

Dover Zoning Board of Adjustment
Thursday, May 19, 2005

MINUTES

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

Staff Present: Christopher Parker; City Planner, Jean Glidden; Recording Secretary

ITEM # 1: CALL TO ORDER

Richard Callaghan brought the meeting to order at 7:10 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 April 21, 2005.

Richard Callaghan stated that a correction should be made on page 5 to delete a typo and on page 6; paragraph four the statement regarding the requirement of parking spaces should be changed from twelve spaces to eight spaces.

Motion: Ruth Gorton made the motion to accept the minutes with the corrections. John Levasseur seconded the motion. **VOTE: U/A**

ITEM # 3: OLD BUSINESS - NONE

ITEM # 4: NEW BUSINESS

- A. Z 05-07 Patrick Raftery, 19 Strafford Rd., a/k/a Assessor's Map D, Lot 9-Y, zoned R-12, requests a variance from the terms of Article V, Section 170-16, to construct a rear addition within approximately twelve (12) feet from a rear lot line, where a minimum of fifteen (15) feet is required.**

Patrick Raftery stated that he is asking for a four-foot variance in order to build a 12 x 12 three-season room. Directly behind his dwelling is a wooded area that is owned by the City and other homes in the area look as if they have built within the setbacks.

Chris Parker asked why he could not build an 8 x 12 room.

Patrick Raftery stated that he wanted to make it more functional with a larger room.

Richard Callaghan confirmed with the applicant that it is currently an existing open deck.

John Levasseur asked about the setback in the drawing.

Patrick Raftery stated that when he received the permit for the open deck he figured he would have twenty-three feet and according to the survey, he has a little more. When he applied, it appeared that he would be encroaching four feet.

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

Public Hearing Open

Chris Parker stated that the Planning Department does not object to this variance request.

Public Hearing Closed

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: Does not encroach towards anybody's yard and is consistent with other rights in the proximity. 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 is keeping with the other homes in the neighborhood. 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: Variance will still allow adequate spacing in yard. 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: There are similar decks in the neighborhood and this should add value to the home. 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: No apparent opposition and no adequate facts to the contrary. Vote: U/A

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

1. The encroachment will be no more than four (4) feet to the property line.

Motion: Ruth Gorton made the motion to approve the condition. Bill Colbath seconded the motion.
VOTE: U/A

D. Z 05-08 Matt & Helen Williams, Dover Point Rd., a/k/a Assessor's Map K, Lot 26, zoned R-12 & ETP requests a variance from the terms of Article IV, Section 170-12, Table I, Part C-2, to construct an office building in an R-12 zoning district.

Chris Parker stated that he wanted to clarify an administrative error that was done when the packets were created. Two plans were submitted and the packet was supposed to include only one plan that shows the office building with the vacant land located behind it.

Chip Williams stated that he was representing his parents and they are proposing a 6,000 square feet office building. Zoning at the rear is ETP and the entire parcel is 5.4 acres on which the front portion is over 1-1/2 acres where they are proposing to construct the office building. The existing area consists of B-3 to the east; ETP to the rear and R-12 is what exists right now. Wetlands divide the property and the lot is irregular in shape. These factors combined result in the lot having special conditions that the ordinance interferes with reasonable use of the property. The proposed use will benefit the public by providing the needed use but would not burden the City. Dover Point has office buildings and several car dealerships. Behind the entire

property is over a hundred acres and is zoned ETP and at some point will be developed into office buildings. He is asking that they grant the change in use, as it is currently zoned for two residential homes.

Masi Denison confirmed with the applicant that it will be a single story structure in the front and will have a double story in the rear.

Bill Colbath asked if this parcel was before the Board for a subdivision and asked how he would gain access to the rear lot.

Chip Williams stated that he did subdivide this lot one year ago. He stated that it was not the best use in this area giving the change in the zoning to ETP in the rear and in the way Dover Point's character is changing today. He stated that he would gain access through the ingress and egress of the existing parking lot of the office building.

Sam Reid confirmed with the applicant that the duplex was a residential use and the dwelling located on Map K, Lot 19-A was his parents home, is zoned B-3 and has been unoccupied for a year. He stated that he recalled that there was quite a bit of public discourse about zoning in this area along Dover Point Road.

Chris Parker stated that in 2003 there was an attempt to rezone both sides of Dover Point Road to B-3 and in 2004 Mr. Williams came back and asked for this side. The first time it went to the Council and it was denied, the second time he approached the Planning Board and the Board did not go forward with it. Last year landowners on the Spaulding side of Dover Point Road brought it forward as a B-5 zone, the Planning Board supported it, but the Council did not.

Richard Callaghan asked if the driveway proposed would be built to the standards so it would support what development will take place.

Chris Parker stated that if this is approved it will go to TRC and would ensure that this would be addressed.

Chip Williams stated that this will be a private road and would never be the responsibility of the City.

Richard Callaghan asked how many businesses he thought would be in this building and is concerned with signage that may exceed the size allowed.

Chip Williams stated that this building would not be over six businesses, possibly four. To make affordable the average size of any tenant space today would be about 1,000 square feet. The larger the tenant the less you would spend on restrooms and the common facilities that are required. The building has to be sprinklered at 6,000 square feet, but believes if it is less than 5,000 square feet it does not have to be. He is asking for 6,000 today but may back down to 5,000 if it is not cost effective. Signage is important for any business but having the address visible from the street is important.

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

Bill Colbath confirmed with Chris Parker that the last variance was a frontage variance for two single house lots and confirmed where the ETP zone was located on the plan submitted.

Chris Parker stated that the lot has not been subdivided and suggests that if this is granted, one of the conditions of approval should be to relinquish the previous variance. He stated that if development did take place in the back, the ETP zone does not require frontage and could possibly subdivide this lot at that point.

Bill Colbath asked if the Conservation Commission looked at the wetlands crossing.

Chip Williams said that this is an existing bridge and is still passable.

Public Hearing Open

Marilyn Follansbee, 25 Dover Point Road stated that when she and her husband moved here 29 years ago those properties were zoned R-40. She stated that the hardship of owners is transferred to the abutters whose quality of life, peace and quiet will definitely be diminished by having an office building, a parking lot, lights and signage located here. The use of the land should remain R-12 zoning and should not have to become consistent with the B-3 zone beside it and the ETP in the back. The traffic is heavy and 3,000 square feet of office space is for rent at Richardson's and has not been leased for some time. Two spaces are available at Dover Office Park and she does not feel office space is needed in this area. She stated she is opposed to any business located in this area.

John Morin, 24 Dover Point Road stated that he owns the duplex that he purchased from Mr. Williams and does not want to see a business located next to him. He asked why the applicant cannot build the office building on the lot that is zoned B-3. This is not beneficial to him and does not have a problem with a residential property located here. He did not think that a business could be located here, but did anticipate a house being built. The bridge that is located behind his property is a culvert with some dirt over the top of it and would say it is no more than three feet wide at this time, and would not consider it a bridge. He stated that he is not in support of this variance request.

Jeff Caddle, 10 Roberta Drive, stated that he is not as involved as the abutters are, but many people on Dover Point Road would like to keep this the way it is, too many commercial changes would change its character, traffic is already a problem, and with the new toll system, he is expecting traffic to increase dramatically.

Chris Parker stated that the Planning Department is in support of this office request and office use is a much better use than two residential uses. They also see this is as a good linkage to the ETP land located in the rear. If this were to be approved and go to TRC they would suggest looking at ways to bring the building to the front and parking to the rear. The department believes that this is a transition area and is an area where an office makes sense.

Richard Callaghan asked when the ETP zone was created, what was the intent to access it at that time.

Chris Parker stated that the rear lot as well as the adjacent lot was zoned ETP at once and it was included in a broader area, the knowledge that the lot was vacant was that you could negotiate with Map K, Lot 19 to try and get access. At the time, it was a similar owner and now is in a different ownership scenario. The best access would be through this lot.

Chip Williams stated that they are proposing office next to B-3 zone and continue the transition. The road suggested on the plan will still service the ETP in the back with appropriate buffers between the road and existing duplex unit.

Richard Callaghan asked how does this Dover Point Road and ETP fit in to the City Master Plan.

Chris Parker stated that the City's Master Plan acknowledges a lack of non-residential commercial industrial land and that was the main reason they rezoned almost 100 acres on Dover Point Road from R-40 to ETP.

Discussion ensued regarding ETP zone and its uses.

Richard Callaghan asked about the bridge and if was even possible to get to that land over the wetlands.

Chris Parker stated that he has not seen the bridge, therefore does not feel qualified to comment. It would have to go to Conservation Commission and the Wetlands Board to do any crossing; if there were an existing crossing, it would certainly help the case.

Chip Williams stated that it is drawn on the plan by a Certified Engineer; scaled off shows more than three feet. They drove vehicles back and forth across it for years to service the fields. In his opinion, the engineer that was retained would not have presented the drawings unless it was a reasonable crossing.

Chris Parker stated that it is scaled off at eighteen to twenty feet. Drawn on the plan that should have not been submitted in the packets shows twenty-two feet, would have to go to the Wetlands Board, and is irrelevant looking at the request of the office building.

John Levasseur confirmed with Chip Williams that they would have enough for a parking lot if they were to widen Dover Point Road.

Public Hearing Closed

Sam Reid stated that he has a concern based on the Planning Boards recommendation and agrees that the zoning may be inappropriate but there is reasonable use besides this proposed use as an office and in his opinion, the variance granted last year for two house lots was a reasonable use.

Richard Callaghan stated that he is troubled with the fact that they have to change the zoning just to create a back door to the ETP zone.

Ruth Gorton stated that she feels the same way.

Frank Landford asked why the City did not change that whole lot to ETP, it is currently residential, and that is what it should be.

Chris Parker stated that in 2003 and 2004 the department suggested that the back portion go ETP and the front R-12 zone was recommended to go to B-3, the back portion did become ETP and the front portion failed. Mr. Williams came forward and asked if they could look at his area and extend the B-3 zone over and that request was denied at the Planning Board at that time. Last year abutters on the opposite side of the street came forward and wanted B-5 zone, Planning Department and the Planning Board supported that request and it failed at Council. Parker reiterated that the Council and Planning Board are both political entities, and that the Zoning Board is designed to not be influenced by politics.

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 face an unnecessary hardship. This conclusion is based on the following findings of fact: With the current variance, that is reasonable use of the property. Vote: U/A
2. It is the Board's conclusion that, if granted, the variance will not deliver substantial justice. This conclusion is based on the following findings of fact: Granting the variance will not take into account the will of the public. Vote: U/A
3. It is the Board's conclusion that, if granted, the variance will not be in harmony with the spirit and intent of the zoning ordinance. This conclusion is based on the following findings of fact: The cities zoning recent decisions have supported that this should be residential as well as abutters. Vote: U/A

4. It is the Board's conclusion that, if granted, the variance will result in diminution in value of surrounding properties. This conclusion is based on the following findings of fact: Testimony of abutters and putting a business in a residential area usually diminishes the residential property values. Vote: U/A
5. It is the Board's conclusion that, if granted, the variance will be contrary to the public or private interests or rights. This conclusion is based on the following findings of fact: Granting would be very contrary to the interest of the neighbor and abutters. Vote: U/A

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

Richard Callaghan stated that Mr. Williams has the right to appeal the decision of the Board within thirty days.

Ruth Gorton announced that she would not be present for the remainder of the meeting.

- D. Z 05-09 Jan Vermeer Holding LLC, (Applicant: Jim Varney d/b/a Varney's Cleaner), 23 Weeks Ln., a/k/a Assessor's Map 38, Lot 38, zoned B-1 requests a variance from the terms of Article IX, Section 170-32 H, to 1) install 2 signs, where a maximum of 1 is allowed; and 2) to display twenty-nine (29) square feet of signage, where a maximum of fifteen (15) feet is allowed.**

Attorney Christopher Wyskiel represented the applicant and stated that Varney's Cleaners has recently gone through the permit process and the building has just been rehabilitated. They have one locator sign in front and wish to have a sign attached to the front façade of the building. Pictures were submitted to show location of the property and signage in the area. They are looking to install a sign above the bow window on the front façade. The new sign is sought to be installed and is dimensioned to be sized and in keeping with the rest of the neighborhood as shown in the photographs submitted. All of the properties have this type of signage, which the applicant is asking the variance to allow him to have. All of the surrounding properties are zoned B-3 and B-5 where a variance would not be needed. The B-1 zone is appropriate because there is residences behind his property, therefore serves other types of uses and dimensional requirements. For purposes of signage the front of the building is every bit a part of the Weeks Crossing traffic patterns and business usage. The façade signage sought by the applicant is a good thing, because you cannot see the side locator sign when you are driving from the turnpike towards Somersworth. A letter written by real estate broker Peter Russell of the Masiello Group was submitted for the file and he has been involved in the development of the ninety-nine restaurant and hotel and it summarizes his opinion of the proposed sign in favor of this variance request. The sign will be located to the front of the building and will not be seen by any of the residential properties located in the rear.

Chris Parker stated that if the objective is to have better sight from Indian Brook or High Street, off Spaulding towards Somersworth, why don't you remove the free standing sign and place one sign on the building.

Attorney Wyskiel stated that on Weeks Lane the free standing sign better serves the viewing public.

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

Public Hearing Open

Chris Parker stated that the Planning Department does not support this variance request and feels that the one sign is adequate and if it were moved, it might prove more in line with their needs. As far as Dover is concerned The Bank of New Hampshire building only has one sign the other sign is located in Rollinsford. He agrees that it would be better sight from Indian Brook and the sign existing should be moved to a better location.

Public Hearing Closed

Bill Colbath asked what was the reason of the B-1 zone having this bizarre shape.

Chris Parker stated that it protects the R-12 abutting zone and was created as a neighborhood zone.

Discussion ensued regarding zoning of the area.

Frank Landford stated that every other commercial structure surrounding this building has a sign located on it and in front of it, this is the only one that does not.

Richard Callaghan stated that he has looked at the area and agrees.

Bill Colbath stated that he would like to see detail of the existing free standing sign. He stated that the request is to display twenty-nine square feet of signage on two signs and it should be made clear that the sign on the building is going to remain eighteen square feet and the free standing sign remain eleven square feet.

Discussion ensued regarding the size of the existing sign.

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: The irregular intersecting of the zoning makes it a hardship whereby adjacent properties have increased privileges. 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 similar use as to all surrounding businesses. 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: In this particular case, the front of the property is very close to the other zones that allow this signage. 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: Neighboring properties are consistent with this signage. 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: Indications are that this will be a benefit to the public and private interests. Vote: U/A

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

1. The free standing existing sign shall be no larger than eleven (11) square feet and the building sign shall be no larger than eighteen (18) square feet.

Motion: Bill Colbath made the motion to approve the conditions. John Levasseur seconded the motion.

VOTE: U/A

D. Z 05-10 Teddy & Tamara Yeglinski, 23 Weeks Ln., a/k/a Assessor's Map 38, Lot 38, zoned B-1 requests a variance from the terms of Article IX, Section 170-32 H, to 1) install 2 signs, where a maximum of 1 is allowed; and 2) to display twenty-nine (29) square feet of signage, where a maximum of fifteen (15) feet is allowed.

Bob Paolini announced that they wish to withdraw the application and will reapply at a later date.

ITEM # 5: OTHER BOARD BUSINESS

Chris Parker stated that he would like to update the Board regarding case Z 05-05 Bomac Realty LLC at last months meeting. They had a TRC meeting today and the Fire Department informed them that they would have to sprinkler the building.

Richard Callaghan welcomed Sam Reid as a new member to the Zoning Board of Adjustment. He also announced a basic workshop that will be located in the area if anybody is interested.

ITEM # 6: ADJOURNMENT

MOTION TO ADJOURN

Bill Colbath made the motion to adjourn at 9:10 p.m. and was seconded by John Levasseur. **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	04-10-08
Ruth Gorton-regular member	11-12-06
John Levasseur-regular member	11-12-06
Masi Denison-alternate member	09-08-07
Sam Reid-alternate member	04-13-08