

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, July 19, 2007**
Meeting Time: **7:00 pm**

1. ATTENDANCE

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

Callaghan announced that case Z 07-10 Central Avenue Real Estate Holding, LLC has requested that the case be rescheduled. He stated that the Board is considering it as a withdrawal because no future date has been set. If it returns before the Board, abutters will be notified.

2. APPROVAL OF MINUTES

A. MINUTES OF THE MEETING OF MAY 17, 2007

Callaghan submitted a revision to item five under other board business for the members to review.

Motion: Perry made the motion to table to the end of meeting. Denison seconded. Vote: U/A

B. MINUTES OF THE MEETING OF JUNE 21, 2007

Denison suggested a change to page 7 as submitted.

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

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

3. OLD BUSINESS

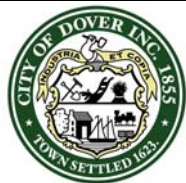
- A. Z 07-02 Kevin & Lisa Turgeon, 55 Back River Rd., a/k/a Tax Map I, Lot 60, zoned R-12, requests a Variance from the terms of Article IV, Section 170-12, Table I, Part A, to construct a two-family dwelling.

Motion: Perry made the motion to continue deliberations. Colbath seconded. Vote: U/A

Callaghan informed Clark that the members of the Board would be asking for clarification on some of their discussions relating to his interpretation of the code.

Colbath confirmed with Clark that he would issue a building permit to construct an addition knowing that it was going to become a duplex. He stated that it was important that the size of the addition did not out scale the size of the original building.

Discussion of section 170-40 nonconforming uses and 170-41 nonconforming structures took place and Clark stated that this dwelling is a nonconforming structure and the 20% that was discussed at last months meeting falls under nonconforming uses so that does not apply to this case. He added that if they grant the



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variance they could place a condition that it cannot exceed a certain size. The conversion is what is allowed here. To add a 2,000 sq ft addition and then say they want to convert to a duplex; he does not think that is in compliance and would not be allowed.

Callaghan confirmed with Clark that he evaluates fire-damaged homes with what the insurance company's state as far as damage. This building is salvageable. The actual structural fire damage is not that extensive to require any portion of it to be torn down.

Callaghan informed the members that if they were interested there is a potential that this could go one more month in order to vote and gather the findings of fact.

Perry said he would like to proceed with the vote. Landford, Denison, and Colbath agreed.

Callaghan added that if this were granted he would be looking for a condition that the proposed building does not exceed 1 ½ times the footprint of the existing building.

FINDINGS OF FACT: USE 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.

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? No, Vote: 3 to 2 (Landford and Perry voted yes)

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: 3 to 2 (Colbath and Denison voted no)

iii. Did the Applicant demonstrate that the variance would not injure the public or private rights of others? Yes, Vote 3 to 2 (Colbath and Denison voted no).

2. Did the Applicant provide proof that demonstrates how granting the variance will result in substantial justice? No, Vote: 3 to 2 (Perry and Landford voted yes)

3. Did the Applicant provide proof that demonstrates how a variance would be consistent with the spirit and intent of the ordinance? No, Vote: 3 to 2 (Perry and Landford voted yes)

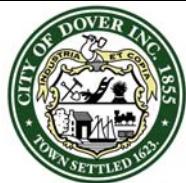
4. Did the Applicant provide proof that demonstrates how the variance will not result in a diminution in value of surrounding properties? Yes, Vote 3 to 2 (Denison and Colbath voted no)

5. Did the Applicant provide proof that demonstrates the variance would not be contrary to the public interest? No, Vote 3 to 2 (Perry and Landford voted yes)

Callaghan said he would like to list the findings of facts into one collective statement. Denison read her findings of fact. Callaghan said that he does not have any objections to Denison's findings. Colbath agreed, but would like to include a comment under substantial justice and spirit and intent. Callaghan added his thoughts and said the additional comments would be added to Denison's findings.

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

Callaghan announced to the public how the cases should be presented to the Board.



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Callaghan, Colbath, Landford, Denison, and Reid 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.

Christopher Noyes stated that he is the owner of this property. He is requesting a variance to build a temporary two-family/in-law area within a single-family dwelling. This is due to being disabled and requires assistance with everyday tasks. He stated that he would be willing to place the temporary status into the deed for as long as his parents live or when the house is sold. He read through the criteria as submitted for the file. He stated that he also submitted documentation with the application regarding his disability from the New York Police Department. He faces more surgery in the future. The request is not permanent and the proposed home is consistent and designed similar to the properties in the area.

Kelley confirmed with Noyes that the variance is needed because he would like to have two kitchens in the home and explained where the second kitchen would be located.

Denison asked Noyes to elaborate on the need for two kitchens. Noyes said he is requesting it in order to maintain some type of independence, for himself and his parents.

Callaghan confirmed with Noyes that he would be willing to do a deed restriction that states it would be a temporary measure and if his parents pass away or the house is sold, it would convert back to a single-family dwelling. He said that if his parents were to pass away, he would seek outside help. Callaghan confirmed with Noyes that the home would be constructed in a way that the walls can be removed and the kitchen would be removed without any major changes to the structure.

Public Hearing Open

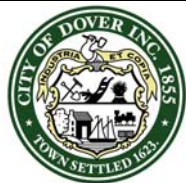
Michelle Krampert, 89 County Farm Cross Road, said she understands the applicants want and need for the two kitchens. She asked if the deed could be changed at any point or time if something was to happen.

Landford said the deed would say that the applicant has the temporary allowance to have the second kitchen.

Denison said the Board members decide what the restrictions are. When the conditions of that deed restriction no longer apply, it would go away. It is not transferable.

Krampert asked how the families and members in this area would access the conservation land.

Bird informed Krampert that he could assist her with that information and suggested that she contact him.



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Jane Ferrara, 101 County Farm Cross Road, stated that her concern is to make sure restrictions apply so that this does not become a rental unit.

Clark clarified that the specific RSA is that the reasonable accommodations are necessary to allow a person or persons with a recognized disability. The information that we received is that the applicant has the recognized disability, not the parents.

Reid said it is an accommodation for the applicant.

Steve Bird said the Planning Department normally is not in favor of in-law apartments. If they were desirable, the zoning would provide for them. In this case, the application is clearly under the State RSA 674:33 V, and if this Board grants the variance with the restrictions that have been suggested, the department would support this variance request.

Public Hearing Closed

Reid stated that the applicant has certainly documented his disability. The fact that he qualifies for social security disability under the current administration is evidence that he is permanently disabled. Having his parents live with him to take care of him is a reasonable request and with the deed restriction, it will prevent this from becoming a two family dwelling.

Landford said the deed restriction should be on the applicant not on his parents.

Reid said in his opinion the in-law apartment should be limited to a person providing care for him. It should not be a rental income source.

Denison agrees. She added that according to the statute, it is for the applicant, not the parents.

Colbath agreed and said the use of the second unit should be used to provide care for the applicant.

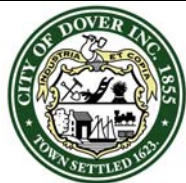
Callaghan clarified with the Board members that the deed restriction would apply to the applicant who is the landowner and exists as long as he needs care.

FINDINGS OF FACT: USE 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.

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: Based on statute and proof provided of permanent disability.

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



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conclusion is based on the following findings of fact: Based on statute and proof provided of permanent disability.

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: Based on statute and proof provided of permanent disability.

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 economical care giving situation.

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: Applicant is requesting temporary in home unit and has agreed to deed restrictions.

4. Did the Applicant provide proof that demonstrates the variance will not result in a diminution in value of surrounding properties? Yes, Vote: 4 to 1 (Callaghan voted no). This conclusion is based on the following findings of fact: Building looks like a single-family dwelling and can be easily converted back to a single-family dwelling. The disability allows for this variance.

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: Public interest would be served by allowing the use as supported by RSA.

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

1. Deed restriction grants variance for only as long as the applicant remains disabled and resides at the property.
2. The second unit must be only used for his caregiver.
3. The deed shall reference the statute and this hearing.

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

Callaghan confirmed with Clark that when the deed is provided to the office, copies would be forwarded to the members for review.

Recess at 8:38 resumed at 8:45

Callaghan, Colbath, Landford, Denison, and Reid will be voting.

- B. Z 07-11 Jewitt Commercial Park LLC (Applicant: Heath Nadeau), 32 Crosby Rd., Unit 8, a/k/a Tax Map G, Lot 31-3, requests a Special Exception under the terms of Article VI, Section 170-23 and Article XII, Section 170-52 C (3) to establish an auto service facility.

Heath Nadeau, 31 Skim Milk Lane, Brentwood, New Hampshire, stated that he is requesting a special exception for a specialty automotive business. He read through the application submitted for the file. He stated that he would be working on race cars and motorcycles and would be by appointment only. This



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would provide a service to the community, there would be low impact on traffic and no major drain on utilities.

Perry left the meeting at 9:50.

Denison asked to explain the type of business. What is motivating you to start the business?

Heath said it is small repairs to cars. It would range from small dent work to scratches. There would be no major mechanical work. It would mostly be for appearance and details. He said that he races and this would fit in with everything that he does.

Kelley asked if his expertise is in painting and finish work.

Nadeau said yes, but he does not want to be limited. His specialty needs would be aimed towards higher quality cars and motorcycles.

Reid asked if they would be selling vehicles and if any would be stored outside the premises.

Nadeau said he would not be selling any vehicles. There may be cars that are dropped off at night in order to work on them for the following day. The building will hold four to five vehicles.

Callaghan confirmed with Nadeau that a spray booth would be located in the building.

Colbath asked what the total square footage is of the lot.

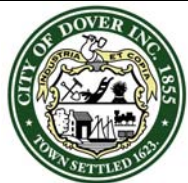
Bird said he pulled the original site plan for the property to make sure that it has met the criteria. The existing lot area is 218,000 sq ft. with 395 feet of frontage, 133,461 sq ft of green area. With the lot area, being 218,000 sq ft it is well in excess of 25%. 50,000 sq ft of the 133,461 is wetlands, which can be used in the calculations for green area.

Denison confirmed with Clark that if this were granted the applicant would need to meet with Arnie Powers at the Treatment Plant to address disposals of fluids, oil separator and paint disposal. This would be required through the permitting process.

Motion: Reid made the motion to accept the case. Denison seconded. Vote: 4 to 1 (Landford opposed)

Public Hearing Open

Wes Tator, 12 Landing Way, Dover, stated that he represents the owners of the commercial park. This park will have twenty-six units, and is providing a service to the economy of Dover, by providing small spaces for entrepreneurs to develop their businesses. He stated that Mr. Nadeau is here because the demand for his service has outgrown his garage.



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Steve Bird stated that the Planning Department has reviewed the criteria presented by the applicant and by research of their own therefore recommends approval of the special exception.

Public Hearing Closed

Motion: Colbath made the motion to grant the special exception. Reid seconded. Vote: U/A

This item was tabled from the beginning of the meeting.

A. MINUTES OF THE MEETING OF MAY 17, 2007

Callaghan stated that he listened to the recording of the minutes of May 17, 2007 and has put together a detailed synopsis for the members to review. It was reviewed and Denison mentioned some typos.

Motion: Denison made the motion to approve the minutes with the changes submitted. Reid seconded.
Vote: U/A

5. OTHER BOARD BUSINESS

A. Administrative Workshop

Discussions of the rules of procedure were discussed. They were reviewed and some editorial changes will be made. A plan to implement the changes will take place next month.

6. ADJOURN

Motion: Colbath made the motion to adjourn at 9:40 p.m. Landford seconded. Vote: U/A

List of Members

Term Expires

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