

**ZONING BOARD OF ADJUSTMENT
JULY 20, 2006 - MINUTES**

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

Members Absent: Sam Reid

Staff Present: Jamie McCulloch, Secretary, Steve Bird, City Planner, Tom Clark, Building Inspector

ITEM # 1: CALL TO ORDER

Richard Callaghan brought the meeting to order at 7:00 p.m. and explained to the general public how the cases should be represented to the Zoning Board of Adjustment.

ITEM # 2: APPROVAL OF MINUTES

A. Approval of the minutes for special meeting of June 22, 2006.

MOTION: Bill Colbath made the motion to approve the minutes. Frank Lanford seconded the motion. Ruth Gorton stated that a correction should be made on page 5 to delete a typo. Vote U/A.

The June 2006 minutes for the regular meeting were unavailable and will be issued to the board for the August 2006 meeting.

ITEM # 3: OLD BUSINESS

- A. Continuation of deliberations regarding case #Z 05-35 Neale A. Hubbard, Earl St., a/k/a Tax Map 40, Lot 12, zoned Office & R-12, request 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.**

Callaghan stated that at the last meeting on this item John Levasseur wanted to change his vote but he only changed ½ of the 2 required parts of the first question but that he agrees to both parts, which still makes the request denied.

Callaghan read over the official findings of fact that the board compiled regarding the case. (See file for copy.) The board agreed that in findings of fact #2 within the fourth line, the word *greaten* needed to be deleted and *increase* be put in its place. Vote U/A. Steve Bird stated that a motion and seconded were required to make the finding's of fact official.

MOTION: Bill Colbath made the motion to accept the findings of facts as read by Richard Callaghan part of the official documents. Seconded by Frank Landford. Vote U/A.

James Schulte was present to speak on behalf of the case. He questioned if the board's vote to adopt the findings of fact was the only vote they took on the case? Richard Callaghan stated yes. He stated that the regular meeting was completed on this case and the official yays and nays were given at that meeting, and we have submitted the official finding's of fact this evening. He stated that the request was denied as there was a unanimous vote across the board for denial and the appeal process begins today.

John Levasseur stated that in the future he would like the board to review the question. Richard Callaghan agreed that it was time for a form review.

ITEM # 4: NEW BUSINESS

A. Z 06-15 David K. Bamford, 488 Central Ave., a/k/a Tax Map 6, Lot 46, zoned B-2, requests a variance from the terms of Article V, Section 170-16 to construct a building with a proposed rear setback of approximately five (5) feet where a minimum of twelve (12) feet is required

David Bamford was present to speak on behalf of his request.

David Bamford briefly described his plans for the property. His request is to build a 3-½ story brick and granite bank building together with new drive-thru portals, together with six condominiums to be built above the bank and the portals. He intends to tear down the metal overhangs now above the Holy Rosary Credit Union drive-thru and introduce new brick portals for use by drive-thru bank customers of Holy Rosary Credit Union and a new bank to locate in Dover. While referencing the plan for the project, he stated that the triangle shaped parcel he referenced on the plans submitted to the board was owned by the City. He stated that the distance between the triangle parcel and the rear footprint of the proposed building shall be at times as close as 5-feet 8-inches with an overhang to come within 2-feet 2-inches of the triangle, where the setback requirement for the rear is 12-feet. He stated that he hopes to purchase the triangle parcel from the City. He stated that every building except the Morrill Block has a zero back area as they are built right up to zero feet. He questioned why there was a zero front and side setback but a 12-foot rear setback. He stated that he did not believe that the City would build on that triangle. He stated that he did not see any harm in this project and that he planned on spending quite a bit of money on landscaping and putting in stone walls etc., adding that he is working with the City on the lighting in the area and he hoped that it would help with the revitalization of the downtown area.

Masi Denison asked how many parking spaces there would be after the project was complete. David Bamford stated 43 spaces. Bill Colbath asked Mr. Bamford if he ever officially attempted to purchase the triangle piece of property from the City. David Bamford stated that he does plan on buying it if the City will allow it, adding that he has talked to Planning and Mr. Steele at Public Works, but that he has not officially formally requested to buy it. He stated that he thought this process would be quicker at this time. Bill Colbath stated that if Mr. Bamford purchased the triangle piece, this request would go away as it would not be required. Mr. Bamford handed out the traffic plan for the board's review.

There was some discussion.

David Bamford stated that buying the triangle piece doesn't give more parking, but it gives sort of an oasis, adding that the City has agreed to take out the guardrails.

The board reviewed the parking area plans.

Richard Callaghan asked about the four drive thru's and if they were all for banking customers. Mr. Bamford stated yes, adding that they come in the driveway and then into our parking area as there is no entrance from Third Street. John Levasseur questioned why there was no entrance from Third Street. Mr. Bamford stated that it creates a problem as there are Do Not Enter signs and people still enter.

MOTION: Bill Colbath made the motion to accept the case. Ruth Gorton seconded the motion. Vote U/A.

PUBLIC HEARING OPENED.

There was no one present to speak for or against the case.

STAFF COMMENTS: Steve Bird stated that the staff was in favor of the request. He stated that there will be no impact on the abutting properties, the shape of the rear portion of the lot is unique, and complying with the rear setback does not add any parking spaces.

PUBLIC HEARING CLOSED.

There was some discussion on the triangle piece of property and that if it were purchased from the City it would alleviate the hardship. Tom Clark stated that the entire process of purchasing a parcel from the City is cumbersome as it has to go out to bid etc. Mr. Bamford stated that if the board wanted a statement that he formally requested to purchase the City owned parcel, he would do so. He stated that the project would be completed as shown on the plans submitted. Frank Landford stated that formally asking the City to buy the piece of property does not alleviate the variance situation. Tom Clark stated that the project has to go before the Technical Review Committee and for Site Review if any entrance or sign issues arise.

FIVE CRITERIA:

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? This conclusion is based on the following findings of fact: 1) Benefits cannot be achieved by some other reasonably feasible method. 2) There is a unique shape to the property and a unique ownership of that portion. Vote U/A.

ii. Did the Applicant demonstrate that the benefit sought cannot be achieved by some other method reasonably feasible to pursue, without the area variance? This conclusion is based on the following findings of fact: The applicant has been in discussions with the lot owner (City of Dover) and a conclusion is predicted to be very timely. Vote U/A.

2. Did the Applicant provide proof that demonstrates how granting the variance will result in substantial justice. This conclusion is based on the following findings of fact: 1) Most of the adjoining properties do already have similar setbacks. 2) There will not be any encroachment on other buildings. 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? This conclusion is based on the following findings of fact: The reduced set back will have little affect on the neighborhood. Vote: U/A.

4. Did the Applicant provide proof that demonstrates the variance will not result in a diminution in value of surrounding properties? This conclusion is based on the following findings of fact: To the contrary, when the building is constructed as proposed it will be an enhancement to the neighborhood. Vote: U/A.

5. Did the Applicant provide proof that demonstrates the variance would not be contrary to the public interest? This conclusion is based on the following findings of fact: It will improve appearances and provide additional business services as well as residential accommodations. Vote: U/A.

Therefore, based upon the foregoing, it is ordered that the application for the variance be granted with the following condition: Applicant must formally (in writing) request to purchase the triangle piece of land from the City.

MOTION: Frank Landford made the motion to approve the condition. Seconded by John Levasseur. Vote 3-2. Richard Callaghan and Ruth Gorton opposed.

Ruth Gorton stated that she would sit back for the rest of the cases to allow for Otis Perry to vote.

B. Z 06-16A Robert Duffy (applicant Brikadia Group LLC), 169 Locust St. a/k/a Tax Map 12, Lot 66, zoned RM-10, requests a variance from the terms of Article VI, Section 170-25.1 E to convert a single family dwelling to a four-family dwelling with a front setback of approximately sixteen (16) feet where a minimum of twenty (20) feet is required.

Richard Callaghan stated that his daughter was a Legal Assistant at the law firm of McNeil, Taylor & Gallo but that he had no conflict of interest with regards to the case before the board and asked if anyone had any objection to him sitting on the case. No one had any objections.

Attorney Bill Tanguay of McNeil, Taylor & Gallo was present to speak on behalf of the case. He explained that the request is a conversion of an existing dwelling to four units, which will be sold as condominium units. He added that the front portion of the existing structure would remain as Unit A. However, the existing structure is approximately sixteen (16') feet to Locust Street where twenty (20') feet from the front property line is required. He asked the board to follow along with him while we went over the plan of the project that the board members had in front of them. He described the property, Map 12, Lot 66, known as 169 Locust Street, as lacking paint, having broken shutters, overgrown grass and having been empty for about 4 years and is run down significantly. He stated that the non-conforming barn would be removed which will create a traffic flow. He stated that Jarrod Craig of Brikadia Group LLC. is the individual heading the project and he has conducted many great similar projects in different areas of Dover. He read through his own findings of fact to the board. See file for copies.

John Landford asked if the driveway was touching the adjoining lot? Tom Clark stated that the driveway is existing and they are not required to change it. Ruth Gorton asked if there was adequate parking for the units? Attorney Tanguay stated that there were 8 spaces for the 4-units.

MOTION: Otis Perry made the motion to accept the case. John Landford seconded the motion. Vote U/A.

PUBLIC HEARING OPENED.

There was no one present to speak for or against the case.

STAFF COMMENTS: Steve Bird stated that the structure is pre-existing. He stated that the option of tearing down the building to conform is not a reasonably feasible method to pursue. He stated that the front setback is consistent with the neighborhood, and has a larger setback than the building to the South. He stated that the proposed use is consistent with the neighborhood and that the proposal would decrease the overall non-conformity of the lot.

PUBLIC HEARING CLOSED.

FIVE CRITERIA:

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? This conclusion is based on the following findings of fact: The building is existing. Vote U/A.
 - ii. Did the Applicant demonstrate that the benefit sought cannot be achieved by some other method reasonably feasible to pursue, without the area variance? This conclusion is based on the following findings of fact: The alternative would be to tear down the building and that might change the character of the building. Vote U/A.
2. Did the Applicant provide proof that demonstrates how granting the variance will result in substantial justice. This conclusion is based on the following findings of fact: Neighboring buildings have similar setbacks. 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? This conclusion is based on the following findings of fact: Proposed use is permitted and there is no increase in non-conformity. Vote U/A.
4. Did the Applicant provide proof that demonstrates the variance will not result in a diminution in value of surrounding properties? This conclusion is based on the following findings of fact: Provide a logical argument the property values would increase. Vote: U/A.
5. Did the Applicant provide proof that demonstrates the variance would not be contrary to the public interest? This conclusion is based on the following findings of fact: The investment in the existing structure would maintain consistency in the neighborhood. Vote: U/A.

Therefore, based upon the foregoing, it is ordered that the application for the variance be granted without condition.

C. Z06-16B Robert Duffy (applicant Brikadia Group LLC), 169 Locust St. a/k/a Tax Map 12, Lot 66, zoned RM-10, Requests a Special Exception as provided by the terms of Article VI, Section 170-25.1 and Article XII, Section 170-52.C.3 to convert a single family dwelling to a four-family dwelling.

Frank Landford stated that he would not be voting on the case to allow Masi Denison to vote.

Attorney Bill Tanguay of McNeil, Taylor & Gallo was present to speak on behalf of the case.

Richard Callaghan explained to everyone that in order to have a special exception approved there must be three out of five members voting in favor of the request.

Attorney Tanquay explained that with the project, Unit A would be kept and the rest of the building would be torn down. He explained that with the garage being removed it would leave less square footage of structure on the ground as an end result, which allows for more pavement for parking. He spoke to the amount of open space in the area versus the surrounding areas. He explained that they have satisfied the off street parking, they are farther than 5-feet from the abutting lot, have two spots per unit and have a one way in and one way out driveway.

He read through his own explanations for special exception approval to the board. See file for copies.

Attorney Tanguy explained that by tearing down the barn the non-conformity goes away, there is no traffic hazard or problems, the properties in the area are 3-4 units, and that the project will not overload public utilities. He explained that the individuals that usually purchase these types of condos are young professionals or empty nesters who usually do not have children in the school system that are looking to build equity and keep the property up.

Bill Colbath asked if the City Engineer was approached to see if the project would be overloading the City's existing utilities. Masi Denison asked Attorney Tanguy to explain the spreadsheet he handed out to the board. Attorney Tanguy explained the spreadsheet to the board. See file for copy.

Steve Bird explained that during the site walk on the property he noticed on the Southside of the lot that there was a wide-open area. He asked if they planned on screening that area of the parking lot to keep the neighbors picnicking area shielded. He stated that he talked to Dave White, Assistant City Engineer who stated that there were no capacity issues with water or sewer in this neighborhood. Richard Callaghan asked if that included water suppression also, separate from domestic use. Tom Clark stated that there was adequate water volume in that area and that the water system could be engineered to allow for adequate fire flow if needed, adding that he did not anticipate volume or pressure issues.

MOTION: Otis Perry made the motion to accept the case. Masi Denison seconded the motion. Vote 4-1 Bill Colbath opposed.

PUBLIC HEARING OPENED.

Frank Landford of 3 Monroe Street was present and spoke in favor of the case.

STAFF COMMENTS: Steve Bird reiterated his earlier comments he made for the variance. He stated that the staff is in favor of the request. He stated that the project is good for the neighborhood. He stated that the only condition he would make is to add the additional screening on the Southside of the lot.

PUBLIC HEARING CLOSED.

MOTION: Otis Perry made the motion to grant the special exception and also add the suggested condition by the Planning Staff. Masi Denison questioned why Bill Colbath voted against accepting the case. Bill Colbath explained that he did not want to accept the case, as there was nothing in writing from Engineering. Callaghan mentioned having a letter on file before continuing. Bill Colbath seconded the motion.

AMENDED MOTION: Richard Callaghan made the amended motion to grant the special exception with the condition that the applicant obtains a letter from the City Engineer indicating compliance with the special exception section 3C regarding drainage/sewer/water etc.

Tom Clark stated that through the building permit process issues like this are addressed, adding that the staff can follow up with the City Engineer. He stated that the Ordinance does not ask for confirmation from the City Engineer concerning this issue.

AMENDED MOTION: Richard Callaghan reiterated his amended motion to grant the special exception with the condition that the City Engineer provides documentation that supplies compliance of Charter 170-52-3C. Bill Colbath seconded the motion. Vote U/A.

D. Z 06-17 Gary and Lois Winters, 31 Summer St., a/k/a Tax Map 12, Lot 45, zoned RM-10, requests a variance from Article V, Section 170-14.A(1) to construct an attached garage within approximately seven (7) feet from a side property line where a minimum of ten (10) feet is required.

Gary & Lois Winters were present to speak on behalf of the case. Gary Winters explained that they lived in Durham but that after the construction was complete they would be moving into 31 Summer Street. He explained that the home was built in 1881 and they would like to restore the existing structure. He explained that the property has an odd shaped lot and they have struggled with architects on where to construct the garage. He explained that they are keeping the style of the garage similar to the style of the house. It was explained that their design for the garage falls within 7-feet of the property line where the required setback is 10-feet. Gary Winters explained that it will be a double door garage that will not obstruct any views, adding that the street is narrow and busy and cars are usually parked on both sides and having the garage will allow them to keep their vehicles off the street. He explained that the hardship is that there is no good location for the garage and they have chosen the least intrusive location adding that the garage is a necessity for a single-family home.

Gary Winters showed pictures of his neighbor's properties that all had buildings/outbuildings within the 10-feet of the property line. He stated that all of his abutters applaud the project. He passed out letters from two of his neighbors who were in favor of the project to the board members.

Frank Landford stated that he would resume as a voting member on this case. Masi Denison would be voting as an alternate and Otis Perry would not be voting.

John Levasseur stated that on the map of the project the rear setback is shown to be 13.9 feet not the 15-feet, which is required. Tom Clark stated that the 15-foot requirement was confirmed and he focused on the side lot line in the review process and did not catch that it listed 13.9 feet on the rear. Gary Winters stated that he would request a variance on the side and rear setbacks if he needed to. Richard Callaghan stated that it would not be a possibility to vote on the rear setback issue, as that request would have had to be advertised properly before coming to the board. Tom Clark suggested moving the garage to accommodate the 15-foot rear set back. Richard Callaghan suggested making a condition of approval that the applicant has the property surveyed after the footings were put in to make sure the 15-foot setback is met.

MOTION: Richard Callaghan made the motion to accept the case. Frank Landford seconded the motion. Vote 4-1. Masi Denison opposed.

Masi Denison explained that she was opposed to accepting the case, as she would have preferred to proceed with a cleaner presentation, speaking to the plan referring to the 13.9-foot setback versus the required 15-foot setback.

PUBLIC HEARING OPENED.

Douglas J. DeDe of 143 Locust Street spoke in favor of the request. See file for copy of letter. See file for copy of the letter from another abutter in favor of the request.

STAFF COMMENTS: Steve Bird stated that the property has a unique shape to the lot corner. He stated that the project has no impact on the abutters and keeps in character with the neighborhood.

PUBLIC HEARING CLOSED.

Frank Landford explained that he had no problem with the setbacks. John Levasseur explained that this was a fine house and the project would improve the house and the neighborhood adding that he had no problem with the garage in its location.

Masi Denison explained that she agreed with Levasseur. She explained that she walked the property and the side that the garage will be built on abuts a parking area and she has no problem with the project. Richard Callaghan stated that he had no problem with the request. He asked Mr. Winters if he could make the garage shorter to get the required 15-foot setback. Gary Winters stated yes, that was his first option.

FIVE CRITERIA:

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? This conclusion is based on the following findings of fact: Unusual shape of the lot. Minimal impact on abutter. Vote U/A.

iii. Did the Applicant demonstrate that the benefit sought cannot be achieved by some other method reasonably feasible to pursue, without the area variance? This conclusion is based on the following findings of fact: Due to the necessary set back and the length of the garage, it is necessary to have this non-conformance at that one point. Vote U/A.

2. Did the Applicant provide proof that demonstrates how granting the variance will result in substantial justice. This conclusion is based on the following findings of fact: The garage is a reasonable request in this application for a single-family home. 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? This conclusion is based on the following findings of fact: The spirit and intent was to provide a safety setback and this is accomplished. Vote U/A.

4. Did the Applicant provide proof that demonstrates the variance will not result in a diminution in value of surrounding properties? This conclusion is based on the following findings of fact: Proposed use is to keep the structure consistent with the neighborhood. Vote: U/A.

5. Did the Applicant provide proof that demonstrates the variance would not be contrary to the public interest? Restoration of this home will be a positive improvement to the neighborhood. Vote: U/A.

Therefore, based upon the foregoing, it is ordered that the application for the variance be granted with the following conditions: 1) Acceptance of the plan amendment that the rear set back will be conforming at 15-feet. 2) Footing will be certified by a licensed land surveyor prior to further construction.

MOTION: Masi Denison made the motion to approve the conditions. John Levasseur seconded the motion. Vote U/A.

ITEM # 5: OTHER BOARD BUSINESS

There was a brief discussion on the Use of Communications forms that needed to be signed by all board members.

Richard Callaghan explained that he met with City Attorney Allan Krans on the Finding's of Fact and that he would be going over them with the board at a future meeting.

Steve Bird spoke about the Speak Out Dover sessions that are being held throughout the City and stated that the next one was Thursday, July 27th at 7 PM and the Planning Board is looking for input from all citizens.

ITEM # 6: ADJOURNMENT

MOTION TO ADJOURN: Masi Denison made the motion to adjourn at 9:55 p.m. Seconded by Bill Colbath. **Vote:** U/A