



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, May 17, 2007**
Meeting Time: **7:00 pm**

1. ATTENDANCE

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

Callaghan informed the informed the public that four board members are present and would need three votes in their favor for approval. The applicants may continue or postpone.

2. APPROVAL OF MINUTES OF THE MEETING OF APRIL 19, 2007

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

3. OLD BUSINESS

- A. 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 requested that this case be postponed to next months meeting.

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 Schulte represented the applicant and stated that Jamie Paolini is present. This is for the purpose to construct twelve residential townhouses as part of a mixed-use project. The project as a whole will go to the Planning Board for site review. There is a strong demand for this sort of condominium/ townhouse development. The units are affordable and desirable and are typically two bedrooms; they are in the range of \$220,000.00 to \$230,000.00 per unit. This will not significantly add to the traffic on Dover Point Road. The units will be at the back of this project with commercial in the front. They have been to TRC and a letter from the City Engineer was distributed. A number of other projects have been approved without the requirement of a traffic study. There will be no impact on pedestrian safety. The proposed use will not overload the utilities. A letter from the City Engineer was distributed stating that there is adequate supply and capacity in the water and sewer systems. The Planning Board has approved numerous projects in this area. There is a strong public interest in favor of the residential components and this will help meet that need. The location of the driveway has been approved by the City Engineers Department. Parking spaces within the commercial space will be available for additional parking for these units at night and on the weekends. Each townhouse will have two parking spaces and garages. He feels the requirements have been met as submitted in the application.

Callaghan questioned the electronic signature of one of the letters that was submitted by Assistant City Engineer, Dave White.



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Attorney Schulte stated that the letter was e-mailed as an attachment. The letter regarding water and sewer was forwarded to the Clerk as well.

Callaghan asked if this project would affect other projects in this area. At some point, we will reach capacity on this system, the water and sewer and the ability of the road to carry the traffic. There is no statement of how this will affect further development.

Attorney Schulte said this is small in comparison to other potential uses that could happen in this area. Similar projects of this size have been approved in the past without any concern regarding traffic or water and sewer. This Board approved other projects in this area and he explained the projects. This is a plan that will go to Planning Board and does not believe they will expect a traffic study.

Callaghan questioned the hazards of health, safety, and welfare of the area under the criteria. He asked about the commercial component.

Attorney Schulte said the commercial component is not a concern for this Board. The special exception is needed for the residential component.

Reid asked Bird if he had concerns with the criteria as Callaghan mentioned.

Bird said Attorney Schulte has demonstrated that those elements have been addressed. He said the questions of Callaghan would be reviewed at TRC. If there are traffic impacts and drainage impacts, you can be sure the Planning Board will look at it as a routine basis. This has been to TRC once and he would have to look at this plan to see how it has changed from the last plan. If there is a significant change, it may go back to TRC.

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

Public Hearing Open
Nobody Spoke
Public Hearing Closed

Bird stated as indicated earlier the Planning Department feels that the criteria has been met with this application.

Motion: Reid made the motion to accept the request of special exception as proposed. Landford seconded. Callaghan added that he would like to add a condition that the letters that were submitted be signed by the Assistant City Engineer. Vote: U/A with the condition discussed.

- B. Z 07-06 Friends Church, John Dawson, Trustee (Applicant: Richard Lethem), 141 Central Ave., a/k/a Tax Map 19, Lot 51, zoned RM-10 requests a Variance from the terms of Article IX, Section 170-32.E Sign Table to install a freestanding sign within one foot of a property line, where a minimum of ten feet is required.



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Richard Lethem, 3 Mayberry Lane, Berwick, stated that he is a member of the meetinghouse and present is Bernie Durhner and Barbara Sturrock. The request is a variance in order to locate the sign to identify the meetinghouse, which is a historic building dating back to the period of 1767 and is a very important historical landmark. One of the problems with the location of the sign is that they have a beautiful surrounding of trees in the front of the property. The tree line is extremely important to them and the nature of their worship to a great extent is silent meditation. The identification of the meetinghouse is important for new members and for emergency services. They would like to locate the sign one foot back from their property line. The sign requested is in keeping with their tradition of simplicity and would be of modest size, which is within the regulations of the City.

Bernie Durhner, 26 George Pickman Drive, Barnstead, stated the he attends Dover Friends meeting. Other signs in the area are very close to the sidewalk and would be of comparable size.

Barbara Storrock, 245 Shaws Lane, said that many people think this is a grange building. The sign would help with new members and emergency services if needed. The sign would be antique white with dark letters. A picture was submitted for the file.

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

Callaghan explained to the applicant how the case is presented to the Board.

Public hearing open

Linda Merullo, 21 Long Hill Road Extension, stated that she is adamant about the signs in the City. In seeing this sign, it seems fine and goes with the regulations, however is concerned with how close it is to the road.

Public hearing closed

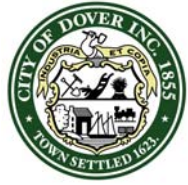
Bird asked the applicant if they have a sign today and questioned the location and appearance of the proposed sign.

Lethem said they have one small sign located on the building and is only visible once you are in the driveway. This sign will be parallel and only one side would have lettering. The photograph provided is the general location.

Bird stated that when he drove by here all of the leaves make it difficult to see. The sign is for the purpose to identify the building. He confirmed that they have a wire fence on the property line and it will be located behind the fence.

Denison asked how the measurement was made. The plot plan and the picture look different.

Lethem explained that the property line is approximately nine feet from the sidewalk. The sign would be back about ten feet from the sidewalk.



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Callaghan confirmed that Lethem would clear the shrubbery around the sign to make it visible.

Reid confirmed with Bird that the size of the sign requested is consistent within the sign ordinance.

Callaghan asked if the picture shown would be allowed as it includes an address and hanging sign.

Clark said typically we deduct addresses as we encourage addresses to be displayed. The hanging piece would be included as part of the overall sign area.

Durhner informed the Board that the sign would be eleven square feet.

Bird stated that the Planning Department supports this request. This is an area of Central Avenue where the right of way starts to widen as it approaches the signalized intersection. In this particular area it is probably anywhere from 18 to 20 feet from the property line to edge of pavement. If the sign were set back at the required ten feet it would be practically useless. We do not want to promote cutting trees. This is certainly within keeping with the signs in the neighborhood; therefore, the department supports this request.

Callaghan confirmed with Durhner that this sign would not be lit.

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.

i. Did the applicant demonstrate that an Area Variance is needed to enable the proposed use of the property give the special conditions of the property? Yes, Vote: U/A This conclusion is based on the following findings of fact: Distance from road is far greater than twenty feet that is required.

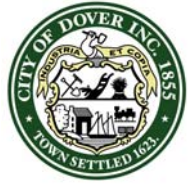
ii. Did the applicant demonstrate that the benefit sought cannot be achieved by some other method reasonably feasible to pursue, without the area variance? Yes, Vote: U/A. This conclusion is based on the following findings of fact: The existing landscaping would have to be removed or the sign placed further forward.

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: Enhancement to traffic and emergency safety, plus case of location identification for users of the facility.

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: Reasonable setback is maintained.

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: No impact because other signs in the area are closer or about the same.

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: Enhancement of traffic and emergency safety.



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

- C. Z 07-07 Middaugh Family Revocable Trust, Shirley Middaugh Trustee, 46 Glenwood Ave., a/k/a Tax Map 36, Lot 17, zoned R-12 requests a Variance from the terms of Article V, Section 170-16, to subdivide a parcel creating a lot with approximately 11,500 square feet, where a minimum of 12,000 square feet is required.

Kevin McEneaney represented the applicant. Shirley Middaugh is present. The applicant wishes to subdivide the property into two lots, one would be 12,000 square feet and one would be 11,490 square feet. Both of the lots meet the frontage requirement. The lot size is 4% shy of the required lot size. Mr. Middaugh has some health issues and they are looking at a few options. One is to stay in the house currently occupied and use the money from the sale of the lot behind the house to fund a rehab of the house to allow for one floor living. Second option would be to sell the house and build a one level living house on the lot that would be created in the back. Third option would be to sell both lots and move. The new lot in the rear would be fully conforming. As shown on the plan the areas highlighted in yellow show all of the surrounding lots and this lot is one of the larger lots in the area. They exhausted the possibility of a lot line adjustment, as most of the lots are slightly less than 12,000 square feet. The Zoning Board granted two variances similar to this case, Z 01-03 and Z 01-17 and both were summarized. He proceeded to read through the criteria as submitted in the application. He submitted letters from the abutters in favor of this request and read them for the record. Out of the eight abutters, five direct abutters have submitted letters that support this request.

Motion: Reid made the motion to accept. Landford seconded. Vote: U/A

Public hearing open

Jim Schulte, Towle Avenue, stated that Shirley Middaugh used to be his neighbor and he knows the family real well. This is a good family and he is familiar with this property. This lot is almost big enough; if it were five feet deeper, they would not need to be here. Because the existing structures are up at the front, there will be no impact. The back portion of the lot will be fully conforming and the neighbors are in support of this request and asked that the Board to approve this request.

Public hearing closed

Bird stated that the Planning Department supports this request. The lot is 94 % of the requirement and is consistent with the lot sizes in the neighborhood. This is an example of why the opportunity for variances is written into zoning. This is a prime example of a variance that would be justified because the requirement is so close to being met, that the average observer would not be able to tell the difference therefore the department supports this request.

Reid said if you look at the tax map shown, most of the lots are similar in size. This is a classic case for a variance.

FIVE CRITERIA FOR AREA VARIANCE:



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1. The applicant was to provide proof that special conditions exist and that literal enforcement of the ordinance would result in an unnecessary hardship.

i. Did the applicant demonstrate that an Area Variance is needed to enable the proposed use of the property give the special conditions of the property? Yes, Vote: U/A This conclusion is based on the following findings of fact: Property is only 4% short on meeting the requirement and similar to those in the neighborhood.

ii. Did the applicant demonstrate that the benefit sought cannot be achieved by some other method reasonably feasible to pursue without the area variance? Yes, Vote: U/A. This conclusion is based on the following finds of fact: Neighboring properties are not large enough to support a lot line adjustment.

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: 500-foot shortage is not substantial enough to be observed by the casual onlooker.

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: Created lot is not any more evasive to density than the surrounding properties, the building is preexisting, and the new lot will be totally within the requirements.

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: Substantial letters of support from abutters.

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: City water and sewer available to new lot, letters from abutters and the size of adjoining lots.

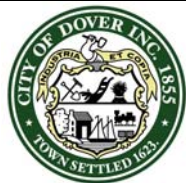
Therefore, based upon the foregoing, it is ordered that the application for the variance be granted.

Recess at 8:30 resumed at 8:35

- D. Z 07-08 Roman Catholic Bishop of Manchester (Applicant: St. Thomas Aquinas High School), 197 Dover Point Rd., a/k/a Tax Map L, Lot 15, zoned R-20 requests a Variance from the terms of Article IX, Section 170.32.E (3) to install a freestanding sign with an area of forty (40) square feet, where a maximum of sixteen (16) square feet is allowed.

Callaghan explained to the applicant that he would need three votes out of the four in order to approve the request. You have the option to proceed or postpone for a full board.

Jeff Quinn, Principal of Saint Thomas Aquinas High School proceeded and stated that they are on the verge of a rather aggressive change at this site and reorganizing the way traffic is managed on and off campus. A significant change and improvement in the plan is that the proposed exit and entrance would be combined, as they are different now. The traffic moves quickly on this road. This major entrance and exit is designed to have a traffic island and the sign will be perpendicular to the road. The material to be used is a granite material and is keeping with the natural surroundings of the neighborhood. It will be indirect lighting. The hardships would fall to the grade of the road and the speed of the traffic. It will be close to the ground on a concrete pad in the center of the island. The sign will be 4 X 10 and 6" wide. The lettering will be done by a laser cut.



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Denison asked about the right and left turning lanes.

Principal Quinn said the roadway is going to be widened at that point so they will have right and left hand turning lanes.

Landford stated that this would be a big change of the actual roadway out front of the school and would help control the traffic. He confirmed that this sign would be replacing the existing sign.

Denison confirmed with Quinn that the traffic entering would be at the same grade as the road.

Reid asked how much frontage they have on Dover Point Road. He asked how big St. Anne's sign is.

Principal Quinn said he was not sure of the frontage. St. Anne's sign is 1 x 15 feet long and their sign actually in terms of the actual height is much higher than the sign they propose.

Clark informed the Board that off the scaled site plan it appears it is about 620 lineal feet of frontage on Dover Point Road.

Callaghan asked if the sign would be illuminated and if so, what time is it extinguished.

Principal Quinn said it is indirectly lit from the ground up until approximately 10:00 p.m.

Clark informed Quinn that in response to the illumination, the ordinance requires that signs be extinguished by 9:00 p.m. in that zoning district.

Principal Quinn said he would make sure that the lights go off by 9 p.m.

Bird asked what the height of the sign would be once you put it off the ground.

Principal Quinn said he does not have an elevation. He is expecting that the overall height would not be more than five feet.

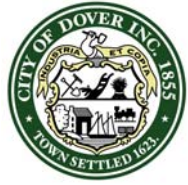
Bird said moving it closer to Dover Point Road would be feasible but the height of five feet in his opinion would block vehicles view up and down the road. A smaller sign would be helpful.

Callaghan confirmed that this is a double-sided sign perpendicular to the road.

Motion: Reid made the motion to accept. Landford seconded. Vote: U/A

Public hearing open

Linda Merullo, 21 Long Hill Road Extension, stated that Principal Quinn knows that she is in favor of this project and fought for it at the Planning Board level. The only concern is the size of the sign being 40 sq.



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ft. and does not want to set a precedent for potential businesses coming to this area. If the size of the sign could decrease it would be better.

Public hearing closed

Bird stated that the Planning Department supports the request for the variance. The sixteen sq. ft. size is for a residential district. This is not a residential use. The importance of people knowing that this is a new entrance is crucial to having the traffic pattern that they have designed and that has been approved by the Planning Board. If you are heading past the school and miss the turn, we do not want people turning in the exit driveway as that was a big discussion at the Planning Board level. In support of this being a primary entrance and exit for this property and the fact that this is not a residential use, those are the primary reasons that they support this request. In terms of a 40 sq. ft. sign, being the right number for this area is up to this Board to decide.

Reid asked how many properties have this kind of frontage.

Bird said in a residential district, probably none that he could think of. Many of the existing businesses are further in town and they are in the B-3 district.

Reid said that if this is granted he is not concerned with setting a precedent. This has a lot of frontage. The size of this sign makes sense.

Denison stated that she is concerned with the size of the sign being 40 sq. ft. and as a graphic designer; she believes a 32 sq. ft. sign could easily fit the information needed for the sign.

Callaghan confirmed with Bird that the department did not think 40 sq. ft. was necessary to accomplish the goal of being safe and people being able to see it coming up and down Dover Point Road. The application before them was to support this or be against it.

Landford felt that the sign is dwarfed by the size of the structure. It is small sign compared to the size of the lot and the size of the structures on that lot.

Callaghan said he agrees with Denison's comment. He does agree that a more prominent sign at this location is needed.

Reid asked Clark what would be allowed if this were located in the business district.

Clark said it depends on the business frontage and the width of the building. The building is 280 lineal feet and if it were in a B-3 zone, the max allowed is 150 sq. ft.

Discussion ensued regarding the size of the sign.

Principal Quinn asked if he could amend the request. He asked the Board if they would consider a 30 sq. ft. sign, 3 x 10 feet.



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Callaghan said in his opinion it would be less restrictive. He confirmed with Clark that the advertisement is appropriate as they are asking for a reduced size.

Reid said he is not convinced that 30 sq. ft. will accomplish his goals.

Bird said that the applicant is offering to keep the height at the same five-foot level. If you lower the height, it would be a concern of visibility but by cutting off a foot at the bottom he believes would not affect visibility.

Reid said he would support the newly proposed size.

Denison said the newly proposed 30 sq. ft. is acceptable to her. This would be less than double the allowed request so it wouldn't set a precedent.

Landford said he did not have a problem with the requested 40 sq. ft. therefore supports this request.

Callaghan stated that he supports the request.

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.

i. Did the applicant demonstrate that an Area Variance is needed to enable the proposed use of the property give the special conditions of the property Yes, Vote: U/A This conclusion is based on the following findings of fact: Size of structure, amount of frontage, type of use, all contribute to the hardship for that zone.

ii. Did the applicant demonstrate that the benefit sought cannot be achieved by some other method reasonably feasible to pursue without the area variance. Yes, Vote: U/A. This conclusion is based on the following finds of fact: A smaller sign is not reasonable given the use and application.

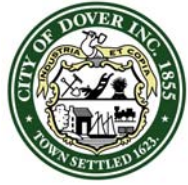
2. Did the applicant provide proof that demonstrates how granting the variance will result in substantial justice? Yes, Vote: U/A This conclusion is based on the following findings of fact: Provides property identification to the public.

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 large structure, property, and road frontage will allow the sign without impact on density or esthetics.

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: Sign is consistent with the size of the building and lot.

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: To the contrary, it will allow easier identification of the location for motorists visiting the facility.

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



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1. The size of the sign will be limited to 30 sq ft.

Motion: Reid made the motion to accept with the condition. Denison seconded. Vote: U/A

5. OTHER BOARD BUSINESS

Callaghan discussed the vote that took place at last months meeting for the Byrnes deed, case Z 07-04. The draft deed was presented to the board and it was voted on for acceptance by a two (accepted) to one vote (not accepted by Callaghan). Discussion ensued relative to the vote requiring three votes in order to pass. During the discussion, Attorney Schulte offered to amend the Deed Restriction as necessary. Tom Clark had contacted the Local Government Center and the response was not specific to the case. While the vote was being deliberated as appropriate, some email correspondence occurred that included Sam Reid who made the motion for the Deed Restriction and it was determined that the Deed Restriction should include a direct reference to the law and the meeting. Clark contacted Attorney Schulte and the changes have been made. The revised deed will be presented to the board when complete. (2:25:44)

As a result the board needs to establish their own policy about handling approval of conditions being met, and perhaps using the law as a reference that says three votes are required for all votes that are in favor of the applicant though it does not specifically apply to conditions.

Changes to the forms were discussed and Callaghan submitted his changes of the form to the members for their review and opinions, which will be discussed at the next meeting. Reid stated that he is working on the changes to the Rules of Procedure and expects to e-mail it to the members in the next two weeks and it will require discussion. The result will be simple to read and will hit all the major points.

Reid discussed the emailing of letters and electronic signatures that were submitted with case Z 07-05 and what is acceptable. Clark confirmed that when the City Engineer or other City Department sends an e-mail he and perhaps other staff get a copy of that e-mail. It was agreed that when e-mails are sent from within the City System, the Advisors to the meeting can authenticate the letters. (2:33:02)

The draft minutes, distributing notes and minutes, utilization of Jean were discussed. Copies of amendments will be e-mailed to the Clerk in order to make copies that will be distributed at the next meeting for all members to review.

6. ADJOURN

Motion: Reid made the motion to adjourn at 9:40 p.m. Denison 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