

Dover Zoning Board of Adjustment
Thursday, September 15, 2005
MINUTES

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

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 7:08 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 August 18, 2005.

Motion: Bill Colbath made the motion to accept the minutes. John Levasseur 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 relates to Article X, Section 170-40 and RSA 674:53.

Tom Clark announced that the Attorney representing the applicant requested that the case be postponed to the October 20, 2005 meeting.

The Board agreed to table the case to next month's meeting.

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

Ruth Gorton will not be voting on the next three cases. Masi Denison will be voting.

ITEM # 4: NEW BUSINESS

A. Z 05-23 David & Christine Sieks, 7 Florence St., a/k/a Tax Map 27, Lot 181, zoned R-12M-10, requests a variance from the terms of Article V, Section 170-16, to construct a front porch addition within approximately five (5) feet from a property line as it abuts a street, where a minimum of thirty (30) feet is required.

David Sieks stated that he is seeking a variance to allow construction of a front porch. Pictures were submitted for the file. The home was constructed in 1900 just 12 ½ feet from the front property line. Most of the neighboring homes are similarly situated and already have front porches. The existing front stairs are unsafe, the bottom riser is about two steps high, and the top landing is too shallow to stand on while opening the door and the entire stair structure does not project far enough from the house to reach the granite slab that is supposed to be the pad for it. Existing stairs do not provide a footprint that they can adhere to in order to construct a safe entry. They need a variance to allow a seven-foot deep front porch; the stairs would be set in to the porch as

shown on the submitted plan to avoid encroaching any further than necessary on the setback. Granting the variance would allow the unsafe existing entry to be replaced with a safe entry and would allow the home to be improved in keeping with neighboring homes. The porch is being designed with an architectural designer to be consistent with the style of the house; it will be professionally constructed by a contractor. He submitted a statement of support signed by eleven of the twelve resident homeowners on the street. The missing signature does not represent an objection; he was just not able to ask them to sign.

Richard Callaghan confirmed that the driveway would be relocated to the other side of the house.

John Levasseur asked if his intention was to turn this in to living space.

David Sieks said no, the side porch will be screened in but will not have a foundation or be weatherized. It will not be appropriate to enclose and has no intention to do so.

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

Bill Colbath confirmed that the location of the lot lines and the house are directly from a surveyed plan on file in the Planning office.

David Sieks stated the front steps that are currently on the house do not project far enough away, the designer and builder suggested 6' 8" because one more stair needs to be added and the top landing needs to be deeper. The majorities of the homes in the neighborhood similarly encroach on the setback and already have porches.

Public Hearing Open

Steve Bird stated that the Planning Department supports this variance request, the request is in line with the majority of the homes on the street and has illustrated by the tax map that the front porch is a customary building feature in this neighborhood and would add to the value of the home and of the neighborhood.

Public Hearing Closed

Masi Denison confirmed with Tom Clark that stairs, which are uncovered, are allowed to project up to three feet in to the setback.

John Levasseur stated that this would be consistent with the neighborhood.

Masi Denison stated that the signatures submitted from the neighbors shows support, therefore is comfortable with granting this variance.

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 position of house because of historical layout provides 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: Allow equitable use with the neighboring properties. 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 use with surrounding properties. 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: Upgrading to the similar use of

- neighbors and the improvement to the property may increase the values all around. 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: This will improve the safety of the home exit and will have no impact on the public or private interest or rights. 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. New porch should not be converted to living space and shall remain open.

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

VOTE: U/A

B. Z 05-24 Corriveau Routhier (Applicant: Laurence Oliva), 71 Broadway., a/k/a Tax Map 24, Lot 25, zoned B-3 & I-1, requests a modification of the conditions of a variance (ZBA case #Z 03-25) granted on November 20, 2003.

Laurence Oliva resides at 49 Fisher Street and operates Oliva Motorsports at 71 Broadway. In November 2003, a variance was granted to open and operate the automobile sales. He stated that he had a small section in the building for performance parts sales and this was done in conjunction with Great Bay Auto Body d/b/a Maaco, unfortunately, they have met their demise. He stated that he has entered into a purchase and sales agreement with Corriveau Routhier Company to purchase the property. He believes that he has supplied the community well with high quality vehicles and is an active participant in sports car racing. They were somewhat cramped in a 1450 square foot rear section of the building and have the opportunity to grow dramatically and is asking the Board to consider modifying two items from the meeting of November 2003. One would be to continue the business at this location without Maaco and the second one he is asking for is an increase of the stipulation of 15 automobiles increased to 22 automobiles. At the time there was a concern of traffic flow and crowding of the lot because Aroma Joe's is located at this location, but it would be down to two businesses from three. He is asking that he be allowed to continue to do business at this location.

Frank Landford confirmed that he is asking that they change condition one and three from Z 03-25.

Tom Clark stated the applicant is asking for more cars to be added and to have a stand-alone used car lot. Maaco is going out of business and he is asking to expand the car sales within that front office building and the lot.

Laurence Oliva stated that he has the whole property under agreement and his plans for the back building will be to use it for admissions testing and servicing. He believes that this is a severe need in the community for this type of testing.

John Levasseur confirmed with Steve Bird that the Planning Department voted against this request originally at the meeting on case Z 03-25, because it was not zoned for automotive sales.

Steve Bird stated that the ordinance states that you cannot have a stand-alone used car dealership, it has to be in conjunction with a new car dealership, and in some instances limited used car sales have been allowed as associated with repair garages.

Richard Callaghan asked if the admissions repair business would also introduce additional cars to this property.

Laurence Oliva stated that he has two acres of paved property and the back building is 10,000 square feet. The section that he is immediately dealing with is a 1/3 of the building. He would be able to triple his space for accessories and inventory. He stated that he has been doing this for thirty-five years, and wants to keep this a

family type business. He stated that their may be a time where he would request perhaps six more vehicles, because it would be sufficient with the level of quality that they do.

John Levasseur asked about the admission repair proposed and is their any hazardous substance involved.

Richard Callaghan stated that those issues would probably be addressed by the State EPA and some other regulatory agencies.

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

Pubic Hearing Open

Steve Bird stated that the Planning Department did have some concerns originally about a used car dealership at this location; however, the two years of business practice that has been performed at this site has changed the department's mind, therefore the department supports this modification of the previous variance. If the modification was not made you would be putting him out of business. The business has existed for two years and it has been a good business use and has existed with little to no problems. The department supports the modification of the variance to allow him to continue, however the department would recommend a condition that somehow would state that they would not want to see a change in the advertising method that is currently being used at this time.

Public Hearing Closed

Frank Landford confirmed with Tom Clark that if this becomes an inspection station he would have to come back before the Board for a special exception for auto service.

Tom Clark stated that should the Board decide to grant the variance the Fire Department would do an inspection for that type of use. He does not anticipate any problems.

Discussion ensued regarding a condition and what restrictions could be placed for advertising.

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: Contained restrictions would prevent expansion of business or potentially end his business. 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: Allowed continued use of property for the existing business. 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: Spirit and intent was to regulate this type of business not to eliminate it. 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: Use is substantially the same as past few years and the business practice has proven that it is positive in nature. 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: Allow continuation of a successful business in the downtown area. Vote: U/A

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

following conditions.

1. No advertising or decorations unless permitted and there shall be no use of festoons other than a fixed permitted signage.
2. The number of vehicles for sale at any one time shall be no more than 22.
3. No for sale vehicles, shall be parked in the City right of way.
4. The hours of operation shall be limited to Monday thru Saturday, 8:00 a.m. to 8:00 p.m.
5. Lighting shall be in accordance with the site review regulations.

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

VOTE: 4 to 1 (Frank Landford opposed)

Frank Landford stated that he is not opposed to the business; he is opposed to some of the conditions.

Recess at 8:18, resumed at 8:23

Masi Denison will not be voting. Sam Reid will be voting.

C. Z 05-25 26 Dover Point LLC, 26 Dover Point Rd., a/k/a Tax Map K, Lot 26, zoned R-12 & ETP, request 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).

Attorney Duncan MacCallum represented the applicant. The applicant is asking to allow residential use in part of a parcel zoned ETP. He is seeking a variance to construct six condominium buildings, consisting of two units each. This property is particularly well suited for residential use and is surrounded by other residential properties. A plan has been submitted of the development along with an architectural drawing. The condominium buildings will be attractively and professionally developed and would be an asset to the neighborhood. If you do not grant the variance and if this property is developed ETP it would not make sense. You would have a commercial island standing in a sea of residential development. For that reason, the variance is appropriate. The second reason is the zoning, one third of the property is residential, and the other two thirds are ETP. Other burdens that present a hardship is two areas of wetlands on the property and a sewer easement, which makes it difficult to develop. He proceeded to read through the criteria. Wetlands in two areas and two easements exist on this property. The zoning does interfere with a reasonable use of the property. Substantial justice will be done and it will relieve the applicant from a serious burden of trying to reconcile two conflicting uses with the same property.

Discussion ensued regarding ETP zone and what is allowed in this zone.

Sam Reid asked about the wetlands on the property and asked why the driveway could not service a commercial building, if the wetlands constitutes a basis for hardship are you saying that the use of the ETP part of this parcel has to be residential.

Attorney MacCallum stated that this property would be developed one way or the other. The issue is will it be developed commercial or residential. Residential would be a more suitable use to the surroundings.

Sam Reid asked if it was fair to say that the parcel in the back where the condominiums are depicted could be an office park. The fact that there is a sewer easement does not affect the use of the parcel in the ETP.

Attorney MacCallum stated that it does and it does not. Significance of the wetlands is that is affectively takes away quite a bit of land that his client needs to construct on and in addition it would be less offensive. The

applicant was here earlier asking for a commercial structure at the front of the property because it would make the parcel uniform.

Sam Reid stated he has a hard time with the reasonable use. The applicant would not even have to come here if he proposed a commercial building where the condominiums are depicted.

Attorney MacCallum stated that he does not believe that this is the highest and best use of the land. It is not a reasonable use of the land because of its surroundings, if the variance is denied and he develops this in a commercial manner the property is going to be an island of commercialism in amidst a sea of residential use and that is one of the things that the Simplex case says shouldn't happen.

Sam Reid stated that the island is not quite as small as this little parcel. The island referred to of a commercial use is the whole ETP zone. Three years ago, the City Council said that is what they want in this area and the island that you are referring to is a big piece. One reason that the City Council did rezone that area is because of an outcry about the amount of residential development that was going on in that area at that time. He stated he has a hard time with the hardship and particularly a reasonable use. The applicant has reasonable use by putting that commercial building in the ETP zone, which is what the City Council is envisioning.

Attorney MacCallum stated that it is true but is still a use that is inconsistent with the front of the property. This parcel is unique and in his opinion believes that there are very few pieces of property in Dover that are divided in to two zoning districts, one commercial and one residential. So the property is burdened for that reason.

Richard Callaghan stated that according to the map, this is surrounded more by non-residential land.

Attorney MacCallum stated that this is an island in a sea of residential. An electrical easement is on the easterly side of the property and that would do away with any conceivable development. It will be considered highly unlikely that there will be any ETP development or any other development for few hundred because the electrical easement takes away ability of the abutting property.

Bill Colbath stated that the electrical easement could be used for a parking area. Your client has an opportunity to develop the front as residential and the rear as ETP. He has been granted a variance a few years ago to divide this in to two lots, one of which not having sufficient frontage. The applicant has already been given relief for this lot and now the Board is being asked to modify that relief again. He can develop the rear parcel with no frontage. He has a residential lot in front and he has ETP in the rear.

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

Applicant Chip Williams stated that at the last presentation the request was that he give up the two lots and go back to just the one parcel. This drawing has been corrected to show the entire parcel as one lot with 12 units. The power lines that do exist on the easterly side of the property could be used for parking but they are low power lines and appear to be about 14 to 18 feet above the surface and generally could not put a parking lot underneath that., but is unsure. The wetland crossing could be modified for commercial use; currently in its existence is about twenty feet, which would be better situated for a residential use and traffic flow. If this were a commercial facility with a 30,000 square foot building, perhaps two to three thousand cars would be coming out. Many residents spoke against this use in front of the City Council and were not in favor of ETP because they were concerned about biological research and development, and may be hazardous or biogenetic in nature.

Public Hearing Open

Marilyn Follansbee, 25 Dover Point Road stated that she sees no hardship in this remaining ETP. Her objection is the placement of the road. Why couldn't he place it closer to lot 19-A, the people that live along Dover Point Road want the road to remain the same, so there is no reason why a house can't be built on the road and leave the back ETP. The road as proposed is too close to the house on lot 27 and believes it is dangerous.

Steve Bird stated that the Planning Department does not support this request for a variance. The primary problem is that they are strictly proposing a residential use in the ETP district. The department feels that there are still viable permitted uses of the property and the purpose of the ETP as created by the City is to promote high-end office space. The argument that the lot is bisected is not a unique situation many lots in the City are bisected by zoning districts and the wetlands would apply whether it was commercial or residential. It is zoned ETP for a reason, the City needed more commercial property. After a long and extensive study, that the City undertook this was one area that was identified as a potential location for ETP. The department is against the erosion of residential in the ETP district.

Public Hearing Closed

Discussion ensued regarding hardship.

Richard Callaghan stated that the owner has the ability to fully utilize both pieces; it may not be what he chooses at this point but it will have a viable use in the future.

Tom Clark suggested that the Board consider responding to the hardship arguments as Attorney MacCallum has set out in his memo submitted for the file.

Richard Callaghan stated that for each of the components of hardship it would be voted on separately and will come up with one finding of fact to support that. The vote will be listed as if they feel the applicant has met the criteria in each instance, with a yes or no vote.

- I. The zoning restriction as applied to the applicant's property interferes with the applicant's reasonable use of that property, considering its unique setting in its environment.
- II. No fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property.
- III. The variance if granted will not injure the public or private rights of others.

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. I) No. Vote U/A. II) No. Vote U/A. III) No. Vote U/A. This conclusion is based on the following findings of fact: 1) ETP restricts use to business only, not residential. 2) To allow a use contrary to public & private interests or rights. 3) Though the property was dissected there is still a valued use in the property zones, therefore there is no substantial relationship with the ETP land use and the R-12 land. 4) The applicant has already received a variance to divide a residential land in to two single lots, and he could still have commercial development in the ETP zone. 5) The utility easement has little effect on the ETP zone. 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: Proposed use is contrary to the ETP ordinance. There is no injustice because there is a viable use for each zoned use of the land. 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: It is contrary to the spirit and intent in the ETP district. Vote: U/A
4. It is the Board's conclusion that, if granted, the variance will (Richard Callaghan and Sam Reid voted will not) result in diminution in value of surrounding properties. This conclusion is based on the following

findings of fact: By inserting a residential use in the ETP zone in may diminish the value of the remaining ETP area. Vote: 3 to 2

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: It will be contrary to the public interest by not utilizing the zone as intended by the City. It may also diminish the value of surrounding private residential areas by increasing density. Vote: U/A

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

Masi Denison left the meeting @9:50.

D. Z 05-26 Lisa Waszkielewicz (Applicant: Albert & Shirley Houde), 18 Wentworth Terrace, a/k/a Tax Map 8, Lot 41, zoned R-20, requests a variance from the terms of Article X, Section 170-39, to reduce the area of an existing non-conforming lot.

Bob Stowell with Tritech Engineering represented the applicant. He stated he was contracted by the applicant to do a boundary survey of his property, which is lot 42. The survey revealed that the boundary line went through the existing garage that is owned and used by the Houde family and it is partially on lot 41. Both neighbors agreed that they would rectify the situation so they would like to proceed with a boundary line adjustment that would move the lot line to the left so the garage would be entirely on the Houde property. Both lots are currently nonconforming lots. They are asking that the Board grant the variance so they can proceed to the Planning Board for a lot line adjustment.

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

Steve Bird asked about the age of the garage.

Bob Stowell stated that upon research, they found a highway plan from 1960 for the Spaulding Turnpike that runs to the South of this property and that surveyed plan showed a garage somewhat smaller than this. It appears that since 1960, an addition was constructed on the garage that made this situation.

Public Hearing Open

Steve Bird stated that the Planning Department supports this variance request it will lessen the nonconformity in terms of the lot line going through the garage. No impact at all on the neighborhood they will not even know the difference and in this case increasing the nonconformity in terms of lot size serves no purpose in this case.

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: This adjustment is necessary to solve the issue of the line through a building. 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 structures to stay intact. 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: It is a simple lot line adjustment and will make the lot less conforming. 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: Clear up a possible property issue if

properties are sold. 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: Provides accurate survey information.
Vote: U/A

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

Recess at 10:01 resumed at 10:07

Sam Reid stated that he would not be voting.

E. Z 05-27 Jeffrey & Kari Grimes, 90 Stark Ave., a/k/a Tax Map 17, Lot 116, zoned R-12, requests a variance from the terms of Article IV, Section 170-12, Table I, Part A, to establish a four-family dwelling.

Attorney Chris Wyskiel represented the applicants. The applicants purchased the property a couple of years ago, the former Governor Sawyer mansion. He stated that he has copies of many submissions and a summary letter to submit for the file. He stated that he received a copy of Tom Clark's memorandum and responded to it as submitted in his letter for the record. He stated that he has a printed exchange of e-mails between Jeff Grimes and Carrie Keech the property owner abutting where the parking would be located as submitted in the packet. Her response of this variance, as do a couple of other neighbors Kevin & Pam Murphy and Carolyn Antell are in support of this variance request to convert the structure to four separately owned condominium units. He proceeded to discuss past litigations with the land. Mr. Grimes has made the lot larger and added a strip of land that will make it more desirable to design parking with the parking plan submitted with the application. He stated that they have an alternative design and a third design in the planning stages. Its best opportunity to preserve this is for this structure to be owner occupied and individually owned. Multiple units are not allowed but there are many multiple units in the City of Dover in the R-12 zone as submitted. He proceeded to describe the structure and stated it is an architectural gem in the City of Dover. He also described other uses and how the parking would not be sufficient for those types of uses. The applicant did try to promote this as senior housing but realized they had many uphill battles in bringing it up to code. This house has been rented out to many college students; this is not something neighbors particularly want or enjoy, this calls for more than eight parking spaces. Adding that strip of land and according to the plan submitted this evening shows the parking with a circular turnaround with angular parking spaces. They may have a third alternative as well. He explained the floor plan in each of the units and the size of each unit as outlined in the plan submitted. The existing 14 bedrooms will be reduced to ten or eleven bedrooms. A computer printout of information organized by size submitted for the file shows structures in the City listed by their street address, zone, and description. Another page of information represents locations that have four units or more within the R-12 zone. This shows smaller size structures in this zone that exist or have been allowed to exist as four unit dwellings. Mr. Grimes is also a real estate broker and the letter submitted for the file is his professional opinion. He read through the criteria and stated that abutter Bayonne Construction Company, owner of lot 17-1, the most immediately impacted abutter, submitted a letter and three of the immediate abutters signed in favor of this variance request.

Richard Callaghan asked if there have been any effort or interest in the people from the historical society or State funding that has been allocated for preservation of mansions of former Governor's. Has any of this been considered or any attempts made.

Jeff Grimes stated that they did make an effort, probably not to the greatest extent that they could have but they did not find any opportunity to chase down and it was mentioned to him the possibility of looking for secondary help to improve the property but people are not quick to give you money.

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

Steve Bird asked about the parking layout. The plan submitted in the packets is substantially a different layout than the one shown on the board. Which one are you proposing?

Attorney Wyskiel stated that he did not know, the one in the packet is from Tritech Engineering, the one here on the board is an alternative and in the cover letter he said he was looking for other alternative parking plans. The opportunity of the Board is to attach a contingency to an approval, such as parking shall be as configured to this plan. There may be a third option engineered that might have greater curb appeal. He said he spoke with Andy Stowell at Tritech Engineering about an alternative in creating a circular with angled parking, but it hasn't be engineered to absolutely but they could do that. They think they have three alternatives and the plans represent that the parking will work.

Steve Bird stated that one of the concerns with this plan was the fact that it provided for no internal traffic flow and potentially would encourage people to try and back out of the parallel spaces that are located closer to the road. The plan shown this evening is a better step in the direction of providing a turn around area. He stated that he would like to see a plan showing the circular driveway. The plan submitted with the application would eliminate the screening that exists today, which is substantial between this property and the Keech property. The relocation of the driveway would basically require the removal of all that mature vegetation and that was a concern with this plan.

Attorney Wyskiel stated that he agrees and likes this idea as well. He was trying to get over the variance hurdle first, before sinking more money in to engineering. The applicant would be happy to consult with the department. The plan submitted in the file is the least desirable but would be happy to take an acceptance of a condition that the plan submitted not be the parking lot but the alternative. He stated that the screening is spruce trees and the lower branches have been limbed. They are mature trees that create a defined distinction between one lot and the other. They do not like the plan that was submitted with the application and they were not satisfied with the parking plan either.

Public Hearing Open

Steve Bird stated that the information that was received tonight would have been very helpful in the Planning Departments initial review and consideration of this proposal. The information with the reduction in the number of bedrooms would have been important and the number of other four unit buildings in the R-12 district is good information that would have been helpful. The Counselor has done a good job in addressing the departments concerns that were discussed as a staff this morning. They were concerned with the number of units. This is certainly unique property as demonstrated by the size of the building and they are not opposed to a conversion to the condominium form or ownership because that instills pride of ownership. They would be concerned if this was the parking plan that moved forward, it is not a safe and or a reasonable parking plan and frankly eliminates a lot of the screening. They also had concerns with snow removal. If the department was presented with a different parking plan, they may have been able to speak in favor of the variance. At this point, the department is not opposed to the variance but have concerns with snow removal, screening, and the layout of the parking spaces.

Frank Landford confirmed that the building is sprinklered.

Richard Callaghan stated that no abutters are objecting and have evidence that they approve. It would be nice to know that the Planning Department was in support of this variance request.

Discussion ensued regarding the lot size and the structure.

Bill Colbath stated that he has the same problems that the Planning Department has, how are you going to take care of eight parking spaces and the subsequent people that come to visit in those units.

Attorney Wyskiel stated that you could only do the best you can with a huge house with architectural features inside. The lot is bigger and the parking will work. The requirement is two per unit. Parking problems exists for many properties through out the City. He stated that he would be happy to take a condition that the plan submitted not be the parking.

Jeff Grimes stated that he could understand the concern. They are looking to reduce the number of people that live on the property. He has lived here for the last two years and to make a property like this survive it is a necessity to have to rent the units. The parking is an issue but by reducing the number of bedrooms, the parking will be reduced. This land is .42 acres and in his opinion is not ridiculously small. They are trying to eliminate cramming more people in this area by taking it out of its tenant mode and create something that is better. This building is beautiful and gorgeous inside. He stated that he is here because the neighbor expressed some concern over the fact that he and his wife moved out and the seven-bedroom unit that they were in was going to be rented to six college students. He stated that he re-roofed and painted it himself this year, but they are at a point right now that this property needs more than what they can do for it. The way it will stand for a long time is separating ownership so that each person has a piece of the building.

John Levasseur stated that parking is an issue for him.

Frank Landford stated that it is an issue but the house is just sitting there and it has to have a use and in his opinion, this is a good use. By making it condominiums there will be some owner appreciation for the house.

Richard Callaghan asked if he would be receptive to revisiting the Planning Department and perhaps requesting to table this until you resolve some of these issues so you can come back with their support.

Attorney Wyskiel stated that he would prefer not to table and he stated that he summarized and discussed every point of every document. Parking will work itself out. He stated that they would be happy to take a condition that they will consult with TRC and would prefer that the decision be made tonight.

Public Hearing Closed

Frank Landford stated that he would vote for it but they do need to discuss the issues with the Planning Department.

Bill Colbath stated that he has a problem with cramming parking in here and maybe instead of being four units it should be three units, with fewer people to park. In his opinion when you pass out important information at the meeting, it is not a good idea. He stated that he does not feel that he knows enough about all of the facts to be able to make a reasonable decision. He needs to make sure that this does not affect the neighbors.

Ruth Gorton stated that she agrees and has concerns; she cannot say she is totally in favor of this request. She stated that she is concerned with the parking and agrees that maybe three units would be better.

Richard Callaghan stated that he has always had a problem with the parking ordinance and feels it is not enough. He stated that he could see the hardship because the uniqueness of the land however is having a problem with public interests and rights and with perhaps diminution in values of surrounding properties. The abutters do not care right now but that is only because they are trying to get the students out of there. It challenges the density issue.

Discussion ensued regarding hardship and lot coverage.

Bill Colbath stated that at one point and time the applicant would have had the opportunity to take some of the land that was subdivided and combine it with this one to make it a more conforming structure. If you keep talking about architectural beauty of the inside of this house and what you are trying to preserve why didn't you submit proof and pictures of that evidence. What is the reasoning why it has to be divided the way it is, why the applicant needs four units instead of three units. He stated that he would be in favor of tabling this and getting the rest of the information requested. He

Attorney Wyskiel stated that the applicant owned two lots that are lots of record. These lots conform to zoning. He stated that he did take pictures but they did not come out.

Richard Callaghan stated that the Board has the option to table this pending more information.

Bill Colbath stated that he would like to see a parking plan to prove that the vehicles can get from where they are parked and get to the street without backing in to the street. In addition, logic behind why the house is being broken up the way it is, into four units. If they were going to base their information on architectural details being an important thing to preserve, he would like proof of historical value and rational for preservation.

Ruth Gorton stated that she would like to see better feedback from the Planning Department.

Tom Clark stated that he did some rough calculations and it appears as if the footprint of the building does comply with the lot coverage, but it may be a good idea for the engineer to do a calculation to show it complies.

Richard Callaghan suggested that some other realtor's thoughts would be helpful.

Motion: Ruth Gorton made the motion to table the case pending the receipt of more information. John Levasseur seconded the motion. **VOTE: 4 to 1 (Frank Landford opposed)**

Recess at 11:39, resumed at 11:41

Sam Reid left the meeting @ 11:41

F. Z 05-28 C & C Coastal Properties, LLC, 22 Pearl St., a/k/a Tax Map 27, Lot 180, zoned R-12, requests an appeal from an administrative decision as to whether the subject property consists of on or four lots.

Richard Callaghan announced that his daughter works at Attorney Bruton's office as a Legal Assistant and has no problem with voting on this case, but if anyone has a concern, he would step down.

Nobody voiced a concern.

Attorney Bruton represented the applicant. This case has been discussed with the Planning Department and Tom Clark. He submitted the tax map for the property showing the parcel outlined and he stated that he has copies of deeds. This parcel has four structures on it as shown on exhibit A. He stated that he believes that these are four parcels and it would result in a more conforming configuration for these lots. These structures exist and function separately, four sewer services and bills are sent to each structure. There is a discrepancy between the tax map and the actual plans of record at the Strafford County Registry of Deeds. They are identified in the narrative submitted. This is a combination of the lots of record at the Registry versus the depiction of what is on

the tax map. In 1938, the parcels come together in a deed, which was submitted for the file and are identified as four separate tracts. In 1974, these lots were brought together as one kind of description of the perimeter, the exact same deed exhibit C is a mirror image of what they did in 1974. He proceeded to describe the metes and bound of the perimeter. In the deed where they finally described them as one parcel, they made reference to four separate lots. In his opinion, the Planning Board thinks this is a good idea to recognize this as four lots because you would then have four lots with individual structures. The only change will be clarity, as the tax map will show four lots and will become a less nonconforming situation. This will promote pride of ownership; each person would have his or her own lot as opposed to one owner trying to manage four buildings on one lot. In his opinion it was just a mistake, maybe someone looked at the deed quickly and lumped it all together, but clearly these are lots of record at the registry of deeds and they asking that you acknowledge it so they can go to the Planning Board.

Discussion ensued regarding the lot line adjustment to separate the four lots with structures.

Tom Clark stated that he would like to commend Attorney Bruton for finding this information because in the years that he has been here, he cannot count the number of times that people have inquired about this parcel and what they could do to subdivide it to create four buildings on four lots. In all that time, nobody ever came up with what he did as far as the deeds and all of the research. He proceeded to read his memo that was submitted in which he requests that the Board respectfully deny the appeal.

Discussion ensued regarding the deeds submitted.

Attorney Bruton stated that he is not trying to make a bad situation worse, he is trying to make it better. It will be more conforming.

John Levasseur asked what the benefits are for making this adjustment.

Attorney Bruton stated that they intend to sell the parcels separately. They already have their own water and sewer bills. This lot fronts two streets and looking at this it does not look like one lot at all.

John Levasseur confirmed with Tom Clark that legal proof was not provided for him to make the determination that this was four separate lots.

Tom Clark stated that he believes that he did see good information. However, this was done prior to the adoption of zoning and the City considered that as one lot; therefore, he did not think he had the administrative latitude to make that decision.

Bill Colbath asked why he could not subdivide the lot. He asked why the structures were constructed the way they were if they considered it four lots.

Attorney Bruton stated that he then would have to create lots that do not have enough size and that would require six variances. He stated that he believes all of the buildings were built in the 1930's and somehow there was an encroachment.

Richard Callaghan stated this is a nonconforming lot and the City tries to stop people from having more than one residence on a single piece of land. This looks like this was willed to someone and they put it on one piece of paper. He stated that he does not disagree with Tom Clark's opinion, however the request is reasonable and they can straighten this out. The City would have never taken four lots that had a separate house on each lot and merged them.

Steve Bird stated that the Planning Department supports the Building Inspectors appeal.

Motion: Bill Colbath made the motion to grant the appeal. Richard Callaghan stated that he would like to add to the motion that is was based on the historical documentation and the difference between the paperwork which was presented this evening. Ruth Gorton seconded the motion.

VOTE: 4 to 1 (Frank Landford opposed)

ITEM # 5: OTHER BOARD BUSINESS

Richard Callaghan suggested to the Board members to attend the Municipal Law Series lectures if possible and if interested contact the Planning Department.

Discussion ensued regarding making a change to the findings of fact forms, as it should match the application.

ITEM # 6: ADJOURNMENT

MOTION TO ADJOURN

Bill Colbath made the motion to adjourn at 12:22 a.m. and was seconded by John Levasseur. **VOTE: U/A**

List of Members

Term Expires

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

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