following findings of fact: Subdivision consistent with development taking place in the local area.
5. Did the Applicant provide proof that demonstrates the variance would not be contrary to the public interest? Yes, Vote: U/A. This conclusion is based on the following findings of fact: Meet all other zoning requirements including setbacks for septic and well.

Therefore, based upon the foregoing, it is ordered that the application for the variance be granted with the following conditions:

1. Review by Planning Board.

Denison, Landford, Reid, Kelley, Colbath and Perry will be voting.

- D. * Z 08-10 Charles Cheney, representing Don Cheney of 53 Back River Road requests an Appeal from an Administrative Decision as provided by Article XII, Section 170-52.C (2) (b) in connection with the administration of a building permit (BP #08-26) at 55 Back River Rd, a/k/a Tax Map I, Lot 60, zoned R-12 to repair/renovate a fire damaged single family dwelling.

Charles Cheney stated that he is representing his father, Don Cheney. He's appealing the decision made by Building Inspector, Tom Clark as discussed at last months meeting.

Denison stated that the board needs to decide if they have the jurisdiction to hear the appeal. She asked him to describe and elaborate the decision.



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Cheney stated he came before the board, a year ago, when the Turgeon's tried to get a variance that would allow the existing building to construct an addition that would allow the home to be converted to a duplex. The permit states that you can repair or renovate the existing building. The spirit of the permit was not followed and things were done well beyond the scope of the permit. He believes the owners' did not follow the intent of permit.

Colbath asked Clark what the permit was for.

Clark stated that there are two permits, one for an addition to an existing single family dwelling to convert it to a two family dwelling and a subsequent permit was issued to make repairs and renovate a fire damaged building. Process of repairing allowed the owner to gut the building to find out what the extent of the damage was. The plan was to lift the single family dwelling, to put in a foundation. However, after gutting, they realized if they lifted the house, it would have fallen apart. During this process they realized there was a lot more damage to this building.

Cheney stated that the decision to not revoke the building permit is what he's appealing.

Colbath questioned how the applicant's were able to demolish the home and rebuild. Discussion ensued regarding whether the permit should have been issued.

Reid asks Clark if that is his jurisdiction to revoke permits.

Clark stated that he did go to the property after receiving the first letter from Mr. Cheney.

Denison felt that this is an enforcement issue, not a zoning issue.

Motion: Perry made the motion not to accept the case, Landford seconded. Vote: 4 to 1 (Colbath opposes)

Cheney asked what his next step would be. Denison stated that he should meet with the City Manager.

5. OTHER BOARD BUSINESS

Denison spoke about the OEP conference and discussed handouts that were copied for all members. The rules of procedure were discussed. City Attorney, Alan Krans, commented on the rules of procedure. Discussions will continue at next months meeting.

6. ADJOURN

Motion: Reid made the motion to adjourn at 10:51 p.m. Colbath seconded. Vote: U/A

<u>List of Members</u>	<u>Term Expires</u>
Masi Denison-regular member	01-24-10
William Colbath-regular member	10-23-09
Frank Landford-regular member	04-10-08
Sam Reid-regular member	11-12-09
Jim Kelley-regular member	05-23-10
Otis Perry-alternate member	02-08-09
Chris Prior-alternate member	02-01-11





CITY OF DOVER

DOVER ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers - 288 Central Avenue, Dover, NH 03820
Meeting Date: Thursday, June 19, 2008
Meeting Time: 7:00 pm

1. ATTENDANCE

- Regular Members Present: Chair Masi Denison, Vice Chair Bill Colbath, Frank Landford, Jim Kelly
- Regular Members Absent: Sam Reid
- Alternate Members Present: Otis Perry, Chris Prior
- Staff Present: Tom Clark, Building Official, Rick Jones, Code Enforcement, Jennifer Bretz, Recording Secretary

Chair Masi Denison introduced the members of the Board.

2. APPROVAL OF PRIOR MINUTES OF MAY 15, 2008

Motion: Colbath made the motion to accept. Perry seconded. Vote: U/A

Colbath stated that he is stepping down on the next case. Denison, Kelley, Perry, and Prior will be voting.

3. NEW BUSINESS

- A. * Z 08-11 William Colbath, 129 Silver St., requests an Appeal from an Administrative Decision concerning Article X, Section 170-41.A, B & C and Article X, Section 170-42, in connection with the administration of a building permit (BP #08-26) at 55 Back River Rd, a/k/a Tax Map I, Lot 60, zoned R-12 to repair/renovate a fire damaged single family dwelling.

Perry motions to hear from City Attorney, Alan Krans. Kelly, Prior and Denison in favor. Vote: 3-2

City Attorney, Alan Krans, gave the ZBA the option of meeting in an Executive Session or Public Session. The board chose the Public Session.

Krans stated the issue of standing is who has the right to bring an appeal of an administrative decision. The Zoning Board has the power to hear appeals of administrative decision regarding interpretations of a zoning ordinance. There are a couple of statutes involved in issue of standing. It has to do with the phrase "aggrieved person". Statutory Laws are laws that are passed by the legislature. Case Laws are cases that are decided by the NH Supreme Court. A combination of those defines an aggrieved person is an abutter or a person who is directly affected by the Administrative Official. The case law is clear that not every tax payer is directly affected. Your status as a citizen of the City of Dover or as a taxpayer does not qualify you as an aggrieved person. Aggrieved persons may not only seek an appeal of the ZBA, they may also go to court if they don't agree with the outcome of that appeal. Who can go to court? Who can appeal a Building Official? The answer is an aggrieved person directly affected greater than the average taxpayer.

Denison requested the statute number.

Krans stated RSA 677:4 and RSA 677:2. There are two cases. One involves Weeks Restaurant vs. The City of Dover; the other is Hooksett Conservation Commission vs. Hooksett ZBA. The additional RSA is RSA 676:5.



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Kelley asked Atty. Krans for clarification of an abutter or not necessarily an abutter.

Atty. Krans stated that years ago it used to be an abutter. They've expanded that to include abutters and people that are directly affected. As he indicated, the case law also speaks to whether any taxpayer has standing. The answer would be no. The Weeks vs. City of Dover case, in 1979, had to do with Weeks Restaurant in the Weeks Traffic Circle. There was a Sambo's Restaurant, which was a competitor that wanted to come in to Dover, in that area. Weeks Restaurant was not a direct abutter but they wanted to have a say in whether Sambo's could come to Dover. The resolution to the case was that Weeks was even though they were not a direct abutter, they had standing because they had a direct impact in terms of traffic.

Denison asked if the applicant would like to express how he has standing if he is in fact an aggrieved party.

Colbath stated he is an aggrieved party being that he was present for the proceeding. He has an interest in the outcome of the case. The word aggrieved party is also equal to "a person having a substantial interest in the outcome of the case" is also used in that same case law. He stated that he currently has a right as a party to the proceeding to bring this appeal where there has been an error committed by the Board. It's his duty to correct that. He does have standing under a different case. He's using the case of Green vs. Shaw (1974). That gives him standing as a taxpayer. Colbath refers to a handout that was passed out. (In file)

Denison stated Colbath is stating the town has acted illegally. Colbath's argument is his interpretation of the permit. She asks Atty. Krans to come back up.

Denison asked Atty. Krans given that the applicant is not stating that they have standing as an aggrieved party in that they are directly affected by owning a property, but they have standing as a citizen and arguing that the city has acted illegally, what is his interpretation?

Krans states he's just been handed the case and needs to review it first.

Motion: Denison makes a motion for Atty. Schulte to speak. No one seconds.

Denison motions to recess at 7:25pm in order for Atty. Krans to read up on the cases.

Meeting is called back to order at 7:38pm.

Atty. Krans stated he's had a chance to review Green vs. Shaw. It's a 1974 case. Richard Green is now the Executive Director of the Pease Development and John Shaw, who was the former Mayor of Rochester. The case involved an equity action. An equity action is when there is no statute or specific remedy. It was a writ of mandamus which is a type of legal action that seeks to have government officials do what they are supposed to do. Mr. Colbath is correct, in that particular case, an equity action allowed a group of taxpayers to go to court to seek redress against public officials. It had to do with whether or not they were spending funds illegally. An equity action is different than what the ZBA does. The ZBA is governed by statutes. Statute is something that is adopted by the NH Legislature. When there is a statute that pertains to legal issues, it's the statute that you go by. In Arnold Goldstein vs. Town of Bedford, Goldstein was challenging a decision by a zoning administrator regarding the merger of two nonconforming lots. Mr. Goldstein went



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before the ZBA and stated he was a Bedford resident who would like to see the zoning ordinance enforced. The decision goes on to say, "Since the plaintiff has proffered no evidence that he has an interest in this action beyond that of a concerned resident and taxpayer, he lacks standing to seek mandamus relief."

Discussion ensued regarding equity actions.

Colbath asked if he's allowed to speak. He does not understand how he does not have standing. RSA677:2 allows a town selectman to bring an appeal. He does not understand how he is not a party to the proceeding since he was a part of it.

Denison asked Colbath if his argument was that because he was sitting on the board at the time of the proceeding, he's a party to the proceeding?

Colbath agrees. He doesn't think he has standing under *Weeks vs. City of Dover*. He doesn't consider himself aggrieved in that format.

Denison stated one argument the applicant has is he has a substantial interest in the outcome of the case. The next argument is he believes there is an error on the board and the board's decision, because he's a party to the proceeding by being on the board he can call that into question. He brought up the case of *Green vs. Shaw* but it was not applicable.

Colbath stated as a member of the board, he has a problem with it being eroded the way that it has been. That is why he has a substantial interest in the outcome of the appeal.

Perry stated a person who voted on the decision is now seeking to overturn that decision through the side. He's not convinced that Colbath has standing. He feels that a member of the board taking this action and appealing a decision of the board opens a can of worms that most courts would not like to see. If at any time a decision was made, a member of the board who was on the side that didn't prevail could then force a reconsideration of that decision by turning around and saying that they are now not acting as a member of the board but acting independently to reverse the decision. If Mr. Colbath had standing in this case, what has changed from the time that he sat on the board from the last vote? If he believes he is an aggrieved party, he should have recused himself from that decision.

Prior stated that if you are on the opposing side, it does open an avenue that in which someone feels they were wronged and wants to rehear the decision, he agrees with Perry.

Kelley stated as the City Attorney indicated, the board works off of ordinances. That was the process followed.

Denison stated she agrees with Perry's points. She would not be uncomfortable if someone changes their mind and states the board made a mistake. If Colbath hadn't voted against it, than he can not use the system to get around his case. This particular method of coming before the board as an applicant, having been on the non prevailing side, makes her uncomfortable. While he doesn't have standing, she thinks he isn't in the wrong. As one of the members on the prevailing side, is significantly reconsidering her decision to



CITY OF DOVER

DOVER ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers - 288 Central Avenue, Dover, NH 03820
Meeting Date: Thursday, June 19, 2008
Meeting Time: 7:00 pm

vote on that side. In the first case, the board voted on a technicality, making sure everything was correct. In the second case, the board was informed that it was an enforcement against interpretation situation. They have an ordinance in the books that is poorly defined. It is a footnote that states any building built before this date can be converted into a duplex. She would like to see the Planning Board and City Council do something about the ordinance.

Motion: Kelley motions to not accept the application, Perry seconds.
Denison, Kelley, Perry and Prior are in favor.
Landford opposes, 4 -1 vote.

4. OTHER BOARD BUSINESS

Colbath takes his seat.

Discussion ensued regarding city e-mail.

Denison stated that in the May meeting, the board went over the Rules of Procedure. There were some changes that were recommended by the City Attorney. She read from an e-mail that Atty. Krans sent to Denison. The board has the option, but not the requirement, of submitting the proposed rule changes to the City Council. The reason why you would do that is it provides the public a chance to provide input through Citizens Forum. She proceeds to ask the board if they would like to submit their rule changes to City Council.

Perry asks if the board is submitting the rules for the City Councils approval or is it for their information?

Denison stated it's providing the public a chance to provide input through Citizens Forum.

Atty. Krans stated every other board seeks Council approval of their rules.

Denison asked if the Council votes on the changes.

Atty. Krans stated yes.

Perry stated his understanding of why other City Councils vote on their ZBA changes is that the other ZBA's are established by their City Council. The Council is the controlling authority for those boards. Their function, their purpose and their legal status comes from the Council. Their Council has control over the rules and procedures. The ZBA is a statutory board. He doesn't think that their rules should be debated in front of the City Council.

Atty. Krans suggests having a Public Hearing at the ZBA.

Perry suggested having a Citizens Forum on the Agenda. It's an opportunity for citizens to have a chance to talk to the ZBA.



CITY OF DOVER

DOVER ZONING BOARD OF ADJUSTMENT - MINUTES

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Clark stated the amendments to the rules are in the rules.

Denison stated its public notice not public discussion. Denison reads Section 8 from the proposed rules.

Clark reads Section 8 from the rules and procedures. He's asking how the Council is involved.

Denison stated they are not. It's a recommendation from Atty. Krans that the board consider doing it. There's not a requirement for it, it's only a suggestion.

Landford stated public input is fine if the board has one meeting for the public to go over their changes. He doesn't think the Council should approve their changes.

Krans stated he thinks the public should be involved.

Denison stated does the board have a public hearing or a public reading. The Board is required to have a public reading.

Landford stated we should give the citizens a chance to comment on the Board. Taxpayers and citizens getting a chance to speak on what the board is doing.

Perry stated a similar procedure is used in the Council for the passage of ordinances. It requires two public readings of the ordinance. The first public reading is a vote by the council to refer it to a public hearing. The public hearing constitutes the second reading. The Council may adopt it after the second reading or postpone it. If the board wanted to follow that procedure, on the agenda for the next meeting would be to adopt those procedures. At that point, it would be referred to a following meeting after a public discussion and then adopt it at a subsequent meeting for it. The Council has a formal public hearing, he agrees with having a public hearing.

Motion: Perry motions to have an initial reading, Landford seconded. Vote: U/A.

Discussion ensued on having a Citizens' Forum as a monthly item.

Denison stated she won't be attending the next meeting, Colbath will sit in.

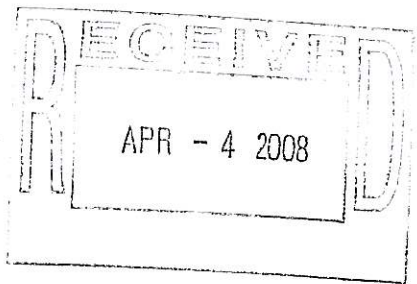
5. ADJOURN

Motion: Landford made the motion to adjourn at 8:16p.m. Colbath seconded. Vote: U/A

<u>List of Members</u>	<u>Term Expires</u>
Masi Denison-regular member	01-24-10
William Colbath-regular member	10-23-09
Frank Landford-regular member	04-10-08
Sam Reid-regular member	11-12-09
Jim Kelley-regular member	05-23-10
Otis Perry-alternate member	02-08-09
Chris Prior-alternate member	02-01-11

CASE # 20807

DATE RECEIVED 4/4/08



AMOUNT PAID \$ 76.05
check 7457

TIME RECEIVED _____

CITY OF DOVER
ZONING BOARD OF ADJUSTMENT
APPLICATION

I. APPLICANT Charles Cheney PHONE #: 742-2012
ADDRESS 7 Beech Rd Dover NH 03820
PROPERTY OWNER _____
ADDRESS _____
PROPERTY LOCATION _____
BRIEF DIRECTIONS _____
ZONE R-12 ASSESSOR'S MAP I LOT #(S) 60

TYPE OF APPEAL: (Please check off one)

- VARIANCE
- SPECIAL EXCEPTION
- ADMINISTRATIVE DECISION
- EQUITABLE WAIVER

ARTICLE <u>XII</u>	SECTION <u>170-52 C(2)</u>
ARTICLE _____	SECTION _____
ARTICLE _____	SECTION _____
ARTICLE _____	SECTION _____

Describe briefly your plans for this property:

II. REQUIREMENTS SUBMITTED: (Please check off)

- A. Plot plan drawn in accordance with a boundary line survey to scale not less than 1" = 40', (12 copies). They need to include the lot dimensions including area in square feet, and also the size and location of existing and proposed buildings if applicable, including setbacks.
- B. List of abutters including addresses and map and lot number of parcels who adjoin or are directly across the street or stream from property.

C. Application fee of:

\$100.00 VARIANCE	\$ _____
\$100.00 SPECIAL EXCEPTION	\$ _____
\$25.00 APPEAL FROM ADMINISTRATIVE DECISION	\$ <u>25.00</u>
\$100.00 EQUITABLE WAIVER	\$ _____

D. Certified letters fee:

# of abutters <u>3</u> X \$5.21 =	\$ _____
Applicant & Owner <u>2</u> X \$5.21 =	\$ _____
Foster's ad	\$ _____
	\$ <u>25.00</u>

TOTAL \$ 76.05

SPECIAL EXCEPTION REQUIREMENTS

1. Explain how the requested use would be essential or desirable to the public convenience or welfare.

2. Detail how the requested use would not create undue traffic congestion or unduly impair pedestrian safety.

3. Describe how the requested use would not overload any public water, drainage or sewerage system or any other municipal system to such an extent that the requested use or any developed use in the immediate area or in any other area of the City will be unduly subjected to hazards affecting health, safety or the general welfare.

APPEAL FROM AN ADMINISTRATIVE DECISION

1. Explain why you feel that the Administrative Official made an error in applying or interpreting the zoning ordinance in a particular case.

I believe BP 08-26 issued to "renovate/repair a fire damaged single family dwelling" was elaborated upon by the applicants as the house was completely torn down. The idea was to "panelize" the building & reuse the materials but what is left is a small pile of rubble. To label this a renovation/repair is a gross understatement.

IV. As applicant of standing of this request, I certify that the information herein is complete and accurate.

IMPORTANT
PROPERTY IDENTIFICATION SIGN MUST BE POSTED ON THE PROPERTY FOR THE 10 DAYS PRIOR TO HEARING.
FAILURE TO POST MAY RESULT IN APPLICATION NOT BEING ACCEPTED

Charles S. Cheney

Signature of Applicant*

Charles S. Cheney

Signature of Owner*

*Both Signatures Required

LIST OF ABUTTERS

Map I, Lot 59
Donald C. Cheney
Chattie V. Cheney
53 Back River Road
Dover, NH 03820

Charles Cheney
7 Peach Rd
Dover NH 03820

Map I, Lot 61
Paul J. Young
Catherine E. Young
57 Back River Road
Dover, NH 03820

Map I, Lot 6 &
Map I, Lot 6 I
Raymond G. Sweatt
Louise M. Sweatt
54 Back River Road
Dover, NH 03820

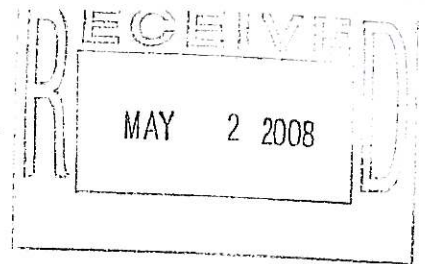
Applicants

Map I, Lot 60
Kevin Turgeon
Lisa Turgeon
225 Green Street
Somersworth, NH 03878

~~James H. Schulte, Esquire
660 Central Avenue
Dover, NH 03820~~

~~(603) 743-6300~~

CASE # 2 08-10 DATE RECEIVED 5/2/08
 AMOUNT PAID \$ 76.05 TIME RECEIVED _____



CITY OF DOVER
 ZONING BOARD OF ADJUSTMENT
 APPLICATION

I. APPLICANT Charles Cheney PHONE #: 742-2012
 ADDRESS 7 Beech Rd Dover NH 03820
 PROPERTY OWNER _____
 ADDRESS 55 Beech Rd Dover NH
 PROPERTY LOCATION _____
 BRIEF DIRECTIONS _____
 ZONE R12 ASSESSOR'S MAP I LOT #(S) 60

TYPE OF APPEAL: (Please check off one)

- | | | |
|--|--------------------|----------------------------|
| <input type="checkbox"/> VARIANCE | ARTICLE <u>XII</u> | SECTION <u>170-52.1(2)</u> |
| <input type="checkbox"/> SPECIAL EXCEPTION | ARTICLE _____ | SECTION _____ |
| <input type="checkbox"/> ADMINISTRATIVE DECISION | ARTICLE _____ | SECTION _____ |
| <input type="checkbox"/> EQUITABLE WAIVER | ARTICLE _____ | SECTION _____ |

Describe briefly your plans for this property:

II. REQUIREMENTS SUBMITTED: (Please check off)

- A. Plot plan drawn in accordance with a boundary line survey to scale not less than 1" = 40', (12 copies). They need to include the lot dimensions including area in square feet, and also the size and location of existing and proposed buildings if applicable, including setbacks.
- B. List of abutters including addresses and map and lot number of parcels who adjoin or are directly across the street or stream from property.
- C. Application fee of:

\$100.00 VARIANCE	\$ _____
\$100.00 SPECIAL EXCEPTION	\$ _____
\$25.00 APPEAL FROM ADMINISTRATIVE DECISION	\$ <u>25</u>
\$100.00 EQUITABLE WAIVER	\$ _____

D. Certified letters fee:
 # of abutters 2 X \$5.21 = \$ _____
 Applicant & Owner 2 X \$5.21 = \$ _____
 Foster's ad _____ \$ 25.00

TOTAL \$ 76.05

SPECIAL EXCEPTION REQUIREMENTS

1. Explain how the requested use would be essential or desirable to the public convenience or welfare.

2. Detail how the requested use would not create undue traffic congestion or unduly impair pedestrian safety.

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Charles S. Cheney

Signature of Applicant*

Charles S. Cheney

Signature of Owner*

*Both Signatures Required

LIST OF ABUTTERS

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57 Back River Road
Dover, NH 03820

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54 Back River Road
Dover, NH 03820

Applicants

Map I, Lot 60
Kevin Turgeon
Lisa Turgeon
225 Green Street
Somersworth, NH 03878

~~James H. Schulte, Esquire
660 Central Avenue
Dover, NH 03820~~

~~(603) 743-6300~~

February 10th, 2007

To whom it may concern:

Be it known by this letter that I, Don Cheney of 53 Back River Road in Dover, New Hampshire, do hereby convey to my son Charles "Chuck" Cheney permission to represent me on matters pertaining to my home and property at 53 Back River Road. At 83 years old, I do not enjoy getting out for night meetings. But since my son and I frequently discuss my property and its abutters, I am confident he knows and understands my wishes and will represent me well. Before this date, I had verbally given my permission to Chuck to represent me. But not realizing mine and my son's integrity would be called into question, I had not previously put this in writing. Let this document end any question you may have regarding his right to represent me.

Sincerely,


Don Cheney

sworn before me this Feb. 13, 2007



Carol E. Salava



CITY OF DOVER
APPLICATION FOR BUILDING PERMIT* OR CHANGE IN LAND USE

Industrial Commercial Residential X

OFFICE USE ONLY
Building Permit 08-26
Est. Cost: 105,000
Fee: 47.19
Date: 2/22/08

Location: 55 B... Zone: R-12 Map: Lot: 60

- 1. Owner's Name
2. Owner's Address
3. Contractor's Name: Diversified Builders
4. Address: 198 ... NH
5. Architect: Specs: Plans:

Proposed Use: Single family home No. Families: 1

This Application For:
Dwelling Garage Shed Pool Alterations Additions Demolitions
Change of Use Removal X Other: Renovation of existing structure (FIRE-DAMAGED)

New Building or Addition Size: X No. Stories No. Bedrooms

*NOTES TO APPLICANT:

- 1. Separate permits are required by the installers of plumbing, mechanical and electrical.
2. It is the applicant's responsibility to notify the Building Inspector's Office at 516-6038 for inspections upon completion of the following: Footings; Foundation; Framing; Wiring; Plumbing; Mechanical; Insulation; and Final.
3. Construction features must be supplied on plans or separate listing as per the Building Permit Application Requirements
4. The issuance of the Building Permit No. 08-26 to KEVIN TURGEON shall not be construed as a right to occupy and/or use such building or structure upon completion of work. A final inspection by the Building Inspector, with approvals (if applicable) from the Planning Director, Public Works Director and Fire and Police Chiefs are required prior to the issuance of a Certificate of Occupancy by the Building Inspector. Failure to comply with the foregoing could result in fines and/or legal action.

S. SECURITY PLAN REVIEW INCLUDED
The above numbered permit is issued upon the condition that the building, structure or land use must conform in all respects to the provisions of the zoning ordinance and other applicable city ordinances. The City of Dover, by issuing the permit, does not express or imply that the ordinances have been complied with.

I certify that the above information given is true and correct to the best of my knowledge. No major changes will be made without approval of the Building Inspector. Responsibility for compliance with the City ordinances is that of the applicant.

Kevin Turgeon
Applicant's Name (please print)

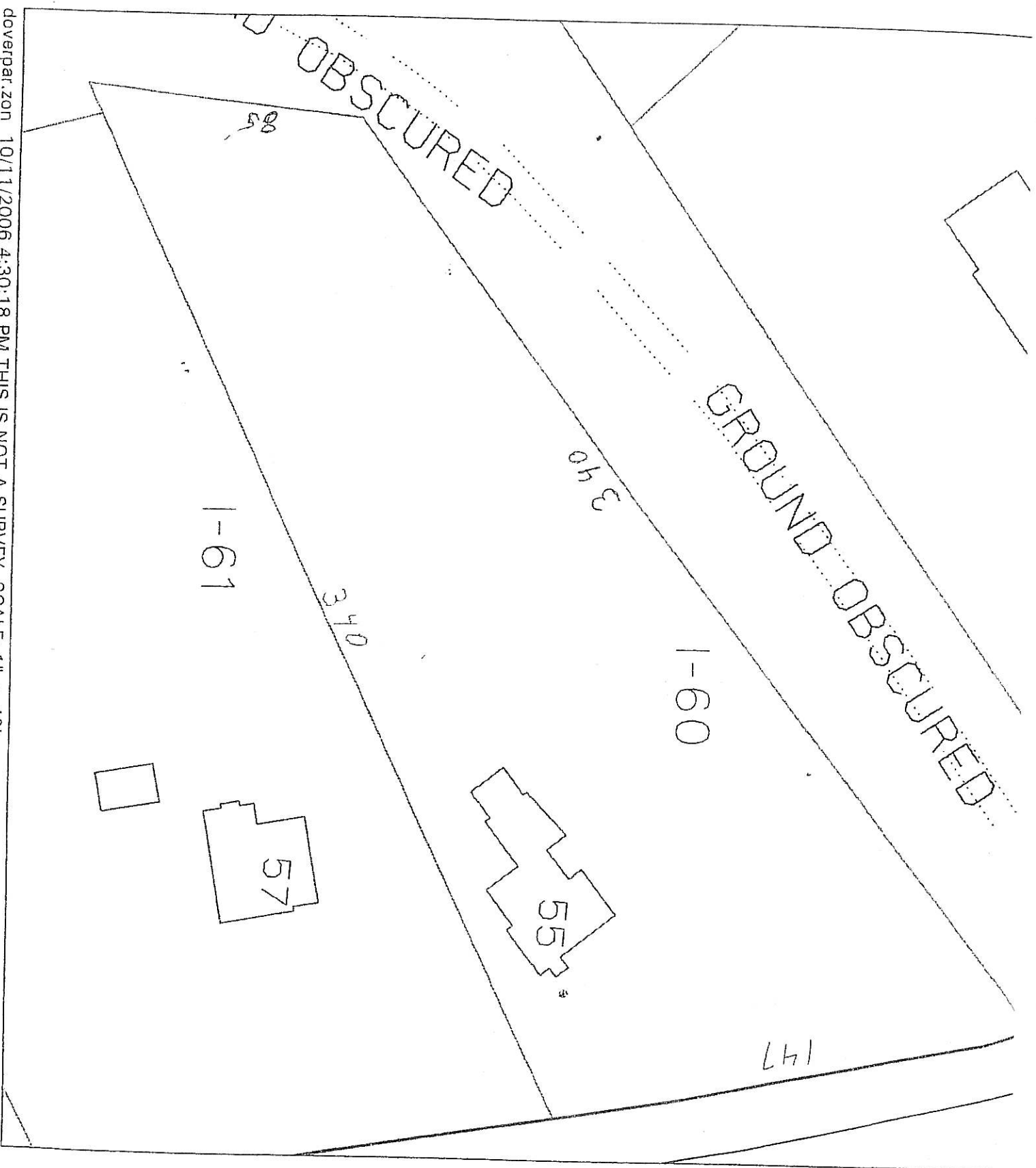
Applicant's Signature

Building Inspector's Signature

Application Fee: \$979 Check # 394 Cash: Date: Initials:

105
30

doverpar.zon 10/11/2006 4:30:18 PM THIS IS NOT A SURVEY. SCALE: 1" = 40'



21 65

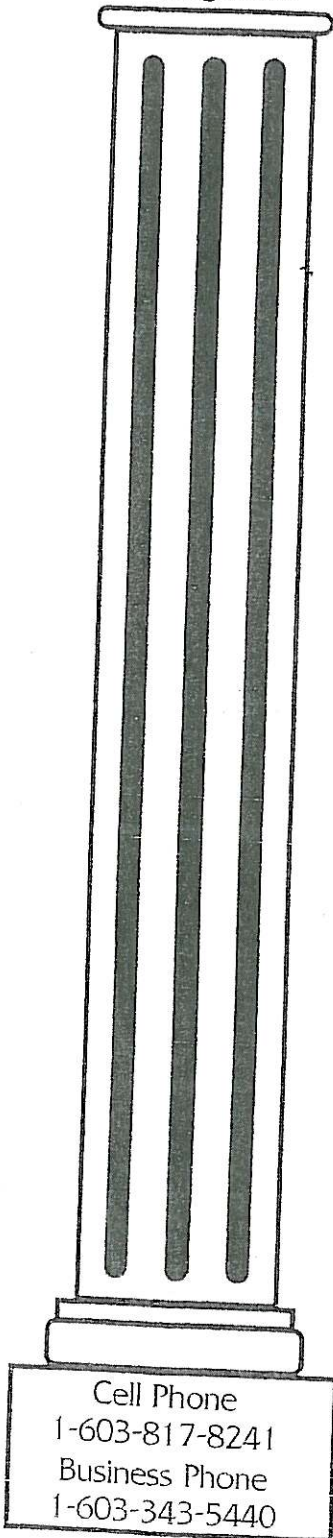


**Diversified Building
& Maintenance**

Custom Builders
Interior/Exterior
Design
Construction
Management

Building Specifications

Rebuild to preexisting condition with no exception

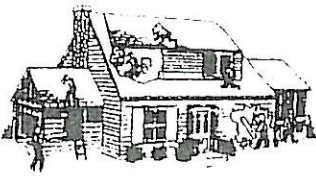


- Slab (PINNED)
- All drains at footing level
- All concrete floors poured to a thickness of 4"
- ½" x 8" j bolt
- Foundation coating (where applicable)
- ¾ inch Advantech sub-floor
- 2 x 6 exterior walls 16 inches o/c
- 2 x 10 headers/ engineered lumber for all spans larger then 4'
- 7/16 OSB Sheathing with house wrap
- 2 x10 roof rafter 16 inches o/c 6/12 pitch (TRUSSES)
- ½ inch Advantech sheathing
- 30 year IKO Shingle
- Ice and Water Shield (3ft)
- 15 pound felt
- 8" aluminum drip edge
- Ridge vent
- Certainteed Vinyl siding (or equivalent)
- Harvey vinyl windows and slider with grills
- Steel exterior doors
- R-19 insulation in walls and basement ceiling
- R-30 insulation in ceilings
- 200 amp electrical service
- Cable and floor jacks in every room
- Smoke detectors per code
- Forced hot air or hot water heating system
- Standard bathroom fixtures
- ½" drywall main house
- ½" moisture board (bathrooms)

servicing all your needs

1888 Blackwater Road
Fax 1-603-343-5442

Cell Phone
1-603-817-8241
Business Phone
1-603-343-5440



Diversified Building
& Maintenance

Custom Builders

Interior/Exterior
Design

Construction
Management

5/8 " fire rated drywall (Garage - 1 hour rating)

- 1 coat primer on walls
- 2 coats flat washable on walls
- 2 coats semi-gloss on trim

- Raised panel interior doors
- Colonial Casing on all doors and windows
- Colonial base for all baseboard

- pressure treated deck
- Pre-cast front steps with rail

Notes:

2006 International Residential building code to be followed .

Existing home dismantled. The majority of the salvageable lumber and walls to be reused in the rebuild of the existing home. The rebuild to match the same size and shape as before. Roof pitch to match as before.

Respectfully Submitted:

Claude Gagnon

Cell Phone
1-603-817-8241
Business Phone
1-603-343-5440

Servicing all your needs

1888 Blackwater Road

Fax 1-603-343-5442

CITY OF DOVER

NEW HAMPSHIRE



BUILDING PERMIT

PERMIT NO. 08-26 DATE 2/22/2008

NAME OF OWNER Whitcomb Tupper ADDRESS OF OWNER Supercenter

CLASSIFICATION RENOVATE / REMOVAL A FILE

ADDRESS WHERE WORK IS TO BE DONE 1000 Bank Street

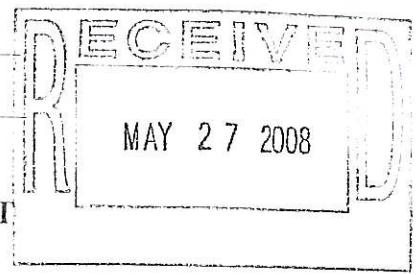
[Signature]
BUILDING INSPECTOR

THIS PERMIT IS SUBJECT TO THE FOLLOWING CONDITIONS: (1) IS SUBJECT TO ANY APPLICABLE ORDINANCES; (2) IS VOID IF WORK IS NOT BEGUN WITHIN SIX MONTHS OF THE DATE OF ISSUANCE; AND (3) IS ISSUED BASED ON THE PLANS AND/OR SPECIFICATIONS SUBMITTED.

NO WORK SHALL BE PERMITTED UNTIL THE COMPLETED WORK HAS BEEN APPROVED BY THE BUILDING INSPECTOR.

CASE # 208-11
 AMOUNT PAID \$ 76.60

DATE RECEIVED 5/27/08
 TIME RECEIVED _____



CITY OF DOVER
 ZONING BOARD OF ADJUSTMENT
 APPLICATION

I. APPLICANT William C. Colbath PHONE #: 744-0063
 ADDRESS 129 Silver St. Dover NH 03820
 PROPERTY OWNER Kevon Turgeon
 ADDRESS 225 Green St. Somersworth, NH 03878
 PROPERTY LOCATION 55 Back River Rd, Dover NH
 BRIEF DIRECTIONS Back River Rd on Right Approx 1/2 Way to
West Rd.
 ZONE R-12 ASSESSOR'S MAP ± LOT #(S) 60

TYPE OF APPEAL: (Please check off one)

- | | | |
|---|------------------|----------------------------|
| <input type="checkbox"/> VARIANCE | ARTICLE _____ | SECTION _____ |
| <input type="checkbox"/> SPECIAL EXCEPTION | ARTICLE _____ | SECTION _____ |
| <input checked="" type="checkbox"/> ADMINISTRATIVE DECISION | ARTICLE <u>X</u> | SECTION <u>170-41A,B,C</u> |
| <input type="checkbox"/> EQUITABLE WAIVER | ARTICLE _____ | SECTION <u>± 170-42</u> |

Describe briefly your plans for this property: Property was involved in fire
and was supposed to be structurally sound. Bldg Permit was issued
for rebuild and small addition to create duplex. Then it was determined
the building was not sound and needed to be completely removed. A
very small portion of the original walls are on site and clearly not
more than 10% of Bldg structure. The building was not purchased until
after the 1yr. limit to rebuild, it was willfully removed and partially
relocated. These events should have resulted in non conforming structure removal

II. REQUIREMENTS SUBMITTED: (Please check off)

- A. Plot plan drawn in accordance with a boundary line survey to scale not less than 1" = 40', (12 copies). They need to include the lot dimensions including area in square feet, and also the size and location of existing and proposed buildings if applicable, including setbacks.
- B. List of abutters including addresses and map and lot number of parcels who adjoin or are directly across the street or stream from property.
- C. Application fee of:

\$100.00 VARIANCE	\$ _____
\$100.00 SPECIAL EXCEPTION	\$ _____
\$25.00 APPEAL FROM ADMINISTRATIVE DECISION	\$ <u>25.00</u>
\$100.00 EQUITABLE WAIVER	\$ _____
- D. Certified letters fee:

# of abutters <u>4</u> X \$5.32 =	\$ <u>21.28</u>
Applicant & Owner <u>1</u> X \$5.32 =	\$ <u>5.32</u>
Foster's ad	\$ <u>25.00</u>

TOTAL \$ 76.60

III. **NARRATIVE:** Complete the section pertaining to your request for a dimensional/area variance. Keep your answers brief and be prepared to explain them in detail at the meeting. The burden of proof is on the applicant. If you need more space use an additional sheet of paper

DIMENSIONAL/AREA VARIANCE REQUIREMENTS: (PLEASE TYPE OR PRINT IN INK)

1. Provide proof that special conditions exist and that literal enforcement of the ordinance would result in an unnecessary hardship. Demonstrate that an area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property; and that the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, without the area variance.

2. Provide proof that demonstrates how granting the variance will result in substantial justice.

3. Provide proof that demonstrates how a variance would be consistent with the spirit and intent of the ordinance.

4. Provide proof that demonstrates the variance will not result in a diminution in value of surrounding properties.

5. Provide proof that demonstrates the variance would not be contrary to the public interest.

USE VARIANCE REQUIREMENTS: (PLEASE TYPE OR PRINT IN INK)

1. Provide proof that special conditions exist and that literal enforcement of the ordinance would result in unnecessary hardship. Demonstrate that: i.) the ordinance interferes with the reasonable use of the property, considering the unique setting of the property in its environment; ii.) no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property; and iii.) the variance would not injure the public or private rights of others.

2. Provide proof that demonstrates how granting of the variance will result in substantial justice.

3. Provide proof that demonstrates how a variance would be consistent with the spirit and intent of the ordinance.

4. Provide proof that demonstrates the variance will not result in a diminution in value of surrounding properties.

5. Provide proof that demonstrates the variance would not be contrary to the public interest.

EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS

An Equitable Waiver of Dimensional Requirements is requested from Article _____
Section _____ of the Zoning ordinance to permit _____

1. Does the request involve a dimension requirement, not a use restriction? yes no
2. a) Explain how the violation has existed for 10 years or more with no enforcement action, including written notice, being commenced by the city OR b) explain how the nonconformity was discovered after the structure was substantially completed or after a vacant lot in violation had been transferred to a bona fide purchaser AND how the violation was not an outcome of ignorance of the law or bad faith but resulted from a legitimate mistake.

3. Explain how the nonconformity does not constitute a nuisance nor diminish the value or interfere with future uses of other property in the area.

4. Explain how the cost of correction far outweighs any public benefit to be gained.

NOTE: The Board must find in the affirmative on all four questions or the request must be denied

SPECIAL EXCEPTION REQUIREMENTS

1. Explain how the requested use would be essential or desirable to the public convenience or welfare.

2. Detail how the requested use would not create undue traffic congestion or unduly impair pedestrian safety.

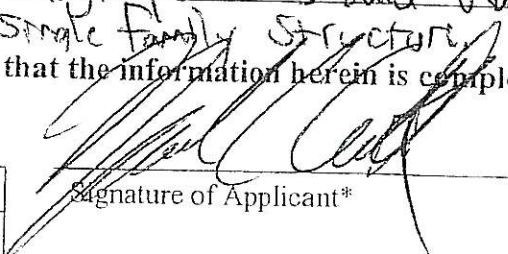
3. Describe how the requested use would not overload any public water, drainage or sewerage system or any other municipal system to such an extent that the requested use or any developed use in the immediate area or in any other area of the City will be unduly subjected to hazards affecting health, safety or the general welfare.

APPEAL FROM AN ADMINISTRATIVE DECISION

1. Explain why you feel that the Administrative Official made an error in applying or interpreting the zoning ordinance in a particular case.

The property was involved in a fire and was not rebuilt within the 1 yr limit to replace. The applicant argued the building was structurally sound and could be rebuilt. After the process was started to build as duplex the structure was willfully removed (less than 10% ~~re~~panelized for reuse). If the structure was unsafe it was to be removed and relocated in correct setback. When the structure was removed the bldg permit should have been needed and issued for a conforming single family structure.

- IV. As applicant of standing of this request, I certify that the information herein is complete and accurate.


Signature of Applicant*

Signature of Owner*

*Both Signatures Required

<p>IMPORTANT</p> <p>PROPERTY IDENTIFICATION SIGN MUST BE POSTED ON THE PROPERTY FOR THE 10 DAYS PRIOR TO HEARING.</p> <p>FAILURE TO POST MAY RESULT IN APPLICATION NOT BEING ACCEPTED</p>
--

THE STATE OF NEW HAMPSHIRE
Strafford Superior Court
Justice & Admin Building
County Farm Road / Box 799
Dover, NH 03820
603 742-3065

ORDER OF NOTICE

WILLIAM C. COLBATH v. THOMAS CLARK
KEVIN TURGEON
LISA TURGEON
CITY OF DOVER

NO. 08-E-0165

RETURN DAY: 08/05/2008

You have been sued and named as a party in a case filed with the Strafford Superior Court. Attached is a copy of the pleading which began this case.

WILLIAM C. COLBATH shall notify each Defendant of the above action by serving the defendant(s) by July 21, 2008 with a copy of the pleading initiating the case, orders that the Court has already issued, and this Order in a manner allowed by law. Plaintiff shall file with the Clerk verification of the service process by August 05, 2008.

IMPORTANT NOTICE TO THOMAS CLARK, KEVIN TURGEON, LISA TURGEON, CITY OF DOVER:

You must file a written appearance form with the Clerk on or before August 05, 2008. You must also file by September 04, 2008 a plea, answer or demurrer. Send a copy of the appearance form and any other documents filed with the court to the attorney for the party filing the pleading or to the party if there is no attorney. The name and address of the attorney or the party filing the pleading is contained in the pleading. If you do not comply with these requirements you will be considered in default, you will not have an opportunity to dispute the claim(s) and the court may issue orders in this matter which may affect you without your input.

BY ORDER OF THE SUPERIOR COURT

07/01/2008


Julie W. Howard
Clerk of Court

State of New Hampshire

Strafford, SS

Superior Court

William C. Colbath

v.

Thomas Clark, Kevin and Lisa Turgeon and The City of Dover

EX PARTE PETITION FOR INJUNCTION AND DECLARATORY JUDGMENT

NOW COMES the petitioner William C. Colbath who respectfully submits the within Ex Parte Petition for Injunction and Declaratory Judgment against the Defendants as follows:

1. Plaintiff

William C. Colbath, 129 Silver Street, Dover, NH is a property owner in the City of Dover, NH, Vice Chairman of the Dover Zoning Board of Adjustment, 23 year member of the Dover Zoning Board of Adjustment, lifelong resident of Dover.

2. Defendant

Thomas Clark is the Dover Code Enforcement Officer and is an employee of the City of Dover and acting on the City of Dover's behalf along with other members of the planning and administrative offices. Thomas Clark's Office is located in the Dover City Hall at 288 Central Avenue, Dover, NH with other City Agency offices.

Kevin and Lisa Turgeon are the Owners of the Property at 55 Back River Road and have an address at 225 Green Street, Somersworth, NH.

The City of Dover Managers Office is located at 288 Central Avenue, Dover, NH.

3. This Court has subject matter jurisdiction over the instant petition pursuant to NH RSA and Case Law, The defendant exists and the acts complained of have occurred first on February 28, 2008 and have continued to date, entirely in the City of Dover, and venue is therefore properly laid in the Strafford Superior Court.

ACTS COMPLAINED OF

1. Thomas Clark acting as the Dover Code Enforcement Officer issued a building permit to Kevin and Lisa Turgeon for property at 55 Back River Road, Dover, NH that was in violation of the City of Dover Zoning Ordinance.

2. Thomas Clark acting as the Dover Code Enforcement Officer allowed a building permit issued to Kevin and Lisa Turgeon for property at 55 Back River Road, Dover, NH to be modified to allow the removal and replacement of a non-conforming structure in violation of City of Dover Zoning Ordinance.

3. Thomas Clark acting as the Dover Code Enforcement Officer issued a building permit

Kenneth C. Brown
Presiding Justice

Ex Parte Petition Demand
This matter will be calendared
in a way after answer is filed
and then responses have
been received
KCB
11/08

to Kevin and Lisa Turgeon allowing a non-conforming use to be initiated at 55 Back River Road, Dover, NH to remain in force after the use was extinguished by City of Dover Zoning Ordinance.

4. The Dover Zoning Board of Adjustment refused to accept an application for Appeal from an Administrative Decision on the Permit issued for 55 Back River Road offered by an aggrieved abutter at the April 17, 2008 meeting complaining of the actions of Code Enforcement Officer not revoking the building permit at 55 Back River Road. The Zoning Board of Adjustment did not accept the case due to the wording of the public advertisement for the appeal. Even though the applicant had no control or input for the advertisement.
5. The Dover Zoning Board of Adjustment refused to accept the application for Appeal from an Administrative Decision (described in item 4) at the May 15, 2008 meeting after it was advertised as requested by the Dover Zoning Board of Adjustment in the April 17, 2008 meeting. The refusal to accept the second time the application for Appeal from an Administrative Decision was offered by the aggrieved abutter was based on the Zoning Board of Adjustment's error in interpretation of NH RSA. The ZBA theorized in error they did not have control over the enforcement of the Zoning Ordinance by the Code Enforcement Officer and could not accept the case.
6. The Dover Zoning Board of Adjustment refused to accept an application for Appeal from an Administrative Decision brought forth by William C. Colbath (the plaintiff) alleging error in the previous decisions and illegal acts committed by a City Official at the June 19, 2008 meeting. The Dover Zoning Board of Adjustment cited a lack of Standing to bring appeal as their reason not to hear the Appeal from an Administrative Decision.
7. William C. Colbath (the Plaintiff) has standing to bring the appeal under NH RSA and under NH Case Law, but was not heard due to the error of the Dover Zoning Board of Adjustment in determining standing under statute and under NH Case Law.
8. The aggrieved abutter was never allowed to state his case and thus was denied his right to be heard as allowed under NH RSA as a result of errors in judgment of the Dover Zoning Board of Adjustment.

Wherefore, the Plaintiff prays that this court;

- A. Issue a temporary order stopping construction at the property at 55 Back River Road.

This immediate order is needed as construction has been allowed to continue after my appeal was received by the City of Dover. Construction was allowed to continue in violation of NH RSA 676:6 prior to refusal of the appeal by the Dover Zoning Board of Adjustment on June, 19 2008. Construction is still continuing today and is being done under a permit issued in violation of NH RSA 676:13. If construction is allowed to continue until a hearing can be scheduled the structure will be nearly completed. I ask the court to intervene and stop construction until the Court can rule on the matter.

B.

Issue an injunction revoking the building permit for 55 Back River Road, Dover, NH and

requiring any subsequent Building Permits be issued in accordance with all Dover Zoning Ordinances, as required in NH Statutes.

Issue an order that all construction undertaken in violation of Dover's Zoning Ordinances be removed and made compliant with all of Dover's Zoning Ordinances.

C.

Declare the following:

Declare that RSA 676:13 prohibits the Code Enforcement Officer from issuing any permit that does not comply with any and all Zoning Ordinances which are in effect.

Declare that RSA 677:2 allows William C. Colbath standing to bring an appeal to the Dover Zoning Board of Adjustment in this matter.

Declare that under NH Case Law William C. Colbath has standing to bring an appeal based on the illegal acts of a City Official.

Declare that under RSA 674:33 the Zoning Board of Adjustment is the correct venue for appeal from an administrative decision made by the Code Enforcement Officer in his enforcement of a zoning ordinance.

Declare that under RSA 676:6 the Code Enforcement Officer must issue a cease construction order when an appeal of a building permit is received.

D.

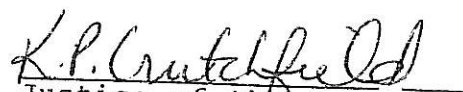
Grant William C. Colbath Court costs associated with the filing of this petition with the Strafford Superior Court.

Respectfully Submitted,



William C. Colbath

July 1, 2008 - Personally appeared, William C. Colbath and made oath that the facts alleged in the above Petition are true and accurate to the best of his knowledge and belief.


Justice of the Peace
Kearston P. Crutchfield

Date Served 7/2 2008

Time 1:13p M.

Place Kevin Turgeman
225 Green St. Somers.

Made ~~at~~ At Abode

By Paul B. Row
Deputy Sheriff

Strafford County
Sheriff's Office

Date Served 7/2 2008

Time 1:13p. M.

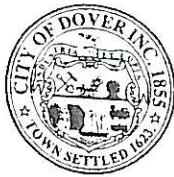
Place LISA TURQUON

225 Green St. ~~Dart~~ Somers.

Made In Hand At Abode

By Paul B. Rowe 123

Deputy Sheriff
Strafford County
Sheriff's Office



ELECTRICAL PERMIT APPLICATION

Subject Property 7 Beech St. Road Electrical Permit # 08-155
 Owner Chuck Cheney Address Same Address
 Electrical Contractor (please print) W.C. Colbath Elect. Cont.
 Address 211 Crosby Rd, Dover, NH 03820
 Master Electrician # 6586 Phone 749-0963 No. of Units Now 1 When Complete 1

BUILDING DATA

USE: Residential Business Industrial Other _____ Wiring Method: NM AC MC Conduit Other _____
 Type of Installation: New Addition Alteration Luminaire Retrofit Repair Other _____ Building Permit # _____

Services, Panels, and/or Disconnects	Quantity	Amount	Devices \$1.00 ea	Quantity	Fixtures \$2.00 ea	Quantity
\$5.00 per 100 amps			Receptacles		Incandescent	
60		\$5.00	Switches		Fluorescent	
100		\$5.00	Motion Sensor		Neon	
200		\$10.00	Other		Smoke Detectors	
400		\$20.00			Exit/Emergency Lts.	
600		\$30.00	Total Quantity		Exh/Paddle Fan	
800		\$40.00	Device Fee		Total Quantity	
1000		\$50.00			Fixture Fee	
1200		\$60.00	Equipment \$5.00 ea			
1600		\$75.00	Range/Cooktop		Washer	
2000		\$100.00	Wall Oven		Dryer	
Meters		\$5.00	Microwave		Boiler Gas /Oil	
Motors		\$5.00	Dishwasher		Furnace Gas /Oil	
Air Compressor/Condenser		\$15.00	Disposal		A/C Unit	
Electric Heat		\$5.00	HW Heater		Door openers	
Heat Pump		\$10.00	Refrigerator/Freezer		Sump Pump	
Pre-manufactured		\$25.00	Total Equip. Quantity		Equip. Fee	
Modular		\$75.00	Transformers			
Fire Pump		\$100.00	Up to 25 KVA		\$25.00 ea	
Standard Temp Service		\$15.00	25 KVA & over		\$50.00 ea	
Illuminated Sign		\$15.00			Trans. Fee	
Above ground pool/Hot Tub		\$25.00	Generators and Transfer Switches			
In Ground pool		\$50.00	Up to 10 KVA		\$25.00 ea	
Misc.			10 KVA to 75 KVA		\$50.00 ea	
Application Fee/Meter Reset		\$25.00	Over 75 KVA		\$100 ea	
Services, Panels, Disconnects Fee			Transfer Switches		same as above	
Total Electrical Permit Fee		<u>425</u>	Generator and Transfer Fee			

Paid: Check Cash Amount \$ 25 Collected by JG Date 5/27/08 Check # 104 Plans Submitted _____
 * Permit Fees Doubled if Work is Started Before Permit is Issued *

Applicant certifies that all information provided is correct, agrees to allow reasonable notification for inspections, and that all work shall be installed in compliance with State of NH RSA: 319-c and all pertinent City Ordinances.

Inspections Required (1) when rough in is complete prior to concealing (2) Upon completion prior to Occupancy
 Failure to correct deficiencies which require a third site visit for the same issue Re-Inspection Fee of \$75.00

Description of Work: Install 2 grd Rods for PSNH Meter float.

[Signature] Signature of Applicant/Agent Date 5/27/08 [Signature] Electrical Inspector