

Dover Zoning Board of Adjustment

Thursday, August 17, 2006

MINUTES

Members Present: Richard Callaghan, Bill Colbath, Frank Landford, Otis Perry, Sam Reid, Masi Denison

Members Absent: John Levasseur, Ruth Gorton

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 June 15, 2006.

Bill Colbath stated a correction on page 1 and page 3. Richard Callaghan stated that he informed the Board prior to the hearing of case Z05-35 page 2 that this case should be treated as if it were a new case being heard for the first time and felt it should be in the record, he also mentioned a typo on page 4.

Motion: Bill Colbath made the motion to accept the minutes as amended. Frank Landford seconded the motion.

VOTE: U/A

B. Approval of the minutes for regular meeting of July 20, 2006.

Motion: Bill Colbath made the motion to accept the minutes. Masi Denison seconded the motion.

VOTE: U/A (abstained – Sam Reid)

Richard Callaghan stated that case Z 06-16-B, applicant Brikadia Group LLC, submitted a letter from the City Engineering Department stating that they satisfied the utility requirements, which was requested at last months meeting and asked if it was acceptable to the Board members.

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

(abstained – Sam Reid)

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

Callaghan, Colbath, Reid, Landford, and Perry 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 did not have anything to add to the submission.

Masi Denison explained why she believes the case should be reheard regarding the findings of facts.

Otis Perry stated that he has a different view and believes that the facts will not change and suggested that if the Board decides to rehear the case he suggests that the City Attorney attend the meeting.

Richard Callaghan said that he agrees that the case should be reheard and expressed his concerns.

Motion: Bill Colbath made the motion to accept the motion for rehearing. Masi Denison seconded the motion.

VOTE: 4 to 1 (opposed – Otis Perry)

Tom Clark stated that he would inform Attorney Krans of the Boards decision and will ask that he be present.

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

ITEM # 4: NEW BUSINESS

- A. Z 06-18 Nancy L. LaRocque, 67 Hill St., a/k/a Tax Map 27, Lot 229, zoned R-12, requests a variance from the terms of Article V, Section 170-15.B, to construct a rear addition onto a main building within five and one-half (5.5) feet of an accessory building (detached garage) where a minimum of eight (8) feet is required.**

Nancy LaRocque stated that she does not have additional comments. She feels the application has all the information needed to explain her request.

Chris Parker stated that the two plot plans provided with the application do not accurately display the property and he confirmed with the applicant that the stairs would be staying where they are located. He stated that the plan that is to scale shows 10 ½ feet between the house and the garage but when it is scaled off it is actually 8 ½ feet. Why not cut the addition off by 2 ½ feet?

Nancy LaRocque stated that the 10 ½ feet is from the corner of the home to the corner of the garage. She intends to retire in this home and the 2 ½ feet is very important to her kitchen and bath design.

Discussion ensued regarding Section 170-15.B.

Tom Clark stated that if you considered granting the variance you could grant it with the condition that the inside of the garage be fire rated sheetrock, which the applicant did agree to do.

Motion: Sam Reid made the motion to accept. Masi Denison seconded the motion. **VOTE: U/A**

Public Hearing Open
Nobody spoke
Public Hearing Closed

Chris Parker stated that the Planning Department does not support this request as the applicant does have other alternatives. No hardship has been demonstrated and there is no neighborhood context that justifies that this is a unique property.

Masi Denison stated that she does not see a hardship.

Discussion ensued regarding hardship and other alternatives for the applicant.

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 4 to 1 (Reid voted yes). This conclusion is based on the following findings of fact: Addition could be reconfigured and obtain the same square footage and not need the relief. 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. This conclusion is based on the following findings of fact: The surrounding properties have similar

- special conditions and granting the variance would allow for further non-conformance.
2. Did the Applicant provide proof that demonstrates how granting the variance will result in substantial justice? No, Vote 3 to 2 (Callaghan and Reid voted yes). This conclusion is based on the following findings of fact: There is not a substantial in-justice to correct and is similar to the question of hardship.
 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. This conclusion is based on the following findings of fact: This would increase the congestion of the neighborhood.
 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: The applicant claimed an increase in subject property value, but did not show how lowering the open space would not affect the abutting properties value.
 5. Did the Applicant provide proof that demonstrates the variance would not be contrary to the public interest? No, Vote U/A. This conclusion is based on the following findings of fact: Increasing already non-conforming congestion negatively affects fire safety and appearance.

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

Tom Clark submitted a handout that will be helpful for the next case, which is Chapter 155, subdivision regulations regarding common open space.

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

B. Z 06-19 Daniel W. Ayer, 100 McKone Ln., a/k/a Tax Map N, Lot 18, zoned R-40 requests an appeal from an Administrative Decision concerning the interpretation of Common Open Space from Chapter 155, Article IV, Section 155-23.C (2).

Dan Ayer stated that he is addressing concerns regarding an OSS relative to the River Front Overlay District. If he prevails in this request, he would have two structures possibly within the 250-foot overlay district but the lots will extend into that 250-foot overlay district. He proceeded to explain his understanding of the common open space. He believes the intent of the OSS is to provide 20,000 square feet of open space per building lot except where bonuses are allowed. When the overlay riverfront district is applied, it requires that a lot within 250 feet of the tidal shore must be three times the minimum lot size of 20,000 square feet or 60,000 square feet. It does not require that the open space outside or beyond the 250-foot limit to be three times the minimum lot size reduction of 20,000 square feet or 60,000 square feet. The OSS requires a minimum of 20,000 square feet per building lot except where bonus lots are allowed. To remove the rights that a landowner has in the land outside and beyond the 250-foot limit by an additional 2/3 is not justified. Nowhere does it say that the open space must be three times the minimum anywhere in the OSS regulations. Copy of the applicants concerns are enclosed in the file.

Tom Clark stated that the intent of the open space subdivision is that in an R-40 zoning district you are allowed a reduction in lot size to 20,000 square feet provided there is an additional 20,000 square feet set aside for open space. The purpose is to be able to allow the applicant, homeowner or the developer to consolidate the lot so that the infrastructure cost are reduced and the lot sizes would be reduced but you would still maintain the density that you normally would in an R-40 zone such as 40,000 square feet of upland per dwelling unit. In our interpretation of 155-23.C (2) it is fairly clear that the area of the open space shall equal or exceed the total allowed reduction in lot sizes within that open space subdivision. Because of the affect of the riverfront overlay district the lot on the river is 60,000 square feet, therefore 50% of the reduction is 60,000 square feet of open space even though it may be outside of the 250-foot setback. He stated that he understands the issues with the bonuses and they apply in an OSS but he does not think they have an impact in this particular question. In his opinion, the required minimum lot size on the river is 60,000 square feet.

Bill Colbath confirmed that the theory is that each lot that has a portion in the riverfront district has to have 60,000 square feet of uplands left for open space.

Dan Ayer said that the building lot itself has to be 60,000 square feet. The reduction in lot size as mentioned by Mr. Clark addresses specifically the open space lots and has nothing to do with the riverfront lots. When you get to the riverfront lots, it says that the lot has to be three times the minimum zone size and in this case, the minimum zone size because of the open space, which is mandatory, is now 20,000 square feet.

Tom Clark stated that the position is, if you were not using the open space subdivision and you were just considering just the straight R-40, without an OSS, you would still have to have a lot three times the required size of the underlying zoning district, which is 120 thousand square feet.

Discussion ensued regarding the interpretation of common open space.

Otis Perry asked Tom Clark if they subdivided lots along the river and the lot is in that overlay district and out of that overlay district does the total lot have to be 120,000 square feet. Tom Clark said if a portion of that lot impinges on that 250-foot setback than the entire lot would have to be 120,000 square feet or three times whatever it is even if it does not go to the riverfront.

Dan Ayer said that one thing that you should consider is the fact that in a conventional subdivision, you enjoy the benefits of the entire lot and if you apply Mr. Clark's formula, you are actually taking half of the benefits of that lot from the landowner. It is not a clean cut situation because the lot owner has given up any rights to do anything within half of that lot. If three times the building lot is met within the 250-foot zone, it satisfies the intent of the riverfront overlay district.

Tom Clark said he disagrees with what Mr. Ayer is saying about the landowner. Practicality, I can see where he says the landowner gives up half of that land, however the intent of the open space is to preserve it for use by everybody within that subdivision, such as for recreation purposes. He agrees that the individual cannot build a garage on that portion of that lot, but as far as taking all use from the landowner, he respectfully disagrees and the other advantage of course, the smaller lots along the river allow for more lots along the river so certainly it is to Mr. Ayer's advantage if he makes smaller lots. He could have more water front lots because of the reduced lot size.

Chris Parker explained to the Board a conventional R-40 subdivision and an open space subdivision.

Masi Denison said it is an order of operations, and the argument is which calculation you do first.

Chris Parker said any overlay district trumps the underlying district. If the underlying district says, you got 40,000 square foot minimum, the riverfront would trump that and now you have to have three times which is 120,000 square feet and that is the starting point and that is according to Mr. Clark, which is not the same point that Mr. Ayer is saying.

Dan Ayer said he just wants to get back to the conventional subdivision formula.

Sam Reid confirmed with Tom Clark his interpretation of the OSS and the conventional R-40 subdivision. He stated that he agrees with Mr. Clark's interpretation and made a motion to uphold the administrative decision.

Richard Callaghan confirmed that the requirement of tripling the size of the lot prevailed during the time of the conventional subdivision rules and regulations. He stated that whenever you have rules that oppose each other more often than not the most stringent shall apply and supports the motion that was made by Sam Reid.

Discussion ensued regarding interpretation of conventional and open space subdivision and the Board members discussed and agreed to uphold the administrative decision.

Motion: Sam Reid made the motion to uphold the administrative decision. Frank Landford seconded the motion.

VOTE: U/A

Recess at 8:42 resumed at 8:55. Otis Perry left the meeting at 8:50.

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

- C. **Z 06-20 Christopher Lara & Leigh-Anne Sapieza (Applicant: Paolini Brothers Development LLC), 48 ½ Dover Point Rd., a/k/a Tax Map K, Lot 22 & 22B, zoned B-3 & ETP requests a Special Exception as provided by the terms of Article VI, Section 170.19 and Article XII, Section 170.52.C (3) to construct a three family dwelling in a multi family project (Harvest Drive).**

Attorney Schulte represented the applicant and the owners. In June of 2005, this Board granted a Special Exception for seven units on the lot, which the Paolini Brothers owned at the time. He referred to the minutes of that meeting in which Leigh-Anne Spaienza stated, "She would rather see this development instead of a commercial development. She likes this idea but is concerned with the back parcel and wants to know if they could guarantee that it would not be developed." Attorney Schulte said at that time the only thing they would intend to do would be to put in accessory structures, otherwise no intent to develop the back lot. A condition prohibiting any development on the lot except for the accessory permissible structures would be acceptable. The restriction against the townhouse units does not apply to the property that is owned by the abutters. The proposed garage does encompass and does encroach into the ETP zone but that would be permitted under the original grant for the seven units. The request is to receive approval for three additional units, which is allowed by special exception in the B-3 zone. He proceeded to read through the special exception requirements as submitted for the file. He submitted a letter from City Engineer, Dave White in which he states there is adequate supply and capacity in the water and sewer systems for three more units on this lot and is enclosed in the file.

Chris Parker stated that the lot that will remain will be under the B-3 minimum lot size of 20,000 square feet and is wondering why you are creating a nonconforming lot.

Attorney Schulte stated that this is a concept plan. They do not intend to create a substandard lot.

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

Public Hearing Open

Nobody spoke

Public Hearing Closed

Chris Parker stated that the Planning Department believes that the special exception conditions have been met and they do not see any reason not to approve the request.

Frank Landford asked if they could place a condition that the lot that Mr. Parker is concerned with would be conforming.

Masi Denison stated that she respectfully disagrees with Attorney Schulte's argument, that the current applicant is the one that brought up the issue of further development. The applicant's in this case should be disregarded and disagrees that despite the fact that they raised the question that particular individual has changed her mind does not reduce the rights of an abutter. She is still concerned with development in the back portion for the same reasons as the June 2005 meeting.

Sam Reid stated that the conditions that we voted on at the last meeting would still apply.

Richard Callaghan asked for a vote on the following Special Exception Requirements and if you accepted what was presented.

1. Explain how the requested use would be essential or desirable to the public convenience or welfare. Vote: 4 to 1 (Masi Denison opposed)
2. Detail how the requested use would not create undue traffic congestion or unduly impair pedestrian safety. Vote: 4 to 1 (Masi Denison opposed)
3. Describe how the requested use would not overload any public water, drainage or sewerage system or any other municipal system to such an extent that the requested use or any developed use in the immediate area or in any other area of the City will be unduly subjected to hazards affecting health, safety or the general welfare. Vote: U/A

Motion: Frank Landford made a motion to approve the Special Exception with the condition that 1) the lot line would move 158.0' property line to allow for 20,000 sq ft lot, which is 22-B, where 19,900 sq ft is shown. Sam Reid seconded the motion. Vote U/A (Abstained – Masi Denison)

Attorney Schulte asked for a motion to grant the Special Exception with the condition.

Motion: Bill Colbath made the motion to accept. Sam Reid seconded the motion. **VOTE: 4 to 1 (Masi Denison-opposed)**

ITEM # 5: OTHER BOARD BUSINESS

Richard Callaghan mentioned a Planning & Zoning Conference in Waterville Valley. Copies will be submitted in the packets and if interested should submit completed forms to the Planning Office.

Mike Joyal stated that the City would make arrangements if you were interested in attending which would include an overnight stay. He stated that he will be sending out a letter to the Boards and Commissions encouraging them to take part in the training that is available throughout the State and this conference is in interest to a lot of Zoning Board of Adjustments across the State.

Masi Denison asked for an update on the City e-mail address for communication. Tom Clark stated that he would check with Matt to see about the forms and how that process is coming.

ITEM # 6: ADJOURNMENT

MOTION TO ADJOURN

Sam Reid made the motion to adjourn at 9:20 p.m. and was seconded by Frank Landford. **VOTE: U/A**

List of Members

Richard Callaghan-regular member
William Colbath-regular member
Frank Landford-regular member
Ruth Gorton-regular member
John Levasseur-regular member
Masi Denison-alternate member
Sam Reid-alternate member
Otis Perry-alternate member

Term Expires

04-13-09
10-23-06
04-10-08
11-12-06
11-12-06
09-08-07
04-13-08
02-08-09