



CITY OF DOVER

DOVER ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Auditorium - 288 Central Avenue, Dover, NH 03820
Meeting Date: **Thursday, February 15, 2007**
Meeting Time: **7:00 pm**

1. ATTENDANCE

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

2. APPROVAL OF PRIOR MINUTES OF DECEMBER 21, 2006 AND JANUARY 18, 2007

Richard Callaghan stated that based on handouts that he has received he suggested that the minutes be tabled.

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

Callaghan informed the Board that he has received an Order of Notice regarding the Neale Anthony Hubbard case Z 05-35. He asked that copies be distributed to the members.

A letter from John Levasseur was submitted stating that he is resigning due to family obligations.

Callaghan stated that he was presented with some information from Chuck Cheney and the members received copies of that information. He reminded the Board that the public session was closed.

3. OLD BUSINESS

- A. Request for motion of rehearing regarding 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.

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

Denison said that although she disagrees with paragraph 9 and 10 of the motion she supports the rehearing as a significant amount of new information has been presented.

Reid stated that he votes to grant the rehearing. He prefers to make the right decision with all the information presented.

Levasseur, Colbath, and Callaghan agreed as new evidence was provided.

Motion: Sam Reid made the motion to grant the rehearing. Masi Denison seconded. Vote: U/A

Callaghan announced the members of the Board and informed the general public how the cases should be represented to the ZBA.

4. NEW BUSINESS

- A. Z 07-03 John Bressoud, 6 Amy Ln., a/k/a Tax Map E, Lot 72 F-2, zoned R-12, requests an Equitable Waiver of Dimensional Requirements to maintain an attached garage within



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approximately fourteen (14) feet from a side property line, where a minimum of fifteen (15) feet is required.

Warren Groen with Groen Builders represented the applicant and he explained to the Board that the process began with a mortgage plot plan that showed the house to be parallel to the lot line. Based on that plan, they measured and decided to shrink the garage nine inches so that they would be several inches inside the required setback. They poured the footings and foundation wall and notified the surveyor to provide the footing certification for the project. It was at that time that they discovered the house was angled in another direction. They started searching for ways to remedy the situation and the neighbor said that he would be in favor of the equitable waiver request.

Parker asked if the applicant considered a lot line adjustment and confirmed that the approximate cost to demolish the footings and foundation wall is \$4,500.00 to \$5,000.00.

Groen said the neighbor was not interested in a lot line adjustment and read the letter submitted by the abutter located at 4 Amy Lane in favor of the equitable waiver request. (Copy in file)

Levasseur confirmed with Groen that it is a two-car garage and the applicant wanted the additional room for a snow blower and tool storage.

Callaghan asked if they feel they have enough information to accept the application.

Motion: Colbath made the motion to accept. Levasseur seconded. Vote: U/A

Public Hearing Open – Nobody Spoke – Public Hearing Closed

Parker said the Planning Department opposes this request. The project is not substantially complete; you still have time to make a change. The easier route is to do a lot line adjustment with the abutter. The department feels that you do not have enough proof that all alternatives have been attempted.

Colbath also had concerns with the substantial completion part of the equitable waiver request.

The overall cost of the project and the definition of “substantial completion” was discussed.

Reid explained to Groen that the problem with the Board is that the law says that it requires “substantial completion” of the structure with this request.

Groen said he received advice to go ahead and build the garage as it is always easier to ask for forgiveness rather than to ask permission, but the company does not operate that way. This is an honest mistake.

Callaghan confirmed with Clark that it does appear to be an honest mistake and the error was found at the requirement of a footing certification. The contractor is asking for an equitable waiver for a foundation and that is substantially complete, therefore it is appropriate for this particular situation.



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Colbath said that Groen could have continued building but he did not. He does not feel that he should be penalized and a variance may have been a better avenue for the applicant.

Clark clarified to the members that he was the one that suggested the equitable waiver request as he felt a variance was not suitable for this case. He recalled that in this particular case, the office did not have a foundation certification for the house; therefore, he informed the applicant that a foundation certification had to be submitted prior to framing. Burden of this compliance is clearly on the applicant and or property owner.

The Board continued to discuss what is substantially complete.

Levasseur reminded the Board that the neighbor was not interested in the lot line adjustment.

Callaghan said he is having trouble with the substantially completed issue. If you look at it as the entire project, it is not even near being completed. Determining that piece of the criteria is what is troubling.

Denison said that she is torn. She appreciates that the applicant is coming forward at this point but the wording of the ordinance clearly states that the structure must be substantially completed. She expressed concern that the ordinance itself causes a "perverse incentive" in that landowners are discouraged from trying to do the right thing."

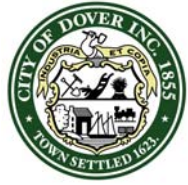
FOUR CRITERIA FOR EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENT:

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 not discovered after the structure was substantially completed or after a vacant lot in violation had been transferred to a bona fide purchaser, and the violation was an outcome of ignorance of the law or 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 denied.

- B. Z 07-04 James Byrne III, 192 County Farm Rd., a/k/a Tax Map C, Lot 3-D, zoned R-40, requests a Variance from the terms of Article IV, Section 170-12, Table I, Part A, to construct an addition onto a single-family dwelling for the purpose of establishing a two-family dwelling.

James Byrne is requesting to construct a three-car garage with an in-law suite above for his parents. He submitted pictures showing the proposed project and photos of a house that he constructed with the same design. Included was a letter, which Dr. Michael Hayter describes the medical condition of his mother. He stated that his wife is at home during the day and if needed she would be able to help with assisting his mother as needed. In 1998 and 1999, the Zoning Board granted a variance for this type of situation.



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Parker asked why they would want to have a second floor apartment if the mother has an issue with walking and moving? Did you consider putting an addition on the first floor and share the kitchen?

Byrne said his mother would like to continue independence without interruption. In planning for the layout of the house, that area was given a lot of thought. Enough room for a lift chair or a small elevator is considered.

Colbath cited the other cases and said that they were approved with conditions that are limited in time.

Byrne said that they are fully prepared to have a deed restriction stating that the whole kitchen would be removed if they were to sell the house or if his parents had to go into a care facility. If possible, he would like to use that unit for his wife's parents if needed. It will be family owned living space.

Parker informed the applicant that they would be responsible for the school impact fee with adding an additional dwelling unit.

The school impact fee and water/sewer investment fees were discussed.

Denison asked what the definition of a kitchen is.

Clark said they focus on the 220 outlet for a range and if a stove, sink, refrigerator and cabinets are installed it obviously is considered a kitchen.

The address of the proposed unit was discussed.

Motion: Colbath made the motion to accept. Levasseur seconded. Vote: U/A

Denison read the language of a condition placed on the other cases similar to this request.

Callaghan was not comfortable with using a condition that would be difficult to enforce. He suggested that the applicant come back and present language with the proposed insertion for the deed. It should provide information that is related to the property and will protect future owners. The burden is on the applicant.

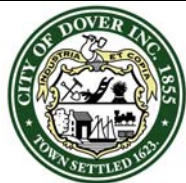
Colbath said the applicant should come up with the deed restriction; he suggested that the City Attorney review it and pass it on to the Board for a vote.

Byrne requested to table the application in order to address the deed restriction and will present it at the next meeting.

Motion: Reid made the motion to table. Colbath seconded. Vote: U/A

No public hearing was held prior to motion to table.

5. OTHER BOARD BUSINESS



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Reid being appointed a regular member was discussed. Denison made the motion to appoint Reid as a regular member. Colbath seconded. Vote 4 to 1 - request to be forwarded to Council for approval.

The minutes and written amendments for December 21, 2006 meeting were discussed. Motion: Colbath made the motion to insert amendments, create another draft, and forward for final approval at the next meeting. Denison seconded. Vote: U/A

The minutes of January 15, 2007 were discussed with an amendment submitted by Denison. Motion: Colbath made the motion to approve the minutes with amendments. Reid seconded. Vote: U/A

A. Administrative Workshop

Callaghan discussed the voting process and the possibility of changing the form. He suggested voting on criteria first and listing the findings of fact later. Denison agreed and suggested that a recess may be helpful before the vote in order for each member to gather his own thoughts about the findings of fact. Levasseur said they should have a standard language similar to law enforcement. Colbath said a format would be helpful. Discussions proceeded regarding the application process and how the Board votes. Denison mentioned that the presenter at their training workshop suggested a different process to record the vote and she agreed to research the process and inform the Board at the next meeting.

Conditions were discussed and Callaghan felt that the condition should be placed before the findings of fact. Accepting an application was discussed. Clark said when you receive your packet and if you feel information is missing you do not have to accept the case. You could have a motion at the beginning and acknowledge receipt of the applications. If you feel information is missing, deny it or table it at that time. The motion to accept is really acknowledge receipt of the application.

Rules of Procedure was discussed and Reid volunteered to do a preliminary view and present a package of what appears to need updating.

Callaghan requested an executive session. Denison will take the minutes of the session and they will be sealed.

Levasseur left the meeting @ 9:53 p.m.

6. ADJOURN

Motion: Colbath made the motion to adjourn at 9:55 p.m. Reid seconded. 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-regular member	01-24-10
Sam Reid-alternate member	04-03-08
Otis Perry-alternate member	02-08-09