



CITY OF DOVER

## DOVER ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Special Meeting  
Meeting Location: Conference Room - 288 Central Avenue, Dover, NH 03820  
Meeting Date: **Thursday, November 8, 2007**  
Meeting Time: **7:00 pm**

### 1. ATTENDANCE

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

Call to order @ 7:05

### 2. OLD BUSINESS

- 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 item was tabled from the last meeting of October 18, 2007*

**Motion:** Perry made the motion to remove from the table. Reid seconded. Vote: U/A

Callaghan handed out a map and informed the members that it was used to estimate frontage with the surrounding lots as this is based on his first criteria. He stated that tonight's meeting is to identify the criteria only, each member had to read their findings of fact for each criteria and the discussion regarding the findings may or may not change their original decision. The draft notes will be collected and two members will become a team to consolidate those into one finding of fact and the real vote will take place at the meeting of November 15, 2007.

DRAFT NOTES FOR FINDINGS OF FACT FOR AREA VARIANCE (copies in file)

**1. The applicant was to provide proof that special conditions exist and that literal enforcement of the ordinance would result in an unnecessary hardship. a) i. Did the applicant demonstrate that an Area Variance is needed to enable the proposed use of the property given the special conditions of the property? Yes, Vote 4 to 1 (Callaghan voted no)**

Colbath voted yes, the lack of frontage despite the size of the lot, and the owner/applicant attempted to acquire frontage from the abutter (City of Dover) and they declined.

Reid, Perry, and Kelley voted yes.

Callaghan voted no, as the applicant has shown as evidence that the lot does have unusual square footage due to irregular shaping as compared to the surrounding properties, however the applicant is seeking a variance for road frontage relief. The applicant has 175 ft. of road frontage compared to the immediate surrounding properties (copy in file). This is consistent with the neighborhood and does not qualify as having any special conditions relative to road frontage.

**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.**

Colbath voted yes, the benefit sought (creation of a new lot) cannot be achieved by some other reasonable feasible method. There is no way to subdivide this lot without creating a non-conforming lot.



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Reid and Perry agreed and voted yes.

Kelley stated that his vote was originally no, however after a brief discussion, he has determined that he would vote yes.

Callaghan voted yes, the only way the applicant can divide the property into two lots is to request a variance from the requirement of having 100 ft. of road frontage.

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

Colbath voted no, there is no injustice to be corrected. The applicant currently enjoys the possibility of creating a duplex in the area of the lot, zoned office by eliminating the aging substandard home in the wetlands setback. He also has the opportunity to use that portion of the lot for a variety of business uses if the home is removed. Granting the variance would create an injustice for the abutters. It would allow the applicant to keep the existing home in the wetlands setback and create a new structure and would allow the applicant additional rights over and above the abutters giving him the right to greater development potential than his neighbors.

Reid voted yes, he stated that he looked at the courts decision, and agrees that duplexes are a permitted use in this zone.

Perry voted yes, as it was based on the courts decision as well. There is no injustice to the public. The gain to the public for another 28 feet of frontage does not outweigh the loss to the individual.

Kelley voted no, because the applicant can improve the lot, he can rebuild the existing dwelling. If it is granted it changes the zoning ordinance in the City of Dover. The applicant is not being deprived of an opportunity to improve the lot.

Callaghan voted no, allowing this variance would create an injustice to the current residents on Earl Street since losing the tranquility of a residential dead end street with lots of equitable road frontage, would be unjust. Discussions continued.

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

Colbath voted no, the spirit and intent of the ordinance was to regulate density and clearances in the neighborhood. The proposal would allow a new structure to be built in an area that currently only has enough frontage for one lot. It does not seem practical to create a new lot with a very small developable area. This new lot would require a second variance to build a reasonable structure on the new lot.

Reid voted yes, the lot between this lot and Willand Pond will be built upon. The building would be subject to the 100 ft. setback from the pond and this new lot would not alter the essential character of the neighborhood.

Perry voted yes, as he agrees with Reid's statement.



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Kelley voted no, the neighborhood is tight, and lessening frontage will ignore the value of spacing. This is at odds with the spirit of the ordinance.

Callaghan voted no, the applicant contends by allowing the creation of two lots of which the size for both meet zoning would meet the spirit and intent of the ordinance. The applicant did not address how creating two lots with one having less frontage than required by zoning, would meet the spirit and intent of the ordinance. If the variance is granted it will increase the number of lots on Earl Street and the potential for congestion and overcrowding in conjunction with inequitable allocations of road frontage for the neighborhood lots.

**4. Did the Applicant provide proof that demonstrates the variance will not result in a diminution in value of surrounding properties? No, Vote: 3 to 2 (Reid and Perry voted yes)**

Colbath voted no, it is their belief that there is a diminution in value evidenced by the letter from the abutters and their opinions voiced. The expert witness for the applicant stated that under certain circumstances there would be no effect on values, but also stated that he could see a scenario that would cause diminution. Though this is an area variance, the proposed use does enter into this question. The expert witness offered comment that if utilized as housing rental units as the applicant indicated it would be used in his presentation, property values would suffer. He also indicated that if some of the uses allowed in the office zone were created, the surrounding property values would suffer. These items would only be allowed if the residence were removed from the lot. The letter provided by the expert witness contradicts his original testimony.

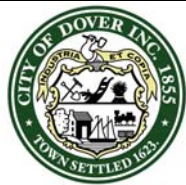
Reid voted yes, in the courts order it says not to focus on the use and the letter was submitted from an expert witness.

Perry voted yes, as he feels the applicant did provide proof from the realtor. The abutters could have provided a letter from an expert on their behalf but they did not.

Kelley voted no, the applicant offered one data point expressed by a single realtor that property values may or may not be diminished. A more formal appraisal seems appropriate for a change of the proposed magnitude.

Callaghan voted no, he stated that the applicant points out the lot that will be subdivided is in a mixed zone of office and residential and alludes to the future use as a residential use. The applicant refers to the use throughout the application. In support of this argument, a letter from a real estate professional explains that duplexes on each lot would add value to the surrounding properties. That argument may apply to the use of the requested lots or for the existence of the two requested lots, but does not address the fact that one of those lots will have a street frontage that does not meet the zoning requirements.

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



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Colbath voted no, presuming the lot is subdivided and create two uses. The additional traffic and burden placed on this road is unfair to the abutters. If you double the lot and are allowed two uses where only one is allowed you are doubling the intensity of use. Part of that road frontage is intended for use.

Reid voted yes, and he looked at a similar case that he has copies for the members to review. The requirement that the variance not be contrary to the public interest is related to the requirement that the variance be consistent with the spirit and of the ordinance. Given the size of the frontage, he does not think it violates the basic zoning objectives of frontage. The tight neighborhood is the character of the neighborhood.

Perry voted yes, as it is similar to Reid's reasons and the point that the applicant made is that the building will be in the building envelope. They will have more than enough frontage because of the unusual shape of the lot.

Kelley voted no, granting the variance would violate basic zoning objective. The neighborhood is tight and lessening the frontage of this lot will make an impact to the abutters.

Callaghan voted no, the applicant refers to the City owned adjacent property and makes the assumption that the property will remain vacant, the open space will maintain an appearance equivalent to the existing open space, thus making the shorter road frontage aesthetically feasible. If the variance were granted based on this premise, granting the variance would preclude the use of that City land for anything in the future that may impact that assumed aesthetic view, the non-conforming frontage may then be an unfair burden to the City thus contrary to public interest.

Discussion continued regarding the vote and Callaghan stated that it appears at this point the vote is 3 to 2, however this is not the official vote as the language for the finding of fact has not been completed for a vote. All members agreed that although they respect each other's opinion their vote would not change from what they have previously stated.

Callaghan stated that he would like to appoint two people to write up the findings of fact, one member in favor of the request and one against. It was decided that Callaghan and Reid would meet to consolidate all the draft notes for one finding of fact to be voted on. Callaghan stated that he would inform City Attorney, Alan Krans of what will take place. The findings of fact will be officially voted on at the November 15, 2007 meeting.

### 3. ADJOURN

**Motion:** Perry made the motion to adjourn at 8:05 p.m. Reid 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