



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, March 15, 2007**
Meeting Time: **7:00 pm**

1. ATTENDANCE

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

2. APPROVAL OF MINUTES

A. MINUTES OF THE MEETING OF DECEMBER 21, 2006

Motion: Masi Denison made the motion to accept. Bill Colbath seconded. Vote: U/A
(Sam Reid abstained)

B. MINUTES OF THE MEETING OF FEBRUARY 15, 2007

The minutes were discussed. The minutes will say that the open session was adjourned at 9:55 p.m. The executive session was adjourned at 10:50 p.m.

Motion: Reid made the motion to accept with amendments submitted by Denison. Colbath seconded.
Vote: U/A

Callaghan explained to the general public that a full board was not present and if interested the applicants would have the option to be heard tonight or postpone to next month. The applicant agreed to continue.

3. OLD BUSINESS

- A. 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.

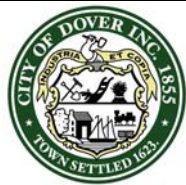
Colbath made the motion to remove from the table. Denison seconded. Vote: U/A

Byrne stated that he drafted a deed with the recommended language suggested by the Board.

Callaghan confirmed with Clark that Attorney Krans reviewed the deed and feels that the information submitted was sufficient.

Reid expressed his concern and stated that he was struggling with this request. The Planning Board does not allow "in-law" apartments and that restriction was put forth for a reason.

Clark clarified and said that the issue is with duplexes, they are either considered one or two family homes. If they allowed in-law apartments, they would eventually turn into duplexes and that is the problem. The Planning Board felt that this would be a way to control that problem.



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Bird added that zoning does allow for conversions providing the unit existed on or before May 27, 1964.

Reid stated that he has a couple of concerns. In reference to RSA 674:33.V it says that the variance shall survive only as long as the particular person has a continuing need to use the premises. Is this a recognizable physical disability and is this a reasonable accommodation?

Denison said she is concerned as well. She informed Byrne that there are some things legally that this Board needs to follow and that is what a few of the members are struggling with at this moment.

Colbath stated that he understands the concerns. In most cases, people create a living space for the parents with a bedroom and bathroom and join the kitchen area. Allowing in-law apartments is a problem when that person no longer lives there it becomes a duplex.

Reid said based on the letter submitted they could grant a variance based on the provision of that statute. His mother does have a disability. In his view, the kitchen would have to come out if no recognized physical disability were present.

Colbath agreed. He stated that he is concerned that the deed does not reflect their concerns.

Callaghan added that this deed restriction looks like it stays with the owners and their blood relatives. This could go on forever. The Boards intent should be that if a person has a physical ailment and when that person went so would the variance. This deed does not do that.

Byrne said he believes he did, although he would prefer to offer the same space to his in-laws if needed.

Callaghan said in his opinion you would have to come back to the Zoning Board.

Clark agreed and by putting in the term "blood relative" it appears it would go on forever.

Callaghan stated that the specific individual should be listed in the deed. He confirmed that the person in question is Jean Byrne.

Discussion ensued regarding the deed.

Reid said he would feel better if the deed specifically referred to the mother. In that case, he would support the variance.

Public Hearing Open – Nobody Spoke – Public Hearing Closed

Bird said that the Planning Department has consistently been against in-law apartments for the same reason that this Board is struggling with and that is, to define when that apartment needs to go away. That is the reason why the zoning ordinance does not use the term "in-law apartment" because it is almost impossible to enforce.



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RSA 674:33.V was discussed.

Callaghan suggested putting together a couple of key points that they can pass back to Attorney Krans. He confirmed with Clark that it would be on the agenda under old business as a review of the deed restriction for approval.

Reid suggested granting it with the condition that the deed be revised to be specifically to Jean Byrne. He also mentioned that they could mimic RSA 674:33.V. Following a brief discussion, it was agreed upon that the variance should survive only so long as Jean Byrne has a continuing need to use the premises.

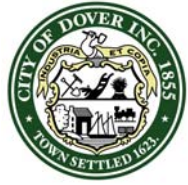
Colbath added the condition that Attorney Krans review it with an idea of what the Board is asking him to accomplish. It should come back to the Board to accept the change.

FIVE CRITERIA FOR USE VARIANCE:

- 1. 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: RSA 674:33.V allows the ZBA to grant this variance.
- 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: RSA 674:33.V allows the ZBA to grant this variance.
- 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: Providing the deed restriction protects future use.
- 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 applicant to provide care and quality of life to James mother, Jean Byrne.
- 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: Deed restriction prevents the building from being converted to a duplex.
- 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: Applicant will keep architectural theme consistent with the area and the property is isolated by great distances to other structures.
- 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 structure will continue to look like a single family home and the "in-law" apartment will not increase vehicular traffic.

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

1. The variance for the additional (second) kitchen shall survive only as long as Jean Byrne (James Byrne III mother) has a continuing need to use the premises, and the ownership of the property is held by James Byrne III or Sonya Byrne.



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2. Revised deed restriction comes back to the ZBA for final approval after review by the City Attorney.

Motion: Sam Reid made the motion to approve the condition. Denison seconded. Vote: U/A

Callaghan explained to the general public how a special exception is reviewed. He confirmed with the applicant that they agree to continue with the request with four voting members.

4. NEW BUSINESS

- A. Z 07-05 Paolini Brothers Development LLC, 54 Dover Point Rd., a/k/a Tax Map K, Lot 20, zoned B-3, requests a Special Exception under the terms of Article VI, Section 170-19 and Article XII, Section 170-52.C (3) to construct a multi-family project.

Attorney Chris Boldt represented the applicant as requested by Attorney Schulte. This is a mixed-use project with 12 multi-family condominiums at the rear of the property. They are similar to the units located on 48 Dover Point Road constructed by the applicants. He proceeded to read through the criteria as submitted for the file. The units are intended to be approximately 1300 square feet. This will not add traffic flow that is measurable and will not be a massive load for the existing water/sewer system. He proceeded to explain where the units would be located on the property. If approved this project would go to TRC and the Planning Board. The driveway is placed in accordance with City Engineers request. This is a benefit to the community as a whole and they believe the criteria has been met.

Denison confirmed with the applicant that the garage would be used for storage.

Callaghan asked if a letter has been submitted by the City Engineer regarding the utilities.

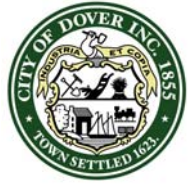
Attorney Boldt said not in hand.

Colbath and Denison agreed that this is a significant decision for the Board to make and feels that the letter from the Engineering Department should have been submitted.

Callaghan expressed concern with regards to the limitation of traffic flow and impact on water and sewer in this area.

Bird reminded the Board that the Planning Board is in the process of updating the Master Plan and the future land use chapter is one of the items that is undergoing a revision and they are looking at impacts on growth in different parts of the community and this is one area that they will specifically be looking at. This is not uncontrolled or unregulated growth.

Callaghan stated that his personal opinion is that they have to vote on three criteria and not enough information has been submitted.



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Colbath said as far as accepting the application his vote will be no. The letter regarding utilities should have been included with the application.

Reid agreed and said he is more concerned about the engineering aspect of the criteria.

Callaghan said that the Board should have the documentation in front of them. He needs to see the evidence in order to accept the application.

Attorney Boldt requested that this be tabled to next month in order to submit additional information.

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

Recess at 8:26 resumed at 8:31

5. OTHER BOARD BUSINESS

Linda Merullo stated that she is an alternate on the Planning Board and felt that it was important to inform the Board that the resolution for the flashing sign ordinance passed at the Council meeting. She proceeded to explain the electronic signs and expressed concern with the various signs throughout the City.

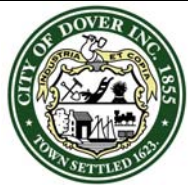
Denison clarified that the new ordinance is that no electronic signs are allowed and the existing electronic boards are allowed but cannot change within the ten-minute rule. She informed Merullo that this Board provides relief of an ordinance by an applicant; they do not enforce the ordinance. She thanked Merullo for all of her helpful information.

Merullo questioned A-frame signs and where they were permitted.

Clark explained the sign ordinance regarding A-frame signs. He stated that it does become an enforcement issue, and we do address it as time permits. The office will send out letters, the owners will come in, and the cycle just starts over. It is a constant problem. Planet Fitness and Naser Jeweler's signs were discussed.

Callaghan informed the Board that City Manager Mike Joyal is here by a request to inform the board of the result of a meeting that took place.

Joyal said that he met with Colbath, Callaghan, Attorney Krans, and Steve Stancel regarding concerns that the Board had related to the content and the scope of minutes. A concern with the chain of commands was addressed as well as the issue over the minutes. He stated that the primary concern is to make sure that documentation that comes out of a meeting is such that the City Attorney can use it to defend the decisions from this board. For that reason, the City Attorney needs to add input of what he feels is important as far as format and content of the decisions. It was decided that the raw notes of the meeting would be e-mailed to the board members. A draft will be created with a format that the members and the City Attorney will suggest and this will then be distributed with the next agenda for review. If a



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discrepancy is found, e-mail them or submit in writing the change to Jean or Rick and copies will be distributed at the meeting for review and approval by the members. If a typo is found a note or e-mail is sufficient.

Colbath was concerned with the content of the minutes. The format will help the content but the content is what is of interest to him.

Callaghan agreed and said that the raw notes will be helpful. If we are in doubt of what was said, a copy of the recording could be reviewed. Discussion ensued regarding content of the minutes and changing the format of the forms.

Denison said that the raw minutes would be helpful with making amendments for review if needed. If we go a few more sessions with this process this may fulfill our expectations.

Reid agreed and thanked Joyal for taking his time to address the issues of the board.

Joyal added that he is working with the Boards expectations but asked them to be patient. He said that the raw notes would be sent out electronically. However, it may take some time to address distributing the electronic copies of the recordings of the minutes, as that is a software issue. He suggested meeting with the City Attorney in order to make sure the minutes are formatted in a way that they reflect all the detail needed to support your decision. It does not have to be verbatim, but you certainly want to capture key points. The decision and the findings of fact is where the detail needs to show up and it does not have to be all of the discussions going back and forth.

A. Administrative Workshop

Discussions ensued regarding changes to the forms.

6. ADJOURN

Motion: Denison made the motion to adjourn at 10:15 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
Masi Denison-regular member	01-24-10
Sam Reid-regular member	11-12-09
Otis Perry-alternate member	02-08-09