

Dover Zoning Board of Adjustment  
Thursday, May 18, 2006

MINUTES

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

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

**ITEM # 1: CALL TO ORDER**

Richard Callaghan brought the meeting to order at 7:03 p.m.

**ITEM # 2: APPROVAL OF MINUTES**

**A. Approval of the minutes for regular meeting of April 20, 2006**

Ruth Gorton stated a correction on page 7. Richard Callaghan stated that Otis Perry was present at the meeting but was excused prior to call to order.

**Motion:** Bill Colbath made the motion to accept the minutes as amended. Ruth Gorton seconded the motion.

**VOTE: U/A**

Richard Callaghan explained to the general public how the cases should be represented to the ZBA.

*Callaghan, Colbath, Landford, Levasseur, and Gorton will be voting.*

**ITEM # 3: OLD BUSINESS**

- A. Request for motion for rehearing regarding ZBA Case 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.**

Attorney Schulte stated that he set forth all the rationale in the motion. Apparent from the reasons given by the Board for denying the application the Board members disagreed with the proposed use of the property. That is not a permissible reason for an area variance to be denied. The proposed use is a permitted use and is presumed to be reasonable and just because the Board disagrees with that proposed use they are not permitted to vote against it on the hardship requirement. The Board was confused as to recollection of testimony and what that evidence was, the other area of confusion had to do with a couple of the Board members saying that if we grant this variance you will have to have another variance to do anything with this other lot and that is not correct. The lot that the variance is granted already has an existing use. There is an adequate building area and you could tear down the existing use and put another one up. He stated that the Board fell into error when they made that determination and in his view in the hardship criteria, there really can only be one answer to that question and the answer that you gave was not the right answer. Do you need a variance for the proposed use? The proposal is to subdivide this into two pieces and since they do not have enough frontage there can only be one answer to that question. You have to have a variance to do it. Second question was, is there reasonable alternatives to this, some other way. He asked that they grant the motion for reconsideration.

Tom Clark stated that the voting members should be identified for the record.

Richard Callaghan stated that the voting members would be Callaghan, Colbath, Landford, Levasseur, and Gorton.

Bill Colbath stated that on page 5 he thinks that the finding was relatively correct and that it is a severely restricted building area. To support that you could go down to end of the paragraph and explain that if the Planning Board were to grant a conditional use permit it could be built within 100 feet of the water, which proves the point. You have to get a conditional use permit to go any further. If there was an error in the way they worded their judgments maybe it should be heard again. Page 3 the applicant states he wants to divide this into two lots. Where is the rest of the request? The only answer is the house can exist where it is or we can tear it down and move it over. The Board is looking for the benefit sought by the applicant; its only benefit is to subdivide the lot. He would support bringing it back for rehearing only to correct the errors that are supposedly in how our judgments were recorded. He said he does not support the request because they are creating a substandard lot that does not make sense. You take a lot with a conforming size use and try to create two lots one of which will never be conforming.

Ruth Gorton said she supports the rehearing.

John Levasseur stated that he believes they did the right thing but does support the rehearing to make sure it is documented in a proper manner.

Frank Landford stated that he feels the Board did the right thing but it would not hurt to grant the rehearing. He does not agree with the opinions of the rehearing statements. There are opinions in there that were not as the Board had stated them.

Richard Callaghan asked if they could delay a decision on this motion for rehearing until perhaps they get an opportunity to consult with the City Attorney.

Bill Colbath said that the information has not changed, just maybe on how it was argued. In his opinion, the appropriate action would be to grant the rehearing and in the mean time forward questions to Attorney Krans. This request for rehearing is based on an error in the Board's judgment and in the recording procedure or new information being placed on the table. I do not see new information on the table but I can see at least one error in the procedure.

Richard Callaghan said that if we say we are going to rehear this just so we can write it correctly we are essentially predetermining that we are not going to accept this, if this is granted we need to rehear this with an open mind.

Bill Colbath said the intention is to either correct the errors that were made, which could be errors of judgments. The only way to correct the errors that were pointed out to us is to do it at another hearing.

Richard Callaghan said we could let it go to Court and provide the City Attorney with their interpretation.

Bill Colbath said if it goes to Court, it would be struck down on an error in procedure.

**Motion:** Bill Colbath made the motion to grant the rehearing. Ruth Gorton seconded the motion. **VOTE: 4 to 1 (Richard Callaghan opposed)**

Tom Clark stated that he has two other items to bring up under old business. The first one is a request for clarification that will be heard next month on a decision that was made back in June 2005 dealing with the congregate care facility use on Dover Point Road. A set of plans will show what was approved and what is proposed. He asked that the five members that voted on the original use variance be present, which is Gorton, Reid, Denison, Colbath, and Levasseur.

The second item is another clarification of a subdivision request that was approved in January 2004 on Dover Point Road. The original variance was one lot per house lot and then a second larger lot that contained about 5+ acres. The subdivision shown is what is being processed through the Planning Department. One of the arguments in the minutes is that they were going to create a lot that is over ten times larger than what the minimum lot size is required, but this subdivision shows that this is not going to be the case and feels this is a major difference than what was shown to the Zoning Board.

Richard Callaghan asked for a vote in favor of these two items returning to the Zoning Board for clarification of the variances granted. **VOTE: U/A**

Tom Clark stated that he would inform the applicants of the Boards opinion.

*Callaghan, Colbath, Landford, Levasseur, and Gorton will be voting.*

#### **ITEM # 4: NEW BUSINESS**

- A. Z 06-09 Patricia A. Langs, 10 Hawthorn Rd., a/k/a Tax Map 17, Lot 124, zoned R-12, requests an Equitable Waiver of Dimensional Requirements from the terms of Article V, Section 170-17, in connection with a storage shed.**

Patricia Langs stated that she received a letter from the Building Official stating that new construction was noted at this location and to contact the office within ten days to determine whether a building permit is required. She proceeded to read the letter that was submitted with the application that was addressed to Mr. Clark. She stated that Mr. Clark did come over and informed me that this would be a case for an equitable waiver. She continued to read her letter for the record. She submitted pictures of the shed that has been placed in the same location as the last shed. She proceeded to read through the criteria submitted and stated that she did not realize that a permit was needed since she placed it in the same location as the last shed.

John Levasseur asked if there was a conflict with the neighbor since the shed is behind their property.

Patricia Langs said that the shed has always been located there.

Masi Denison said she looked at the property, if you were to move the shed more towards your property, where the house is located, there is quite a lot of room there, and it is flat. Why is it located behind your neighbor's property rather than behind your own property?

Patricia Langs stated that it was because she wanted access to the backyard and it was not quite as spongy at this location. She stated that she has two things to deal with and she has lost many trees because of ledge or being too wet. She said she did not see any reason to change the location of the shed. Nobody has ever complained about the location of this shed.

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

Public Hearing Open

John LaPlante stated that he is representing his mother Claire LaPlante abutter at 12 Hawthorn Road. The day that this shed was being constructed he stated that he informed the contractor that the City of Dover has setbacks and he asked them why they were building it two feet from the property line. They said it was no concern to them and it is up to the property owner. He stated that he spoke with the property owner and told them the same thing and that they may want to stop building this shed until you find out what the setbacks are because you are too close to the property line. He stated that the applicant said, "If nobody complains it will probably be okay" but he said he would complain. My father passed away two years ago and he was not the type of person to complain. I am the caregiver for my mother and she does not like the shed, it is an eyesore, the old shed seemed to be lower. The applicant has three to four acres and it does not need to be located here.

Tom Clark said that when he received the complaint he contacted Mrs. Langs and he did go out to her property and informed her that the issue of the location of the shed needs to be resolved before a building permit would be issued. An equitable waiver was recommended because of the size of the lot.

Patricia Langs stated that she thought that this shed was grandfathered and thought she had the right to do it.

Richard Callaghan stated that the existing shed was grandfathered because it was there. Grandfathering means that you are allowed to keep a structure that existed before regulations that were in place that would prevent you from putting it there. Zonings intent is that as buildings decay and fall apart the right to have them there goes away with that and you have to go to the new standard and comply with the regulations. You have a lot of land to put the shed on. The decision is based on the value of that building as it relates to the zoning spirit and intent.

George Lang asked why the City requires it to be ten feet from the property line.

Richard Callaghan stated that the intrusion of space on a neighbors property. The intent is to have so much space between structures. The other reason is that when you maintain the building you do not need to put a ladder up in your neighbor's yard to paint it or fix it. He confirmed with Tom Clark that there are specific provisions in the ordinance that do allow for the repairs and maintenance of nonconforming structures and it is clear that to remove one; the new building has to meet the current regulations.

Public Hearing Closed

Chris Parker stated that the Planning Department supports the Code Enforcement Officer and agrees that there is no need to grant the equitable waiver.

#### **FOUR CRITERIA:**

1. It is the Board's conclusion that the request (does) involve a dimensional requirement. Vote U/A
2. It is the Board's conclusion that the violation (has not) existed for 10 years or more with no enforcement action, including written notice, being commenced by the City, or 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 the violation (was) an outcome of ignorance of the law of bad faith but resulted from a legitimate mistake. Vote U/A
3. It is the Board's conclusion that the nonconformity (does) constitute a nuisance nor diminish the value or interfere with future uses of other property in the area. Vote U/A
4. It is the Board's conclusion that the cost of correction (does not) outweigh any public benefit to be gained. Vote U/A

Therefore, based upon the foregoing, it is ordered that the application for Equitable Waiver of Dimensional

Requirements be denied.

Richard Callaghan informed the applicant that the shed has to be moved.

Tom Clark stated that a building permit is already on file but the applicant will need to provide a site plan showing where she proposes to place the shed.

**ITEM # 5: OTHER BOARD BUSINESS**

Chris Parker informed the Board that recently the Planning Board created and the Council ratified the creation of a new overlay district zoning commercial mixed-use overlay district that allows for some elderly housing to be built on nonresidential-zoned land. Currently two parcels qualify which is the former Elliott Rose parcel on Dover Point Road and the Torr parcel on Mast and Durham Road.

**ITEM # 6: ADJOURNMENT**

**MOTION TO ADJOURN**

Bill Colbath made the motion to adjourn at 8:15 p.m. and was seconded by Ruth Gorton. **VOTE: U/A**

<u>List of Members</u>	<u>Term Expires</u>
Richard Callaghan-regular member	04-13-09
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