

Dover Zoning Board of Adjustment
Thursday, July 21, 2005

MINUTES

Members Present: Richard Callaghan, Bill Colbath, Frank Landford, John Levasseur, Sam Reid
Members Absent: Masi Denison, Ruth Gorton
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 7:06 p.m. and explained to the general public how the cases should be represented to the Zoning Board of Adjustment. He announced that a letter was submitted regarding case Z 05-18 stating that the application has been withdrawn.

ITEM # 2: APPROVAL OF MINUTES

A. Approval of the minutes for regular meeting of June 16, 2005.

Richard Callaghan recommended a correction on page 3 and Sam Reid recommended a correction on page 10.

Motion: Sam Reid made the motion to accept the minutes as amended. Bill Colbath seconded the motion.

VOTE: U/A

Richard Callaghan announced that the Board has made a decision, at some point if necessary, to delay the findings of a particular request. If a case becomes complex enough, it may be necessary to further deliberations so they would hold a public hearing with a Board hearing only. The date would be announced for the hearing and the Board would finish the deliberations on that particular case. The Board members want to make sure that the findings are clear and precise and may need to request some further information, it may be legal support, or more research. They would like to be more accurate in their decisions and do the best job that they can for the City of Dover.

ITEM # 3: OLD BUSINESS

- A. Request for motion for rehearing regarding ZBA Case Z 05-12 George Georgakilas., 70 Silver St., a/k/a Assessor's Map 12, Lot 79, zoned RM-10, requests a variance from the terms of 1) Article I, Section 170-6 definition of lot to have two principal buildings on a lot; 2) Article VI, Section 170-25.1.A to have approximately 7,100 square feet of open space where the average amount on surrounding developed lots is 10,100 square feet; and 3) request a special exception as provided by the terms of Article VI, Section 170-25.1 and Article XII, Section 170-52.C (3) to establish a fourth dwelling unit.**

Attorney Schulte stated that the review is based on his written submission. When they re-measured the lot coverage, it turned out that the open space was somewhat greater than what they thought, 7900 square feet. He also re-visited the neighborhood and found two residential structures on the same lot.

John Levasseur stated that he realizes new information has been submitted but in his opinion, the building is too close to the property line to be able to maintain it.

Sam Reid stated that one item that may justify a rehearing is #16 located in the written submission and it may be worth having the rehearing in order to have a complete record.

Richard Callaghan stated that although he was not present for the meeting, he reviewed the minutes and read the request for rehearing. He noticed some things that he thought could have been responded to a little more clear in the findings of fact. There also seems to be more information that has been brought forward after the fact, which should have been here at the original hearing.

Motion: Sam Reid made the motion to grant the request for rehearing. Bill Colbath seconded the motion.

VOTE: U/A

ITEM # 4: NEW BUSINESS

A. Z 05-16 Churchill Realty Trust, Old English Village Rd., a/k/a Tax Map 38, Lot 12, zoned B-3, requests an appeal from administrative decision as it related to Article X, Section 170-40 and RSA 674:53.

Richard Callaghan announced that his daughter is a Legal Assistant for the Law Firm that Attorney Bruton represents. In his opinion, he feels that there is no conflict and these cases are not discussed between himself and his daughter. He stated that if anybody feels that this is a potential conflict of interest he would like him or her to voice any level of concern at this time.

Nobody voiced a concern regarding the statement.

Attorney Bruton represented the applicant. He stated that the decision was an adoption of an opinion prepared by Attorney Bernard Waugh whom is present and must have been here for the non-public session that was held prior to the meeting regarding RSA 674:53. Documents submitted contain all of the information that will be discussed. In October 2004, the applicant met with the Dover Planning Department to talk about this project. They submitted a formal application in Rollinsford for the proposed construction in December 2004. The basic issues were access from Central Avenue on to Old English Village Road and concern was raised by the Planning Department with respect to protecting their groundwater. It was the applicant's intent to utilize water and sewer utilities through Dover. Prior to submitting their application to Rollinsford the applicant obtained written confirmation from the City of Dover that they have conducted flow tests and could provide the water and sewer services. A plan was submitted to Dover showing the project and that led to a necessity for a TRC meeting. At that meeting, they were informed that Dover had some issue with respect to whether or not they would need to satisfy the density requirement. Another concern expressed at that meeting was a position by Dover to suggest that the Zoning Ordinance or the requirements of the Zoning Ordinance, over and above the density requirement, would apply to the construction that would occur in Rollinsford. In Attorney Waugh's opinion letter, his opinion deals with whether or not this project meets the satisfied density requirements of Dover. The density requirement in this zone is 5,000 square feet per unit and wetlands cannot be used in that calculation. He stated that both of the letters from Tom Clark and Attorney Waugh's letter focused on the provisions of RSA 674:53. In his opinion since there is no development and it is a grandfathered protected project, this would not have to meet the new density requirements. They meet all regulations in Rollinsford. Attorney Waugh takes a different position and suggests that they still have to meet the requirements of the Dover density requirements. A point during TRC was that a reference was made by the Engineering Department of Dover to realign the utility depiction on the plan and that was meaningful to

the applicant that the Dover Engineering Department was looking at the development and was making sure it complied with the Dover regulations. During Site Plan Review in Dover, because of the bulk of the work and or the entire work would be done in Rollinsford they expected the review would be limited and they received this impression from the Planning Board. It was not until the TRC meeting that they were informed for the first time, that they could not do their project. This project is associated with a project that had been approved by the Dover Planning Board in 1972. That plan shows that it occurred only in Dover. In Rollinsford there is no density requirements so there is no need to use density requirements on the Dover side, nothing is occurring in Dover so it is there position that there is no need to use any of the Rollinsford side. Dover is not dealing with an access issue or a utility issue but a density issue that results in that they cannot build in Rollinsford. The proposed project in Rollinsford will not alter any construction in Dover. Dover did agree to provide the necessary utilities with all the regulations in Rollinsford. This project was considered a project of regional impact so Somersworth which provides High School services to Rollinsford was notified of that status and it resulted that did not have an objection to this project and it did not concern them. This construction will be an attempt to provide market rate opportunities. This is something that is needed and he stated that there is little or no interest by the abutters in this project and the only entity interested for some reason is the City of Dover and he stated that he does not know why Dover is doing this and is hoping that he can get an answer.

Bill Colbath stated that it appears that two buildings and the parking area is located in Rollinsford.

Attorney Bruton stated that Karen Lovejoy with Ambit Engineering is present and is a surveyor whom prepared the recent plans. In 1972, it was determined that the entire project that was built at that time was located in Dover. It has now been determined that the Town line may be through one of the buildings.

Richard Callaghan asked if that plan was submitted to review.

Attorney Bruton stated that he did not have it, but it is on record in the Planning Department. If this Board is inclined to recess this hearing that is something that obviously can be obtained.

Discussion ensued regarding the letter from Attorney Bates for the Town of Rollinsford.

Attorney Bruton stated that he read the letter and believes that it would be part of this hearing. His opinion is a carbon based upon the opinion of Attorney Waugh. It may say similar things and he is asking the Board to consider the opinion of Attorney Waugh.

Sam Reid confirmed with Attorney Bruton his position in terms of the meaning of the statute RSA 674:53 III (b).

Attorney Bruton stated that he feels that the new zoning does not apply because it is a grandfathered project, they are not doing development, therefore in their opinion they do not need to satisfy the density, they are not changing the density.

Frank Landford confirmed that there is no access to this lot from Rollinsford. He stated that he noticed by the plan submitted that a quite a bit of the development is on the Rollinsford side as far as parking and recreation.

Attorney Bruton stated that it was not and the Site Plan that is on record in file #1 that was considered and approved is located in Dover, not in Rollinsford. The plan submitted is the existing conditions. That file could be submitted as additional evidence. It is located in the Planning Department and he will try to obtain a copy of it.

Bill Colbath stated that it is clear that the reason it was built here is that it is the most useful and cost effective piece of the property to develop on at that point. He stated that if the applicant is going to rely on the fact that the information in the file is to your benefit you should have brought that file.

Attorney Bruton stated that his argument is not about the plans. He stated that the density issue is the structures. Density in Dover indicated in Attorney Waugh's opinion and in my letter is today 5,000 square feet per unit at 120 units and 21 acres of land is necessary. If you wanted to take a parcel in Dover and build 120 units in this zone, you would say you need useable area and deduct the wetlands. They meet the requirements in Rollinsford. If this were all in one municipality on one lot, you would have to deal with the density issues in that Municipality. What the Statute says is that if there is a Town line the development in that Municipality is subject to the provisions of that Municipality. There is no developing in Dover. The structures that occur in Rollinsford are not going to occur in Dover and would not affect the density in Dover.

Discussion ensued regarding density requirements.

Attorney Bruton stated that if this case were recessed he would bring a copy of the original Site Plan and have the numbers regarding the number of apartment units, bedrooms, and parking spaces for this project.

Public Hearing Open

Ann Green abutter at 19 Pinecrest Lane stated that her back yard abuts this project. They already have a problem with getting out of this road, they are located on a dead end street, and it is not a good idea to add more traffic flow to this area. She has a wooded area between her backyard and the apartment buildings and they have a lot of wildlife, they have issues with children that like to come and play in the woods. She would rather not see more children added to the area. When they bought the house, they did not intend on having a concrete view.

Paul Cloutier abutter at 43 Pinecrest Lane stated that he is the last house located on the dead end road and is against this project. This will affect all of the wildlife that they enjoy. He stated that he has been to three or four of the Rollinsford meetings and stated there is a lot more wetlands than shown and he believes the plans are flawed.

Tom Clark stated that the opinion is based on Attorney Waugh's letter and he did submit Attorney Bates letter as supporting documentation. Part of the issue is that Attorney Bruton is using a portion of RSA 674:53 III (a) and he believes the applicant would also need to use RSA 674:53 (b). Attorney Bruton is pointing out since the project was approved in 1972 it should therefore apparently be held in a time capsule. In 1979, City of Dover had a City wide rezoning which allowed for multi-family development in a B-3 zone. In 1999, the density was changed to require 5,000 square feet of land per dwelling unit and in his opinion that is when RSA 674:53 III (b) would kick in and now the improvements are affected by this change. Dover can apply to density calculations for this project over the entire parcel. He also stated that five months is not an unreasonable review time for a project of this size.

Steve Bird stated that the Planning Department supports the administrative decision based on the legal opinion.

Attorney Waugh stated that he provided the opinion and he seems that the gist of the disagreement is regarding the interpretation of 674:53 III (b) of the statute, when it talks about when the requirement of one municipality has been fulfilled through the inclusion of land at another municipality. He stated that Attorney

Bruton's interpretation is that it has to be intentional for that fulfillment of the requirement and since it was not intentional in 1972, it does not apply. He stated that he does not read it that way, as pointed out in his opinion letter. However, he thinks this applicant would be eligible to apply for a variance from this requirement.

Richard Callaghan confirmed with Steve Bird that it is a completely normal procedure to be approached in the Planning Department by a developer with concept plans, they meet with them, and eventually they will bring in a set of plans with a formal application, they go through the TRC process and a three or four-month time period is average.

Steve Bird stated that just because somebody meets with an individual staff person, it does not mean that all of the issues have been resolved. TRC is the meeting where all of the issues will be put on the table.

John Levasseur confirmed with Attorney Bruton that the nearest road to this development is Pinecrest Lane.

Ann Green stated that they have a hard enough time getting off this street unless you intend on placing traffic lights at the end of this road.

Paul Cloutier stated that the apartments located on Webb Place are not full and have been located here for a couple of years. He stated that friends from work are renting here and he believes they are not expensive. If these units are not filling, how do they expect these new units to be rented?

Richard Callaghan stated that he would like to point out that they are focusing on an appeal of an administrative decision and it is about the interpretation of the laws and the Zoning Regulations.

Public Hearing Closed

Frank Landford stated that the present construction shows quite a bit of the development in Rollinsford. The parking does not meet present parking requirements but it did at the time. It appears that at the time they were using land in Dover and Rollinsford for this development, why has this changed now. The original plans would show something different and he would like to see them.

Bill Colbath stated that he would like to see the minutes and the approved plans from the Planning Board meeting in 1972.

Sam Reid stated that he this really comes down to which interpretation you abide by and it would be up to the Board to decide what that language means. Even though they want to do it in Rollinsford, they have to abide by Dover's density requirements. He stated that he would vote to sustain the proceedings of Mr. Clark based on counsels recommendation and his interpretation of the statute.

John Levasseur stated he agrees that Mr. Clark's interpretation is correct.

Richard Callaghan stated that he would like to see some pieces of information of what is contained in file #1 for this project. He would also like time to read the information submitted in order to make a decision as he feels he is not ready to vote at this time.

Steve Bird stated that the file would be available for the Board members to review.

Attorney Bruton stated that he does not object to what the Board wants to do in order to gather the information needed and continue the deliberations when you receive it.

Richard Callaghan stated that he is seeking an agreement that they would postpone deliberation and seeking a volunteer to present a motion based on their interpretation of the events for the rest of the members to consider. He announced that he was going to present a motion and anyone else may feel free to do so.

Motion: Bill Colbath made the motion to table the case pending receipt of more information and will be held one hour prior of the regular scheduled meeting of August 18, 2005. Frank Landford seconded the motion. **VOTE: U/A**

B. Z 05-17 Holgate Limited Partnership, (Applicant: Tawny Gilbert), 163 Central Ave., a/k/a Tax Map 19, Lot 48, zoned RM-10, requests a variance from the terms of Article IV, Section 170-12, Table I, Part C-1 to establish a beauty shop.

Tawny Gilbert stated that she is a licensed Esthetician and an Instructor. She received her license in 2001. About 18 months ago, she decided to look for a place for herself, a sole proprietorship to work as an Esthetician in Dover on a part time basis. She stated that in May she came across the Hopkins Enterprise space located at 163 Central Avenue. It is a first floor space in a Victorian Building and has a lot of built in ambiance, which is nice with any type of spa treatment. An agreement was made that she would take the space. She left her deposit and figured that her business would open by the end of June. Mr. Hopkins office is located in this building as well, and he has been supportive. Three other businesses are located upstairs, two of which are Massage Therapists and the other is a Commercial Framing business for hospitals and large buildings. She would only have one client at a time. She stated that she and Mr. Hopkins incorrectly assumed that the space was permitted for this use. She is not a hair stylist so she does not put herself professionally in the category of a Beauty Shop. She was told that she would need to file for a variance and she informed Mr. Hopkins of her status of the situation and he was surprised, since they do have massage therapists located upstairs. If you were to go to a spa, those services would all be offered under the same facility, so it never occurred to either of them. Mr. Clark contacted me this afternoon that two of the abutters were not notified by Mr. Hopkins. It was suggested that she locate them, write a letter, and have them sign it to make sure they do not have a problem with skin care being done at this location. She submitted a signed letter from one of the abutters, Mr. Sakkas. The other abutter, Mr. Rozek was not in the area but had a phone conversation with him and he said that he would give her verbal approval and would sign the letter and submit it in the morning.

Richard Callaghan read the letter submitted by Mr. Sakkas for the record.

Bill Colbath asked how they would deal with the fact that an abutter has not been notified.

Tom Clark stated that the Planning Board has accepted letters like that in the past for people who have not been notified stating that they are agreeing with the application. You would have to take the applicant's word that she spoke with the abutter and you could proceed as if everyone was notified.

Frank Landford stated that it could be placed as a condition that she submits the letter.

Sam Reid confirmed with Tom Clark what zone a beauty shop is allowed in and at some point, it should be looked at as a separate use.

Tom Clark stated that the department feels that Massage Therapists are consistent with Chiropractor, which is consistent with office uses. It was his decision of the Esthetician definition that it would fit more in keeping

with beauty shop than office use. Any reasonable conditions can be attached to this should you decide to grant the variance.

Motion: Frank Landford made the motion to accept. Sam Reid seconded the motion. **VOTE: 4 to 1 (Bill Colbath opposed)**

Public Hearing Open

Steve Bird stated that the Planning Department supports this variance request; they feel it is a reasonable use of the property, given the other uses that are located in the building. It is a function of the zoning definition having a particular use and to be classified in the same category as a beauty salon there was no other option that the Building Inspector could use. The department feels it meets the criteria.

Public Hearing Closed

Frank Landford stated that he has no problem with the request.

Bill Colbath stated that he is only opposed because of the abutter not being notified.

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: This allows for a similar use of the office space within the building, which is reasonable and prohibiting the use would be an 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 for similar use of the space within the building. 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: Allows similar business, it is an oversight to not allow that specific type of business and will not have a negative impact on the looks of the building. 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: The use will be nearly indistinguishable from the allowed use. 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, it will provide a service, which is needed, for the public. Vote: U/A

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

1. Written approval must be received from the abutter (Peter Razek).
2. This only applies to Esthetician type work.

Motion: Frank Landford made the motion to approve the conditions. Sam Reid seconded the motion. **VOTE: U/A**

Recess at 9:15, resumed at 9:21

C. Z 05-18 Tyra Inc/James P. Griffin, Mast Rd., a/k/a Tax Map H, Lots 60& 62, zoned R-40, requests a rehearing regarding the revocation of an extraction permit.

It was announced at the beginning of the meeting that this application was withdrawn.

Sam Reid stated that he would not be voting on the next case.

D. Z 05-19 Matt & Helen Williams, 26 Dover Point Rd., a/k/a Tax Map K, Lot 26, zoned R-12, and ETP, requests a variance from the terms of Article IV, Section 170-12, Table I, Part A, to construct a residential development (twelve (12) dwelling units in six (6) buildings).

Richard Callaghan stated that four Board members would be voting on the case and the applicant was offered the option to either proceed or have the case postponed.

Bob Stowell represented the applicants and stated that he would like to proceed with their case. He stated that this was before the Zoning Board before with other plans for this property. This property is partially zoned R-12 and the rear portion of the parcel is zoned ETP. They feel that creates a hardship for the applicant. The plan submitted shows the proposed road and a wetlands crossing that will access the rear property. A Commercial project was denied by this Board, so they are here to do a residential project. It would consist of twelve condominium units in six buildings; the development would be in the rear portion of the lot off from Dover Point Road. This would fit in better with the surrounding neighborhood. He stated that they are asking for a residential development in an ETP zone.

Bill Colbath confirmed that ETP does not require any frontage and lot 26-1 was one of the lots before the Board a couple of years ago.

Frank Landford confirmed that the proposed lot could be part of the residential development.

Richard Callaghan stated that if this goes far enough they could place it as a condition. He asked if any calculations have been completed as far as space criteria and number of bedrooms.

Bob Stowell stated that they would give up the previous variance granted for lot 26-1. ETP does not have a set density. They are using a reasonable density on the 5 ½ acres of land. R-12 zone requires 12,000 square feet per unit and this would be more than enough for that zone.

Tom Clark stated that duplexes like the plan shown are not allowed in an R-12 zone and this lot would not be large enough to qualify.

Richard Callaghan asked about the traffic and emergency services for this area.

Steve Bird stated that the issue that he is bringing up is something that will be part of the TRC meeting and the focus should be placed on the use variance request.

Motion: Frank Landford made the motion to accept. John Levasseur seconded the motion. **VOTE: 2 to 2 (Richard Callaghan and Bill Colbath opposed)**

Richard Callaghan stated that his application was not accepted and he would like to see more information of how this property is going to be developed and whether or not it is more beneficial for the City to change the ETP zone to create a residential property. He stated that he applauds the effort and the willingness to give up the previous variance but he has many questions that he would need to know in order to make a determination if this is a good thing for the City.

Bob Stowell asked if they could come back before the Board.

Tom Clark stated that the applicant would have to resubmit a new application.

Richard Callaghan stated that he would like to see more details as to what is being proposed as far as number of people, calculations of driveways, density, and everything that goes along with a development that they normally would see.

Bill Colbath stated that the reason why he did not accept it is that he is looking at a plan that is showing a lot of record, lot 26-1 shown on the plan and the variance at that time was not granted for what you are trying to do here. The circumstances have been completely altered and that would not have been granted under the circumstances that now exist.

Bob Stowell stated that the lot in question would not be part of the application. He stated that a conceptual plan is normally what is presented. In his opinion, this plan is more detailed than the plan that was before the Board that is located across the street.

Richard Callaghan stated that the plan had lot lines shown on the plan and he is welcome to look at other plans submitted.

ITEM # 5: OTHER BOARD BUSINESS

Richard Callaghan stated that he would like to make an amendment to the application form and add to the agenda language that states that a decision may not be made the same night of the hearing, as the Board may have to continue deliberations.

He also stated he has two notices for training if anyone is interested they should contact the Planning Office.

ITEM # 6: ADJOURNMENT

MOTION TO ADJOURN

Frank Landford made the motion to adjourn at 9:51 p.m. and was seconded by Sam Reid. **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