

Dover Zoning Board of Adjustment
Thursday, August 18, 2005
MINUTES

Members Present: Richard Callaghan, Bill Colbath, John Levasseur, Sam Reid, Masi Denison, Ruth Gorton
Members Absent: Frank Landford
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 6:05 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 July 21, 2005.

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

VOTE: U/A

ITEM # 3: OLD 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 a letter was submitted and the applicant has requested that the case be postponed to the September meeting.

Richard Callaghan announced that the Board may or may not make a decision on a case. A decision may be postponed depending on if the Board needs to seek legal advice or need additional information in order to make sure that the findings are clear and precise.

Masi Denison will not be voting on the next case.

B. 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 represented the applicant. This is a request for an area variance and the proposal is to take the second floor of the carriage house and convert it into a residential unit. A picture was submitted showing the existing carriage house. He stated that the abutter on the east side of the carriage house raised concerns about privacy. The applicant would not place any windows on the second floor. The parking lot measures approximately 60 feet wide by 45 feet deep and can accommodate five vehicles. A graveled parking area is along side the carriage house. Parking for the two spaces of the new unit will be on the first level of the carriage house. 7900 square feet of open space exists and it would not be affected in any way by this development. He proceeded to read through the criteria. He submitted pictures of other properties in the neighborhood that have more than one unit located on their lots.

Chris Parker confirmed that five parking spaces are on the paved area and one adjacent to the garage. He asked if he included the two spaces for the carriage house.

Attorney Schulte stated that with the two spaces within the carriage house they would have eight parking spaces.

Tom Clark stated that the graveled area would be required to be paved.

Public Hearing Open

Fred Clough abutter at 64 Silver Street submitted photos of the property. He stated that he is speaking on behalf of the public in support of the ordinances and he has a major issue with an accessory structure being turned into a residential unit so close to the property line. As pointed out at the last meeting the carriage house is part of what keeps his property fenced in. The proposed intensity of use is too dramatic. He stated that he was never approached up front regarding the windows, the certified letter informed him. He asked if dormers, more windows, or spotlights are going to be added to the front of the building, as the front of the carriage house is a direct line of sight to his bedroom. He has numerous privacy concerns with this project. The applicant already has a three-unit and feels there is already a reasonable use in place. He proceeded to read his letter that was submitted for the file. He stated these are not legitimate variance requests and strongly opposes them and respectfully asks that the Planning Department and the Zoning Board continue enforcing the current ordinances and laws.

Chris Parker stated that the Planning Department is not in favor of this variance. The open space requirements are meant to control density and this property does not meet the open space requirements. The department does not see a hardship. The table of uses lists it as a three to four dwelling unit and he currently has three units, which is a reasonable use of the property. The department is against this variance request.

Public Hearing Closed

Discussion ensued regarding open space in the neighborhood.

Attorney Schulte stated that he has a matrix available showing the figures.

Richard Callaghan stated that he is having a hard time with the hardship. This piece of property probably is on the lower side of the average of open space in the area. The applicant's proposal is asking for an area variance so they can change the use and in his opinion does not feel it is a reasonable request.

Ruth Gorton stated that she agrees and does not see a hardship as they have a reasonable use at this time.

John Levasseur stated that he is concerned with maintaining the side of the building that is located so close to the abutter.

Attorney Schulte stated that it has been maintained for the last 100 years and his assumption is that it will continue to be done otherwise it would deteriorate.

Sam Reid stated that he feels that by having a residential unit so close to the abutter it would affect the value of his property. The fact that they may board up the windows on the abutters side is helpful but in his opinion, it would affect the value of his property.

Bill Colbath stated that he requested parking information, which has not been presented.

Discussion ensued regarding the interpretation of 170-25.1.

Richard Callaghan reminded the Board of their option to deliberate if needed.

The Board decided to proceed with the case and vote on the request for an area variance.

FIVE CRITERIA FOR AREA VARIANCE:

1. It is the Board's conclusion that if the applicant complies with the strict letter of the ordinance he/she does not (Sam Reid and Bill Colbath voted does) face an unnecessary hardship. This conclusion is based on the following findings of fact: 1) The request is too far off from the average square footage 2) By the application and by the fact that the area variance is being requested for a nonconforming use places the property in a greater nonconforming state. There is no hardship for the applicant because it is far from the intended use 3) Buildings are presently utilized. Vote: 3 to 2
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: It will create an injustice to those on the property and on the surrounding properties. 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: Spirit and intent is to maintain an appropriate level of density. This variance creates greater density. 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: 1) Allows a use of greater nonconformity and is already lower than the average in the area. 2) Residential conversions of this building, as close as it is to the property line, will diminish the surrounding 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: As presented by the abutter and agreed to by the Board, this will compromise their interests and rights. Vote: U/A

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

The Board proceeded to discuss the request for a use variance.

Attorney Schulte stated that this is a request to allow a residential unit to be placed in an accessory structure. He stated that in this neighborhood, located on 81 & 87 Belknap Street, 50 & 51 Summer Street they all have two residences on the same lot and he submitted photographs of the properties.

Richard Callaghan confirmed with Attorney Schulte that by looking at the property assessment card he could not confirm that 81 Belknap Street had two separate units located on the lot.

Bill Colbath stated that it should not be assumed that it has two units located on the lot.

Attorney Schulte proceeded to explain the lot and the two structures on this lot are located about 60 feet away from each other. Other properties in this neighborhood that have a barn, garage, or carriage house happen to be located close to each other. Property at 44 Summer Street had a detached building and is currently being attached to the house so that another unit can be added. Hardship in this case is that the two buildings are located too far apart from each other to be connected. The density will not be changed and four units are permitted by the ordinance. The applicant agreed not to have any windows on that side of the dwelling, which would eliminate the impact of privacy of the neighbor on that side. The use is consistent with the character of this neighborhood. There will be no change in the open space as these are pre-existing conditions.

Chris Parker confirmed with Attorney Schulte that the square footage of the unit would be 12,000 to 15,000

square feet.

Sam Reid confirmed that the applicant intended on blocking the windows facing the Clough residence and would be installing a skylight.

George Georgakilas, 10 Long Meadow Road stated that the upstairs windows would be blocked off and he would work with the privacy issues that the abutter is concerned with.

Discussion ensued regarding definition of lot.

Tom Clark stated that the building located on 44 Summer Street is a carriage house that was already attached to the main house. They are currently converting it to a dwelling unit but it always has been one structure.

Bill Colbath stated that he is concerned with how the hardship is based on the fact that it is because it is not attached; the property has a reasonable use with three units.

Attorney Schulte stated that this property has two detached buildings and feels that four units is also a reasonable use.

Public Hearing Open

Kristen Cole 6 Cranbrook Lane stated that she used to live in the Summer Street area. She confirmed that two means of egress would be required in this unit and asked about the windows.

George Georgakilas stated that the windows are knee high.

Fred Clough 64 Silver Street stated that his previous argument stands as presented earlier.

Chris Parker stated that the Planning Department does not support this variance request. The department does not encourage the creation of two primary structures on a lot. The department agrees that other accessory structures have residential uses in them, but they are not located as close to the lot lines as this one is. The concern is that it would be infringing on the privacy of the abutter.

Public Hearing Closed

Bill Colbath stated that this already has a use, it is being used as a garage and storage, therefore has a purpose.

Ruth Gorton stated that creating living space in that separate building does not seem safe in regards to exits and exhaust from the vehicles.

Sam Reid stated that the applicant is asking for two residential structures on the same lot, which zoning clearly does not allow. Whether or not you have windows on Mr. Clough's side, there will still be outside noise and lights that he can see from his bedroom. He stated that in his opinion he does not feel that the standards have been met.

Richard Callaghan confirmed with Tom Clark what the requirements would be for a fire escape and would need to be enclosed and isolated from the garage.

FIVE CRITERIA FOR USE VARIANCE:

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: The structures

- are fully being used in a reasonable way considering the unique setting 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: Increase density. 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: Intent was to allow only one structure. 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: Allowance will result in overcrowding and place a residential structure closer to the lot line than most abutting properties. 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: Would result in an encroachment of privacy and rights per the abutter objections. Vote: U/A

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

Richard Callaghan proceeded with the request for special exception.

Tom Clark stated that normally he makes a note on the agenda that would state that the following would be heard if the previous item were granted, which would be the variance. If he did not get the variance, why is the Board considering the special exception especially knowing the applicant does not meet the conditions?

Attorney Schulte suggested that this request be tabled pending a motion for reconsideration that he will be filing next month. He stated that he does not want to withdraw the request for special exception but agrees it is appropriate to table the request.

Motion: Sam Reid made the motion to table the special exception request to such time when the Board grants a rehearing and acts upon favorably the two variance requests. John Levasseur seconded the motion.

VOTE: 4 to 1 (Bill Colbath opposed)

Recess at 8:32, resumed at 8:38

Masi Denison will be voting on the next case.

ITEM # 4: NEW BUSINESS

- A. **Z 05-20 Robert Shaw, 33 George St., a/k/a Tax Map 20, Lot 26, zoned RM-10, requests a variance from the terms of Article V, Section 170-16, to construct a side deck addition within 1) Zero (0) feet from a front property line as it abuts a street, where a minimum of seventeen (17) feet is required and 2) less than one (1) foot from a side property line, where a minimum of three (3) feet is required.**

Kevin McEaney represented the applicant and stated that Attorney Schulte is also present. This is a request for an expansion of a nonconforming building located on the corner of Henry Law Avenue and George Street known as the Riverbend Variety Store. Pictures were submitted to show the location. The plan is to construct a deck and it will be used for patrons for outside seating and to look over Henry Law Park. It would also increase the use of the structure. The deck will be constructed with a wood frame structure with standard decking and with a wrought iron railing so it would not block any views. The access to the deck will be strictly from inside the business. The variance is needed because there will be an encroachment into the setback along both George Street and Henry Law Avenue. This is a good use of this property. The applicant made an effort to contact the abutters and no one is present in opposition of this request.

Attorney Schulte proceeded to read through the criteria that was submitted.

Chris Parker confirmed that the entrance would be located where the exterior sign is currently located.

Bill Colbath asked if they had any idea what the elevation would be on the deck. He is concerned with being able to see when you are sitting at that intersection.

Kevin McEneaney stated that the elevation of the existing finished floor in the building is about 18 to 20 inches above the ground level of where the deck would be located. Estimated sight distance looking up Henry Law Avenue is about 375 feet and in his opinion would not impair the sight any different from what it is right now.

John Levasseur stated that placing an angle on the corner of the deck would make a difference in order to increase the visibility.

Richard Callaghan confirmed that the sign will be relocated and would not need a variance.

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

Public Hearing Open

Jason Hindle 602 Cocheco Court stated that he was in support of this proposal. As a neighbor and a frequent patron of this establishment he believes that this is an asset to the future development of the riverfront and would also enhance the future reconstruction of the Henry Law area.

Chris Parker stated that the Planning Department supports this variance request and they feel the hardships expressed are adequate. The department envisions this area going towards a mixed use; the neighboring Cocheco Waterfront District zoning has a zero setback. This will be an asset to the area and the department supports the economic expansion.

Public Hearing Closed

John Levasseur stated that he believes it is a good idea economically.

Bill Colbath stated that he has no problems with this request.

Masi Denison stated that she was concerned with the bulkhead but her issues have been addressed.

FIVE CRITERIA FOR AREA VARIANCE:

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: Unique size of the lot, placement of existing structures and bulkhead and the open space abutting the street create an undue 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: This is a reasonable request because adjacent properties are as close to the lot line therefore allows equal use. 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: Not impacted by spirit and intent because of the street and neighboring structures. 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: Deck placement is away from neighbors and fronts a park. 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: Contrary to that it will provide a good service to the community. Vote: U/A

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

1. Railing system remains an open baluster.
2. As presented the deck will have no exterior exit.
3. Gravel will be replaced with brick or cobble pavers.

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

VOTE: U/A

B. Z 05-21 Eric Ferrell, 338-A Dover Point Rd., a/k/a Tax Map L, Lot 58-R, zoned R-20, requests a variance from the terms of Article V, Section 170-17, to construct an accessory structure (inground swimming pool) within two (2) feet from a rear lot line, where a minimum of ten (10) feet is required.

Eric with Custom Pools represented the applicant. The plan is to install an inground gunite pool approximately three feet from the rear property line. The pool requested is a Maui design and the size proposed is 15 x 12 x 32. He proceeded to read the criteria submitted. The property already has a fence around the property. He confirmed that the setback would be from waters edge, therefore is asking for a seven foot setback.

Ruth Gorton confirmed that the property located behind them is a vacant lot with no public frontage.

Chris Parker confirmed that the fence would not be removed.

Discussion ensued regarding the installation of gunite.

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

Public Hearing Open

Chris Parker stated that the Planning Department does not oppose this variance request although they do recommend a condition that the fence remains.

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: Unique size and shape of properties, placement of house all cause a 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 reasonable use of the back yard. 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: Because variance is for a pool and there will be a fence, the variance is only for three feet. 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: Will not be visible and may increase properties value. 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: Should have no appreciable effect on abutters or general 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. The fence remain.
2. The variance is for seven feet not three feet.

Motion: John Levasseur made the motion to approve the conditions. Masi Denison seconded the motion.

VOTE: U/A

Ruth Gorton stated that she would not be voting on the next case.

C. Z 05-22 James & Kristen Cole, 6 Cranbrook Ln., a/k/a Tax Map D, Lot 53-A, zoned R-12, requests a variance from the terms of Article V, Section 170-16, to 1) construct a rear addition within eight (8) feet from a rear property line, where a minimum of fifteen (15) feet is required and 2) construct a rear deck within seven (7) feet from a rear property line, where a minimum of twelve (12) feet is required.

Kristen Cole applicant stated that they would like to construct an addition to the rear of the house in the interest of safety and concern for the family. She stated that they have very limited space in the cooking and eating areas. This is a split ranch; the kitchens total dimension including the counters is 7 x 9 feet. The workable space is about 5 ½ feet wide and 4 ½ feet in depth. She stated that she has two children and a dog and it can get dangerous as you are cooking and moving pots around. They are also looking to expand the dining area. We are not able to sacrifice existing living room or bedroom areas to increase the size of the kitchen area and do not have any intention to place the kitchen in the basement. They are asking to add this to the rear of the house. They would be taking down the existing deck and make it smaller with a stairway directly against the house.

John Levasseur confirmed that a chain link fence is located at the rear of her property.

Kristen Cole stated that her husband approached Mrs. Guay and asked her if she would like to sell the property to them, but she declined.

Chris Parker confirmed that the existing deck would be removed and would need to expand the basement for additional living space. He asked why she could not stay within the setbacks.

Kristen Cole stated that the basement would be unfinished area. Financially they cannot do that at this time and asked that the Board respect their desire to add to the sides (within the setbacks) in the future. However, that would be expanding a living area not a kitchen area. To go to the left would affect the bedrooms not the general areas of the house.

Chris Parker stated that the Board granted a variance for a shed setback at this property and confirmed where it was located, as it was not shown on the plan submitted.

Richard Callaghan asked who did the plans for her. He stated that he noticed they were not stamped plans.

Kristen Cole stated that they were drawn by Dave Hannah and asked if they were supposed to be stamped.

Richard Callaghan stated that they carry more credibility that way.

Motion: Sam Reid 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 support this request, while it is realized that the future plans would be to put more living area within the allowable setbacks it is an option that the applicant could explore now, therefore the department does not see the hardship in this case.

John Levasseur stated that he is concerned with the plans submitted. He would like to see surveyed plans.

Public Hearing Closed

Bill Colbath confirmed that the applicant did not have elevation plans to show how it fits on the house.

Richard Callaghan confirmed that the shed was located two feet from the rear property line. He stated that he is concerned with the plan submitted and they should be stamped plans. He stated that he did not see any other houses in the neighborhood that were that close to the lot line.

Kristen Cole stated that the lots in the area are shaped so that the houses have extremely limited side and rear variances. It is the way my plot was constructed and I am not looking to expand on the side. In her opinion having the kitchen retained in the back provides a better line of sight for people in the neighborhood; it does not impact the size of the house. In the future, they may want to expand the side but for an entirely different purpose that they are not willing to discuss at this time.

Sam Reid stated that he is not troubled by the surveyed plans and it is the applicant's burden to make sure that it does comply.

Tom Clark asked what information the architect used to produce the plan.

Kristen Cole stated that he came out and took the property measurements.

Chris Parker stated that the architect did request a PDF of the parcel and it may be what he used.

Masi Denison confirmed that the existing deck is nonconforming.

Bill Colbath asked why the addition has to be located in the rear couldn't you expand to the right.

Kristen Cole stated that if they did construct it on the right they would be impeding on the front corner of the house, as it is closer to the street.

Bill Colbath stated that it would not require a variance, as long as you do not get any closer than what you are.

Chris Parker stated that there is no hardship because you can expand up to the front of the house, up to that 15' foot side setback.

Kristen Cole stated that it would block the shed and it would make it difficult to maintain the area.

Chris Parker stated that in order to establish a hardship you need to show there is no alternative, by you stating that you want to reserve the right for potential future side expansion you are admitting that you have an alternative.

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 (Sam Reid voted does) face an unnecessary hardship. This conclusion is based on the following findings of fact: There is another option for addition that would not require a variance. Vote: 4 to 1
2. It is the Board's conclusion that, if granted, the variance will not (Sam Reid voted will) deliver substantial justice. This conclusion is based on the following findings of fact: Allows use of greater nonconformance than allowed by abutters. Vote: 4 to 1
3. It is the Board's conclusion that, if granted, the variance will not (Sam Reid voted will) be in harmony with the spirit and intent of the zoning ordinance. This conclusion is based on the following findings of fact: Would allow for a nonconforming structure that is beyond the intended setback. Vote: 4 to 1
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 is no direct abutter that will be affected and an improvement to home would increase its value and surrounding properties. Vote: U/A
5. It is the Board's conclusion that, if granted, the variance will (Sam Reid and Masi Denison voted will not) be contrary to the public or private interests or rights. This conclusion is based on the following findings of fact: Would allow a nonconforming structure to be added to the neighborhood. Vote: 3 to 2

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

ITEM # 5: OTHER BOARD BUSINESS

Richard Callaghan stated that he would like to discuss the option of tabling decisions and when a decision needs to be rendered.

Discussion ensued regarding how to formulate and articulate the findings of fact.

The Board agreed to meet prior to the next meeting @ 6:30, September 15, 2005 for an Executive Session to discuss procedural issues.

ITEM # 6: ADJOURNMENT

MOTION TO ADJOURN

Bill Colbath made the motion to adjourn at 10:25 p.m. and was seconded by John Levasseur. **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
 Sam Reid-alternate member

Term Expires

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