



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, January 18, 2007**
Meeting Time: **7:00 pm**

1. ATTENDANCE

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

2. APPROVAL OF PRIOR MINUTES OF NOVEMBER 16, 2006 & DECEMBER 21, 2006

The minutes of November 16, 2006 were discussed.

Motion: Bill Colbath motioned to approve the November minutes. Sam Reid seconded. Vote: U/A

Richard Callaghan suggested that the minutes of December 21, 2006 be tabled to discuss a meeting that occurred with Attorney Krans regarding the minutes from last month's meeting.

Motion: Colbath motioned to table the December minutes. Levasseur seconded. Vote: U/A

Callaghan asked Attorney Schulte if he was comfortable with Reid voting in Landford's absence. Attorney Schulte said yes.

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

3. OLD BUSINESS

Request for motion for rehearing regarding case Z 05-35 Neal A. Hubbard, Earl St., a/k/a Tax Map 40, Lot 12, zoned Office and R-12 requests a Variance from the terms of Article V, Section 170-16, to subdivide a parcel into 2 lots, one with frontage of seventy-five (75) feet along a public right of way, where a minimum of one-hundred (100) feet is required.

Callaghan asked if anyone had comments or suggestions regarding the motion.

Motion: Otis Perry motioned to deny the rehearing. Levasseur seconded.

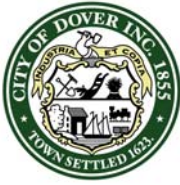
Reid stated that he did not vote on the original request but Attorney Schulte has raised some issues that concern "use." and the Board should grant the rehearing to address that issue.

Callaghan stated that one of the issues concerned the vote. He believes the Board acted correctly.

Landford arrived at 7:08.

Attorney Schulte asked if Landford could vote on this case.

Callaghan informed Landford of what took place prior to him arriving and Landford said he did not see any changes in the motion for rehearing so he would vote to deny the request.



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Motion was on the table to deny the request for rehearing. Vote: 4 to 1 (Colbath opposed)

Callaghan announced the members of the Board and informed the general public how a case of Special Exception would be presented.

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

4. NEW BUSINESS

- A. Z 06-32 Darlene Colwell Ellis, 153 Silver St., a/k/a Tax Map 11, Lot 7, zoned RM-10, requests a Special Exception under the terms of Article VI, Section 170-25.1, and Article XII, Section 170-52.C (3) , to establish a four-family dwelling.

Nick Skaltsis represented the applicant and discussed the intent of the application. Lot area coverage was addressed along with the letter submitted from the City Engineering Department stating that there are essential utilities for the expanded use as submitted with the application. The plan is to demolish the existing carriage house and construct a 25 'x 40' two-story, two-unit structure which would have 2 garage under spaces. Eight parking spaces will be available on this property. Drainage problems exist as the front and back of the lot are the highest points and water collects in the middle of this bowl shaped lot. Plans to address, with the abutters, the drainage problems were discussed.

Denison confirmed that the additional changes would be adding four spaces. She questioned if the drainage issue would have any effect where the buildings would be located. She asked if there is adequate sight distance from this driveway.

Skaltsis said yes and the rear and the front parking lot would permit people to drive in, back up, and drive out of this lot.

Clark confirmed that this would not go to TRC, but would need a driveway permit and the Engineering Technician would go out and do an inspection and would work with the applicant or owner regarding the drainage issue. The parking lot configuration was discussed.

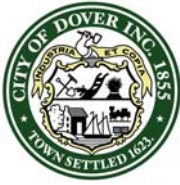
Skaltsis said that the barn location will move west about 16 to 18 feet and that would permit backing up and staying a fair distance from abutters.

Snow removal was discussed.

Motion: Colbath motioned to accept. Landford seconded. Vote: U/A

Public Hearing Open

Attorney Phil Pettis representing Barbara Brock of 157 Silver Street spoke against the application. They believe the applicant does not meet the code requirements, as this addition of two more units would create traffic issues and safety concerns.



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Larry Tatro, 2 Arch Street, stated that he is against this request, and described the previously granted Special Exception. He stated that this is a congested area and does not believe that all three requirements have been met.

Matt Mayberry, 155 Silver Street, spoke in favor of the Special Exception. The proposed plan would only use 24% of the lot. The applicant was working with the abutters regarding the drainage issue and has a plan to improve the situation.

Will Boc, 8 Arch Street, asked if the Board approves the proposal can it provide conditions to address the drainage issue and screening issue.

Patricia Tatro 2 Arch Street asked that the Board consider the long-term impact of granting the Special Exception.

Public Hearing Closed

Steve Bird stated that the Planning Department has reviewed the calculations regarding open space and they are accurate, and that the criteria for Special Exception have been met.

Denison stated that her biggest concern is traffic and is concerned with adding more cars to an already congested area. She did not realize there was a drainage issue.

Clark clarified to the members that the third unit was granted in 2003. The building permit was not issued within the one year allowed time therefore, it has expired. This request is adding two units to a two unit building.

Levasseur stated that fixing the drainage problem would help the neighborhood.

Landford stated that adding a couple cars is a small addition and he did not realize they had a drainage problem.

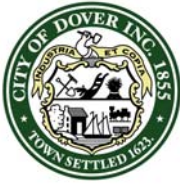
Colbath had concerns with the parking.

Clark informed the Board that he reviewed the parking as far as quantity and if this is granted they would need to go to Engineering and have them make sure it physically works. There is a provision in the ordinance and they cannot back out of the driveway.

Callaghan expressed concern with the drainage issue and screening with the concerned abutters.

Skaltsis proceeded to discuss the drainage issue and what the solution may be. As far as screening they are suggesting and negotiating a fence with Mr. Boc. They are open to do boundary screening.

Callaghan asked if this has to go to TRC for the drainage and screening issues.



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Bird said it does not have the criteria to go to TRC but you could make that recommendation.

Callaghan informed the Board that the drainage issue is very important and if they are going to act in the public interest, they just cannot let this water pour in a different yard.

Denison said she agrees but feels that the TRC is a better forum to discuss that.

Callaghan said he does not know if TRC could correct the problem. If TRC decides they have adequate screening they could work with the applicant to come up with the best solution for drainage as well.

Colbath said that he believes the criteria have been met.

Bird informed the Board that the 22-foot back up space that is shown is the standard number. TRC would confirm that. He felt that there is an adequate turning radius to get in and out of the garage.

Landford made the motion to approve with a condition that the drainage, parking, and screening be addressed and get neighborhood approval. He does not believe they need a condition of TRC.

There was discussion regarding TRC and neighborhood approvals of the proposal.

Motion: Landford's motion was amended to approve the Special Exception with the condition that TRC approves parking, drainage and screening. Colbath seconded the motion. Vote: U/A

Colbath stated that he would be stepping down on the next case.

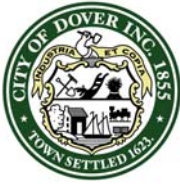
Callaghan, Reid, Perry, Landford, and Levasseur will be voting.

Rick Callaghan explained to the general public how the variance requests are represented to the ZBA.

- B. Z 07-01 City of Dover (Applicant: Mark Investments, Inc.), Central & Glenwood Ave., a/k/a Tax Map 38, Lots 31, 33 & 33-A, zoned B-3 requests a Variance from the terms of Article IX, Section 170-32.D.(1) and (10) to locate a freestanding sign off site and in a public right of way.

Callaghan announced that his daughter works at this firm as a legal assistant to Attorney FX Bruton. If anybody in the room has a concern with that situation, he would be happy to listen to the concern and would step down if needed. Nobody voiced a concern.

Attorney Bill Tanguay represented the applicants and present is Jim Bernadino with Bohler Engineering and Carl McKinster, the architect with Edwards and Kelsey. The plan shows the large piece of property that is City owned and contains all utilities. Landscaping will not block the visibility to the store and it will be done in a way that will make sense with walkways and park benches. The plan shows the proposed pylon sign as submitted in the application. The applicant would like to put the sign on the City owned property closer to Central Avenue. This alternate location is in keeping with the other signs along



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Central Avenue. The logo for an on-site location is 109.84 square feet and the height is 30 feet. The logo on the alternate location is 45 square feet and the height is 17 feet. The reader board on each sign is the same, 40.03 square feet. Because the alternate location is more visible from Central Avenue, a much smaller sign accomplishes the necessary result. They believe they meet all of the criteria for the variance as submitted in the application.

Reid asked if there were other alternatives considered besides a variance such as a license agreement or a lease.

Attorney Tanguay said when they went before the Planning Board they did not realize that they would need a variance as well. It is the fact that the sign is not on the same property that is being promoted. The Planning Board recommended this location change and recommended that the applicant go to the City Council for either a license or an easement and they needed both for the fact that the sign is going to be located out there and because they are taking over the responsibility for maintaining the area.

Reid verified that if the variance is granted the City Council would have to give its approval either for a license or for an easement but Walgreens cannot get there until its receives the variance first.

Perry asked about the reader board and if the sign could be reduced.

Carl McKinster said that the sign with the reader board is a standard pylon sign with Walgreens. It is a packaged project and does not come in many varying sizes.

Jim Bernadino discussed the size of the sign. It is more of a symbol rather than a message that is trying to be relayed to potential customers

The pending flashing sign ordinance was discussed as was the difference between electronic and manual reader boards. It was confirmed that this sign would have to adhere to the sign ordinance.

Reid said in his opinion to drive down Central Avenue and see this sign in the middle of a park with a reader board is not attractive.

Attorney Tanguay said the reader board is not a huge board it is 40.03 square feet and that the sign will comply with whatever zoning requirements are in place. If the ordinance says no electronic reader boards, they will not have one.

Reader boards were discussed.

Motion: Perry motioned to accept the case. Seconded by Reid. Vote: U/A

The basis and the jurisdiction of the variance were discussed.

Public Hearing Open



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No comments

Public Hearing Closed

Bird stated that the Planning Department recommends the variance be granted. This location of the sign was discussed extensively as it went through the approval process. There was quite a bit of negotiation that went on during the Walgreens proposal and the Planning Board felt a smaller sign in this location was preferable to the larger sign on the property and in that respect the Planning Board was supporting the alternative location. This is a unique circumstance giving the width of the right of way. In most cases, the right of way for a city street is not even close to this one and the other example that they could find was the Northeast Credit Union that was granted quite a few years ago.

Reid confirmed with Bird that the Planning Board has seen the sign that was submitted.

Levasseur commented that he hates to see reader boards all along Central Avenue. The smaller sign is better and the City would benefit from having some of their green space maintained for free. The City wins on this one.

Discussion ensued regarding the sign.

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.

b. 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: The unique ownership of the property where the sign is and the distance of the owners' property from the street.

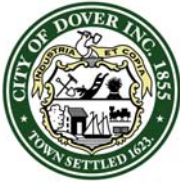
ii. Did the Applicant demonstrate that no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction of the property? Yes, Vote U/A. This conclusion is based on the following findings of fact: This is supported by the planning department and the development of the property.

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 fact: The City owns the property otherwise, the sign would be allowed.

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 for similar signage as to other businesses in the area.

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 ordinance considers safety and their proposed location after a safety store identification. to the public..

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: Surrounding Properties are all commercial and have similar signage.



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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: The open green space will be maintained at no cost to the city.

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

1. The applicant receives approval from the City Council.

Motion: Landford made the motion to approve with the condition. Perry seconded. Vote: U/A

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

- C. Z 07-02 Kevin & Lisa Turgeon, 55 Back River Rd., a/k/a Tax Map I, Lot 60, zoned 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 represented the applicant. The existing residence was damaged by fire and is located less than ten feet from the side property line. They are proposing to demolish the building and build a duplex. He submitted three pages of photographs that showed the abutting properties. The zoning requirements in this zone were discussed. This lot is 30,000 square feet with 147 feet of frontage. They are proposing to increase the ordinance setback from 15 feet to 25 feet and to increase it from 30 feet to 60 feet and would accept this plan and the building envelope as a condition if approved. As part of the application a tax map shows the building envelope proposed for the new dwelling. The owners could put a duplex on the property at the present location but it would continue an existing violation. They are asking for a variance to allow the construction of a duplex on this site in a more appropriate location so they would be granting a variance that would be eliminating an existing violation from the ordinance

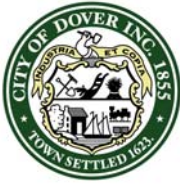
Landford confirmed where the proposed building site would be.

Colbath asked for depiction of the new location and what kind of structure will be built.

Attorney Schulte said that as an attachment to the application the tax map shows the building envelope and this location will exceed most of the setback requirements. The new structure will be consistent with the other homes in the area which is a mixture. He also said there is a vested right for a duplex on the property and that a condition of approval that they could not build any closer than 25 feet to that side line.

Landford said the intent is to move the building away from the closest home and move it closer to the driveway shown. There is ample room here for whatever they want to do.

Levasseur confirmed with Attorney Schulte that the variance is intended to guarantee space relief to the neighbor without adversely affecting anybody else. It does not have any impact on the tenants of



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the apartment complex because of the trees and the road and would not affect the house out back. It gives them a chance to make two new units that would be more attractive and functional.

The board discussed the structure and if there was enough information to accept the case.

Motion: Landford motioned to accept. Seconded by Denison. Vote: U/A

Public Hearing Open

Paul Young, 57 Back River Road, is in favor of relocating the building and gave reasons.

Chuck Cheney representing Don Cheney 53 Back River Road spoke against the variance request. He does not see a hardship. He is in favor of the existing home being converted to a duplex.

Public Hearing Closed

Bird stated that the Planning Department supports this variance request. The City rezoned this area from multi to single family. The lot size meets the minimum lot size requirement. The nonconformity in terms of location of the building would be eliminated under this proposal. It is a mixed-use neighborhood. They could take the existing building which is in fairly rough condition and they could convert that in to a duplex The departments view is that the alternative of building a new building that will conform to the building codes and exceeds the building setbacks. This is a preferable alternative.

Callaghan questioned the building and if Clark felt it had to be destroyed.

Clark said that he felt it was salvageable and described the condition.

The spirit and intent of the ordinance was discussed.

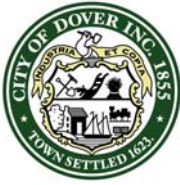
Levasseur said he thinks the lot is of ample size to place a duplex on it. It would be conforming in that area and it would be a new building up to code. He likes the idea.

Denison asked about the building envelope and what the dimension is for the back setback. She asked if the Board could put a dimension in the conditions that the Cheney's might feel a little comforted about as far as how far back this building will go.

Attorney Schulte said yes. He could scale it off the plan and the Board could adopt this sketch and say that it cannot exceed what is shown on that sketch.

The structure, building envelope, height, and neighborhood were discussed.

Callaghan is concerned with not knowing what it will look like. He would rather see the building moved. One abutter loves it because it would move further away from him and the other abutter does not like it because it would be closer to him. The Board has the ability to make sure it is consistent



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with the neighborhood. He stated that he is not convinced that they have enough proof that it is in the best interest of the public. In his opinion, hardship is there but some of the other criteria are not.

Levasseur said many of the buildings in the area are large. A duplex would not stand out in that area.

Denison stated that she is undecided. This would be moving it to a conforming location. She would be okay with adding the condition with limiting the total square footage of the proposed building.

Colbath stated that he is opposed to this request as far as spirit and intent and benefit to the public and private rights. He understands the hardship that is involved, but still does not buy the argument that this is the intent of the ordinance.

Similar single family to duplex conversions was discussed.

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.

b. 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: 1890's construction, location of building on the lot.
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: The variance would not markedly increase population density.

iii. Did the applicant demonstrate that the variance would not injure the public or private rights of others? Yes, Vote: 3 to 2 (Colbath & Denison voted no) This conclusion is based on the following findings of fact: Proposed location would allow more space from existing neighbor on southerly side and the building would be built in the allowed envelope.

2. Did the applicant provide proof that demonstrates how granting the variance will result in substantial justice? Yes, Vote: 3 to 2 (Colbath & Callaghan voted no) This conclusion is based on the following findings of fact: A new building in the building envelope will conform to the required setbacks.

3. Did the applicant provide proof that demonstrates how a variance would be consistent with the spirit and intent of the ordinance? Yes, Vote: 3 to 2 (Colbath & Callaghan voted no) This conclusion is based on the following findings of fact: The 1964 change to allow for a duplex goes with the lot and eliminates a nonconforming structure.

4. Did the applicant provide proof that demonstrates the variance will not result in a diminution in value of surrounding properties? No Vote: 3 to 2 (Levasseur & Landford voted yes)

This conclusion is based on the following findings of fact: There is not enough information on the proposed structure to know what impact it would have on the surrounding properties.

5. Did the applicant provide proof that demonstrates the variance would not be contrary to the public interest? Yes Vote: 4 to 1 (Denison voted no). This conclusion is based on the following findings of fact: Moving the structure to a conforming location is in the public's interest.

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



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Callaghan confirmed with Attorney Schulte that he is aware of his appeal rights. He explained to the public that the applicant has the right to appeal and it would be a motion for rehearing and if granted the abutters would be notified.

5. OTHER BOARD BUSINESS

A. Annual Election of Chairperson and Vice Chairperson will be held.

Colbath nominated Callaghan to continue as Chairperson, Denison seconded. Vote: U/A
 Denison nominated Colbath to continue as Vice Chairperson. Levasseur seconded the motion.
 Vote: U/A.

The Board decided that the approval of the December minutes would remain tabled until the next meeting.

B. Technical Training

Executive Session

6. ADJOURN

Motion: Otis Perry made the motion to adjourn @ 10:15 p.m. Colbath seconded the motion. Vote: U/A

<u>List of Members</u>	<u>Term Expires</u>
Richard Callaghan-regular member	04-13-09
William Colbath-regular member	10-23-09
Frank Landford-regular member	04-10-08
John Levasseur-regular member	11-12-09
Masi Denison-alternate member	09-08-07
Sam Reid-alternate member	04-03-08
Otis Perry-alternate member	02-08-09