



CITY OF DOVER

## DOVER ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting  
Meeting Location: Council Chambers - 288 Central Avenue, Dover, NH 03820  
Meeting Date: **Thursday, September 21, 2006**  
Meeting Time: **7:00pm**

### 1. ATTENDANCE

- Members Present: Richard Callaghan, Bill Colbath, Masi Denison, Frank Landford, Sam Reid, Otis Perry, John Levasseur
- Members Absent: Ruth Gorton
- Staff Present: Tom Clark ; Building Official, Steve Bird; City Planner, Jean Glidden; Recording Secretary

### 2. APPROVAL OF PRIOR MINUTES

Motion: Bill Colbath made the motion to accept the minutes of August 17, 2006. Sam Reid seconded the motion. Vote U/A

Richard Callaghan announced that ZBA case Z 06-01A & B Karen Ciccotelli, Applicant: The Brikadia Group, LLC has been withdrawn.

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

### 3. OLD BUSINESS

- A. Z 05-35 Neal A. Hubbard, Earle 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 with a frontage of seventy-five (75) feet along a public right of way, where a minimum of one-hundred (100) feet is required.

Richard Callaghan requested of Attorney Schulte a clarification of line 18, items in the motion for rehearing to avoid further concern on the issues of impartial voting members and the de novo hearing. A lengthy discussion followed.

Attorney Schulte stated that in May, Board members stated that they made the right decision but they did not document it well, which raised the question of whether or not there had been a predetermination by any of the Board members in advance of the new hearing.

Richard Callaghan asked if he had any concerns with any of the Board members that may or may not be sitting on the Board tonight. He asked Attorney Schulte if he would like him to ask the Board members to recuse themselves if they feel they are impartial. Would that satisfy your concern for the appeal?

Attorney Schulte said he has never doubted the integrity of the members of this Board and if the members state that they are prepared to consider this matter as a new matter tonight he is perfectly willing to abide by that. Ruth Gorton may have been on the previous panels so at some point you may want to appoint one of the alternates.

Richard Callaghan stated that it was his direction to the Board that each re-hearing would be treated as a new case and now has the understanding that the case should not be treated as a rehearing as de-novo. Callaghan instructed the Board that as of tonight when you rehear the case you may use information from the previous cases.



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Attorney Schulte agreed and said his concern is that when the Board members say, "I remember back in December," that is not always necessarily a complete recollection and not an accurate recollection of what was said. For example, there was a reference to a petition that was issued and that petition should be in the record. If you intend to rely on the petition you need to know exactly what it said because we have different recollections of the import of that at various times. His only concern is that this case be accurately presented so that we are all on the same page. Mr. Schulte indicated that he did not have a problem with the Board going back into the record but he is concerned with looking accurately at what was said in the past and what was done in the past. We have the same concern but may have a different view of what the results should be and we want to make sure the process is accurate and fair.

Richard Callaghan stated that he agrees and it is important that the Board is accurate with their facts. There is a potential that you may not leave with a decision tonight. He asked if any of the Board members had a conflict of interest or cannot be impartial in the decision making process on this request for rehearing? After further discussion, it was agreed upon that Callaghan, Colbath, Landford, Perry, and Levasseur will be voting on the case. Attorney Schulte agreed with the selection of the Board members.

Sam Reid was excused for the evening at 7:18 p.m.

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

Attorney Schulte proceeded to discuss the case as submitted in the file. The only variance being addressed tonight is a dimensional variance. The question that has to be addressed tonight is what difference it makes to a neighborhood that this lot has 78 feet of frontage along Earle Street as opposed to 100 feet. They are abutted by all City land that is deeded for recreation land, required to be as recreation land, and would never be developed. The only way they can subdivide this is to get a variance. He proceeded to discuss and explain the criteria submitted.

Frank Landford asked if this was approved would the applicant be interested in making a condition that the home would be demolished and willing to move it away from the water. He stated that the other variance that is being requested if this variance is granted is not being discussed tonight.

Attorney Schulte said he would not agree to make that a condition if approved because it would be discussed in the context of the other requirement.

Discussion ensued regarding frontage of the surrounding lots.

### Public Hearing Open

Brian Athearn 2 Earle Street stated that he is against this request and asked if the petition that was submitted for the file at the first meeting be resubmitted. He proceeded to read it for the record.

Leland Otis 25 New Rochester Road stated that he is opposed to the request.



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Margaret Cote 37 New Rochester Road stated that she is opposed to the request.

Terrence Dunn 15 Lakeview Drive stated that he is opposed to the request.

Frank Landford confirmed with Mr. Dunn that six single-family homes are located on Willand Pond in Dover. No homes are located on the pond in Somersworth.

### Public Hearing Closed

Steve Bird stated that the Planning Department opposes this variance request for the same reasons that were expressed at the previous hearings and summarized the concerns regarding the lot sizes in the neighborhood. The single-family home on the property that exists today is a reasonable use and a creation of a nonconforming lot is not reasonable.

Frank Landford said he would like to have time to put his thoughts and notes together before he can vote.

Richard Callaghan agreed and said he was looking at the minutes from previous meetings and the last time this was turned down and the findings of fact that was agreed upon was not included in the minutes but it is referenced as a separate document. He asked that it be submitted in the file.

**Motion:** Frank Landford made the motion to table to the next meeting. Bill Colbath seconded the motion. Vote: U/A

Discussion ensued regarding the meeting to vote for findings of fact.

Richard Callaghan said the plan is to review what they have learned tonight, plan to make a vote and give the finding of fact for the vote at the next meeting. He stated to the public that this issue is tabled in order to review what has been presented tonight and what was presented at previous cases. Next month we will vote and present the findings of fact. The public is welcome but you cannot participate.

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

- B. Request for extension of condition of approval regarding ZBA case 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 explained why she was looking for an extension of the condition regarding no cash and carry sales after September 30, 2006. She asked if they could extend the date to December 31, 2006 as submitted in her letter for the file.

**Motion:** Frank Landford made a motion to accept the request presented. Bill Colbath seconded the motion. Vote: U/A



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### 4. NEW BUSINESS

- A. \*Z 06-01-A Karen Ciccotelli, (Applicant: The Brikadia Group, LLC), 125 Silver St., a/k/a Tax Map 10, Lot 168, zoned RM-10, requests a Variance from the terms of Article VI, Section 170-25.1.A, to establish a four family dwelling on a parcel with less open space than the average amount on developed lots within two-hundred (200) feet of the subject parcel, and 2) Article VI, Section 170-25.1.E, to establish a four family dwelling in a building with a side setback of approximately ten (10) feet, where a minimum of fifteen (15) feet is required.
- B. \*Z 06-01-B Karen Ciccotelli, (Applicant: The Brikadia Group, LLC), 125 Silver St., a/k/a Tax Map 10, Lot 168, zoned RM-10, requests a Special Exception as provided by the terms of Article VI, Section 170-25.1.A, to establish a four family dwelling.

Richard Callaghan announced that the application for the above cases has been withdrawn.

- C. \*Z 06-21 MGIA Development, LLC, High Ridge Dr., a/k/a Tax Map 28, Lot 26-A, zoned R-12/RM-20 requests a variance from the terms of Article V, Section 170-16, Footnote [3] to construct a single family dwelling on a lot within one-hundred (100) feet of frontage along a public right of way, where a minimum of one-hundred twenty-five (125) feet is required and approximately 19,000 square feet, where a minimum of 20,000 square feet is required.

Fenton Groen applicant proceeded to discuss his application as submitted for the file. He stated that he went before the Conservation Commission and a site review was conducted on the lot. They looked at the conditions and unanimously agreed that the High Ridge Drive part of the lot was a much better site for construction.

Bill Colbath confirmed with Tom Clark the background of this lot, which was originally subdivided with a condition that the house had to be on the front part of the lot in the R-12 zone. Tom Clark proceeded to explain the condition placed on the lot from the Planning Board.

Frank Landford confirmed with Steve Bird that the Conservation Commission made a favorable recommendation to the Planning Board. The subdivision was approved in 1992 and it is the Planning Boards decision to approve it.

Bill Colbath confirmed with Steve Bird that the ZBA is being asked to grant a variance to allow a single-family structure in the portion of the property that would make the lot nonconforming because of the different zones.

Discussion ensued regarding the different zones.

**Motion:** John Levasseur made the motion to accept. Frank Landford seconded the motion.

Vote: U/A



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Meeting Date: **Thursday, September 21, 2006**  
Meeting Time: **7:00pm**

Steve Bird stated that the Planning Department is in favor of this variance request. This lot meets the definition of a unique lot because it is split by a zone and because of the conservation districts steep slopes and the conditions that was placed on this lot when approved by the Planning Board in 1992.

Discussion ensued regarding the lot and why the condition was imposed on the lot from the Planning Board. This went to the Planning Board first but they do not have the authority to say they could build a house in the RM-20 zone because it would be a nonconforming lot.

### **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 4 to 1 (Colbath voted no). This conclusion is based on the following findings of fact: Unique lot, mixed zones, conservation district, slope of lot, changes in zoning all are special condition that create a hardship. 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 4 to 1 (Colbath voted no). This conclusion is based on the following findings of fact: The benefit sought is to build on less of a slope and construction in lower area would require additional permits.
2. Did the Applicant provide proof that demonstrates how granting the variance will result in substantial justice? Yes, Vote 4 to 1 (Colbath voted no). This conclusion is based on the following findings of fact: Allows for construction on an otherwise un-buildable lot.
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: The slope issue only restricts construction to a different area without further impacting density.
4. Did the Applicant provide proof that demonstrates the variance will not result in a diminution in value of surrounding properties? Yes, Vote U/A. This conclusion is based on the following findings of fact: High Ridge Drive has apartment, this will be a single family home that should not diminish the apartments.
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: This construction will benefit public interest because it will be a single family home with a driveway on High Ridge Drive instead of Oak Street.

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

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

- D. \* Z 06-22 Diane Renzi, 166 Littleworth Rd., a/k/a Tax Map F, Lot 44, zoned R-40 requests an Equitable Waiver of Dimensional Requirements from the terms of Article V, Section 170-16, to maintain a relocated single family dwelling within approximately twenty-three (23) feet from a side property line, where a minimum of twenty-five (25) is required.

Diane Renzi proceeded to explain her application and material as submitted in the file.



CITY OF DOVER

## DOVER ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting  
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Meeting Time: **7:00pm**

Discussion ensued regarding the fence on the property and the surveyed plan from Norway Plains Associates.

**Motion:** Bill Colbath made the motion to accept. Frank Landford seconded the motion.  
Vote: U/A

Public Hearing Open

Joanne Boyle 168 Littleworth Road stated that she is Diane's sister and neighbor and supports the request.

Public Hearing Closed

Discussion ensued regarding the location of the property line and the fence.

### **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 complete or after a vacant lot in violation had been transferred to a bona fide purchaser, and the violation (was) an outcome of 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 not) 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) 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 granted.

*Callaghan, Colbath, Landford, Denison, and Perry will be voting.*

- E. \* Z 06-23 Thomas & Ellen Backowies, 99-101 Broadway, a/k/a Tax Map 26, Lot 9, zoned B-3, requests a Special Exception under the terms of Article XII, Section 170.52.C (3), to convert an existing dwelling to accommodate three (3) units.

Tom Backowies proceeded to describe his plans for the property and read his application that was submitted for the file.

Discussion ensued regarding attaching the barn to the dwelling, fire separation and parking.

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



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Meeting Time: **7:00pm**

Public Hearing Open  
Nobody Spoke  
Public Hearing Closed

Steve Bird stated that the Planning Department supports this request as they feel that the criteria has been demonstrated that they are in compliance.

**Motion:** Bill Colbath made the motion to grant. Otis Perry seconded the motion. Vote: U/A

*Callaghan, Colbath, Landford, Denison, and Perry will be voting.*

- F. \*Z 06-24 Jay W. Palmer, Palmer Dr., & Littleworth Rd., a/k/a Tax Map F, Lot 16-F, zoned R-40, requests a Variance from the terms of Article II, Section 170-6, definition of lot to permit a lot line adjustment that would result in a parcel of land being occupied by two (2) principal buildings.

Attorney Schulte represented the applicant and proceeded to describe the plans for the property in which to adjust the property line between lots 16 and 16-F. The variance requested is to allow two residences on one lot. He stated that there are other types of variances that may have been granted but they all would have led to the same result, which is the same number of residences, the same density, spacing, and impact on the neighborhood. If you would like to put in a requirement that there would be no further subdivision of that four acre lot that would be a condition that would be acceptable to the applicant. He stated that he could have asked for a variance to allow an open space subdivision without having a yield plan but it really would not have changed anything. He stated that this Board is very strict about creating a lot that does not have frontage and that is another alternative and if the Board would prefer a variance to create a separate lot they would come back with that proposal.

Bill Colbath confirmed where the wetlands and easement was located on this property.

Richard Callaghan stated that personally he is more in favor of seeing this as a separate lot with one house on it then seeing two principal buildings on one lot. It would set a precedent for argument down the road. Which is the worst of the two nonconformities?

Steve Bird stated that they do not have wetland information as Mr. Colbath indicated and it is a four-acre lot. Between the easement with the United States Government and the wetlands, you might be lucky to have two acres of buildable area on the lot.

Attorney Schulte stated that two acres is more than they would need.

Otis Perry confirmed with Steve Bird why they do not allow two single-family dwellings one lot. He stated that the applicant could convert the existing dwelling to a two family condominium.

Steve Bird stated that he is concerned with the septic system and if it could handle two dwelling units rather than one. No information has been submitted on the septic system or if it would need to be upgraded.



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Richard Callaghan asked if they had enough information to accept this case.

**Motion:** Otis Perry made the motion to accept. Frank Landford seconded the motion. Vote: 3 to 2 (Colbath & Denison opposed)

Public Hearing Open

Jay Palmer 5 Palmer Drive stated that he has always lived in Dover and has inherited the property and would like to build on the property.

Peter Stoykovich 35 Westwood Circle stated that he is concerned with the amount of wetlands located in this area. He stated that he is not opposed to the single-family dwelling located here, assuming that they are away from the wetlands and the government easement. He would be more opposed to an open space subdivision with three or four houses located on the property.

Bruce Berrie 169 Littleworth Road stated that he is in favor of this request. He has known the applicant for a long time and would like to help him renovate the current dwelling and build a new home on this property for himself.

Public Hearing Closed

Steve Bird stated that the Planning Department is not in favor of this variance request primarily because of two houses on one lot. This is a single-family neighborhood. The fact that both lots are nonconforming to start with is a concern. How would they handle septic systems and making sure they are adequate and or upgraded? No wetland information was submitted and it is hard to tell if even the front lot would conform to minimum lot sizes excluding wetlands. You would have to get a State Subdivision Permit and is concerned how they would look at two houses on one lot.

Bill Colbath said he does not want to see two houses on the same lot and stated that he would like to see wetland information. He opposes to the configuration shown tonight. If you can prove it makes sense to allow this other lot to being serviced off a private drive it would make more sense to have two lots with a right of way.

Otis Perry stated that he does not have a problem with this being converted to a two-family dwelling but from a point of view that may happen in the future, it would make more sense to have that back lot a separate lot off Palmer Drive.

Frank Landford stated that he agrees and would rather see it as a separate lot, and would like to see more information on the wetlands.

Masi Denison agreed with Mr. Landfords statement.

Richard Callaghan stated that he does not like the idea of two houses on one lot and would prefer to see this as one lot.



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 Meeting Time: **7:00pm**

Attorney Schulte stated that he would like to withdraw the request and submit a different variance application with wetland information along with it.

### 5. OTHER BOARD BUSINESS

Richard Callaghan encouraged the Board members to attend the 2006 Fall Planning & Zoning Conference that is being held at the Waterville Valley Conference Center.

### 6. ADJOURN

**Motion:** Otis Perry made the motion to adjourn at 10:46 p.m. Frank Landford seconded the motion.  
Vote: U/A

#### List of Members

#### Term Expires

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	04-03-08
Otis Perry-alternate member	02-08-09