

Dover Zoning Board of Adjustment
Thursday, June 15, 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 7:02 p.m.

ITEM # 2: APPROVAL OF MINUTES

A. Approval of the minutes for regular meeting of May 18, 2006

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

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

Denison, Colbath, Reid, Levasseur, and Gorton will be voting.

ITEM # 3: OLD BUSINESS

A. Clarification request regarding ZBA case Z 05-14 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 IV, Section 170-12, Table E, to establish a congregate care facility.

Kevin McEneaney stated that this particular project has been to the Board several times. In June 2005, we received a use variance for a congregate care facility that would incorporate a maximum of 28 units and food service would be available. As shown on the Board and the handout that was provided is a rendering of what the applicant intends to build on the site. While going through the process of TRC with the Planning Board the staff recommended that the applicant come before the Board tonight because it is slightly different then the original footprint shown on the use variance granted a year ago. As you recall a height variance was requested but was denied. Because of that, the building has been lowered to meet the 35-foot requirement and it expanded the footprint. A sketch was displayed to describe the change in the footprint. The change in the footprint is 12 feet longer than what was originally proposed.

Masi Denison asked if the house lot adjacent to this building was originally plotted with different lot lines. She confirmed with Kevin McEneaney that the lot is 12,000 square feet and the reason that it has changed a little bit in configuration was to accommodate some of the out buildings that were there and to get a further buffer from the building.

Kevin McEneaney stated that the landscaped sketch shown would be what is required from the Planning Department and it is estimated to be approximately \$40,000.00. He stated that he feels the change in the footprint is a better change and is not a significant change.

Richard Callaghan confirmed with Tom Clark that this was brought before the Board for clarification because of the change in the plan that was approved.

All voting Board members voted and agreed that this is an acceptable plan. **VOTE: U/A**

Richard Callaghan announced that case Z 06-12 has withdrawn their application. He stated that the next case Z 05-35 is a rehearing and that the Board members should be treating this as if it were a brand new case being presented.

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

- B. 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 this property contains approximately 40,000 square feet and 10,700 square feet of that is in the office zone. The office zone portion of the property will have 100 feet of frontage along Earl Street. The whole property has about 178 feet according to the original subdivision, as shown on the sketch provided. The waterfront parcel would have 78 feet of frontage if this variance were granted. The request is for a variance as to the frontage of the waterfront parcel. The owners plan is to place a duplex on the office zone lot, which is a permitted use, and his plans are to have a residential duplex on the R-12 portion of the property. If this variance is granted with respect to the frontage, the next application is to ask if the Board will grant a second variance to allow the existing residence to be removed and construct a duplex in the appropriate building area on the waterfront lot. The proposed use for each of these lots is a permitted use. This lot is irregularly shaped. It is 22 feet shy of the amount of frontage that is needed to subdivide. The direct abutter is the City of Dover, we approached them to obtain the additional 22 feet of frontage so we would not need a variance but the City declined. He proceeded to read through the criteria. Greg Patch a Realtor was not able to attend the meeting but did prepare a letter that he read for the record and was submitted for the file. He stated that he realizes the Board looks at this matter individually but there have been instances where the Board has approved lots that have no frontage at all. In this case, they have frontage and they only need 22 feet.

John Levasseur confirmed with Attorney Schulte that the Planning Board has the ability to grant a conditional use permit to build closer to the water.

Bill Colbath stated that as one point of clarification this is a request to subdivide a lot to create two dwelling units on that lot.

Attorney Schulte stated that they plan to have duplexes on each of the lots if this is approved.

Tom Clark stated that this is a variance for a subdivision to create a lot with insufficient frontage.

Attorney Schulte stated that what is represented to this Board is that they will build a residential duplex on the lot in the office zone and you can make that a condition that will be acceptable.

Public Hearing Open

Brian Athearn abutter at 2 Earl Street stated that he still has the same concerns as expressed at all of the other meetings and proceeded to explain why he is against this variance request. He does not see a hardship.

Terrence Dunn 15 Leighton Drive stated that he abuts the City property. He believes this is not a financial hardship. This property was purchased a year ago with the intent of developing it. It seems that by granting a variance you are allowing him to make more money. If granted you are adding four families to that area crowding an already small area designed for one home. He stated that he was concerned with the pond, which is already polluted. Adding more people to this area is detrimental to the environment. Let us use this lot as minimally as possible.

Public Hearing Closed

Chris Parker stated that the Planning Department opposes this variance request. There is a reasonable use of the property through the demolition of the existing structure and putting a duplex in the office zone portion of the property. There are no other inadequate frontage lots other than one in this neighborhood. This is not consistent with the neighborhood context. It was mentioned that this Board has approved variance requests for lots lacking frontage, that is true, and you also have denied them in many cases. The ones that were approved had asked for minimal frontage, 22 feet is a noticeable difference. Granting this would be inconsistent with the spirit and intent of the Zoning Ordinance.

Masi Denison stated that she has been to this property. The road is literally a driveway on to the other property. Because of that, what is shown on the map is not the reality of what is going on there. She believes that two duplexes is a very intense use and recommends to the voting members to consider that while voting.

John Levasseur stated that his concern is to place four families on that one lot. There is reasonable use with possibly two families on this property.

Bill Colbath stated that an area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property. The special condition of this property is that it is located next to Willand Pond and because of the 100-foot buffer; it loses a substantial section of the property. The idea of going in that buffer was only demonstrated for lots in which people had to do it because they were lots of record. By creating a lot that has a very restricted buildable envelope you are asking to do that, so you are creating the problem that you now need relief from.

Ruth Gorton stated that she is concerned with the protection of the body of water in this case and that is what is different from the other cases.

Frank Landford stated that he agrees and the member's statements have stated his opinion as well.

Richard Callaghan stated agreed and said that law is to give relief to somebody who has a piece of property that has an inherit nonconforming component to it. This would be creating a piece of property that is nonconforming and then turn around and say that now that we have created it we can give it a variance. He stated that he has strong feelings about the abutters concerns.

Attorney Schulte mentioned John Murphy's lot that the Board granted in order to create a lot with insufficient frontage.

Tom Clark stated that the variance was not required for the subsequent use on the lot.

Attorney Schulte stated that if you grant this variance and allow the subdivision, it does not mean that you have to grant the next variance because they would still have perfectly fine use on that lot without a variance, even if they kept the existing single family home or converted it into a duplex by adding on to it. The use is a permitted use; you have to accept it as reasonable.

Richard Callaghan stated that the Board does have the opportunity to delay developing the criteria to another time if needed. He stated that they will have a vote and each voting member would attend another meeting to prepare the findings of fact. He asked if Attorney Krans could attend the meeting.

Tom Clark stated that it will be advertised as a meeting, but closed to public hearing and Attorney Krans would be notified. The meeting will be held on June 22, 2006 at 7:00 p.m.

FIVE CRITERIA FOR 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 the area variance is needed to enable the proposed use of the property given the special conditions of the property? No, Vote U/A ii. Did the Applicant demonstrate that the benefit sought cannot be achieved by some other method reasonable feasible to pursue without the area variance? No, Vote U/A
2. Did the Applicant provide proof that demonstrates how granting the variance will result in substantial justice? No, Vote U/A
3. Did the Applicant provide proof that demonstrates how a variance would be consistent with the spirit and intent of the ordinance? No, Vote U/A
4. Did the Applicant provide proof that demonstrates the variance will not result in a diminution in value of surrounding properties? No, Vote U/A
5. Did the Applicant provide proof that demonstrates the variance would not be contrary to the public interest? No, Vote U/A

Therefore, based upon the foregoing, it is ordered that the application for the variance be denied and findings of fact meeting will be held on June 22, 2006 at 7:00 p.m.

ITEM # 4: NEW BUSINESS

- A. Z 06-03 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 IV, Section 170-12, Table I, Part A, to construct a two-family dwelling.**

Attorney Schulte stated that they would continue to table this application pending final resolution on the request for area variance for the same property.

Callaghan, Colbath, Reid, Perry and Landford will be voting.

- B. Z 06-11 Dover Point Village LLC, (Applicant: Kathleen Boisquin), 90 Central Ave., a/k/a Tax Map 15, Lot 78, zoned Office requests a Variance from the terms of Article IV, Section 170-12, Table I, Part C-2 to maintain a retail use.**

Kathleen Boisquin, 64-A Bennett Road Durham NH stated that she is the owner of Elliott Rose. She provided a brief outline to read as a matter of record for the Board and submitted a copy for the file. She stated that she purchased the business in 2005 and a primary focus being primarily on wedding and flower sales. She provides delivery sales and an occasional pick up services. They have very limited foot traffic at this location.

John Levasseur confirmed that all of the flowers are brought in and supplied by a local wholesaler in Dover. Masi Denison confirmed with Tom Clark that this is a use variance request to operate a retail establishment in an office zoning district, which is not allowed.

Kathleen Boisquin stated that she was under the impression that the zoning for this area was office and her interpretation of the service that they provide is similar to Burns Security where a majority of their business although it may be conducted on site is delivered off site and she thought she was conforming to the office use. She also stated that she rents out an area of her space as a small gift shop.

Discussion ensued regarding office use.

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

Public Hearing Open

Nobody spoke

Public Hearing Closed

Chris Parker stated that the Planning Department does not oppose this request.

Discussion ensued regarding reasonable conditions to place on this variance if approved.

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? Yes, 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? Yes, Vote U/A. This conclusion is based on the following findings of fact: Eliminating the cash & carry sales use will be similar to abutting uses. iii. Did the Applicant demonstrate that the variance would not injure the public or private rights of others? Yes, Vote U/A. This conclusion is based on the following findings of facts: There is a large buffer between this and other very different uses.
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: Allows reasonable use of the property considering the actual method of business after conditions are met.
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: Direct abutters are similar businesses and will not affect traffic flow.
4. Did the Applicant provide proof that demonstrates the variance will not result in a diminution in value of surround properties? Yes, Vote U/A. This conclusion is based on the following findings of fact: Surrounding properties have similar use.
5. Did the Applicant provide proof that demonstrates the variance would not be contrary to the public interest? Yes, U/A. This conclusion is based on the following findings of fact: The Planning Department supported the request due to the unique method of business after conditions are met.

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

Otis Perry suggested the following conditions to be no cash and carry sales after Sept 30, 2006 of flowers.

John Levasseur stated that he did not like the date; it is not giving them enough time.

Richard Callaghan stated that he would like the amendment of the following.

1. No cash and carry sales after September 30, 2006 of the flower business and no cash and carry sales of the small gift shop boutique after December 31, 2006.
2. Activities to include assembly and delivery.
3. Variance only allows the sales use under the use conditions and this particular tenant then returns to the office use.

Motion: Richard Callaghan made the motion to accept the conditions with the amendment. Bill Colbath seconded the motion. **VOTE: 4 to 1 (Otis Perry opposed)**

Recess at 9:25 p.m. resumed at 9:31 p.m.

- C. Z 06-12 Woodman Block Holdings LLC, 266 & 278 Central Ave., a/k/a Tax Map 9, Lots 113 & 114, zoned B-2 requests a Variance from the terms of Article V, Section 170-1 to subdivide a lot resulting in two (2) buildings with zero (0) rear setback, where a minimum of twelve (12) feet is required and with one (1) building having a lot coverage of 100%, where a maximum of 70% is allowed.**

Richard Callaghan announced that this application was withdrawn.

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

ITEM # 4: NEW BUSINESS

- D. Z 06-13 Lauren Wolf, (Applicant: Janneth Black), 301 Durham Rd., a/k/a Tax Map H, Lot 1, zoned B-4, requests a Variance from the terms of Article IV, Section 170-12, Table I, Parts A & C1 to establish a beauty salon & single family dwelling.**

Attorney Thomas Ferrini represented the applicant and proceeded to read through the criteria as submitted in the file.

Chris Parker confirmed that more parking spaces will be added.

Masi Denison confirmed with Myliege Black that the salon would have 20 employees.

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

Public Hearing Open

Katherine Wentworth Chalue 12 Mast Road stated that this is a wonderful business and urges the Board to grant this variance.

Public Hearing Closed

Chris Parker stated that the Planning Department supports this variance request.

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? Yes, Vote U/A. This conclusion is based on the following findings of fact: Surrounding zoning areas are very similar and this unique application would be consistent with that zone. 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? Yes, Vote U/A. This conclusion is based on the following findings of fact: They explained the adaptation needed for this use are easily accomplished. iii. Did the Applicant demonstrate that the variance would not injure the public or private rights of others? Yes, Vote U/A. This conclusion is based on the following findings of facts: Similarity of use will have no affect on the abutters or others.

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: Granting will allow a use consistent with the overlay district a few hundred yards away.
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: Granting variance will not increase population density.
4. Did the Applicant provide proof that demonstrates the variance will not result in a diminution in value of surround properties? Yes, Vote U/A. This conclusion is based on the following findings of fact: Testimony of realtors and this variance will not require substantial changes to the property.
5. Did the Applicant provide proof that demonstrates the variance would not be contrary to the public interest? Yes, U/A. This conclusion is based on the following findings of fact: Allows continuation and growth of a desirable service.

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

E. Z 06-14 Stanley Whiting, 340 Dover Point Rd., a/k/a Tax Map L, Lots 58-M, zoned R-20, requests a Variance from the terms of 1) Article V, Section 170-17, to construct an accessory structure within four (4) feet from a side property line & within five (5) feet from a rear property line, both where a minimum of ten (10) feet is required; and 2) Article V, Section 170-15.B to construct the shed within four (4) feet from the main building where a minimum of approximately eight (8) feet is required.

Stanley Whiting stated that he had to demo a shed that was located in that area for 35 years and he would like to replace it with a new Rubbermaid 7 x 10 shed. He proceeded to read through the criteria submitted for the file.

Discussion ensued regarding the shed.

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

Public Hearing Open

Nobody spoke

Public Hearing Closed

Chris Parker stated that the Planning Department does not oppose this variance request.

FIVE CRITERIA FOR 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 the 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: Unique neighborhood lots, location of house and property size. ii. Did the Applicant demonstrate that the benefit sought cannot be achieved by some other method reasonable feasible to pursue without the area variance? Yes Vote U/A. This conclusion is based on the following findings of fact: There appears to be no other practical location that would make for a better location.

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: Allows replacement of shed without any change in location of previous shed.
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: This will allow reasonable clearance because of the circumstance.
4. Did the Applicant provide proof that demonstrates the variance will not result in a diminution in value of surrounding properties? No, Vote U/A. This conclusion is based on the following findings of fact: Installing a shed on comparable size will not make any changes. Shed will be new.
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: Applicant pointed out no abutter complaints and there is no increase in density.

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

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 10:25 p.m. and was seconded by Sam Reid. **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