



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, December 21, 2006**
Meeting Time: **7:00pm**

1. ATTENDANCE

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

2. APPROVAL OF PRIOR MINUTES

Richard Callaghan stated that he had a couple of comments. He asked that on page three the first criteria needs to be reviewed for the proper wording of the conclusion. Bill Colbath mentioned a couple of typos and expressed his concern regarding the statement in which Marcia Colbath was opposed to Z 06-30 application request for a drive through service. Bill Colbath felt that the reasons that she stated were important and should have been included in the minutes.

A lengthy discussion took place regarding the minutes in which the Board members voiced their opinion of what should be included in the minutes and what is too much information. Callaghan said that these minutes were discussed with the City Attorney Allan Krans and he said that the minutes are summaries and are not all-inclusive facts. There may be times when part of the narrative has not been written into the minutes. The minutes are not verbatim; the actual record is available if they want a copy of it. Callaghan said that this is one of his items that he would like discussed at the workshops that he has requested to fit in with the Board meetings.

Bill Colbath said it is a reversal of what we did in the past, and if there is a change the whole Board should have been notified.

Richard Callaghan recommended that if these minutes are not sufficient for approval we should table them until we get the information resolved with the City Officials. Callaghan said that if we are not happy with the minutes or uncomfortable with the minutes we shouldn't approve them at this point. We need a strategy of how we are going to record this information, if we are not going to have the verbatim mode. A verbatim transcript is tedious and ridiculous. Where do you define how much detail and what is the detail that goes into these minutes.

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

Richard Callaghan said with that motion to table we need to establish what we need to do about the minutes so we do not end up with six months of them to be approved. Immediately it will be our first discussion at the workshop. It may include asking some City Officials to come and visit us for information.

Otis Perry asked if this could be discussed at the end of the meeting under other board business.

Richard Callaghan confirmed with Tom Clark that Masi Denison has not been appointed a regular member yet and he would check on the status of that with the City Clerk's office.



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Richard Callaghan explained to the general public how the cases should be represented to the Zoning Board of Adjustment.

3. OLD BUSINESS

- A. Continuation of deliberations regarding case 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.

Motion: Otis Perry made the motion to remove the case from being tabled. Frank Landford seconded the motion. Vote U/A

Attorney Schulte was offered the opportunity to continue the case due to only four Board members present. Attorney Schulte said he would prefer the Board vote tonight.

Callaghan stated that Bill Colbath had summarized the boards' preliminary vote and would present that to the board. Callaghan further stated that after the board heard the summaries, he would confirm with each board member that they are satisfied with the summary and /or accepts changes as necessary, and then record the information as the vote. The number of votes will be recorded differently than as presented in the summary to account for John Levasseur not being present tonight.

Colbath read the summaries aloud so that the general public could hear the results.

FINDINGS OF FACT COMPILED FOR APPROVAL BY VOTING MEMBERS

- 1. 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? The variance is needed to allow the applicant's proposed use of subdividing this lot into two lots. The special conditions of the lot are as noted: 1) the lack of frontage despite the size of the lot. 2) The unique shape of the lot. 3. The owner attempted to acquire frontage from the abutter (City of Dover). The abutter chooses not to sell the needed frontage. Confirmed Vote: Yes, Vote 3 to 1 (Rick Callaghan voted no). **b) ii.** Did the Applicant demonstrate that the benefit sought cannot be achieved by some other method reasonably feasible to pursue, without the area variance? The benefit sought cannot be achieved by any other reasonably feasible method. There is no way to subdivide this lot without creating a non-conforming lot. Confirmed vote: Yes, Vote 3 to 1 (Landford voted no).
- 2.** Did the Applicant provide proof that demonstrates how granting the variance will deliver substantial justice? There is no injustice to be corrected; the applicant currently enjoys the possibility of creating a duplex in the area of the lot zoned office by eliminating the aging sub standard home. He also has the opportunity to use that portion of the lot for a variety of business uses if the home is removed. Granting the variance would create an injustice for the surrounding abutters. It would allow the applicant to create two and possibly three new housing units in a multi-family format in an area of predominantly single-family homes. Confirmed Vote: No, Vote 3 to 1 (Perry voted yes).
- 3.** Did the applicant provide proof that demonstrates how a variance would be consistent with the spirit and intent of the ordinance? The spirit and intent of the ordinance was to regulate density and clearances in the neighborhood. This proposal would allow four residences to be placed in an area that currently only has one residence and only supports frontage for one lot. It also would increase



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the number of residences of Earl Street from four to seven and would create a perception of crowding in an area that is currently a single-family neighborhood. Confirmed Vote: No, Vote 3 to 1 (Perry voted yes).

4. Did the Applicant provide proof that demonstrates the variance will not result in a diminution in value of surrounding properties? There is diminution in value if the subdivision takes place evidenced by the letter from the abutters and their opinions voiced. The expert witness for the applicant stated that under certain circumstances there would be no effect on values, but also stated that he could see a scenario that would cause diminution. If the property was poorly managed as a rental unit, property values could suffer. In addition, he indicated that if the some of the uses allowed in the office zone were created on the site surrounding property values would suffer. Confirmed Vote: No, Vote 3 to 1 (Perry voted yes).

5. Did the Applicant provide proof that demonstrates the variance would not be contrary to the public interest? The public interest would be adversely affected by the impact on Willand Pond. There has been no evidence provided that the additional development allowed by the creation of another lot and units, would not put the pond at risk. It seems apparent that the increase in residences or office uses would have a greater impact in terms of run off and potential pollution to the pond, as Willand Pond is a non-circulating body of water. The private rights of abutters would be adversely affected evidenced by their testimony and possibly by the testimony of Mr. Patch the realtor who testified for the applicant. Confirmed Vote: No, Vote 3 to 1 (Perry voted yes)

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

Otis Perry stated that when he voted, he had findings of fact to support his vote.

During findings of fact regarding item #4, the following discussion took place; Richard Callaghan asked Colbath where the comments come from about the expert witness. Colbath said that in the tape, the witness was specific and he felt that if it was put forth as a single duplex it would not have any effect if they were well managed. He also put in the caveat that he could see a scenario where it could suffer if it went to one of the other allowed uses in the office zone. Callaghan stated that he looked for language of that in the minutes. Colbath said that it is on the tape not the minutes.

Callaghan stated that the applicant has rights to appeal and to see the Building Official if needed.

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.

Callaghan announced that the applicant has asked that this be postponed and will be heard at the next meeting.

Callaghan explained to the general public how the cases are represented and reviewed. They need three votes in favor of the request in order for it to be approved; normally we have five sitting Board members. Therefore, you have the choice of either tabling or agree to proceed with the four voting members. The presenter needs to give us information and we will determine whether or not to accept



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the case, we go to the public hearing in which we may have questions, the public hearing is closed and we will discuss the case further. We will get opinions by the Planning Department and we will vote on the case.

- B. Z 06-33 City of Dover (Applicant: Sage Properties, LLC, 35 Third St., a/k/a Tax Map 31, Lot 22, zoned RM-8, requests a Special Exception under the terms of Article VI, Section 170-25.C (3) and 170-52.C (3) to establish an Elderly Assisted Care Home.

Callaghan announced that he has a daughter that works as a Legal Assistant for Attorney Bruton. Neither he nor his daughter have any interest in this case. If anyone has an issue with him voting, please speak up and will be happy to reclude himself. Nobody spoke. He confirmed with Attorney Bruton that he would like to proceed, as he knows there are only four members.

Attorney FX Bruton stated that he is here on behalf of the applicant and with him tonight is Dave Safford and he is here to answer any questions. They are electing to go forward with the request with four voting members. He described briefly the plans for the property as submitted for the file. The Special Exception is to increase the number of residents and under the zoning ordinance this board is allowed to do that. He proceeded to explain the information submitted for the file.

Discussion ensued regarding the use of this property.

Motion: Otis Perry made the motion to accept. Frank Landford seconded the motion. Vote: 3 to 1 (Colbath opposed)

Colbath asked Attorney Bruton about a letter from the engineering department regarding utilities.

Attorney Bruton said he just received one yesterday and he submitted copies to the Board members and for the file.

Colbath confirmed that they would have three staff members and asked if it would increase the number of residents. What is the staffing of a normal twelve unit building?

Attorney Bruton stated that the staffing is regulated by the State requirements and the best way to address this is that they are in compliance with the State requirements although they would accept it as a condition. The three provided staff members would satisfy those requirements. They would be there to make meals, cleaning and laundry services and would only be there during the day.

Callaghan clarified with Attorney Bruton that they would have staffing available. It is not required to be there at the end of the night. It is not a 24-hour care facility.

Landford confirmed with Attorney Bruton that this is an elderly assisted care facility, not a hospice facility, as they would have 24-hour care.

Public Hearing Open



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Larry Blanchette 86 Third Street stated that he lives directly across the street from this building and they have experienced many other activities at this building. This use would be less of a distraction to others and a welcome peaceful environment to balance the street. He is in favor of this request.

Public Hearing Closed

Chris Parker stated that the Planning Department believes that this request does meet the special exception criteria and supports the request.

Motion: Otis Perry made a motion to grant the special exception. Frank Landford seconded.
Vote U/A

- C. Z 06-34 Walter Ladisheff (Applicant: David Ladisheff), 35 Sixth St., a/k/a Tax Map 30, Lot 70, zoned RM-10, requests a variance from the terms of Article IV, Section 170-12, Table I, Part C-2, to establish a retail store.

Jason Pahopek represented the applicant and briefly described the plans for the property as submitted for the file. The applicant proposes to operate a 500 square foot retail cigar store in a portion of the existing building. He proceeded to read the application and he read letters by some of the abutters. An abutter located at 49 Grove Street and a letter from Merle Wentworth, owner of ABC Lock and Key in which he states that he has granted the applicant permission to use two of the four off street parking spaces located at 33 Sixth Street for the purpose of satisfying the parking requirement.

Colbath confirmed with Clark that the requirement for retail space is one space for every 250 square feet of floor area; therefore, two spaces would be needed. Colbath asked if the parcel gave up two spaces would they still be in compliance with their parking requirements.

Clark stated that he would have to confirm that information as this is the first time he has heard that being offered. He said the applicant did not ask for parking, he would have to come up with that and it should not preclude the Board from voting on this request. If he did not have parking, he would have to come back to the Board.

Perry confirmed with Clark that the applicant has to show adequate off street parking for this use.

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

Public Hearing Open

Johnson 20 sunset drive represents the company WAMCO. He stated that they own the self-storage property located across the street. They are in favor of this request and would have parking available if the applicant needs more spaces.

Public Hearing Closed



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Chris Parker stated that the Planning Department supports this variance request as it is in the context of the neighborhood. There are already two core businesses on this location and the third would be complimentary to that neighborhood.

Callaghan asked Parker about the parking situation. Parker said that he does not think the parking would impinge upon this business. It is not a destination commercial where as this will be. The spaces would probably be for employees to park and the general public will use the on-street parking, which is plenty spaces in this neighborhood.

Callaghan asked how the Board should handle the parking.

Colbath said that the applicant has to provide the parking or this variance would not exist.

Clark said that it would have to be adjacent or abutting lot for parking. It can be at the storage facility if needed.

Parker said this is an issue for a variance for the use. Clark will check the parking and if it were not sufficient, they would not get the permit.

Colbath stated that he does not have a problem with this variance.

Callaghan suggested a condition. If the parking is not available, they could request or obtain formal written agreement with the storage facility.

Perry said that is not necessary. The building permit will not be issued if the parking is not there. This parking issue is not what is on the table.

Clark said that the condition is not necessary.

Landford said that he agrees.

Motion: Otis Perry made the motion to go to criteria. Frank Landford seconded. Vote U/A

FIVE CRITERIA FOR USE VARIANCE:

1. 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: This is a continuing retail and business use of the property. 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: Considering abutting/surrounding property, uses are similar and the historic use of the building is the configuration of the building. 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: This is a continuance of a business use and no effect shall occur.



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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 continued use of the structure as designed and compatible with surrounding uses.
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: Allows a continued non-intrusive use without any increase in density or congestion.
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: Use is as exists and compatible with the neighborhood and should not have an effect.
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: Continue a merchantable service to the community.

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

5. OTHER BOARD BUSINESS

The board and the advisors continued discussions regarding the content of minutes and whether the recording or the minutes should be on record. The pro's and con's for different situations were discussed and on those were extended cases, appeals, code enforcement, and potential complications of having two sets of records. The fact that the board is quasi-judicial was also taken into consideration. The administrative time it takes to create accurate and complete records was also a concern. The board concluded that they would need assistance from Attorney Krans in order to proceed on this subject.

The board discussed the allocation of time that may be needed to complete the minutes to an acceptable standard. Currently the clerk is following instructions to limit the content so as to limit the time. If the board were to review the draft minutes and provide amendment language, the board would want the draft minutes right after the meeting.

The board also agreed that we need to provide more direction in what the minutes need to contain. This would be the outcome of the board developing guidelines for minutes.

Tom Clark offered to call the municipal association and seek guidelines for writing minutes. The handouts from the recent training for land use boards were also considered.

In order to make progress on approving the tabled minutes of November 16, 2006, the board decided that each board member should review the minutes again and be sure any omissions are submitted as an amendment. In order to notify and get input from the non-attending board members. Callaghan will distribute the minutes electronically with a brief explanation and instructions.

The board agreed in a 3 to 1 vote that when an applicant withdraws an application anytime during the hearing, the minutes only need to reflect the case information., approximate time deliberating, and the fact that the applicant had withdrawn.



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There was a brief discussion on the board meeting the 144 hour deadline for making minutes available. Though the board felt we met the requirement by having the tape available it was suggested that the recording may not meet the requirement. Callaghan was send Steve Stancel an e-mail requesting minutes be available in draft form within that 144 hour time frame.

There was a brief discussion about setting up the administrative workshops but no commitments were made.

6. ADJOURN

Motion: Frank Landford made the motion to adjourn @ 9:08. 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	11-12-06
Masi Denison-alternate member	09-08-07
Sam Reid-alternate member	04-03-08
Otis Perry-alternate member	02-08-09