



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, June 21, 2007**
Meeting Time: **7:00 pm**

1. ATTENDANCE

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

Callaghan informed the public that case Z 07-10, Central Avenue Real Estate Holdings LLC has requested to be postponed to the next meeting. He introduced the new Planning Director, Christopher Parker.

Parker informed the members that he is trying to make some positive changes as the new Planning Director. He submitted a few items for their review, which consisted of a synopsis from the most recent Planning Board meeting and agendas for the upcoming meeting of TRC, Planning Board and workshop meetings. He stated that the Planning Board would receive a synopsis of the most recent Zoning Board meeting and they will continually be submitted to the members for review. This is in an effort to improve communications with all of the land use boards.

2. APPROVAL OF MINUTES

A. MINUTES OF THE MEETING OF APRIL 19, 2007

Callaghan stated that on page 2 of 2 he would like to add the words, "Attorney Schulte offered to amend deed restriction if determined necessary."

Motion: Perry made the motion to accept the minutes with amendment. Colbath seconded. Vote: U/A

B. MINUTES OF THE MEETING OF MAY 17, 2007

Callaghan stated that on page 4 of 10, the record should reflect that when Durhner informed the board that the sign would be 11 sq. ft., he also announced that the colors were the reverse of what was submitted for the file. On page, 10 of 10 under other board business he recommended some changes regarding the Byrne case and other issues, which would require the review of the tape in order to clarify.

Motion: Denison made the motion to postpone the minutes to add amendments for review and approval. Colbath seconded. Vote: 4 to 1 (Perry abstained)

Callaghan, Colbath, Landford, Denison and Perry will be voting

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.

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

Attorney Schulte represented the applicants. He stated that this matter was considered at the January meeting and they came within one vote on one of the five criteria of approving it. The applicants are



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seeking a use variance. Currently a single-family dwelling is on this lot, the home was built in 1890, and because it was in existence prior to May of 1964, it may be converted and expanded into a duplex. The problem is that the existing location of the existing building is nonconforming. Previously, a sketch of the building envelope showed that the applicants would agree as a condition of approval a setback of 60 ft where 25 ft is required. On the Young side, the new building would not be any closer than 25 ft, on the side next to the driveway that eventually leads back to the Cheney property it would be the standard 15 ft and in the back the setback would be between 90 and 120 ft. The new structure would be built within the building envelope, which would meet or exceed all of the zoning setback requirements. A picture was submitted which showed the type of design that the applicant is interested in constructing. The general layout of the home would be similar; the structure would be limited to 28 ft where the zone allows 35 ft and they would agree that it would be 68 ft wide and 32 ft deep. If this variance is denied and it has to be constructed this could be 35 ft tall and could be almost any size. The applicants want to make sure this has a good appearance and form a good reputation with the City. One of the questions raised is impact with neighborhood. A letter was submitted which was signed by David Francoeur and the letter indicates the preference is to remove the existing dwelling and construct one similar to the picture shown. His opinion as a Realtor is that it would increase this property and would increase the value of abutting properties, would be a positive impact, and would be fully compliant and more consistent with the neighborhood. Attorney Schulte stated that there are a number of duplexes in this area. He submitted the tax map to show the structures on the lot. By moving the house it would be further away from the Young property and the Cheney property, it would be closer to their driveway but further away from their residence. Hardship is that a duplex is allowed on this property. The reasonable use is that this is a reasonable structure. This is not commercial; this is a mixed-use neighborhood with duplexes and multi-family homes. The new structure would be more attractive and conforming. It would eliminate the nonconformity and would meet the building codes. We would accept a condition of the height to be 28 feet. The foundation dimensions to be 32 x 68 ft plus the decks. The bldg is a significant improvement to the neighborhood.

Callaghan informed the public how the cases are presented. Five members sit on a vote; three out of the five would need to vote in favor for an approval. He informed Kelley that he could participate in discussions however would not be able to vote.

Public Hearing Open

Chuck Cheney stated that he has been a resident of Dover for 55 years and is here tonight on behalf of and as a request for his father who has lived on Back River Road for over 51 years. He submitted a letter stating this information and read it for the record. He stated that the three abutters to this lot are present and all three are against this request. The burden of proof is on the applicant and he feels that the applicant has not met the criteria. The Turgeons purchased this dwelling built in 1890 one year ago knowing that it had fire damage. The proposed action by the applicants is not permitted. The applicants repeatedly said we will add on to the present building but they did not read Article X, Section 170-40 A in which it states that the single family dwelling may be expanded up to 20% of its gross habitable floor space provided the addition conforms with all other applicable regulations and ordinances and no additional units are created. This proposed bldg is one ½ times the size allowed and will dwarf the Youngs property. The letter submitted by David Francoeur is flawed, as his place of business is not in Dover, but is close to the applicant's residence. Additionally, the applicant says that there are a number of duplexes in this



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neighborhood and he proceeded to explain that out of 78 buildings in this area, there is only one duplex, which is not visible from this proposed property. He confirmed with Callaghan that a letter was submitted for the file and Callaghan would read it before the public hearing is closed. Cheney continued to explain a petition for the record in which is requests that the ZBA denies the request as it violates Article IV, Section 170-12, Table 1, Part A. It has been signed by 115 residents, 28 from Back River Road, and 87 from throughout the City. A highlighted tax map showed who signed the petition surrounding the property.

Paul Young, 57 Back River Road stated that he is against the request. He does not see how this duplex would enhance the neighborhood. He is concerned with the upkeep of the property as the grass has not been mowed and in the winter, it was not plowed, which would have limited emergency access if needed. A single-family dwelling is not a concern but is against the conversion of a single to two family dwelling.

Steve Bird stated that the Planning Departments position has not changed since the January meeting. They are in favor of this variance request. The property is located in an area that up until a few years ago was a multi family district; it is clearly a mixed-use district. As a right allowed, they can take the existing building that is fire damaged and convert it into a duplex. It is the department's preference that it is conforming. He stated that he would like to take the opportunity to correct Mr. Cheney on his referencing of Section 170- 40.A, and the 20% figure does not apply in this case, it applies to nonconforming uses and this is a nonconforming structure.

Callaghan confirmed with Bird that Section 170-41.D talks about additions to nonconforming single-family structures and this building would apply to that section.

Attorney Schulte stated that the applicant could put a substantial addition on this structure and said that he wanted to make sure that Mr. Young realizes that one way or another there will be a duplex located here.

Colbath said that he believes that these are condominiums, not duplexes. Discussions continued regarding the difference between the both.

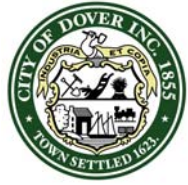
Attorney Schulte said the applicant hoped to tear down and build but either way they will have a duplex. A substantial addition to this dwelling would not look right, as it would be too close to both abutting properties and both abutters would be better off with a new duplex that would be conforming.

Cheney asked if the City would recommend this to be in their back yard and stated again that there is only one duplex in this area. There are condominiums at Wingate not duplexes.

Callaghan read the letter for the record submitted by Alice Grover 45 Spruce Lane, which asks to deny the request.

Attorney Schulte asked that the letter not be accepted. He stated that this person lives $\frac{3}{4}$ of a mile away and does not have interest in this property although she may be one of Cheney's customers.

Public Hearing Closed



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Colbath asked Bird to read to the Board the Article that allows conversion of this duplex. Bird read from the Table of Use Regulations, residential section of conversion of existing dwelling to accommodate not more than two units, footnote 8.

Callaghan asked what was the piece or interpretation that Mr. Cheney referenced.

Bird said that Cheney was quoting a wrong section of the nonconforming provision of the Zoning Ordinance, Section 170-41 nonconforming use of the land. The appropriate section to look at is Section 170-41, nonconforming structures, and that has no 20% limitation.

Perry stated that in regards to duplex and condominiums it is a building with two units, whether it is renters or condominium owners, the land use applications are the same.

Colbath said physically these are two unit structures; the sole point is that the difference in maintenance on a duplex structure is going to be considerably different from a condominium structure.

Perry said in a physical sense and a planning sense this is a two unit building.

Kelley confirmed with Bird that this building would need to meet the zoning requirements as far as lot coverage, height, and set back requirements. Kelley asked if you were to modify this to be a two unit dwelling, at what percentage would you be able to tear down to rebuild.

Bird said the ordinance doesn't specify but the grandfathered right to convert is based on this being a single family dwelling unit, if this were a vacant lot they would not be having this discussion. You cannot tear it down and build a duplex. He stated that he is not that familiar with the Building Inspectors decision-making process but you would not be able to tear it down to the foundation and decide to build a duplex.

Callaghan reminded the Board that Clark said the fire damage, related to this dwelling, is that there is enough of the building left to rebuild it as it stands and this would need to be interpreted by Clark.

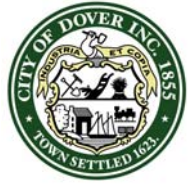
Discussion of adding on to the dwelling, duplexes, and condominiums continued.

Callaghan suggested that due to the complexity of this case, the Board could postpone findings of fact to a later date or have a special meeting.

Perry said he prefers that each member individually prepare his or her own responses. If we are not going to have a vote tonight we should individually come up with the responses. He would like to have the time to put down what he understands to be the facts of the case.

Denison agreed.

Colbath asked how this has played out in the past, as far as constructing an addition to convert single-family dwelling unit to a two family dwelling. He believes the intention was for the older larger homes to



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make better use of the property, it was not about taking a property with a small structure on one corner of it and adding whatever you want to it and convert to a duplex.

Discussion regarding the interpretation of the code continued.

Perry made the motion to defer to a future meeting.

Callaghan said that one of his concerns at this point is the petition with many signatures on it stating that they do not want the Board to violate the ordinance. His perception is that this document was signed based on the understanding as presented by Cheney that they are not only allowing a duplex to be built they are allowing a duplex to be built beyond the 20%.

Colbath said he has a problem with the way the code is written. It says any dwelling unit built prior to 1964 can be converted. Where does the end of the dwelling unit come?

Landford said he believes it is an opinion of the Building Official, he does not believe it is written down.

Colbath said he would like to see some information of how many have taken place.

Callaghan said they would ask that Clark be present at the next meeting. Discussion ensued regarding clarification of the motion. It was decided that each member would write down his or her notes and the final decision may be postponed in order to collectively make a decision.

Motion: Perry made the motion, as stated earlier to defer to the next scheduled meeting. Denison seconded. Vote: U/A

Attorney Schulte felt that Clark's interpretation is important and suggested that they speak with him in order to clarify. He said that his recollection of how he explained the ordinance is significantly different as to what Colbath is stating.

Callaghan said they do not want the Board members communicating individually to Clark. We need all of his answers directly in public. Callaghan said they would write down as much as they can for themselves and it may extend to another meeting.

Recess @ 8:44 resumed 8:50

Callaghan, Colbath, Landford, Denison and Perry will be voting

4. NEW BUSINESS

- A. Z 07-09 Doyle Skeels (Applicant: Christopher Noyes), 97 County Farm Cross Rd., a/k/a Tax Map B, Lot 10 C-1, zoned R-40, requests a Variance from the terms of Article IV, Section 170-12, Table I, Part A, to construct a two family dwelling.



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Christopher Noyes, 410 Brendan Avenue, Massapequa Park, New York 11762 applicant, approached the podium.

Perry said before the presentation and as a point of order, when he looked at the plan this morning it seems that one of the abutters, Samuel Bagdin, Map B, Lot 11-G, was not officially notified of this meeting.

Bird said when we receive the applications we do not go through each abutter to make sure they are listed, it is relied upon to the applicant to provide it. He stated that Perry, being familiar to the neighborhood, pointed out the tax map that was with the application and it incorrectly identifies the large piece of property as Map B, Lot 11-C and in fact, it is lot 11-G, it was an unintentional error but this Board needs to address it.

Callaghan said since that abutter was not notified he does not believe they can accept the case because it violates the law to which this Board operates under.

Perry suggested that they continue and open the public hearing in order to hear who is present tonight and it would be recessed to next month. The abutters could be notified that this will be continued.

Acceptance of the case was discussed.

Callaghan asked if there was a motion to accept and continue or deny accepting application. We could also table acceptance.

Denison said it is not clear to her if the variance is even needed to reach the applicants goal. She said she had specific questions for Clark and wishes he was here.

Callaghan said in order for the applicant to present we have to accept it.

Landford asked Bird if the applicant asked for a postponement would he have to notify all abutters again.

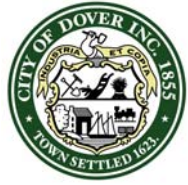
Bird said the Board has the ability to continue this application to a further meeting without notification of abutters except for the delinquent abutter who was not notified. The issue is whether you need to vote to accept the application or not, in his opinion you do not need to do that.

Callaghan said the Board could make a motion to table; it is the best thing to do instead of a motion to deny the application.

Landford said the applicant should ask for the postponement. Discussions continued.

Motion: Colbath made the motion to table acceptance until the abutter has been notified. Denison seconded. Vote: 3 to 2 (Perry opposed – Landford abstained)

Discussion ensued regarding the applicant's options.



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- B. Z 07-10 Central Avenue Real Estate Holdings, LLC., David Richards, Casey Kim, Shawn & Amy Shambo and Daniel & Alyssa Brigandi, 794 Central Ave., 796 Central Ave., 798 Central Ave., 796 ½ Central Ave., 800 Central Ave., 1 Lowell Ave., and 1 Page Ave., a/k/a Tax Map 37, Lots 26-A, 26, 28, 27, 29, 57 & 56, zoned Office & R-12 requests a Variance from the terms of Article III, Section 170-10 E, to have parking for a use allowed in the less restricted district within twenty-five (25) feet of a street line in the more restricted district, where a minimum of one-hundred (100) feet is permitted.

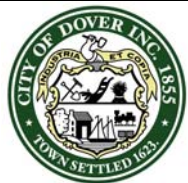
This case is postponed to the next meeting.

5. OTHER BOARD BUSINESS

Callaghan submitted handouts of the rules of procedure to review. He stated that he had a meeting with Parker and some positive changes were discussed, one of which the minutes would be available within a shorter period and submitted. He stated that they also discussed interaction of the Boards in order to bring their land use Boards together, and that led to a possible liaison for the Planning Board and the Zoning Board. Callaghan informed the Board that the person, if appointed could be Linda Merullo, who was present, as she would be interested in this position. Discussions continued and Callaghan stated that this would have to be researched and informed the members to give it a thought. He also stated that the Planning Department as a team it seems that we can get all of our information discussion regarding a written position submitted by the Planning Board. He stated that Parker is thinking about making changes in regards to a member of the Planning Department present at the meetings, as one of the things suggested is a written position. Discussion ensued in regards to case Z 07-09 relating to abutter notification. Perry said that the Board needs to find out and define what constitutes receiving an application as opposed to accepting it and whether or not the Board has the responsibility for policing or confirming the completeness of the application before an applicant can proceed with their case. It was determined that they will ask Attorney Krans to attend the next meeting in order to address the issue.

Linda Merullo stated that she is an alternate on the Planning Board and as Chairman Callaghan mentioned earlier, the idea of a liaison was discussed and realizes the respect of the different Boards. She stated that she has been at these meetings because she is learning and some of the projects do go to the Planning Board. She stated that she would like to be an alternate of this Board. She informed the members that whatever decision made is fine with her.

Perry felt that one thing that should be addressed, is that he read the Statute that allows the Board to do a conditional variance for someone who needs help for a handicap person and nowhere that he saw does it say how to confirm how on going it is. The Statute says that when the person who is providing this and needs the assistance is no longer a residence of the structure than the variance lapses, but it does not say how the community will know when this happens. Denison said it is an enforcement issue. Perry said that one of the things that occurred to him and should speak with Attorney Krans is whether or not the person who receives the variance, could they certify on an annual basis the same way the people receive tax abatements, for elderly status or military service by the 15 of March, or similar to it. If we grant these types of variance, can we do that? We need a mechanism for enforcement. Denison said that it might possibly be that the Planning Board may have to modify the code and this would be a question for



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Attorney Krans. This has to be addressed. Bird said it should be a burden put on the applicant receiving the variance.

Callaghan mentioned that he received the amended deed restriction regarding the Byrne case. He stated that Reid confirmed that it was what he wanted addressed.

6. ADJOURN

Motion: Perry made the motion to adjourn at 10:20 p.m. Colbath 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
Jim Kelley-alternate member	05-23-10