

Dover Zoning Board of Adjustment  
Thursday, March 16, 2006

MINUTES

**Members Present:** Richard Callaghan, Bill Colbath, John Levasseur, Masi Denison, Otis Perry

**Members Absent:** Sam Reid, Ruth Gorton, Frank Landford

**Staff Present:** Tom Clark; Building Official, Steve Bird; City Planner, Jean Glidden; Recording Secretary

**ITEM # 1: CALL TO ORDER**

Richard Callaghan brought the meeting to order at 7:00 p.m.

**ITEM # 2: APPROVAL OF MINUTES**

**A. Approval of the minutes for regular meeting of February 16, 2006**

**Motion:** Otis Perry made the motion to accept the minutes. Masi Denison seconded the motion. **VOTE: U/A**

**ITEM # 3: OLD BUSINESS**

Richard Callaghan stated that he has an item for old business to discuss, but will postpone it until after the next case has been heard.

**ITEM # 4: NEW BUSINESS**

**A. Z 06-04 Emerald Woods Dev., LLC, Emerald Ln., a/k/a Tax Map F, Lot 22-A-24, zoned R-40, requests a variance from the terms of Article IX, Section 170-32.E, to maintain two (2) freestanding signs where one (1) is allowed.**

Tim Noonan, Project Manager for Emerald Woods Development stated that he is representing the company. The ordinance allows 16 square feet and the combined signage is 15.60 square feet. In order to accommodate for the sewer and drainage easement they had to cut a substantial amount of trees back off from the entrance. They created two walls and put new signage directly behind both walls. They were looking for visibility from both directions, as this is a main corridor into the community. They wanted something that would be attractive and not be offensive to the neighbors.

Masi Denison confirmed that both signs have already been installed.

Tim Noonan stated that he was under the understanding that he could have 16 square feet of signage. He stated that upon review of a certificate of occupancy, Tom Clark informed him that he was only allowed one sign, which could measure 16 square feet and he said that both signs could stay for now as long as the variance is applied for but the decision would be up to the members of the Zoning Board. He stated that if the Board decides that two are not acceptable one sign would be removed but Mr. Clark did not feel it was necessary at that particular time.

Otis Perry confirmed that no lights are associated with the signage.

**Motion:** Otis Perry made the motion to accept. John Levasseur seconded the motion. **VOTE: U/A**

Public Hearing Open

Nobody spoke

Public Hearing Closed

Steve Bird stated that the Planning Department has reviewed the application for this use variance and it is their opinion that it does not meet the criteria. It is not a unique setting of property and is very similar to lots of other subdivisions, which have one sign that seems to be serving the development adequately. The solution could be to make it a two-sided sign; you could achieve the same benefit as you could see it from either direction. It is the department's opinion that one sign would adequately serve the development; therefore the department is against this variance request.

John Levasseur confirmed with Tim Noonan that if one of the signs had to be removed the stonewall would remain. He asked where the signs were located.

Tim Noonan stated that the signage is located behind the stonewalls which is on each side of the entrance. If they had just the one sign, they would have to cut down some more trees in order to have clear visibility on Route 9. We have already cut a substantial amount of trees to accommodate the sewer and drainage easement.

Otis Perry confirmed with Tom Clark that the applicant did not fill out a permit for signage until after he was told to do so and at that time, the signs were already installed.

Discussion ensued regarding the sign ordinance.

#### **FIVE CRITERIA FOR USE 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) USE: i. Did the Applicant demonstrate that the ordinance interferes with the reasonable use of the property, considering their unique setting of the property in its' environment? No, Vote U/A. This conclusion is based on the following findings of fact: Adequate space is adequate for the proper signage to be installed. ii. Did the Applicant demonstrate that no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction of the property? No, Vote U/A. This conclusion is based on the following findings of fact: Similar locations have only one sign and there is no basis for a different allowance. iii. Did the Applicant demonstrate that the variance would not injure the public or private rights of others? Yes, Vote 3 to 2 (Bill Colbath & John Levasseur voted no). This conclusion is based on the following findings of facts: The signage is not obtrusive and does not exceed the size requirements, only the number of allowed signs.
2. Did the Applicant provide proof that demonstrates how granting the variance will result in substantial justice? No, Vote U/A. This conclusion is based on the following findings of fact: There does not appear to be any injustice in following the ordinance.
3. Did the Applicant provide proof that demonstrates how a variance would be consistent with the spirit and intent of the ordinance? No, Vote 4 to 1 (Masi Denison voted yes). This conclusion is based on the following findings of fact: Spirit and intent is to keep the number of signs to a standard, this variance would be contrary.
4. Did the Applicant provide proof that demonstrates the variance will not result in a diminution in value of surrounding properties? No, Vote 3 to 2 (John Levasseur & Masi Denison voted yes). This conclusion is

based on the following findings of fact: There was no evidence provided to the contrary.

5. Did the Applicant provide proof that demonstrates the variance would not be contrary to the public interest? No, U/A. This conclusion is based on the following findings of fact: Allowing this variance would set an unreasonable standard for similar applications. Also keeping the number of signs in compliance with the ordinance is in the public interest.

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

#### **ITEM # 5: OTHER BOARD BUSINESS**

Richard Callaghan reminded the Board members of the NHOEP Planning and Zoning Conference training and if anybody is interested in attending, they should submit the completed forms to the Planning Office by Friday March 24, 2006. He stated that another series of workshops, which will be held in local areas, are coming up and copies will be submitted to each member for review. These workshops and conferences are very helpful and urged the members to attend.

He also stated that he spoke with Attorney Krans on a couple of different subjects. One was regarding the status of a suit filed against the Board. An answer has been filed, which was due April 6, 2006 and the hearing will be held on May 3, 2006. He feels that copies should be submitted to the Board members for review, as Attorney Krans should be told if you may or may not agree with what he perceived the Board's opinion to be on that particular case. The second subject was about e-mails, as he is concerned with what has been going on within the City regarding e-mail usage. He stated that Attorney Krans suggested that if you intend to use e-mail for any of your communications you should have a City e-mail address and use it specifically for City business. Discussion ensued regarding e-mail usage. It was decided that the Board would invite Attorney Krans for a presentation on this subject. The Board will be notified of the time and date.

Steve Bird agreed with Richard Callaghan and stated that the training that is being offered is very important for the ZBA because you are a semi-judicial Board. He believes that the City Council as a whole is urging the different Boards to take advantage of the training that is being offered to them.

#### **ITEM # 6: ADJOURNMENT**

##### **MOTION TO ADJOURN**

Otis Perry made the motion to adjourn at 7:46 p.m. and was seconded by Bill Colbath. **VOTE: U/A**

<u>List of Members</u>	<u>Term Expires</u>
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
Otis Perry-alternate member	02-08-09