

# Dover Zoning Board of Adjustment

## Thursday, April 21, 2005

### MINUTES

**Members Present:** Richard Callaghan, Bill Colbath, Frank Landford, Masi Denison, Ruth Gorton  
**Members Absent:** John Levasseur  
**Staff Present:** Thomas Clark; Building Official, Steve Bird; City Planner,  
Jean Glidden; Recording Secretary

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

Richard Callaghan brought the meeting to order at 7:09 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 March 17, 2005.**

**Motion:** Ruth Gorton made the motion to accept the minutes. Frank Landford seconded the motion.

**VOTE:** U/A

#### **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.**

Richard Callaghan stated that this case was granted a motion for rehearing from the last meeting.

Attorney Schulte represented the applicants. The application is for permission to tear down an existing garage and replace it with a single car garage that will be attached to the house with some additional living area and a workroom area above. At the last meeting, the Board was provided photographs of the existing conditions and floor plans of the proposed addition. The existing garage is slightly over four feet from the rear property line and is built into the embankment, and is 1.9 feet from the side property line. In response to the concern at the last hearing regarding the ability to maintain the side of the garage, a letter has been submitted from the DHA confirming that if this variance is approved they will grant an easement that will be 10' feet wide and will allow access to perform maintenance on the proposed structure. The reason for the dimension of the garage has to do with the size of the workspace. Mrs. Palmer needs this space to make curtains and the large table that she works with will just fit into the workspace as it is designed with a dormer located on the left hand side of the garage. A written estimate is not available for the cost of the foundation as it is designed because of the expense involved until they know exactly what and where they are going to build. The result of shifting the garage and addition further to the right would be an additional cost for excavation. The estimate for that work would be in the range of three to five thousand dollars. Letters were previously provided from the

abutters stating they are in favor of this request. The DHA is in favor to the point where they are willing to commit to granting an easement to allow this to be constructed. The location of the proposed addition is in the best spot for the neighborhood and is in an area where it would minimize the amount of excavation because of the way the land slopes. This has to be decided on the proposal as requested, and decide if it meets the standards or not. It cannot be redesigned by the Board or by anyone else as to what the applicant wants to do with it. This is a permitted use and the applicant is asking for a dimensional variance. They are not increasing the nonconformity and they will have a deeded right from DHA for an access easement. They would be minimizing the excavation on the site and overall improving the property while minimizing impact on the neighbors.

Bill Colbath asked why it is so difficult or impossible to comply with applicable setbacks or other restrictions.

Attorney Schulte stated that it is difficult to comply with the fifteen-foot rear setback because they would be encroaching in the terraced area and they would not have sufficient depth between the back of the house and the rear setback line to accommodate the use that they want to make. He stated that he was under the impression that the rear setback was not a primary concern of the Board and felt they were more concerned with the side setback.

Bill Colbath stated that if the applicant is willing to get an easement and have it placed in the deed he does not have a problem with the side setback. He stated that he does not think he ever said that the rear setback was not a problem because you are taking an accessory structure and turning it into living space.

Attorney Schulte stated that the garage is built into the embankment and if you move it forward it would create a hole, which is wasted space and would require the construction of a retaining wall which would be expensive and it would have to match up to the slope of the property.

Bill Colbath stated that assuming that you would need to fill in that hole it would be actually a net gain, you could use fill that was the foundation and utilize it on the property and not have to truck it away.

Richard Callaghan stated that in the last case study that they received it was very clear that it is inappropriate to challenge the request in asking for an alternative design method or suggesting them. The case should be accepted as it is and vote on it as presented and go through the criteria. This case was already accepted at the original meeting therefore does not need a motion to accept the case.

#### Public Hearing Open

Steve Bird stated that the Planning Departments opinion is the same as it was previously and supports this variance request. The special conditions would be the shape of the lot, the slope, the retaining wall as previously discussed, and those factors make it difficult to shift the building towards the front because of the size being requested. They did not have any abutter opposition and the proposed addition is no closer to the property lines than the existing garage.

Richard Callaghan read the letter submitted from the Dover Housing Authority granting a maintenance access easement that will provide adequate space of the side structure.

#### Public Hearing Closed

Masi Denison stated that the easement with the side setback is a great solution and is comfortable with approving the side variance but is still concerned with the rear setback.

Ruth Gorton stated that she is more comfortable with the access easement.

Frank Landford stated that he feels the same way as last time and the abutters have no problem with this request.

Bill Colbath stated that the rear abutter has his property up for sale and cannot assume that there will never be an issue and has a problem with the rear setback.

Richard Callaghan stated that he is pleased with the easement and the rear property line is a concern.

Steve Bird stated that if the fifteen-foot rear setback was contemplated in this case and if you look at the floor plan and where the existing dwelling sits right now he does not think it could fit that and still make the fifteen-foot setback.

Richard Callaghan stated that he agrees, but was looking for something in between that. He also stated he was concerned with the height of the proposed structure. He stated that the Board will be voting on the side and rear setback separately and utilize their rational with the findings of facts for each of them. The side setback will be voted on first.

**FIVE CRITERIA FOR SIDE SETBACK:**

1. It is the Board's conclusion that if the applicant complies with the strict letter of the ordinance he/she does (Ruth Gorton voted does not) face an unnecessary hardship. This conclusion is based on the following findings of fact: Slope of land, size of lot and building envelope with consideration of the land easement. Vote: 4 to 1
2. It is the Board's conclusion that, if granted, the variance will deliver substantial justice. This conclusion is based on the following findings of fact: Allows applicant reasonable use of land with consideration of land easement. Vote: U/A
3. It is the Board's conclusion that, if granted, the variance will be in harmony with the spirit and intent of the zoning ordinance. This conclusion is based on the following findings of fact: There is no increase of the nonconformity as it is in consideration of the land easement. Vote: U/A
4. It is the Board's conclusion that, if granted, the variance will not (Ruth Gorton and Richard Callaghan voted will) result in diminution in value of surrounding properties. This conclusion is based on the following findings of fact: No reasonable value was given for the easement therefore the property values are not diminished. Vote: 3 to 2
5. It is the Board's conclusion that, if granted, the variance will not be contrary to the public or private interests or rights. This conclusion is based on the following findings of fact: The easement was provided by the abutter at no cost to the applicant, therefore no rights, private or public are lost.  
Vote: U/A

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

1. The easement must be granted, recorded, and deeded at ten feet as described specifically in the letter and a copy provided to the Building Inspector prior to the issuance of a building permit.
2. Footing location is certified by a licensed certified surveyor prior to further construction.

**Motion:** Masi Denison made the motion to approve the conditions. Frank Landford seconded the motion.

**Vote:** U/A

Richard Callaghan stated that they will proceed to vote on the rear setback and will amend if needed.

**FIVE CRITERIA FOR REAR SETBACK:**

1. It is the Board's conclusion that if the applicant complies with the strict letter of the ordinance he/she does (Bill Colbath voted does not) face an unnecessary hardship. This conclusion is based on the following findings of fact: Slope of land, size of lot and building envelope. Vote: 4 to 1
2. It is the Board's conclusion that, if granted, the variance will (Bill Colbath voted will not) deliver substantial justice. This conclusion is based on the following findings of fact: Allows applicant reasonable use of land without having to build or move the retaining wall. Vote: 4 to 1
3. It is the Board's conclusion that, if granted, the variance will (Masi Denison and Bill Colbath voted will not) be in harmony with the spirit and intent of the zoning ordinance. This conclusion is based on the following findings of fact: There is no increase in nonconformity and the rear abutter gave written approval for variance. Vote: 3 to 2
4. It is the Board's conclusion that, if granted, the variance will (Ruth Gorton and Frank Landford voted will not) result in diminution in value of surrounding properties. Vote 3 to 2. This conclusion is based on the following findings of fact: Discussion ensued regarding the findings of fact and Tom Clark reminded the Board that the current abutter does not have a problem with this request and you are trying to protect the rights of someone that is not even there yet and the height should be irrelevant. Richard Callaghan stated that he agreed and feels that they should revote. It is the Board's conclusion that, if granted, the variance will not (Bill Colbath voted will) result in diminution in value of surrounding properties. This conclusion is based on the following findings of fact: Existing abutter has expressed no concern.  
Vote: 4 to 1
5. It is the Board's conclusion that, if granted, the variance will not (Bill Colbath voted will) be contrary to the public or private interests or rights. This conclusion is based on the following findings of fact: Existing abutter has agreed in writing to the variance and construction therefore no rights public or private are lost.  
Vote: 4 to 1

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

1. The easement must be granted, recorded, and deeded at ten feet as described specifically in the letter and a copy provided to the Building Inspector prior to the issuance of a building permit.
2. Footing location is certified by a licensed certified surveyor prior to further construction.

**Motion:** Ruth Gorton made the motion to approve the conditions. Frank Landford seconded the motion.

**VOTE: U/A**

Ruth Gorton stated that a family member is an abutter on the next case therefore will be stepping down.

Richard Callaghan stated that the next two cases will have the option to be heard or wait until the next meeting as a member of the Board will be stepping down on both cases.

#### **ITEM # 4: NEW BUSINESS**

- A. Z 05-05 Olde Madbury Ln., (Applicant: Bomac Realty, LLC), 582 Central Ave., a/k/a Assessor's Map 30, Lot 118, zoned Office and RM-10, requests a variance from the terms of Article IV, Section 170-12, Table I, Part A, footnote [23] to re-establish a four-family dwelling.**

Attorney Sharon Somers stated that they will proceed with their case and represented the applicants. The request is to renovate a four unit residential building where five thousand square feet per unit is required. The property contains approximately 14,000 square feet, approximately two thirds of the lot is in the Office zone, and the other third is in the RM-10 zone. The property contains a four unit residential property in somewhat of a state of disrepair and in the rear portion is a two family structure along with a garage, which is in very much of a state of disrepair along with a garage. In order for this to be permitted 5,000 square feet per unit is

required and they only have 14,000 square feet. If you were to convert the building, to make it appropriate for Office use you would have to do significant interior reconfigurations and the interior layout would need to be redesigned at a considerable expense to make it suitable. The exterior and the interior of the lot are not suited for the permitted Office use. If the existing Victorian were to be used for Office space, you would need to take in specific requirements that are associated with Office use such as ADA accessible, sprinklered and reformatted to account for those types of commercial needs, all of those things are expensive. They are asking to demo the rear building and garage and to simply renovate the four-unit building in the front and make it four-unit condominiums. Some interior work would be required including rewiring and plumbing and a significant amount of work will need to be done but nothing of a structural nature. The buildings in the back will be removed and it will create a large space in the back for parking and for open space for the four units. This will greatly expand the space on the property and provide ample parking areas and useable outdoor space for the residential units. Letters have been submitted in support for this variance request from the abutters. The proposed use is consistent with the residential uses that are adjacent in the vicinity.

Steve Bird confirmed with Attorney Somers that they would be condominiums with three bedrooms in each unit.

Richard Callaghan stated that it was his understanding that this building would have to be sprinklered anyways.

Tom Clark stated that according to the Ordinance where it is an existing four unit building they may not have to, although it would be strongly recommended. He stated that he would need to confirm this with the Fire Department.

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

Public Hearing Open

Steve Bird stated that the Planning Department supports this request for variance. This has been on the market for a number of years and in the last four years; he personally has met with a half dozen prospective buyers and discussed different development scenarios on the property. The talk led to variances because they may have wanted more than the two residential units that are allowed in the Ordinance today and in some cases wanted eight to twelve dwelling units on the property. Some buyers suggested a mixed use that led to difficulties with the number of parking spaces that you can fit on the property. This proposal is the best proposal that the department has seen to date for this piece of property. By removing the duplex, you would reduce the number of dwelling units and the plan submitted shows screening and fencing and this would improve the property in the neighborhood. He suggests that if this variance is granted they make a condition that they would have to go through the TRC process regarding the drainage and screening issues although they would have to anyways because of the ten parking spaces.

Attorney Somers asked if Site Review would be required.

Steve Bird stated that if you look at the Site Review Regulations and you are creating a parking lot of ten or more spaces it does require Technical Review and at the committee a decision would be made as to if, it would have to go to the Planning Board.

Attorney Somers stated that the Zoning Ordinance requires eight spaces and if the ten parking spaces are going to create a requirement to go to Site Review they would want to reserve the right to remove those two parking spaces.

Richard Callaghan stated that the Board could recommend that this go to TRC anyways whether it is eight or ten parking spaces as this has happened in the past.

Attorney Somers stated that they were under the understanding that the requirement was supposed to be eight spaces and that is why the ten spaces were placed in the plan. They would like to amend the application to provide the required eight spaces under the Ordinance and if it is a condition of this Board to go to Technical Review, they will do that and discuss with the TRC at that time the possible need to add additional parking spaces.

Richard Callaghan stated that he does not think that this will affect the public notice and confirmed with the Board members that they do not have an issue with the amendment. He stated to Attorney Somers that the Board has accepted their amendment. He stated that this is a great opportunity to fix up the building, demo the one in the back, and turn this into a better place. An Office use would be tough in that building because of the rooms and doorways are small.

Masi Denison stated that she is in favor of renovating this building rather than tearing it down and in her opinion feels that a hardship does exist here.

Frank Landford and Bill Colbath stated that they do not have a problem with this request.

Richard Callaghan stated that he would be looking for a condition that this goes to TRC. He asked if they could require that they install a sprinkler system as part of a condition.

Tom Clark said that he does not think that they can make that a condition.

Steve Bird stated that you would need to make a substantial argument that sprinkling the building has a direct bearing on the variance.

Richard Callaghan read a letter from Christine Hickman, owner of Studio 590, which states that she has no problem with the redevelopment of the apartment building that is located next to her.

#### **FIVE CRITERIA:**

1. It is the Board's conclusion that if the applicant complies with the strict letter of the ordinance he/she does face an unnecessary hardship. This conclusion is based on the following findings of fact: Existing building construction, size of lot cause a needless and unnecessary hardship. Vote: U/A
2. It is the Board's conclusion that, if granted, the variance will deliver substantial justice. This conclusion is based on the following findings of fact: Allows reclamation of the existing structure. Vote: U/A
3. It is the Board's conclusion that, if granted, the variance will be in harmony with the spirit and intent of the zoning ordinance. This conclusion is based on the following findings of fact: Addresses the open space requirement of the zoning rules. Vote U/A
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: Removal of declining condition of the buildings and renovation of structure will increase value of property. Vote: U/A
5. It is the Board's conclusion that, if granted, the variance will not be contrary to the public or private interests or rights. This conclusion is based on the following findings of fact: Both public and private sectors will benefit. Vote: U/A

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

following conditions.

1. The duplex building and garage be removed.
2. This goes to TRC for review.

**Motion:** Bill Colbath made the motion to approve the conditions. Masi Denison seconded the motion.

**VOTE:** U/A

Bill Colbath stated that he would be stepping down.

**B. Z 05-06 Martineau Revocable Trust (Applicant: Ray Martineau, Trustee), Back River Rd., a/k/a Assessor's Map I, Lot 56, zoned R-12, seeks to clarify /expand a variance granted May 20, 2004 (ZBA Case # 04-15) to establish a congregate care facility.**

Attorney Chris Wyskiel represented the applicant and stated that he does not have an objection to proceeding with their case. He stated eleven months ago, they were before the Board and the variance was granted with conditions authorizing the construction of the first phase of a Congregate Care Facility on the land. The second phase would be a companion use, which would be a different style and accommodate a more independent living. The representation to the Board at that time would probably be appropriately characterized as an Elderly Care Home for which no variance would be needed. It was anticipated that they would be coming before this Board for a Special Exception because the number of units would be substantially larger than the number of units allowed. In discussions with the Planning Department, it became clear early on that the type of facility to be built did not appropriately fit in the Elderly Care Home definition that they anticipated a year ago. What is said in the minutes of the meeting or represented may have led to some confusion with the total number of units that in fact were intended to be built on this site. The minutes reflect that the first phase intended to build 50 to 115 units under one facility and that the second phase was at that time being characterized as a different use for which they would need a Special Exception. The suggestion of a second phase of independent living cottage style units would be age restricted and would accommodate Congregate Care living through people purchasing these units, but partaking of the common dining facilities, meals and participate in a common building that could accommodate catered services. The Board did express some frustration with the granting of the variance without having their hands around an actual plan and it was stated at that time that the applicant wanted the variance so they could go forward with the absolute plan and dedicate the resources that was necessary to come up with a real plan. As shown on the conceptual plan the Congregate Care Facility is intended to be built with 115 units that will not be equipped with kitchen facilities as this type of facility has services that are catered to a residency where food preparation would be conducted on site and served in a common facility. The rear portion will be a series of cottages, duplexes, and multi-unit townhouses and encourages a village concept with a streetscape that encourages walking and people congregating amongst each other. A common building in the center and common dining facilities and a kitchen built to specification to accommodate caterers who will primarily take care of food prep off site and bring to this site the meal services as this population will demand and it intended to be age restricted 62 and older. He stated that the Planning Department did not feel comfortable with the opinion that the variance that was granted eleven months ago sufficiently covered this plan development of Congregate Care Facilities even though it meets the density requirement. As many as 245 units could be developed on this site but this plan will be limited to the 115 units under one roof and the cottage style units accumulating to 52 or a combination of 167 total units. This is less than the total that the prior variance would have authorized but it was a number that was never clearly expressed in the minutes of the prior meeting when the variance was requested. The Planning Department also discussed that a couple of neighbors that expressed support for this variance might not have expressed the same support if they had clearly understood the full extent of the number of units being proposed, so they were encouraged to apply again for clarification of the variance. He stated that he is not waiving any rights from the old variance but thinks it is appropriate to go through the steps again and grant the same variance with a condition of limited development of Congregate Care Facilitation as noted on the

plan shown, as the Planning Board may modify it during the Site Review process. This plan is conceptually drawn so that the Board can understand exactly what the applicant is asking for, as it still has to undergo TRC and the full Planning Board review process. With a clarifying variance, there will not be any hesitancy on the part of the Planning Board and no confusion with the meeting minutes. This is a use variance and suggested to look at the findings on the five criteria of the last meeting that was part of this application and consider the granting of this variance with the condition suggested and submitted for the file.

Ruth Gorton stated that she feels Back River Road is already over burdened with traffic at the intersection and asked if there was any way to make an alternate evacuation route on part of this property.

Attorney Wyskiel stated that they could not because of the substantial wetlands.

Ray Martineau stated that they have been working with the Planning Department as part of the combined traffic study to help address the traffic jam at Store 24 and will be assessed fees to help the improvement of that intersection along with the other developers.

Steve Bird stated that three developers off from Back River Road that have agreed to contribute to a traffic study to look at the impact on the intersection. Significant improvements have been made to that intersection in the last two years. The traffic signal that was installed has significantly improved the operation at the intersection at peak hours, which was the problem previously when School was released.

Richard Callaghan stated that if this variance request is granted it takes away the one that was granted at the last meeting.

Frank Landford stated that he has less of a problem with this request if the applicant is actually stating how many units they are actually going to have and asked if they could add a requirement that they have a maximum number of units.

Attorney Wyskiel stated that if this variance is granted they would forget about the other one and they agree with the requirement of maximum number of units.

Richard Callaghan confirmed with Attorney Wyskiel that the minutes of the last meeting read from one perspective, with an implied limitation of 115 units and they are here to get a clarifying variance that will let the applicant present these plans to the Planning Board.

Attorney Wyskiel stated that at the last meeting the Board voted on the Congregate Care Facility and said that they could build it, in his opinion the intent was that they did not have to talk about the Elderly Assisted Care because it was an allowed use.

Tom Clark stated that the Elderly Assisted Care portion was going to come back to the ZBA because it is only allowed by Special Exception. The confusion is that this is all Congregate Care and the minutes reflected the Congregate Care portion would be 115 units.

Attorney Wyskiel stated that the Elderly Assisted Care definition is a residential facility permanently housing six to twelve elderly residents but they were representing that they were going to have a substantial larger number than that and they anticipated coming back to the Board and having this discussion.

**Motion:** Masi Denison made the motion to accept. Frank Landford seconded the motion. **VOTE: U/A**

## Public Hearing Open

Steve Bird stated that the Planning Departments position is the same as the previous variance request eleven months ago and echo Chris Parkers comments listed on page six of the minutes from the last meeting.

## Public Hearing Closed

Masi Denison stated that she was comfortable on voting on this request with the number of units being restricted as discussed.

Frank Landford stated that it is much more definite this time and gives the Board the other number of units that will be located on this property, which they did not have at the last meeting.

Ruth Gorton stated that the number of 167 total units take care of her concerns.

Richard Callaghan read the proposed condition and added language that will be placed on this variance request if it is granted.

### **FIVE CRITERIA:**

1. It is the Board's conclusion that if the applicant complies with the strict letter of the ordinance he/she does face an unnecessary hardship. This conclusion is based on the following findings of fact: Strict adherence to the table of uses is a needless and unnecessary hardship for this application. Vote: U/A
2. It is the Board's conclusion that, if granted, the variance will deliver substantial justice. This conclusion is based on the following findings of fact: It will enable the use of the property in a way that impacts the traffic and services in a lesser way than approved zoning. Vote: U/A
3. It is the Board's conclusion that, if granted, the variance will be in harmony with the spirit and intent of the zoning ordinance. This conclusion is based on the following findings of fact: Zoning already allows for assisted elderly care and this is a very similar use. Vote: U/A
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: This will be less density than residential use and is a quiet business, thus having a lower impact than other residential uses. Vote: U/A
5. It is the Board's conclusion that, if granted, the variance will not be contrary to the public or private interests or rights. This conclusion is based on the following findings of fact: To the contrary, this will provide a service that the City needs and will in the end provide for greater amount of open space than the approved zoning allowance. Vote: U/A

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

1. The Congregate Care Facilities to be built be limited to the density of one unit per 3,000 square feet of land and built substantially as shown on Plan Z-1 submitted with the application, as said plan may be modified by the Dover Planning Board during its Site Review application approval process with a maximum of 115 self contained units and 52 detached units.
2. Detached units be limited to age 62 and over.

**Motion:** Masi Denison made the motion to approve the conditions. Frank Landford seconded the motion.

**VOTE: U/A**

**ITEM # 5: OTHER BOARD BUSINESS**

Richard Callaghan read a letter that was submitted by Attorney Griffin regarding case Z 05-03 Kevin Kelley, Trustee of the Strafford Trust withdrawing his application for variances.

**ITEM # 6: ADJOURNMENT**

**MOTION TO ADJOURN**

Bill Colbath made the motion to adjourn at 10:25 p.m. and was seconded by Masi Denison. **VOTE: U/A**

**List of Members**

Richard Callaghan-regular member  
William Colbath-regular member  
Frank Landford-regular member  
Ruth Gorton-regular member  
John Levasseur-regular member  
Masi Denison-alternate member

**Term Expires**

04-13-06  
10-23-06  
04-10-08  
11-12-06  
11-12-06  
09-08-07