

Dover Zoning Board of Adjustment
Thursday, January 19, 2006
MINUTES

Members Present: Richard Callaghan, Bill Colbath, Frank Landford, John Levasseur, Sam Reid,
Masi Denison, Ruth Gorton

Staff Present: Steve Bird; City Planner, Jean Glidden; Recording Secretary

Staff Absent: Tom Clark; Building Official

ITEM # 1: CALL TO ORDER

Richard Callaghan brought the meeting to order at 7:02 p.m.

ITEM # 2: APPROVAL OF MINUTES

A. Approval of the minutes for regular meeting of November 17, 2005.

Motion: Bill Colbath made the motion to accept the minutes. John Levasseur seconded the motion.

VOTE: U/A

B. Approval of the minutes for regular meeting of December 15, 2005.

Bill Colbath stated a correction on page 3 and page 4.

Motion: Bill Colbath made the motion to accept the minutes as amended. Frank Landford seconded the motion. **VOTE:** U/A

Richard Callaghan announced that Z 06-01-A and Z 06-02-B has submitted a letter, which states that the applicant and owner have requested that the case be withdrawn.

ITEM # 3: OLD BUSINESS

- A. Z 05-35 Neale A. Hubbard, Earl St., a/k/a Tax Map 40, Lot 12, zoned Office & R-12, requests a variance from the terms of Article V, Section 170-16, to subdivide a parcel into 2 lots, one of which a frontage of seventy-five (75) feet along a public right of way, where a minimum of one-hundred (100) feet is required.**

Richard Callaghan read a letter from Attorney Schulte, which requested that this case be tabled to next months meeting.

Richard Callaghan explained to the general public how the cases should be represented to the Zoning Board of Adjustment. He announced that he would be stepping down on the next case.

ITEM # 4: NEW BUSINESS

- A. Z 05-37 Free Trade Inc., 40 Maple St., a/k/a Tax Map 30, Lot 18, zoned I-1/RM-10, requests a variance from the terms of Article I, Section 170-6, definition of accessory structure, to**

construct an accessory structure (detached garage) in a different zoning district from the principal building.

Attorney Malcolm McNeil represented the applicant Peter Widmark whom is present. This property is a unique piece of property. The applicant is proposing to construct a garage 50 x 30 feet and 17 feet high. Mr. Widmark has owned the property for approximately 20 years and it has been used for industrial purposes. The applicant obtained subdivision approval to carve off lot 1, it is presently under construction as a duplex, and they will likely be converted to condominiums. A garage is permitted in either one of these zones under certain conditions. The size is to accommodate a large non-commercial vehicle that he wishes to park in the garage. In his opinion, because of the construction of the dwelling units on lot 1, nobody would see the proposed garage. The duplex property is higher. The applicant would agree to as a condition of approval that there be appropriate buffering of the southerly side of the garage. It would be acceptable to the applicant if you wish to impose a condition of approval that this barn only be used for non-industrial and non-commercial purposes. The only reason why they are here is that the proposed garage is located in a different zone. He stated that the provision of the zoning ordinance for which they are seeking relief is from section 170-6 accessory structure and proceeded to read the description. This structure is a far less intense use than the principal building that has approximately 60 parking spaces and has been used for industrial and commercial purposes for many years. He stated that he would like to apologize for an error in the application submitted. When he filed the application, he presumed that the sketch plan that was submitted with the application was the same plan that was submitted to the Planning Board for site review, which indicated the proposed garage, but it did not and that was a mistake. He wants the application to be clear and that at the time the Planning Board considered and approved this minor subdivision there was not a garage issue at that time. The use would not have any adverse affect on the surrounding properties. Lot 1 has always been intended as a lot that would be a duplex that will be sold to third parties; it was not the intent of the developer to have his garage as part of the condominium owned by somebody else. A garage for residential use in a residential zone that complies with all setback requirements for this structure will not cause a diminution in property values. The garage allowed by conditions that may be agreed upon would be buffered from residential properties on the South. He stated that regarding hardship he has chosen to address in both ways but to apply the most difficult standard, the use standard and he proceeded to read through the criteria. They are asking that the variance be approved with conditions. One of which a buffer from the adjoining residential properties to the South and the garage may only be used for non-commercial, non-industrial purposes.

John Levasseur asked if they had any drawings of the proposed garage. He is concerned with its appearance and if it will look like a residential garage. Attorney McNeil has mentioned residential many times. Most steel buildings that he has seen look very industrial.

Attorney McNeil said that he did not have any drawings but it is intended to be a steel building with two doors. He stated that if he wanted to put a steel garage on his property he would be able to do that. Industrial buildings could be steel or wood and the applicant prefers a steel building.

Steve Bird asked if the 50 x 30 foot garage is the minimum size garage that the owner is seeking. What is the need for two bays?

Attorney McNeil said that he thinks the size is necessary to house the size of the recreational vehicle. He needs the two bays in case he wants to place lawn mowers or a car on the other side.

Frank Landford confirmed that the structures that are on the South side of this are residential dwellings.

Motion: Frank Landford made the motion to accept. Sam Reid seconded the motion.

VOTE: 4 to 1 (John Levasseur opposed)

Public Hearing Open

Elizabeth Winzeler 39 Hough Street stated that she is not pleased with the request. It is already congested in this area, Horne Street is an area where there are a lot of schoolchildren and buses, and she has seen trucks backing in and out of the driveway, and feels it is very dangerous. She stated that she feels sorry for the people that are going to be living in that duplex.

Richard Callaghan 32 Horne Street stated that his direct abutting property is at 26 Horne Street. He stated that he is a member of the Zoning Board of Adjustment and he is not representing the Board, he is representing himself. He proceeded to discuss the meeting of the Planning Board that was held on July 26, 2005 for a subdivision and lot line adjustment as he feels it has a significant bearing on what is happening here tonight. My wife and I submitted a letter in opposition to the Planning Board regarding the request of a subdivision and lot line adjustment. During the Planning Board's discussion Pete Lavoie had stated that he was okay with the proposal "as long as the rest of the property cannot be built on, I guess." Mr. Lavoie also asked if any stipulation could be placed that it definitely cannot be built upon, the extra lot. Steve Stancel explained that there is no extra lot, that there are two lots and you cannot build in the RM-10 area that is left on the one lot, because you do not have enough frontage to create it. In my opinion, what they were saying to each other is that they were trying to confirm that this land was not going to have additional structures on it. Kevin McEaney whom represented the applicant at that meeting, made a statement that he wanted to make sure that he was not looking for any deed restrictions to be placed on this, so if something could be done with either of those zones from the perspective of what is approved or permitted, they hope that it would still be allowed. He stated that less than six months later, they are asking for exactly what they said they were not going to ask for and that is for a variance. If you were to consult with the Planning Board or review the tape of the meeting, you might find that their anticipation was that the applicant would not expect any further building on these properties. He applauds the applicant for requesting the condition that this structure can only be used for personal use forever but the City is already over loaded with a lot of conditions and special exceptions that are supposed to be monitored and they do not have the staff to do it. By putting the building up, he believes it will eventually slide into an area that you would not anticipate it to be used for. They had an opportunity to use that property to the best way they saw fit therefore does not believe there is a hardship. Diminution in value of property has to be addressed by the Board when voting, no proof was provided. One of the criteria that the Planning Board was looking at when they approved this property was the amount of open space that went with that industrial property. The proposed building would take up almost all of the land.

Beth Setear 29 Horne Street stated that she owns property at 6 Horne's Court, which abuts the industrial building. The concern tonight is related to the amount of traffic that they currently experience and the possibility that the traffic would increase. The traffic is incredibly busy and she has pictures of different trucks that are parking in the RM-10 zone and have been there for over a month. If the current use of that garage stays the way the owner intends it to be, it may not be a problem, but if any point this is sold it could be a huge increase in the amount of traffic. The owners of the condominiums have many windows and they will be looking out at a steel garage. She is concerned with increased traffic in this area and the number of vehicles from that industrial area that travel that road. They are hazardous and dangerous to the children and to the neighbors.

Peter Malia 17 Horne Street stated that they are concerned about the same thing as the other abutters. He understands that the owner wants to put a recreational vehicle in this building. Why can't he put the steel building on his own property in another area of the City? This will lower my property value looking out a steel building that is 17' high. If that is the wall height, it will be an enormous building. If you allow another building, it will take a lot of the green space. He is concerned with increased traffic and what it could be

switched to after it is built. Abuse with vehicles parking in the RM-10 zone is already happening. This is not a good use of the land.

Charlene Callaghan 32 Horne Street agrees with the abutters concerns and she is home all day and sees the trucks coming and going. They did run over their garbage cans and recycle bins and have parked in front of their driveway, as she has to wait for them to get back to their trucks because they have said that they were not sure where they were supposed to pull in. They let their trucks run and the tenants complain about that. The proposed building will look awful in this area and will diminish property values. She is also concerned with the safety of the children going to school with all of the trucks on this road.

Hilary Malia 17 Horne Street stated that the Fed Ex trucks that make deliveries to this building are always going to the wrong location. She stated that people are driving their children every day to school and many children do walk to school, to have another business or garage here would not be a safe thing.

Attorney McNeil stated that what he did to prepare for this meeting was he looked over the minutes of the Planning Board meeting of July 26, 2005. He did not represent the applicant, Kevin McEneaney did, who is present. He looked at the restrictions imposed by the Planning Board with regard to the use. Just as you have authority to impose restrictions, the Planning Board does as well. He stated that he would not bring forward a proposal that would be inconsistent with what the minutes contained or what was allowed by the subdivision that was permitted by the Planning Board. He did review the minutes and if there are materials that are contained on those documents that are inconsistent with the minutes, the Board should know about that, he said he certainly did not know that when he drafted this request as he would not have proceeded. The vast majority of the testimony that you have heard from the abutter's relates to the existing permitted industrial condition that exists on this site, traffic, parking, the parking that is in the RM-10 zone, which is industrial in nature presently in his view would be a vested use. In terms of traffic and trucks and schoolchildren, noise and different trucks, that exists regardless of someone trying to build a garage to put a recreational vehicle in it. In terms of the conditions that many of the abutters spoke to with regard to an industrial use, that use has predated their occupancy of the site and is permitted. With regard to the interest of the people that will buy one of the condominiums, they will take it with the knowledge of this structure being there and make appropriate choices as to whether they would like to buy the unit or not. He submitted some photographs that showed the parking and industrial type uses around the site. I am asking you to permit someone to put a garage to use for residential purposes in a residential zone with conditions of approval and adequate buffering. The concerns of the abutters do not apply to the use that is being proposed, they apply to the conditions that they find there right now that are legal and have existed there probably before most of them made a decision to locate here. If there are complaints with regard to the uses etc., they should be brought to the attention of the City, but in terms of utilization of the site, this does not create that kind of violation.

Peter Malia stated that this is a building, not a garage and he would have to look out his backyard off from his porch at a steel building.

Richard Callaghan stated that he took the time to watch the tape and make a transcript of the minutes of the meeting of the Planning Board meeting and the two did not match. He stated that he still has not heard anything about diminution in value of surrounding properties.

Public Hearing Closed

Steve Bird stated that the Planning Department is not in favor of this variance. He stated that he was not at the Planning Board meeting either but according to staff there was quite a discussion regarding the potential use of the property in question; they had concerns raised by neighbors about what other uses might be able to go in there, if the Board approved lot 1. There were certain representations made, in terms of anything that would

go in there would have to comply with the zoning in the residential or the industrial portion and so it was a surprise to see a variance request coming in so soon after that Planning Board meeting. The conditions suggested by the applicant, in terms of agreeing that this only be used for residential purposes is a step in the right direction. From the City's point of view, it would be very difficult to enforce and it would probably be done based on complaints from neighbors, as that is how a lot of enforcement issue are done in the City. We think it sets a bad precedent; therefore, the department is not in support of this variance request.

Bill Colbath confirmed with Steve Bird that lot 1 met all the requirements of the RM-10 district and that was why it was approved. He also confirmed that it would be possible to get a copy of the tape of the Planning Board meeting.

Frank Landford said that if there were discussion of the rest of the lot he would like to know that.

John Levasseur stated that he was concerned with the steel building and at some point later on, it could be used for industrial uses and that would be too much traffic for this area.

Bill Colbath stated that it really does not have anything to do with traffic and the argument that parking is vested is a reasonable argument. If anything, it would cut down parking. If it is going to be a residential garage to store a recreational vehicle and a two bay garage that stores a bunch of other stuff is a nightmare to enforce. Why was this not part of the residential property to start with. He could have very easily carved that out. That was the applicant's choice. If you create your own hardship, in his opinion it is a hard argument to have one afterwards. The Planning Department did not put a condition on their case, which they probably should have done if they wished it to be a condition, it may have been an implied condition.

Discussion ensued regarding review of the tape and the minutes.

Motion: Frank Landford made the motion to table to the next meeting, pending review of the tape and transcript. Sam Reid seconded the motion. **VOTE: 4 to 1 (Ruth Gorton opposed)**

Discussion ensued regarding obtaining a copy of the tape. Jean would verify if the transcript is accurate and will notify and distribute the DVD and the transcript to the members when it is ready for review.

Recess at 8:30 resumed at 8:40

- B. Z 06-01-A Karen Ciccoltelli, (Applicant: The Brikadia Group, LLC), 125 Silver St., a/k/a Tax Map 10, Lot 168, zoned RM-10, requests a variance from the terms of Article VI, Section 170-25.1.A, to establish a four family dwelling on a parcel with less open space than the average amount on developed lots within two-hundred (200) feet of the subject parcel, and 2) Article VI, Section 170-25.1 E, to establish a four family dwelling in a building with a side setback of approximately ten (10) feet, where a minimum of fifteen (15) feet is required.**
- C. Z 06-01-B Karen Ciccoltelli, (Applicant: The Brikadia Group, LLC), 125 Silver St., a/k/a Tax Map 10, Lot 168, zoned RM-10, requests a special exception as provided by the terms of Article VI, Section 170-25.1.A, to establish a four family dwelling.**

Richard Callaghan stated that Z 06-01-A and Z 06-01-B has submitted a letter, which states that the applicant and owner have requested that the case be withdrawn.

- D. Z 06-02 South Dover Investment Group, LLC, 31 Dover Point Rd., a/k/a Tax Map K, Lots 36 & 37, zoned R-12, requests a variance from the terms of Article V, Section 170-16, to**

construct a building (congregate care facility) with a height of approximately forty-five (45) feet, where a maximum height of thirty-five (35) feet is allowed.

Attorney Schulte represented the applicant. This project was before this Board last June when the use was approved with two conditions, which were that the building be limited to 28 units based upon 3,000 square feet of land area per unit and also that there be a food service provided. At the time, the application was submitted for the variance they presented a copy of a concept design to give the Board an idea of the size and what a building might look like. Since that time, they have had architectural plans prepared and the actual design of what they would like to do was submitted for review in the packets. When this was originally presented, the applicant said that this would be three levels of residences in this structure with a garage underneath, which would be below grade. The site plan identifies it as a three-story building and they always said it would be three levels of apartments with garages underground. If they had known at the time that a height variance would be needed they would have done it at that time. When they came up with this current concept, they went to TRC and the issue came up at that point, as to how high the building will be. It was determined that at the ends it will be almost 45 feet. The maximum height on the concept sketch, which they never planned to build, was going to be as high as 44 feet in the center. What they have designed contemplates 25 units, the size of the units was varied between 950 square feet and 1425 square feet, they will have some one-bedroom units, and most of the units will be two-bedroom units. He submitted a listing with a picture of an adult community in the Hampton area called Blueberry Terrace. He stated that it is a three-story building and this building would probably meet the height requirements with a flat roof, but this would not be in keeping in character with the neighborhood. Another possible approach would be that it is possible to build a structure like this and have wings coming out towards the road. It would only be two stories tall and would be within the 35 feet, but would use up substantially more of the open space on the property and would bring the building closer to the road. Across the street is Thornwood Farm, which is essentially the same height of what this building is. B-3 zone has a 40 foot height requirement. If you have to drop a story off and put wings on it in order to get the number of units that you would want it substantially increases the cost because you have a lot more foundation area, exterior walls, and longer corridors. The central elevator would not be as convenient for the people who would live out on the end, so it is not as useful for the people involved. He proceeded to summarize the criteria submitted. Because of the topography of the land, it prevents the structure from being further excavated into the ground. He stated that the architect said that you do not want a flat roof in this climate, not only is it hard to maintain but it also would adversely affect the appearance and the impact on the neighborhood. The lot that this property sits on is one of the lower lots in the area. Mrs. Follansbee owns the property next to them and the top of her barn will be taller than the top of this proposed building because she sits further up the hill. Because this property sits lower than its neighbors the building could be taller and still not overpower them because they sit higher. The property across the street is essentially the same height and if you add in the tower at the top it is probably even taller than either one of these designs would be. In order for them to have a three-story building with a garage under, they believe the variance is necessary because the alternative for a three-story building without a variance is that you have a flat roof. While it is theoretically possible to have wings that extend out, the extra construction cost and the probability of needing a second elevator instead of one, substantially increases the cost of construction 20 to 25 percent. That is one of the factors that you can consider when you are looking at the question as to whether the alternative is reasonably feasible. It would also substantially change the traffic pattern and would bring the building closer to Dover Point Road than is currently the case with this design. He stated that Kevin McEaney is present and has some observations to offer about this project.

Kevin McEaney explained that the site plan that was originally shown to this Board for the use variance was a building that was 75 x 180 feet with 28 parking spaces in the garage. As shown, they have come up with a new site plan and this building is 70 x 198 feet with 33 spaces internally, which has increased the spaces within the garage itself. The tax map shows the lot configuration in the area, which he explained the lot in question with surrounding areas zoned business. The area in green is currently zoned ETP and is under

consideration for a new overlay district currently going through the Planning Board and will be sent to the City Council for approval. Within that zone it will be a mixed residential and commercial use, the maximum height allowed in the new zoning overlay district for the commercial uses is 55 feet. They actually increased the height in that particular area.

Bill Colbath asked how the two buildings are remotely related. What you came in with at that time and asked for was a plan showing a two ½-story building. You are showing three full stories and the Board is expected to understand for some reason that you need a height change. The first plan is more in character with the neighborhood than what you are showing tonight.

Attorney Schulte said the concept sketch does shows many dormers but it too would have needed a height variance.

Bill Colbath asked if they were supposed to know that the center of that sketch was 44 feet high.

Attorney Schulte said no, and they did not know that either, because they did not calculate that in. He stated that they knew that the concept sketch was not going to be exactly the building that they were going to construct. If you look at the site plan submitted you could see what they came up with for the site plan was a rectangular building without all of the dormers. We always told you that it was going to be three residential stories.

Frank Landford confirmed with Attorney Schulte that the units might be sold independently.

Discussion ensued regarding ownership of the units.

John Levasseur asked if they had a view of the backside of the building.

Attorney Schulte said no, that will face the turnpike but they do expect that in the back they have been talking about some kind of recreational facility. Possibly a green house structure so residents can use that year round and there may be some decking off the back.

Kevin McEneaney stated that the units with the bump outs shown will be individual deck areas for each unit so he suspects that it will be similar on the back, but the central part on the rear of the building is going to be where the dining facility, a glass area opens up to a courtyard. The number of units will not be as many on the second and third floor because of the common facilities. It will be similar to the front. They will also have decks on the back.

Ruth Gorton confirmed that the majority of the units would have two bedrooms with some one-bedroom units available.

John Levasseur stated that he realizes that roofing is very expensive, but in keeping with the spirit of keeping with the neighborhood would you consider putting more dormers on this building. He stated that the sketch submitted is considerably different from the first sketch. He does not believe that the new proposed building would fit into that neighborhood, as it looks very commercial.

Attorney Schulte said that if the Board would be more comfortable with this being at 41 to 42 feet than they could probably figure out a way to do that, it would not be easy but they could discuss it.

Richard Callaghan confirmed with Kevin McEneaney that there would be no mechanicals located on the roof. They will be enclosed for each individual unit.

Attorney Schulte stated that because there is going to be an elevator here, there has to be some height above the third floor level to accommodate the mechanicals for the top of the elevator. With this design, it will be contained within the roofline.

Public Hearing Open

Marilyn Follansbee 25 Dover Point Road stated that they are the lot to the right of the proposed structure. As an abutter, she would prefer to see a building with a peaked roof. If that means going above the 35-foot maximum height allowance it certainly meets her approval. She does not want to see a flat roof, they are eyesores and are not practical in New England and certainly would be a hardship if you would have to shovel one off during a heavy snowstorm. The citizens of Dover Point Road wanted this area to remain residential and this building fulfills those wishes. She cannot see that this would affect property values by allowing it to be higher in order to get a roofline comparable to those in the areas. There is no view to spoil. Her garage already obscures that area. The developers have respected the wishes of the citizens by letting this area remain residential and the citizens appreciate it. My husband and I have no objection to this variance request.

Motion: Bill Colbath made the motion to accept. Ruth Gorton seconded the motion. **VOTE: U/A**

Richard Drapeau 37 Dover Point Road stated that he is not in opposition to what is being proposed. He would certainly prefer something that is more aesthetically pleasing even though it exceeds the height requirements as opposed to a building that is out of place with a flat roof or wings. This proposal would allow for open space and he hopes that the Board grants the variance.

Public Hearing Closed

Steve Bird stated that the Planning Department opposes this variance request. They feel the height of the building is out of character with the neighborhood. The design presented tonight is very different from the design that was submitted originally. They are asking for a building height that is higher than allowed in the abutting business district, this is a residential district. The department spoke against the variance request originally as they felt the use was too intense for the site. You could reduce the height by looking at the size of the individual units. Some of the proposed units are greater than 1500 square feet and that is driving the size of the building and forcing the height of the building. The plan that was brought before the ZBA last year has changed. Since that time, they went to TRC and one of their arguments for the increased height was that they did not want to spread the building out more, but that ignores the fact that the footprint of the building that they are proposing now is 18 feet longer than the building that they showed originally at the ZBA meeting. The department is against this request.

Richard Callaghan asked how the 18 feet affects the density.

Steve Bird said that the applicant is saying they have to increase the height of the building to accommodate the number of units, but they have already increased the footprint from what was shown to the ZBA originally. They are not only spreading out they are going up.

Frank Landford confirmed with Steve Bird that this has been to TRC but has not been approved by the Planning Board.

Steve Bird said that they raised issues about the changes from what was shown at the ZBA meeting and the plan that came to TRC.

Sam Reid confirmed with Steve Bird that the footprint is going to expand.

Steve Bird suggests looking at the size of each individual unit, 1500 square feet is a large unit for a congregate care facility.

Bill Colbath stated that part of the request is that it cannot be reasonably accomplished by any other means. He has not seen any reason why the building has to be 44 feet tall. Is there a mechanical reason why you need to have 44 feet? At some point it becomes an architectural question and some kind of rendering of plan or reason why they need to have 14 feet to a story of structure.

Attorney Schulte said that in response to Mr. Bird the units as designed in the plan range from 950 feet to 1425 square feet. It is an architectural or engineering question regarding the peak of a building. It is one thing to build it flat, but if it is going to be peaked, it has to come to a certain height. He said that the reason why the center of the first concept sketch was 44 feet was to accommodate the elevator. If you are going to have an elevator that is going to serve the top floor, it has to extend above the floor. The living areas are going to be 10 ½ feet.

Bill Colbath said that again this goes back to the question of rendering. What you showed in the first sketch and the second sketch is different. You have not offered any information explaining why you need that height.

Attorney Schulte asked if the Board has a height that would be reasonable. Is there some other height that would be appropriate?

Bill Colbath said not without the reason for it being there, you are telling us that the architectural requires this to be this way, what is the reason it requires it to be that way.

Richard Callaghan stated that his thought was that he was proud and pleased to think that they were going to construct a congregate care facility that looked like a Marriott Resort and this plan looks substantially different. He said that he would have no problem with this request if it was for the first plan, but he has a problem with saying that this one is okay. In his opinion, he would not just be saying the height is okay he is saying the whole change in plan is okay. Substantiation of why this is needed would be very helpful.

John Levasseur said he feels the same way. He would be okay with the first plan; this is a very different plan that has been presented tonight.

Ruth Gorton stated that it looks more like an institution.

Bill Colbath said that he would like to know the reason why it has to be that way. He does not care how tall it is as long as the reason why it needs to be that tall is answered. The appearance goes into Planning; they need to be aware that the original plan is nothing like the new plan.

Attorney Schulte stated that the other congregate care facility that has been approved in the City was approved without any architectural renderings being provided either to this Board or to the Planning Board.

Steve Bird said that was not true.

Bill Colbath said that he did not vote on that case. He said that it would not have gone that far for the same reasons.

Attorney Schulte stated that the first concept sketch shows dormers and it makes those rooms in those units smaller on the top. If the units are going to be in the range that they would hope, the sidewall needs to be raised some. You lose too much space when you are trying to build into a dormer and you would not get two bedroom units up on the third floor.

Discussion ensued regarding the proposed units.

Steve Bird stated that the Planning Board has some leeway in terms of architectural review.

Richard Callaghan asked if they were ready to go to criteria or make a motion.

Frank Landford stated that he was ready to go to criteria, as he does not believe this request is necessary. He said he would not have given an approval for this project on that lot to begin with; he was not here that night to vote. It is too many units for that size of the lot. This is not an area where congregate care facility should be constructed on.

Discussion ensued regarding what zone congregate care is allowed in and square footage requirement for assisted living was used to determine the density.

Attorney Schulte confirmed with Steve Bird the height requirement in the zone in which congregate care is permitted. He stated that if this variance is not granted the building could be constructed with a flat roof but it would not be the right choice for that site or for this project. If you think the magnitude of 45 feet is too tall they would be willing to come back with a design of 41 or 42 feet.

Bill Colbath said it should carry the burden of why it has to be that way and you are not willing to do that. He would not have a problem with the height if you can give us a logical explanation of why it needs to be that way. Prove why it cannot be reasonably accomplished by any other means.

Attorney Schulte asked if floor plans would be helpful.

Bill Colbath said no, what are the reasons and a logical explanation other than we want to make units that are large and try to fit them in a smaller space.

Richard Callaghan asked what the Board wants to do, criteria, conditions or table pending more information.

John Levasseur asked if they had the option of asking for design changes.

Richard Callaghan said they could force the issue by denying the height variance but the applicant could go to a flat roof.

Steve Bird stated that flat roof is not the only option for the applicant if they do not get the variance. This still has to go through Planning Board review. The Board is not going to approve a flat roof building for congregate care facility on Dover Point Road. The Planning Board has jurisdiction over architectural review.

Attorney Schulte said that the Board does not.

Steve Bird said that it is in the Site Plan Regulations.

Attorney Schulte said they have never exercised it.

Steve Bird said that he disagrees with that statement.

Attorney Schulte stated that if the board wants more information beyond his verbal exposition as to why the building needs to be this size they are willing to come back with the architect who designed it. He asked that this be tabled to allow them to present further information.

Bill Colbath stated that it would have to be more than the architect saying it has to be a certain way. The Board will need some renderings and some written information that explains why it needs to be that way.

Richard Callaghan stated that one of his concerns is why you did not stay with the original plan. Why did you have to redesign it the way presented tonight? He said that he is concerned with what was approved and why that design went away.

Attorney Schulte stated that you did not approve that particular building.

Bill Colbath said it is part of the record when you presented it to the Board.

Richard Callaghan said what you present to the Zoning Board is what is expected to happen.

John Levasseur stated that the applicant would not have received his vote if he knew the building was going to look like the drawing presented tonight. You got his vote because of the plan presented.

Motion: Bill Colbath made the motion to accept the request to table pending information be provided at the next meeting. Ruth Gorton seconded the motion. **VOTE: 4 to 1 (Frank Landford opposed)**

Discussion ensued regarding types of information.

Richard Callaghan clarified to Attorney Schulte that they are looking for a reason based upon a number of feet involved per floor and the reason behind it. If you look at the rendition that was given, originally the roofline is not based on a full story on the upper floor it is based on less than a full story. The Board was originally presented with a two ½-story structure, now they have a three-story structure, and the reason is that they need more square feet per unit. He stated that it would be helpful if he had a comparison of the two different buildings such as the footprint, height, mechanical issues, and elevators, everything that makes the two buildings different. The Board is looking for how much living space you are trying to get, and why is the first sketch no longer able to work.

John Levasseur said in making decisions you must originally have had a floor plan for that third story.

Attorney Schulte said there was not a building design at that time and if you review the minutes of that meeting there really was no discussion of the design of the building, other than that they said there was going to be three levels of residential living and a garage underneath. They had this picture of what it might look like but there was no floor plan until you get approval for the use. The first sketch was given to give you as a concept of what the mass of the building would look like, but he does not recall a single comment about the appearance of the building.

John Levasseur said they were sold on what was presented.

Bill Colbath said you gave us the appearance of the building, why would they question what you gave to them.

Richard Callaghan stated that if you give us something and ask for a variance based upon what you gave to us, it is part of the record.

Attorney Schulte stated that all you are actually voting on is the use. You do not vote on architectural details. You vote on what is being presented in front of you. In this case, you are being asked to vote on the height of the building. Planning Board has their own requirements and to some degree, it is going to change. He understands that if it becomes a completely different project, the variance that was asked for, may no longer be relevant.

Discussion ensued regarding substantial changes in the sketches presented.

Richard Callaghan suggested that more information with something that supports your side would be helpful.

ITEM # 5: OTHER BOARD BUSINESS

A. Annual Election of Chairperson and Vice Chairperson

Richard Callaghan asked if anybody would like to voice an opinion on whether or not they would like to be considered for the positions or would like to nominate another person or persons for the positions.

Frank Landford made the motion that Richard Callaghan continue to be Chairperson and Bill Colbath the Vice Chairperson. Ruth Gorton seconded the motion. **VOTE: U/A**

ITEM # 6: ADJOURNMENT

MOTION TO ADJOURN

Bill Colbath made the motion to adjourn at 10:10 p.m. and was seconded by Frank Landford. **VOTE: U/A**

List of Members

Term Expires

Richard Callaghan-regular member	04-13-06
William Colbath-regular member	10-23-06
Frank Landford-regular member	04-10-08
Ruth Gorton-regular member	11-12-06
John Levasseur-regular member	11-12-06
Masi Denison-alternate member	09-08-07
Sam Reid-alternate member	04-13-08