

# Dover Zoning Board of Adjustment

## Thursday, February 17, 2005

### MINUTES

**Members Present:** Richard Callaghan, Bill Colbath, John Levasseur, Masi Denison, Frank Landford, Ruth Gorton

**Staff Present:** Thomas Clark; Building Official, Christopher Parker; City Planner, Jean Glidden; Recording Secretary

#### **ITEM # 1: CALL TO ORDER**

Richard Callaghan brought the meeting to order at 7:05 p.m. and explained to the general public how the cases should be represented to the Zoning Board of Adjustment.

#### **ITEM # 2: APPROVAL OF MINUTES**

##### **A. Approval of the minutes for regular meeting of January 20, 2004.**

**Motion:** Bill Colbath made the motion to accept the minutes. John Levasseur seconded the motion.

**VOTE:** U/A

Ruth Gorton announced that she would be stepping down on the next case because she was not present at last months meeting.

#### **ITEM # 3: OLD BUSINESS**

- A. Z 05-01 Randy & Teresa Palmer, 19 Union St., a/k/a Assessor's Map M-20, Lot 101, zoned RM-10, requests a variance from the terms of Article V, Section 170-16, to demolish a non-conforming accessory structure (detached garage) and to construct an attached garage within approximately two (2) feet from a property line, where a minimum of six (6) feet is required and within approximately four (4) feet from a rear property line, where a minimum of fifteen (15) feet is required.**

Attorney Schulte announced that he was representing the applicants. The plan submitted at last months meeting shows the existing structures on the property, the existing house, and garage. The request is to demolish the existing garage and build an addition connecting the house to the garage. As requested by the Board sketches were submitted that shows a small dormer addition on the right hand side and it will accommodate the headroom for the stairway. In addition, the sketches show the elevation as to what the front will be with the garage door and the entranceway. The plan for the second floor shows a dormer located on the left hand side, which allows the ceiling to be 7 feet tall in that area. If the dormer did not exist it would be a slanted roof, and it would make the area difficult for Mrs. Palmer to work in. The sketch shows three areas highlighted underneath the dormer and they are for the three different types of sewing machines that she will be using. The large table shown is located in the center of the working area and is drawn to scale, it measures 5 feet by 12 feet and Mrs. Palmer will be using it to make curtains and will also have storage racks and design boards. Given the pitch of the roof there is limited walking space where you would have the adequate 7-foot ceiling and that is the reason why this building was sized as it was. It would also allow for a full size single car garage and a bathroom with a shower stall on the first floor.

Pictures submitted show the retaining wall and he stated that both terraces measures just over 30" tall and from the base of the front terrace to the base of the stockade fence in the back is about 6 ½ feet in elevation and is 4 to 4 ½ feet in depth. The edge of the building is already up against where the terracing is and if it goes any further, it would have to be disturbed at a considerably greater expense. The existing garage and the new enlarged structure will not have any further encroachment on the setbacks than the existing structure does. The lots are relatively narrow and many of the structures are close to the property line and are common in this neighborhood. This project is not increasing the nonconformity, they are connecting the buildings and making it useful and allowing enough space on the second floor so it can be used for the purpose that they want to use it for. This is a reasonable use and putting the structure closer to the side property line of the Dover Housing Authority is the best place, it has the least impact on the neighbors and all of the neighbors are in support of this project.

Richard Callaghan asked if there were any evidence or estimates to support the cost of moving the retaining wall further to the right.

Attorney Schulte stated that he does not have a number, but it would obviously be a lot more work. The applicant spent a lot of time putting that wall in and they do not want to disturb it.

Bill Colbath stated that the Board was looking for the reason why this has to be designed over the garage versus another place on the property, why is it not able to be incorporated in the addition.

Attorney Schulte stated that in order to get to the second level you would need a stairway somewhere and this design would work because it would still allow sufficient room to provide a working area that they want. They would continue to have a structure located here that meets the existing setback.

Bill Colbath stated that he is asking the same question that he asked at last months meeting. What is the reason for the shape and size of the addition, and why it cannot be incorporated to stay within the setback?

Attorney Schulte stated that he provided the Board with the floor plan to show why it has to be designed this way. The applicant is entitled to receive consideration for the fact that extra expense would result if some other approach were required. This is a reasonable proposal and the neighbors support it. The DHA is urging them to do this because the fence that runs on their side of the property line is going to be taken down and they have been very cooperative in terms of allowing use and maintenance on the existing structure.

Richard Callaghan stated that the whole purpose behind the Zoning Ordinance is that as these buildings self-destruct and go away, it is not an entitlement to keep the building forever. He stated he requested at last months meeting that he preferred a little bit wider of a setback as a consideration for the applicant. The applicant is asking that the Board grant an expanded nonconforming use. He stated that he sees a lot of expansion of the living space and in his opinion sees it as convenience. It may meet the wishes and desires of the applicant but does not find it an absolute necessity. He does not feel that the applicant adequately looked at what degree the expense would be to move the retaining wall.

Attorney Schulte stated that the specific suggestion was to move the building 2 feet over, which reduces the encroachment on the side, but it would increase the encroachment on the back property line. It would bring the property closer to a neighbor that is already close and you would move it away from an empty lawn that has no use at all. If they are going to be encroaching somewhere and it will be close to somebody's property, it would be better to have it close to the Dover Housing Authority side.

Randy Palmer stated that the space is needed for Mrs. Palmer's workspace. They are trying to improve the property. He stated that he and his wife plan on staying here forever, and the long term planning with this property is, as they grow older, they will need to live on the first floor eventually. He stated that he has not asked the excavator for a quote because he has already spent more money than he planned on doing because of returning to this meeting and by paying an architect for drawings. More money would be spent to have an excavator look at something just to decide if it would cost more money. This is the best way to use this property and they are not changing what is already there in terms of encroachment.

John Levasseur stated that he is concerned with how the building will be maintained on the side and the applicant may not have the same neighbors in the future. This is the time to make it conforming.

Attorney Schulte stated that the new building will have vinyl siding and the old building has wood siding and requires more maintenance.

Public Hearing Open

Chris Parker stated that the Planning Department does not oppose this variance request; they understand the reasonable aspects that Attorney Schulte pointed out and they do see the neighborhood context as being in its favor.

Public Hearing Closed

Richard Callaghan stated that in his opinion, you would not have any complaints at this time to maintain the building, but fifty years from now the new owners would not have their rights to the space by allowing this building to be reconstructed.

**FIVE CRITERIA:**

1. It is the Board's conclusion that if the applicant complies with the strict letter of the ordinance he/she does not (Frank Landford and Masi Denison does) face an unnecessary hardship. This conclusion is based on the following findings of fact: If redesigned the equivalent of square footage could be designed within the setbacks. The hardship was not effectively presented because of the proposed use and lack of cost evidence.
2. It is the Board's conclusion that, if granted, the variance will not (Frank Landford and Masi Denison will) deliver substantial justice. This conclusion is based on the following findings of fact: Hinders the rights and privileges of present and future surrounding owners.
3. It is the Board's conclusion that, if granted, the variance will not (Frank Landford will) be in harmony with the spirit and intent of the zoning ordinance. This conclusion is based on the following findings of fact: Zoning is intended to provide ample use for maintenance of property/building and prevent abutters from unnecessary congestion.
4. It is the Board's conclusion that, if granted, the variance will not result in diminution in value of surrounding properties. This conclusion is based on the following findings of fact: Current abutters have no objection to requested variance. Vote U/A
5. It is the Board's conclusion that, if granted, the variance will (Frank Landford will not) be contrary to the public or private interests or rights. This conclusion is based on the following findings of fact: This variance will be contrary to abutter's privileges even though they are not voicing objection at this time.

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

#### ITEM # 4: NEW BUSINESS

- A. **Z 05-03 Kevin Kelley, Trustee of the Strafford Trust, County Farm Rd., and Watson Rd., a/k/a Assessor's Map E, Lot 32-4, zoned ETP, requests a variance from the terms of 1) Article IV, Section 170-12, Table I, Part A, to permit a three lot single-family residential subdivision and 2) Article V, Section 170-16 to create a lot within an area of approximately two (2) acres, where a minimum of three (3) acres is required.**

Richard Callaghan announced that an official notification was submitted requesting that this case be postponed to the March meeting.

- B. **Z 05-04 PRPC Development Group, LLC, Mast Rd., a/k/a Assessor's Map I, Lot 3, zoned RM-12, requests an appeal from an administrative decision in connection with the interpretation of Article IV, Section 170-12, Table of Use Regulations, Table I, Part A, Footnote 2 and Article V, Section 170-16 Table of Dimensional Regulations, Footnote 12.**

Richard Callaghan stated that his daughter is a Receptionist at Attorney McNeill's office and he has had discussions with the Board members to ensure that nobody objected to him voting on cases brought by the office of McNeill, Taylor, and Gallo and if anybody voiced an opinion or had a concern, he would gladly step down.

Masi Denison stated that this issue has been discussed before and the other members agreed that they were comfortable with the situation.

Ruth Gorton announced that she would not be voting on this case.

Attorney McNeill represented the applicant. The issue is with the interpretation of the Zoning Officer relative to the density that is permitted on this project. The Zoning Officer is stating that the applicable criteria is 15,000 square feet and the ordinance is clear that the requirement is 12,000 square feet. This project will be a mix of single-family detached and duplex condominiums. According to the Table of Use Regulation's one and two family dwellings are permitted in the RM-12 zone, with no footnotes. Footnote 2 only relates to 3 to 4 dwelling units in multifamily dwelling units. In his opinion, if the applicant were looking at Table I, Principal Uses, Part A and developing this project as detached condominiums, singles and duplexes, he would look at category one and two and stop. If the applicant were doing multifamily dwellings together consisting of three or more units, the requirement would be 15,000 square feet. According to the Table of Dimensional Regulations RM-12 zone is 20,000 square feet minimum lot size with the footnote number 12, which relates to the uses that are permitted in that zone. The general category of what a multifamily dwelling is defines it as a building containing more than four dwelling units. He stated that if the applicant were proposing a three, four or five unit building or units that were permitted in this zone, that are multifamily dwellings, than the interpretation would be correct. They are asking that the Board take respectful disagreement with the Zoning Officer and this is what this case is about, it is not about whether or not Mast Road is overdeveloped or how this project will look.

Tom Clark stated that this meeting is about an interpretational difference between the density. He proceeded to read the memo that he submitted. He stated that they researched some of the projects approved in the RM-12 zone and stated that they do have past practice established for the interpretation, despite the language in the Zoning Ordinance.

**Motion:** Bill Colbath made the motion to accept. John Levasseur seconded the motion. **VOTE: U/A**

Richard Callaghan confirmed with Attorney McNeill that this case could be decided without a plan and the issue is with what the units are that may be developed and what is the density requirement, per unit.

Attorney McNeill stated that the applicant is proposing singles and duplexes and does not feel the 15,000 square foot standard can be applied.

#### Public Hearing Open

Dorothea Hooper, abutter at 84 Katie Lane stated that she lives on Davis Farm. She stated that Mast Road Extension is a secondary road with average attention to snow plowing and repair and is concerned with the impact of City Services. She asked if the project were approved, would the road be upgraded.

Richard Callaghan stated to the abutters that this meeting is to decide about the square footage issue. If this project continues, it would go to TRC and this is where they could voice their opinions.

Walter Sims, abutter at 42 Fords Landing stated that they live next to a very steep slope and is concerned with surface water drainage, which in his opinion begins with density. He stated that the intent of the City of Dover was clear to have zoning create long range good practices.

Ted Hedberg, abutter at 32 Fords Landing stated that according to the plans submitted Fords Landing and Davis Farm have a lot more open space than the proposed plan. In his opinion, this project is too large for this area.

Maureen Keough, abutter at 1 Fords Landing agrees that density needs to come into consideration and this property has served as a buffer zone between the single-family homes on Mast Road Extension and the two condominium developments. Maintaining the 15,000 square foot area would be best, if a project like this must go through.

John Trayner, abutter at 55 Fords Landing is concerned with the drainage issue. In his opinion, the density issue is driven from a profit motivation to the developer.

Kristen Detwiller, abutter at 54 Fords Landing stated that there is a very heavy slope and is the steepest where she is located. She sees heavy run off and is concerned with traffic.

Chris Snow, abutter at 10 Fords Landing stated that in support of the project, he prefers the combination of single-family homes and duplexes, rather than attached multifamily dwellings.

Scott Lindquist, abutter at 38 Fords Landing stated that he is not in favor of this project.

Heather Wass, abutter at 114 Tideview Drive, stated that she agrees with the interpretation of 15,000 square feet.

Ruth Gorton, abutter at 81 Katie Lane stated that she is representing the residents of Davis Farm and she is a member of the Board of Directors. She proceeded to read the letter that she submitted to the Board members in which she shared their concerns.

Chris Parker stated that the Planning Department supports the Administrator in this situation. The Department agreed with the interpretation, especially based upon 170-4 that holds the greater restrictive regulation. Southwood Village is a similar project and was created after the amendment in 2000, the site plan for that project was determined by figuring the gross area, deducting the wetlands and right of way,

and dividing by 15,000. He stated that he met the other members of PRPC along with Don Rhodes, Engineer from Norway Plains at the property on two occasions and explained to them that it would be considered a multifamily project and holding to the 15,000 square foot regulations.

Attorney McNeill stated that he appreciates all of the comments of the abutters and they would be appropriate during the Planning Board process but none of them went to the issue of whether Mr. Clark made the right decision in regards to his interpretation. He stated that a multifamily residence is not on this property.

Bill Colbath confirmed with Attorney McNeill that the applicant is proposing condominiums, consisting of singles and doubles only, which are permitted under the Zoning Ordinance without a footnote and no multifamily units will be located on the property.

Attorney McNeill stated that the Zoning Ordinance should be revised if you want it to say what you believe should be applied here. The reason the applicant is proposing this project in this form is that the unit component is commensurate with the 12,000 square foot requirement.

Ruth Gorton confirmed with Richard Callaghan that if the applicant went to the Planning Board with something different he would need to meet the regulations that apply.

Richard Callaghan stated that the Board is not here to debate whether it is reasonable or not to allow 12,000 or 15,000 square feet. The judgment is who is right in their interpretation.

Walter Simms stated that he believes that the difference between 20 % more or less units is the beginning step for things like surface water drainage and the decision made tonight will make a long range impact.

Mary Golden stated she is the President of Tideview and questioned why the abutters were notified if they cannot give any input towards this discussion.

Richard Callaghan stated that all abutters must be notified of a hearing and you can voice an opinion or have supporting information of why you think a determination should be made one way or the other. Many things heard tonight are outside the Board's realm of authority and other Boards will address these issues.

Public Hearing Closed

Bill Colbath stated that the bulk of this argument is with the first Table referenced as one and two family dwellings and with the second Table, footnote 12. The argument is that we are dealing with single units and is it either a multifamily project or a multifamily residence.

Attorney McNeill stated that if it was one or two units the 20,000 square feet would apply. There will be three or more units located here, but it will be singles and duplexes. This is not one dwelling on a 20,000 square foot lot or a duplex on a 20,000 square foot lot; this is three units or more on six plus acres.

Discussion ensued regarding intent of the Zoning Ordinance.

Masi Denison stated that her interpretation of the one and two family dwellings is the permitted uses and one family dwelling being the only building on the lot. When you get into more buildings on the lot, in her opinion, it is a multifamily and in that context, she would think that the 15,000 square foot makes the most sense.

Richard Callaghan stated that according to footnote 12, it states developments containing three units or more and it does not say separate pieces of land. He asked Tom Clark if he could elaborate on the discussions with the Planning Department as stated in his memo.

Tom Clark stated that the Planning Department has been trying to take land out of residential inventory and trying to increase lot density. It would slow down residential growth rate, and one of the things to do was to increase lot sizes or increase densities. To increase the lot size made sense but unfortunately, it was not changed in both footnotes and it was an administrative error. If you had a development with more than four dwelling units, it should apply to that development, and he agrees that they did not do it.

Bill Colbath stated that the argument is with the word dwelling and the word residence.

Discussion ensued regarding definition of multifamily project and multifamily dwelling.

Attorney McNeill stated that the Zoning Ordinance does not say what it should say. In its present form it does permit what the applicant is seeking. Do you go with what the Zoning Ordinance says or what they planned to do and did not?

Frank Landford stated that the Table of Use Regulations states that footnote 2 is only for multifamily residences. The Table of Dimensional Requirements footnote 12 states multiunit and in his opinion, the Board would have to go with the 12,000 square feet, and the footnote should be changed.

Richard Callaghan read footnote 2 and agrees that it means one unit for a piece of property and is clearly saying that the expectation is that you will put more than one multifamily residence. This project does not apply because it is not a multifamily residence.

Bill Colbath stated that if the Board agrees that a multifamily residence is going to be considered a singular building he would agree that Attorney McNeill is correct in his interpretation. Multifamily dwelling is not the same thing as multifamily residence.

Tom Clark stated that a residence is a dwelling and it is a unit.

Attorney McNeill stated that it is the definition of the terms that control and multifamily dwelling is defined as a building containing more than four dwelling units.

Frank Landford read the definition of lot and in his opinion if this were going to be a multifamily on one lot, it should be 15,000 square feet per unit.

Bill Colbath stated that you need to figure out if it is a multifamily lot or a multifamily structure.

Frank Landford believes it is a multifamily lot with more than one structure and multifamily means more than four units and this will be more than four units on the lot.

Attorney McNeill confirmed with Tom Clark that his decision was not based on that definition. Tom Clark stated that according to footnote 12 from the Table of Dimensional Regulations it has to be read in its entirety.

Richard Callaghan asked if the members were ready to vote.

**Motion:** Frank Landford made the motion to uphold the administrative decision. **VOTE: 4 to 1 (Richard Callaghan, Bill Colbath, John Levasseur, and Masi Denison opposed)**

Richard Callaghan announced that the appeal from an administrative decision has been granted.

**ITEM # 5: OTHER BOARD BUSINESS**

Richard Callaghan stated that if anyone was interested in attending the NHOEP Planning and Zoning Conference they should submit the completed forms to the Planning Office. He also stated that he has been in contact with Mike Joyal and a few City Councilors regarding the location of the ZBA meetings and in his opinion feels that the ZBA meetings should be held in the Council Chambers. The members agreed that they feel that his inclination is justified and he has their support in order to speak for all of them.

**ITEM # 6: ADJOURNMENT**

**MOTION TO ADJOURN**

John Levasseur made the motion to adjourn at 9:45 p.m. and was seconded by Frank Landford. **VOTE: U/A**

**List of Members**

**Term Expires**

Richard Callaghan-regular member	04-13-06
William Colbath-regular member	10-23-06
Frank Landford-regular member	04-10-05
Ruth Gorton-regular member	11-12-06
John Levasseur-regular member	11-12-06
Masi Denison-alternate member	09-08-07