



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, October 18, 2007**
Meeting Time: **7:00 pm**

1. ATTENDANCE

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

2. APPROVAL OF PRIOR MINUTES OF SEPTEMBER 20, 2007

Motion: Reid made the motion to accept. Perry seconded. Vote: U/A (Kelley abstained)

Callaghan explained to the members an important item that was discussed at the OEP Conference last week regarding when is it appropriate to decide on the conditions. He stated that the Attorney at the conference that made the statement was clear that it needs to be done during the deliberations as a separate piece or part of the motion. In speaking with Attorney Krans, he suggested bringing it up to the Board to decide if the members want to make an immediate change to the policy or set it aside in order to have discussions.

Clark stated that he believes that if you discuss conditions prior to the vote it would be an implied consent. This is a significant change and would need more discussion. If you are going to change the policy, we should do the research and put more thought into it and meet as a group with Attorney Krans in order to discuss.

Perry said he is troubled with negotiating with the owner or the applicant before they vote and establishing conditions that change the facts of the case. Establishing conditions of the variance has an influence on the facts.

Reid suggested sitting down with Attorney Krans and have this conversation with him before we make changes. We should continue deciding on cases as we have been.

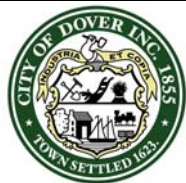
Callaghan stated that he agrees and prefers to do what they did last month and discuss the conditions with the applicant and work through some of the ideas of the condition and make them part of the motion. We were informed that we should not add a condition after they approve a variance.

Perry said when we go through the five criteria and if they are all positive, we assume the variance is granted, but there is no motion to grant the variance. It may be possible to go through the five criteria, have them all turn out positive, and then have a motion to grant the variance with the following conditions.

Callaghan thought that was a good point. For tonight, they will continue as they did in the past pending further discussions with the City Attorney.

Callaghan, Colbath, Reid, Perry, and Kelley will be voting.

3. OLD BUSINESS



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, October 18, 2007**
Meeting Time: **7:00 pm**

- A. Z 05-35 Neal A. Hubbard, Earl 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 frontage of seventy-five (75) feet along a public right of way, where a minimum of one-hundred (100) feet is required.

Note: This case has been remanded back to the ZBA by Strafford Superior Court.

Callaghan said that he has never gone through this process before in which they were asked to perform an evaluation of their decision. In discussions with the City Attorney, a couple of options were that we could rehear the whole case or rewrite the conditions based on the hearings that we have had. One recommendation was to speak with the applicant and get a perspective on what he feels is an appropriate action to take in evaluating the case.

Attorney Schulte stated that he was under the assumption that this would be treated as a rehearing. The Court has given specific guidance as to where the Board went astray. You would have to revote on the criteria because your votes on the criteria in the past were based upon a misapplication of the standards. Had the Board only considered the things that should have been considered, the vote might well have been different, and that would have certainly affected the findings of fact. On the four matters that the Board found against the applicant and on every one of them, the findings were inappropriate because they looked at matters that the Board should not have considered. Anything that has been introduced in the record in the past remains available to the Board. I do not believe there is new evidence for the record tonight although there is always a chance to go back, identify, and reemphasize things. He submitted copies of the maps and the letter from Realtor Mr. Patch that was already on file.

Bird felt that the evidence presented to this Board up until this point is all part of the evidence and this hearing is a supplement and additional information for the Board to consider, but the previous evidence that you have received should be part of your decision making process.

Callaghan agreed and stated that this is not a de novo hearing. We will consider everything that has happened in the past.

Motion: Perry made the motion to accept and conduct a rehearing and a re-determination of the criteria in the findings of fact. Reid seconded. Vote: U/A

The voting members for the previous hearings were discussed. Landford removed himself from the case. Alternate Jim Kelley will be voting.

Attorney Schulte felt that although Kelley was not present for some of the meetings he feels he is capable of deciding and voting on this case.

Callaghan said he did not plan on hearing this tonight, he felt that they were just going to decide on what to do and add it to the agenda for next month.



CITY OF DOVER

DOVER ZONING BOARD OF ADJUSTMENT - MINUTES

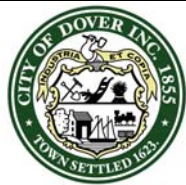
Meeting Type: Regular Meeting
Meeting Location: Council Chambers - 288 Central Avenue, Dover, NH 03820
Meeting Date: **Thursday, October 18, 2007**
Meeting Time: **7:00 pm**

Attorney Schulte said he assumed that it would be heard tonight, all abutters were notified and this is a simple request.

Callaghan asked how the members felt about continuing. After further discussion, it was decided to proceed with the public hearing session as Reid, Perry and Colbath agreed that it should be heard, although a decision may not be rendered tonight.

Attorney Schulte proceeded and represented the applicant. In the Court Order, the court pointed out that the last time around there was a vote by this body that the hardship criterion had been satisfied, but the ZBA found by different votes, that the other four criteria had not been met. The findings that were made and the discussion that was undertaken by the ZBA, addressed the use that was going to be made by the property. The court said very clearly and specifically that when voting on the dimensional variance, you could not decide it based upon the use. This body cannot deny a variance because you would prefer a different type of use or you have a concern about the proposed use. The only question is what is the impact of the fact that one of these lots would be lacking 22 feet of frontage? A copy of the tax map of the original subdivision was submitted which shows the direct abutter on both sides of this property as the City of Dover. The applicant tried to obtain land from the city but they declined. The other plan submitted shows the lots and the proposed lot that is entirely in the office zone meets all the requirements, therefore this board does not need to grant relief for this lot. The remaining land is the lot for which this variance is sought. It is a lot that is 27,000 sq. ft. and has 78 ft. of frontage along what was originally plotted as Earl Street. The blue area shown on the map is the minimum size that a building envelope could be and that is based upon 15 ft. setback from the side, a 30 ft. setback from the street, and a 100 ft. setback from the wetlands. At the point where the new building occurs at the 30 ft. setback line, the lot is at least 135 ft. wide and that is important as they get into the criteria. The only issue in this case is does it make a difference that this 27,000 sq. ft. lot would only have 78 ft. of frontage as opposed to 100 ft. of frontage. An existing residence on the lot has been here many years and they do not know what its wastewater treatment arrangements are. This lot would be improved because we are extending sewer and water down the street and would be available to abutting properties if they wanted to connect to it. The proposal is to subdivide a 37,000 to 40,000 sq. ft. lot into two lots, one of which is fully compliant with the zoning ordinance, the other one is compliant in every regard except for frontage. This board needs to focus on the dimensional issues and what impact they would have on the criteria.

Although the ZBA voted last time that the applicant satisfied the hardship criteria, he briefly explained why as it continues to apply and it needs to be in the record. Under standard that is applicable under the boccia decision to dimensional variances. There are two questions that you have to answer with respect to hardship. The first question is do you need a variance to enable the proposed use of the property given the special conditions of the property. The special conditions of the whole lot are that it is irregularly shaped. The lot widens as you go back from the road so that the 30 ft. setback line for the proposed lot is about 130 ft. wide. The big lot cannot be subdivided unless a variance is granted because we only have 178 ft. of frontage, therefore they need a variance to do this, so he feels that they meet the first criteria. The second portion of the hardship test is, is there some other method reasonably feasible for the applicant to pursue without the area variance? Last time you voted no, the only cure for frontage is to get more frontage and we cannot get more frontage because the abutter on each side, which is the City of Dover has refused to give us more land, so we meet the hardship provision.



CITY OF DOVER

DOVER ZONING BOARD OF ADJUSTMENT - MINUTES

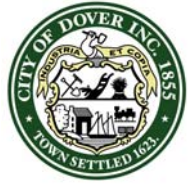
Meeting Type: Regular Meeting
Meeting Location: Council Chambers - 288 Central Avenue, Dover, NH 03820
Meeting Date: **Thursday, October 18, 2007**
Meeting Time: **7:00 pm**

The second criterion in the form that is used by the ZBA is whether or not granting the variance will result in substantial justice. This is the point where the court set forth what the applicable test is, which is different from what was applied previously. The Court Order states that the applicable standard is that any loss to the individual, which is not outweighed by a gain to the public, is an injustice, so if you have a loss to the individual, there is not an injustice unless you have a gain to the general public that outweighs the individual loss. In this case, the loss to the individual is that he has an oversized lot that has nearly enough frontage but not quite enough. The loss would be that if the variance is not granted the property owner will not be able to use his lot for its highest and best use. The purpose of frontage requirements, the ZBA acknowledges in the findings, is to maintain density and spacing between buildings. In this case, that density and spacing would be maintained because there is a building envelope on this lot. Any new building and the existing building would satisfy the density consideration, which is the reason for frontage requirements. Denying the variance would not provide a public gain because all of the gains that the public might have, would be satisfied because of where a new building would have to be located and because of where the existing building is located.

The third criterion is that the variance be consistent with the spirit and intent of the ordinance. The purpose of frontage is to maintain sufficient spacing between buildings and that purpose will be satisfied. If a new building is constructed it will be far enough away from the office zone and be far enough away from the city owned land. The spirit and intent of the ordinance dealing with frontage is that there be adequate spacing and a certain amount of density. In this case, the spirit and intent of the ordinance is satisfied as there is adequate spacing.

The fourth criterion is that the variance, not result in a diminution of property values. At two previous hearings, a local realtor Greg Patch testified. He was not able to come to the third hearing so he submitted a letter (copy enclosed) in which it restates what his testimony was. His professional opinion was that the subdivision of this lot that would create an additional building lot would not have a negative effect of the property values in the area. A duplex residence on both of the lots or either of the lots would not have an adverse effect on property values. In fact, there would probably be a positive effect on home values in the area. He testified at one of the meetings, that if there were no primary residential structure on this lot and you were to put in a commercial use, it would more likely have a detrimental impact. If there were no house on this lot, you could put a commercial use here, which would more likely adversely affect property values. The question is does the fact that the waterfront lot that would have less than 100 ft. of frontage have any adverse impact. Knowing what use might happen, would the lack of frontage have any adverse impact on the neighboring property values and the simple answer is no, it cannot. He reminded the board that Mr. Athearn has said that he had an opportunity to buy this property but he did not because he did not think he could do anything with it. Had he known that he could divide it and develop it he would have bought it.

The fifth criterion is that the variance not be contrary to the public interest. This is one of the areas, where the court has given you specific guidance. They have said that the applicable standards on this test are whether granting the variance would violate basic zoning objectives or would threaten public health, safety, or welfare. The frontage issue does not have any impact that would implicate public health, safety, or welfare. The existing building could continue and any new building would meet all setbacks, the applicant would be bringing city water and sewer, which is a positive impact. This would not be the only lot in this



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, October 18, 2007**
Meeting Time: **7:00 pm**

neighborhood where less than 100 ft. was available for frontage. We could put a duplex in the office zone and another residence on the waterfront lot; we could expand the existing residence and convert it to a duplex. Since you are under the instructions of the court, you cannot look at this as whether or not there will be one more house or two more houses. You can only look at the frontage. He believes that the applicant meets all of the criteria requirements and asked that the variance be approved.

Kelley confirmed with Atty. Schulte that Mr. Patch's letter was originally submitted at the June 2006 meeting. He questioned the lots shown on the 1904 subdivision plan and Schulte informed him that most of the lots were combined.

Callaghan announced that the Board is implementing a different routine that will help everybody understand what position they are speaking from, either for or against. As always, we will hear the Planning Departments recommendations and you will be given an opportunity for rebuttal to comments that you have heard.

Public Hearing Open

In Favor of the request – nobody spoke

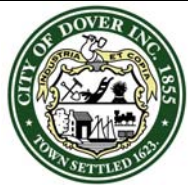
Against the request

Brian Athearn 2 Earl Street clarified that he did want to buy the property to put a garage on it but was told that he could not as it would have to be 100 ft. from the water. This is a dead end street. People come down and turn around continuously. It is a property that should stay the way it is. Renters have a tendency to do whatever they want on the property and do not maintain the property. The lawn on this property has not been taken care of, the grass is long, and trees that have fallen from the storm have not been dealt with. There is no hardship to the developer; he wants to do more to his property than what is allowed. Willand Pond is a major issue. He mentioned the petition that was signed by thirty people whom are concerned with what will happen if this is granted.

Terrance Dunn 15 Leighton Drive stated that he lives at the next street over and believes this is an overuse of the land. He stated that he could not believe that 78 ft. of frontage will increase the value of any property in that area. He expressed concern with all projects that have to do with Willand Pond. He confirmed that there was no building moratorium in place.

Margaret Cote 37 New Rochester Road stated that this is a simple request as Atty. Schulte stated and the applicant needs 100 ft. of frontage and it is simple, they do not have it. In regards to Mr. Patch's letter, at one of the meetings Mr. Patch had said that he did not know whether it would increase their values, but the following month in the letter, it says it will make the value go up. She stated that she would like Mr. Parker's research from one of the meetings regarding nonconforming lots read for the record.

Planning Dept. recommendations



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, October 18, 2007**
Meeting Time: **7:00 pm**

Bird stated that the Planning Departments opinion has not changed from the previous meetings. All of the explanations and reasoning still apply. He reiterated the research that Chris Parker did on the lots that were part of the Lakeview subdivision. There were originally 266 lots created in that subdivision. Those now comprise a total of 60 lots, on the current city tax map of those 60, 6 do not meet the frontage requirement, 3 of 6 are city owned lots. Of the 57 useable lots, 3 of them do not meet the frontage, of those three, abutters own two of those lots, so according to our calculation of those 56 lots there is only one that has inadequate frontage. Parker did this analysis at the meeting of February 2006. The other point to reiterate is a large portion of Earl Street is a paper street which means that the right of way exists but the road was never built, the pavement for Earl Street ends in front of this property. There is only about 95 ft. of pavement that this lot has frontage on today and the rest can be characterized as a driveway for a single family home because that is what it is.

Rebuttals to the comments in favor – none

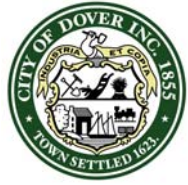
Rebuttals to the comments for opposed

Dunn added that the city is not willing to sell land to this applicant and he proceeded to discuss the nonconforming abutting lots, which he believed they could not be built on without a variance.

Attorney Schulte said there are three separate lots of record that are 50 ft. wide. Because they are separate lots, they can be built on but are subject to reduced sideline setback requirements and they do not have to come to this board for approval. He stated that all of the comments from Mr. Dunn and most of the comments made from Mr. Athearn are not proper for this board to be considering. The status of Willand Pond has nothing to do with the issues that you need to consider. With respect to Ms. Cote, she said that Mr. Patch testified that he did not know if there would be a positive or negative impact on value. If you go back and look through the minutes, Mr. Patch did not say that, he did not testify. Mr. Athearn however did testify and in the June 2006 minutes, his testimony is quoted in the Judges opinion that he has spoken to several realtors and they could not tell him if there would be a positive or negative impact. Ms. Cote did hear this testimony but it came from Mr. Athearn. In response to Mr. Athearn's comment regarding renters is particularly inappropriate and the Court has said you cannot consider that since that has to do with the use of the property. If this applicant wanted to take down the home and withdraw his application for a variance, he could put up a duplex across the street. He could put in several types of commercial uses here that would be a greater impact.

Colbath pointed out that Mr. Patch did stand up here and did in fact say that if those duplexes were built and were poorly managed they would have a negative affect. That is in the recording of the meeting although it did not make it in the minutes. Listen to the recording and you will hear Mr. Patch say that and it is also referenced in one of our findings of fact.

Attorney Schulte said because that focused on the use and not dimensional, it was inappropriate and that was one of the findings of the courts. He added that in response to Bird's comment, in which he characterizes Earl Street as being just a paper street, the ordinance requirements talk about frontage on a public way, and in fact a significant part of Earl Street is owned by the city. The city does not require that you actually have frontage, if you have an existing lot that does not have direct frontage on a city street but



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, October 18, 2007**
Meeting Time: **7:00 pm**

you have access to it, policy of the city is that you can still build on it. In this case, Earl Street as it extends to the city land should be characterized as a public way.

Public Hearing Closed

Reid confirmed with Bird that there is no actual road in front of that lot, the pavement ends and it is a driveway to the house at that point. I am not saying it does not have a right of way there.

Kelley said the city could choose to pave it all the way to the end. He clarified with Bird that the tar ends at the driveway shown on the plan.

Reid asked Bird which of the five criteria do you support a denial. Bird said it probably comes most to the hardship criteria. The frontage for the nonconforming lot seeking the variance has no actual city street that runs in front of it. It is an unpaved driveway. This may be addressed if they get the variance and come in to subdivide it. He stated that he was pointing out the conditions that exist today. There is no actual city maintained road in front of this lot, which is being asked for the variance.

Callaghan asked the members where they stand on the criteria and if we have a significant difference in the vote, we could ask one member to write up something in opposition and one in favor. We could then bring that back to the Board next month or at a special meeting if necessary and we could review the criteria and the finding of fact together.

Colbath questioned one of the statements made in the Courts Order and believes that there is an error in the assumption in the statement that says, "the parties agree that if the property had 200 ft. of road frontage, Hubbard would be allowed to subdivide the property and construct a residential duplex on each lot without any action by the ZBA." That is not correct, the existing structure can be converted but they cannot move it, they can only convert it.

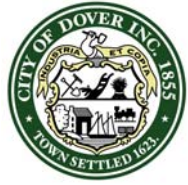
Clark said he agrees with Colbath and in the R-12 zone, if you have an existing building and it meets the criteria in the ordinance you can convert it to a two family dwelling you cannot tear it down and build a duplex. In the office zone, a duplex is an allowed use and the applicant could put up a duplex without further action from this Board, but if the applicant chose to tear down the existing home and build a new two family dwelling, that would require a variance from the ZBA.

Perry added that the statement Colbath is concerned with is not relevant, that is still a use issue.

Callaghan said the last time each member took home the form and filled out their findings of fact. All points were taken and were solidified into one.

Motion: Perry made the motion to defer decision to the next meeting. After further discussion, Reid seconded the motion to table with the intent of determining the findings of fact. Vote: U/A

Callaghan requested that each member write their own findings of fact to support their decision and focus on area issues only, avoid the use. The meeting would be to compile the information of documents for the



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, October 18, 2007**
Meeting Time: **7:00 pm**

findings of fact and will be held in the Conference Room on Thursday, November 8 @ 7:00 p.m. The clerk will notify all via e-mail and or a phone call. There will be public notice but no public hearing.

Reid left the meeting at 8:50 p.m.

Recess @ 8:50 p.m. resumed 9:00 p.m.

Callaghan explained to the general public how the cases should be presented to the ZBA. In order to receive a variance you would need a positive vote from three out of the five voting members on your case.

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

4. NEW BUSINESS

- A. * Z 07-15 City of Dover (Applicant: KAB Realty Management LLC), 35 Third St., a/k/a Tax Map 31, Lot 22, zoned RM-8, requests a Variance from the terms of Article IX, Section 170-12, Table I, Part C-2, to establish an office use.

William Goldstein representing KAB Realty Management LLC. This lot directly abuts the B-2 zone, which is principally a commercial zone and this structure on this property has been used for non-residential purposes for almost 50+ years. He stated that this structure was previously the meeting house/club house for the Dover Senior Center. The applicant intends to purchase the property from the current owner, which is the City of Dover, and convert it to owner occupied office space, while completely renovating the façade and the exterior and interior of the building. He proceeded to read the application submitted for the file.

Perry confirmed with Clark that this property was before the Board previously when an applicant asked for a special exception for a congregate care facility. It was granted but there was a financing issue, so it never happened. Since it was a year ago, it expired per the ordinance. He confirmed with Goldstein that no deliveries of material would be delivered here; it will be offices for this business only.

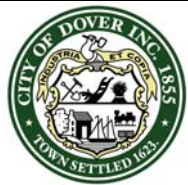
Kelley confirmed with Goldstein that it would be owner occupied as office space only, no living space. He is not renting out individual offices in the building.

Colbath stated that this is a big structure. Will it remain a single user facility? How many people do you intend to put in this building.

Goldstein said initially twelve people, although suspects that they will add five within the next year and probably another three after that. At any given time over the course of the next two years, it would be increased to 23 people. Some of the administrative people will be working away from the office, so the 19 parking spaces should work well considering the comings and goings of the staff.

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

Public Hearing Open



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, October 18, 2007**
Meeting Time: **7:00 pm**

In Favor of the request

Vicky Blanchette 86 Third Street stated that she lives directly across the street and clarified that there are residences in this area. She stated that she is for this request because she does want to see the building being used. She expressed concern with the parking, as this is a problem and asked that they take into consideration the parking issues as this area already has congestion problems.

Against the request – no comments

Planning Dept. recommendations

Bird said that the Planning Department supports this variance request. It is a mixed-use neighborhood, as there is a variety of residential land and commercial uses in the neighborhood. The previous use was certainly a non-residential use and this is similar to that. In terms of the parking issues, obviously, they have to provide enough parking to meet the zoning requirements and we will make sure that it happens. The property does abut the B-2 district, so it is certainly in an area that is in transition. When the City Council sold the property, they went through the bidding process and their sale of the property was contingent upon the successful bidder receiving a variance. The applicant had no other option than to apply for the variance. It is compatible with the neighborhood and it is a better situation than the building remaining vacant, therefore the department supports this request.

No rebuttals were made

Public Hearing Closed

Landford stated that this use would be a better use for the property.

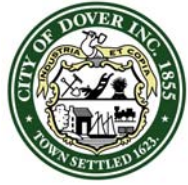
Kelley added that the office use takes cars out of the neighborhood overnight. He asked how the parking is enforced and what would happen if the population of the building increased.

Clark said that if the variance is granted the applicant submits the information with the building permit as far as the renovations, etc. and part of it will be a site plan, so prior to any certificate of occupancy being issued we would make sure that the parking is constructed as per the plan submitted. In regards to adding additional people to the structure, it would be in his best interest not to overpopulate the building but an occupant load would limit the number of people. There is a potential of all spaces on site being taken and a client or visitor may have to park on the street but that is why we have public parking.

Callaghan confirmed with Clark that he is going by the ordinance of required spaces in the general office category, which is one space per 325 sq. ft. of gross floor space. The square footage of the building is 5,796 sq. ft. and divided by 325 is 17.8. The applicant is showing 19. He has one more than the minimum.

Callaghan asked what the hours of operation would be for the office space.

Goldstein said Monday through Friday 8:00 a.m. to 5:00 p.m.



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, October 18, 2007**
Meeting Time: **7:00 pm**

Callaghan asked about the off-street evening parking ban during the winter. Clark said that the winter ban is midnight to seven a.m., so it would not affect Mr. Goldstein. It is his understanding that the residents that have no off street parking are given permission to park in the municipal lots by the Dover Police.

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: Due to the proximity of other zoning, the proposed use is reasonable.

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: The City of Dover has been using the property for perhaps 50 years.

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: Primarily based on parking it meets the parking requirement and will not affect overnight parking.

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 reasonable use of the property. Denying the applicant would not provide substantial justice 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: Proposed use in its environment will not change the essential character of the locality.

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: To the contrary, updating and putting the building into use, will help the surrounding properties.

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: It is best for the public that the building is put to use than to leave vacant.

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

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

- B. * Z 07-16 Joyce D. Mackey, 337 A & B Dover Point Rd., a/k/a Tax Map L, Lot 60-2, zoned R-20, requests a Equitable Waiver from dimensional regulations in connection with Article V, Section 170-16, to maintain a two-family dwelling within twenty-one (21) feet from a front property line as it abuts a street, where a minimum of thirty-five (35) feet is required.

Joyce Mackey stated that she hired a contractor to construct her two family dwelling from start to finish. After the foundations were poured and the houses were erected, they starting having numerous problems with the contractor. Things did not go well, therefore the relationship between the applicant and contractor



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, October 18, 2007**
Meeting Time: **7:00 pm**

had been terminated. She stated that in trying to receive a certificate of occupancy she became aware of the fact that the home was built within the front setback.

Clark reminded the Board that this applicant was granted a variance to construct a two family dwelling. On the variance application, it showed sufficient room for the house so variance for setbacks was not necessary. The company was given the same conditions that apply to all applicants, in that the footing location has to be verified and certified prior to construction. Unfortunately, that did not occur and the reason why this was not caught is because it is a modular home. The foundation goes in and the home shows up. The applicants are clearly innocent bystanders.

Callaghan asked why it is not in front of them as a variance as he feels that it is a better request for this situation.

Clark said that once Kevin McEaney did the survey, they discussed the request and they felt that there is no hardship with a variance request.

Perry said he does not have a problem with using the equitable waiver in this situation. It was this type of circumstance that this was designed for. This is an equity hardship and they deserve an equitable waiver. He does believe that the Council and Planning staff needs to address how to deal with modular homes.

Clark said the only real way that we could deal with this is to issue separate permits for foundations and then submit building permits, which would require more administrative time.

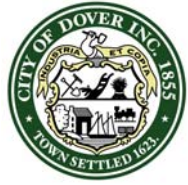
Kelley said he agrees that this circumstance is unfortunate but you do not want to lead an easy path to contractors in the future. The homeowner should be on top of this. The burden seems to be on the city.

Clark said a separate foundation permit with a certification could be done.

Landford felt that was a good idea.

Colbath asked how this could have happened, as he recalls that a foundation certification needs to be submitted before further construction. We are rewarding the contractor that this is okay. If you read the questions in the equitable waiver, it will not pass.

Clark said we inform all applicants that a footing certification needs to be submitted prior to further construction and with only three inspectors in the city and with the level of development going on, it is difficult to go to this home every day to check progress. In regards to the equitable waiver statement somebody else came before the Board for an equitable waiver and it was just for a foundation but this Board denied it because it wasn't substantially complete, you felt it didn't meet the criteria so it was denied. Now we have a new house sitting on this foundation how can you say it is not substantially complete. This was an error and it was not the applicant/owners fault.



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, October 18, 2007**
Meeting Time: **7:00 pm**

Callaghan explained that the part he has a problem with is “the violation was or was not an outcome of ignorance of the law or bad faith but resulted from a legitimate mistake.” This is not a legitimate mistake; the builder deliberately ignored the rules

Clark said the rule that he ignored was getting the foundation certification, the mistake that he made was that he measured from the edge of pavement to the front of this house.

Kelley felt that this is a contractor and he should have known what he was doing.

Clark said part of the issue and in the State of New Hampshire is we do not require contractors to be licensed so there is no rule that they have to be knowledgeable or aware etc We get plans all of the time from homeowners and contractors that shows their front setback from edge of pavement and we have to inform them that it has to be from their front property line, not from edge of pavement.

Kelley stated that in looking at the property and where this house has been constructed it is not terribly inconsistent with the neighbor’s houses.

Motion: Kelley made the motion to accept. Perry seconded. Vote: U/A

Public Hearing Open

In favor or against - no comment

Planning Dept. recommendations

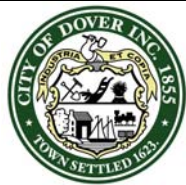
Bird said that the Planning Department meets the criteria of the equitable waiver and recommends approval.

No rebuttals or comments were made

Public Hearing Closed

FOUR CRITERIA FOR EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENT:

1. It is the Board’s conclusion that the request does involve a dimensional requirement. Vote: U/A
2. It is the Board’s conclusion that the violation has not existed for 10 years or more with no enforcement action, including written notice, being commenced by the City, or the nonconformity was discovered after the structure was substantially completed or after a vacant lot in violation had been transferred to a bona fide purchaser, and the violation was an outcome of ignorance of the law or bad faith but resulted from a legitimate mistake. Vote: U/A
3. It is the Board’s conclusion that the nonconformity does not constitute a nuisance nor diminish the value or interfere with future uses of other property in the area. Vote: U/A
4. It is the Board’s conclusion that the cost of correction does outweigh any public benefit to be gained. Vote: U/A



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, October 18, 2007**
 Meeting Time: **7:00 pm**

Therefore, based upon the foregoing, it is ordered that the application for Equitable Waiver of Dimensional Requirements be granted.

5. OTHER BOARD BUSINESS

A. Administrative Workshop

Callaghan distributed a list that summarizes some of the things that were talked about at the OEP Conference and he feels it has a significant impact on this board. He stated that the rules of procedures amendments will be made and they should be ready for next month in order to use them immediately to accommodate some of the new regulations. He will discuss the list with Attorney Krans along with the discussion on the conclusions from this meeting. Callaghan informed the members that the first item on the list is a requirement. After a lengthy discussion regarding that item he stated that he will speak with Attorney Krans and would e-mail the training documents back to all to review denoting whether or not the item is a requirement or a recommendation. The other items on the list were discussed.

6. ADJOURN

Motion: Landford made the motion to adjourn at 10:30 p.m. Kelley 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