

Dover Zoning Board of Adjustment
Thursday, November 17, 2005
MINUTES

Members Present: Richard Callaghan, Bill Colbath, Frank Landford, John Levasseur, Ruth Gorton

Members Absent: Sam Reid, Masi Denison

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 7:01 p.m.

ITEM # 2: APPROVAL OF MINUTES

A. Approval of the minutes for regular meeting of October 20, 2005.

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

Tom Clark stated that Attorney Bruton who represents Z 05-16 Churchill Realty Trust is requesting that his case be heard later in the evening.

ITEM # 3: OLD BUSINESS

A. 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. He proceeded to discuss the dimensional variance as submitted in the motion for rehearing. This residence contains three apartments with a 1500 square foot carriage house. Parking area provides parking spaces for five vehicles and a graveled parking space adjacent to the carriage house provides the sixth space. The total open space on the lot is about 7,900 square feet. The average open space for other residential properties located within 200 feet of this property is 10,100 square feet. The open space average is high because several large lots have single-family residences located on them. In order to have three or four units on this property one of the requirements is that the open space on the property is equal to the average in the neighborhood and they do not meet that requirement. The request is to put a fourth unit on the second story of the carriage house and the windows on the south side of the property overlooking the Clough property would be covered over. Parking for the new unit would be located within the carriage house. The only changes would be internal. He proceeded to read through the criteria as submitted as it contains the prior proceedings. The applicant is trying to take advantage of under utilized space and put a residence into that space. Majority of the other properties in this neighborhood within the 200-foot radius have more than one unit on the property. Of the seventeen other properties that are relevant to this, 12 of them have two or more units in them. This is not going to affect the density of the neighborhood.

Public Hearing Open

Fred Clough abutter at 64 Silver Street stated that he is completely against the project. To clarify a few points in regards to the second motion it indicates that the yard next to the carriage house is for public use. This is my backyard. This is major impact. Windows or not it is an encroachment issue. The applicant does not live at the property and would not have to deal with any of the issues that this would create. How can you add a 1500 square foot rental unit on a lot that has a deficiency of open space of 22% and say you are not increasing density. This request is based on a self-created hardship. He already has reasonable and economic use of the property without needing variances. He respectfully asks the Board to turn down the request for a variance.

Attorney Schulte stated that this property qualifies for a variance because of its condition and what is being proposed. In September, the Supreme Court came down with a decision called Chester Rod and Gun Club versus Town of Chester and the Court gave some guidance on the issue of whether or not an application for variance is contrary to the public interest. He proceeded to read some quotes from the decision.

Steve Bird stated that the Planning Departments position has not changed from the first time this case was presented. This is putting two principal buildings on one lot, the open space requirements in the ordinance are meant to control density and this property cannot meet those requirements. Addition of the fourth unit on this property, which is separated from the main building, would not fit in with the neighborhood. The department does not support the variance request.

Public Hearing Closed

John Levasseur stated that he is concerned with the amount of open space on this lot.

Frank Landford stated that to have two structures on one lot is against the ordinance.

Richard Callaghan stated that in his opinion that adding people to an area is increasing density.

Ruth Gorton stated that she was concerned with tenants having to park in the carriage house.

Attorney Schulte stated that inside parking is an amenity not a hardship.

FIVE CRITERIA FOR AREA VARIANCE:

1. The Applicant was to provide proof that special conditions exist and that literal enforcement of the ordinance would result in an unnecessary hardship. a) AREA: i. Did the Applicant demonstrate that the area variance is needed to enable the proposed use of the property given the special conditions of the property? No, Vote U/A This conclusion is based on the following findings of fact: The special conditions of the property are too far off from standard in relationship to neighboring properties to allow a variance. ii. Did the Applicant demonstrate that the benefit sought cannot be achieved by some other method reasonable feasible to pursue without the area variance? No, Vote U/A. This conclusion is based on the following findings of fact: The benefit sought by applicant should not be granted because it still is not reasonable.
2. Did the Applicant provide proof that demonstrates how granting the variance will result in substantial justice? No, Vote U/A. This conclusion is based on the following findings of fact: By granting the variance there would be a decrease in the privacy of the neighbor, increase in density would allow a nonconforming area usage.
3. Did the Applicant provide proof that demonstrates how a variance would be consistent with the spirit and intent of the ordinance? No, Vote U/A. This conclusion is based on the following findings of fact: The variance creates a greater density.
4. Did the Applicant provide proof that demonstrates the variance will not result in a diminution in value of surround properties? No, Vote U/A. This conclusion is based on the following findings of fact: It is only the applicant's contention that there will be no decrease in surrounding property values; the neighbor speculates increase density will decrease value.
5. Did the Applicant provide proof that demonstrates the variance would not be contrary to the public interest? No, Vote U/A. This conclusion is based on the following findings of fact: Increase in density increases area usage by people, compromised the interest of abutters and sets a bad precedent for future requests against the zoning ordinance.

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

Attorney Schulte proceeded to discuss the request for a use variance and stated that this request is specifically asking

for permission to allow two principal structures on the lot to be used for residential purposes. The carriage house is located about sixty feet away from the main house and it is not physically possible to connect them. The unique setting of this property in its environment is that unlike many of the neighbors they have a sixty-foot gap between the two structures. They would be taking an existing building and making it a different use. At least three other properties have two buildings located on the lot where residences are located in them, two lots located on Summer Street and one on Belknap Street. Mr. Clough's property already has a four unit on one side and a six unit behind him. The existence of those greater density uses apparently did not have any adverse impact on the value of his property when he bought it.

Ruth Gorton stated that the variance would threaten welfare health and safety because the carriage house is right next to the lot line.

Attorney Schulte stated that out of the number of properties in the neighborhood there are three other properties where the residences are at least as close to the side property line as this one would be.

Richard Callaghan confirmed with Tom Clark that the zoning ordinance does regulate density by quantity of units. Housing standards and building codes ordinances do regulate the number of people in a unit by square footage.

Bill Colbath stated that he already has use of the structure and could pursue residential purposes in that building. You could make it available to the tenants as a meeting place or a pool hall for the units that exist. You still have residential purposes.

Discussion ensued regarding other units located in the area that have two residential buildings on them.

Richard Callaghan confirmed with Tom Clark that the City of Dover may not have its own set of people density regulations but through adoption of other codes, they do have regulations that govern that.

Public Hearing Open

Steve Bird stated that the Planning Department is against this variance request. This would allow two principal dwellings on one property in separate buildings. The basic objective of the zoning ordinance in these zoning districts is to restrict the dwelling units to one principal building.

Public Hearing Closed

John Levasseur stated that he has not seen any dramatic use proposed that would make this reasonable to have a second principal dwelling unit.

Frank Landford stated that this would be setting a precedent that could lead to other requests.

Richard Callaghan stated that he has a concern with density.

Ruth Gorton stated that this violates a basic objective of the zoning ordinance.

FIVE CRITERIA FOR USE VARIANCE:

1. The Applicant was to provide proof that special conditions exist and that literal enforcement of the ordinance would result in an unnecessary hardship. b) USE: i. Did the Applicant demonstrate that the ordinance interferes with the reasonable use of the property, considering their unique setting of the property in its environment? No, Vote U/A. This conclusion is based on the following findings of fact: The applicant already has reasonable use with three dwelling units on this property. ii. Did the Applicant demonstrate that no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction of the

property? No, Vote U/A. This conclusion is based on the following findings of fact: The proposed use would violate an existing ordinance and would set a precedent for two dwelling properties. iii. Did the Applicant demonstrate that the variance would not injure the public or private rights of others? No, Vote U/A. This conclusion is based on the following findings of fact: Current location of building converted to living space thus creating an increased lack of privacy and public rights of the abutter.

2. Did the Applicant provide proof that demonstrates how granting the variance will result in substantial justice? No, Vote U/A. This conclusion is based on the following findings of fact: The applicant has reasonable use of the property now and proposed use would allow for more leniency than the abutting properties.
3. Did the Applicant provide proof that demonstrates how a variance would be consistent with the spirit and intent of the ordinance? No, Vote U/A. This conclusion is based on the following findings of fact: Spirit and intent is to only allow one principal building per property. Allowing the variance would not be consistent with the zoning.
4. Did the Applicant provide proof that demonstrates the variance will not result in a diminution in value of surround properties? No, Vote U/A. This conclusion is based on the following findings of fact: Evidence presented was not sufficient.
5. Did the Applicant provide proof that demonstrates the variance would not be contrary to the public interest? No, Vote U/A. This conclusion is based on the following findings of fact: The public interest is not served well by adding a second principal structure on the same property and also changes the essential characteristics of the locale and diminishes the psychological welfare of the abutters.

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

Attorney Schulte stated that since the variance requests were denied they do not need to further address the special exception.

Richard Callaghan announced that according to the agenda, case Z 05-16 was requested to be postponed to after 9:00 p.m. and will be heard at the earliest opening at that time. He explained to the general public how the cases should be represented to the Zoning Board of Adjustment. A decision may be postponed depending on if the Board needs to seek legal advice or need additional information. At 11:00 p.m., a member of the Board will be dismissed for the evening which means only four members will be voting and you need three votes in your favor.

ITEM # 4: NEW BUSINESS

- A. **Z 05-31 Dana & John Leggett, 128 Dover Point Rd., a/k/a Tax Map M, Lot 67, zoned R-20, requests a variance from the terms of Article V, Section 170-16, to subdivide a parcel into 2 lots having frontages of twenty-nine (29) feet and eighty (80) feet along a public right of way, where a minimum of one-hundred twenty-five (125) feet per lot is required.**

Dana Leggett stated that they are proposing to subdivide their 119,580 square foot lot. The existing house is located very close to the road. If this were granted, they would like to construct a house in the rear portion of the property, which would have 29 feet of frontage for access. They are proposing a shared driveway as shown on the plan, which is a minimum of 10 feet from the property line. They would be improving the drainage conditions on the property and potentially the abutting properties. Other improvements that would be possible would be removal of a large metal shed and an out of use pool. Due to the shape of the lot, it is narrow in the front and widens about half way back. To make use of the back area and still be within the zoning regulations a road would be required which would require removal of the existing house and would not be as attractive to the abutters. The only way to make it economically feasible to place in a road would also be to create more lots. Many abutters have less than adequate frontage. At least two lots nearby have less than 50 feet of frontage. She addressed the five criteria as submitted for the file. She stated that she would be open to any conditions if approved.

Ruth Gorton confirmed with the applicant the frontages of properties in the area and asked about wetlands located the lot.

Dana Leggett stated that she has a couple of wet areas on the lot; they have a drainage path that cuts through the property. They would have to cross an intermittent stream with a driveway to access the back portion of the lot. The

other wet areas have not been evaluated yet, but they may be wetlands. If this were approved, they would need a detailed plan showing wetlands.

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

Public Hearing Open

Kevin Fortuna abutter at 19 Tuttle Lane stated that this would decrease property values and it would affect the privacy. One of the reasons he purchased his home was because of the wooded area and the privacy. By subdividing this lot, a nonconforming lot will be created. The spirit of the ordinance was to keep from overcrowding.

Diane Stowell abutter at 25 Tuttle Lane stated that she is against the subdivision. Tuttle Lane area has beautiful homes, which is a well-planned development. Northern portion of the applicant's lot is very wet. This would not improve the neighborhood. She stated that she has more frontage than the applicant does and she could request a variance to place a house on her back of the lot. This would set a bad precedent and detract from the quality of the neighborhood.

Mark Jacobs stated that he is speaking in behalf of Mrs. Brunette abutter located at 126 Dover Point Road. A letter was submitted for the file that was written by Mrs. Brunette and he proceeded to read it for the record. He stated that if approved this would require significant alterations of a long section of the stream and associated wetlands. He confirmed that it would require a conditional use permit and would have to be approved by the Planning Board.

Steve Bird stated that the Planning Department is opposed to this variance request. The lot is already nonconforming in terms of frontage. Frontage is meant to control density and the proposed frontage of the lot is already substantially below the average lot frontage in the neighborhood. The department does not see a special condition in this lot; the lot was already divided in the 50's. The requested frontage of 29 feet is less than one-quarter of what is required in this zoning district and is a substantial difference from the zoning requirement.

Public Hearing Closed

John Levasseur stated that in order for him to make a decision he would like to know where the wetlands are located and where the buildable area would be.

Steve Bird stated that it is not unusual for the Board to be asked to make a decision on a dimensional requirement whether it is lot size or frontage without having a full wetland survey. It would be a substantial expense for an applicant to go through.

Richard Callaghan stated that if this was granted and they have a concern it could be addressed in the conditions.

FIVE CRITERIA:

1. The Applicant was to provide proof that special conditions exist and that literal enforcement of the ordinance would result in an unnecessary hardship. a) AREA: i. Did the Applicant demonstrate that the area variance is needed to enable the proposed use of the property given the special conditions of the property? No, Vote U/A. This conclusion is based on the following findings of fact: The applicant wants to use the back of the lot; there are ways to do that other than the proposed way. ii. Did the Applicant demonstrate that the benefit sought cannot be achieved by some other method reasonable feasible to pursue without the area variance? No, Vote U/A. This conclusion is based on the following findings of fact: The applicant stated the house could be torn down to accomplish construction in the rear.
2. Did the Applicant provide proof that demonstrates how granting the variance will result in substantial justice? No, Vote U/A. This conclusion is based on the following findings of fact: The property is already in a use allowed and a lesser allowance would not accomplish anything good.

3. Did the Applicant provide proof that demonstrates how a variance would be consistent with the spirit and intent of the ordinance? No, Vote U/A. This conclusion is based on the following findings of fact: Spirit and intent is to regulate density by frontage allowing variance would violate.
4. Did the Applicant provide proof that demonstrates the variance will not result in a diminution in value of surround properties? No, Vote U/A. This conclusion is based on the following findings of fact: Contrary to proof, abutters testified they felt their values would diminish greatly.
5. Did the Applicant provide proof that demonstrates the variance would not be contrary to the public interest? No, Vote U/A. This conclusion is based on the following findings of fact: The increased usage from second home on same driveway on Dover Point Road would be contrary to public interest.

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

Richard Callaghan stated that the applicant has thirty days to appeal the decision.

Recess at 9:26, resumed at 9:33

B. Z 05-32 Winning Ways Stable, Inc, 203 County Farm Cross Rd., a/k/a Tax Map B, Lot 17, zoned R-40, requests a variance from the terms of Article V, Section 170-16, to subdivide a parcel into 2 lots, one of which with a frontage of one-hundred thirty-seven (137) feet along a public right of way, where a minimum of one-hundred fifty (150) feet is required.

John Murphy stated that he is one of the owners of Winning Ways Stable. He is requesting a variance to create two residential lots on a parcel of land that is currently 25.88 acres, which they purchased two weeks ago. In an effort to try to mitigate the need for a variance, they attempted to do a lot line adjustment with both abutters but were unsuccessful. The 25-acre piece would be turned into three lots and they only have 287 feet of frontage. The intent is to eliminate the lot line between the 18-acre piece and the 25-acre piece and make one large 43-acre piece. Their existing home is located on the 18-acre piece.

Frank Landford stated that he does not see that information on the plan submitted.

John Murphy stated that the intent was to focus on the two residential lots. However, a new survey map is located in the Planning Department that would clear things up. This parcel is 25-acres and they are looking to create two residential lots that total 3.08 acres leaving the balance of 22.8 acres. When the memo was written, they were in the process of selling off the development rights to the City of Dover. If this variance is granted to create the two lots the balance of the 22 acres cannot be developed, it is placed in a conservation easement.

Bill Colbath stated that a plan should have been submitted in order for this to make sense.

Frank Landford stated that they are lacking information.

John Murphy asked Steve Bird if he could get the plan that was submitted from the office in the Planning Department. He stated that the 25-acre piece of land he wants to split up and create two lots along the road and to gain access and for frontage requirements for the back piece of that land, he is eliminating the lot line adjustment between the 18 acre piece and the 25 acre piece. A horse barn that is located on one of the lots will be removed and a residence will be constructed. His parents are purchasing lot 2 and they do not intend to build a structure.

Discussion ensued regarding the proposed lots and the existing lot and the new plan was reviewed.

Richard Callaghan stated that he has a hard time with the applicant buying a piece of property knowing that he would need to come in and ask for a variance. He wants to know what the hardship is.

John Murphy stated that the hardship is that this is a 25-acre parcel and cannot be subdivided. You would need 300 feet of frontage and they only have 287 feet. What they are willing to do is eliminate the lot line between lot 17 and

17-B, which reduces the overall value of that property. The goal is that they are looking to create two residential lots in doing so they recognized they realized they would have to eliminate a lot line. They are willing to give up all developmental rights. Part of the hardship is that they attempted to purchase 13 feet to the left and to the right and could not do it. 34 acres of the 45 acres are under conservation easement with the City of Dover.

John Levasseur asked him if he ever thought about selling lot 1 and 2 as one lot. He does not see a hardship.

John Murphy stated that his goal was to create two lots. This is a 25-acre piece with a small piece of frontage and if that is the only lot that you can have on a 25-acre piece, in his opinion that presents a hardship. He tried to do a lot line adjustment with both abutters but was unsuccessful.

Bill Colbath confirmed that the proposal is that the lot line between B-17 and B-17 B is to be eliminated so that it will become one lot. He stated that it should have been part of the application.

Steve Bird stated the only thing that could happen under the easement deed is that the balance of the easement land could be attached to another piece of property, another abutter or attached to lot 1 or 2, but it cannot be further subdivided beyond that. The easement encompasses two parcels.

John Murphy stated that he does not have a problem with a condition of no further subdivision.

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

Pubic Hearing Open

Steve Bird stated that the Planning Department supports this variance request. This request is only 13 feet short of the required frontage, 95% of the required 300 feet. The applicant has attempted to obtain additional frontage from the neighbors. It is a unique piece of land, which is a 25-acre parcel and has some special conditions. Abutter support has been demonstrated through the submission of the letters with the application. The hardship is the frontage requirement; the purposes of frontage are for density control and prevention of overcrowding and these two lots would not constitute overcrowding. The lack of 13 feet is a needless and unnecessary restriction.

Public Hearing Closed

Discussion ensued regarding the three proposed lots and hardship.

FIVE CRITERIA:

1. The Applicant was to provide proof that special conditions exist and that literal enforcement of the ordinance would result in an unnecessary hardship. a) AREA: i. Did the Applicant demonstrate that the area variance is needed to enable the proposed use of the property given the special conditions of the property? Yes, Vote U/A. This conclusion is based on the following findings of fact. Due to the topography and neighbors unwillingness to sell the minimal request, creates a needless and unnecessary hardship. ii. Did the Applicant demonstrate that the benefit sought cannot be achieved by some other method reasonable feasible to pursue without the area variance? Yes, Vote U/A. This conclusion is based on the following findings of fact: Attempted alternative is not available.
2. Did the Applicant provide proof that demonstrates how granting the variance will result in substantial justice? Yes, Vote U/A. This conclusion is based on the following findings of fact: Allows conforming size lot with only frontage needing a variance.
3. Did the Applicant provide proof that demonstrates how a variance would be consistent with the spirit and intent of the ordinance? Yes, Vote U/A. This conclusion is based on the following findings of fact: Spirit and intent was to regulate density, variance still regulates that.
4. Did the Applicant provide proof that demonstrates the variance will not result in a diminution in value of surround properties? Yes, Vote U/A. This conclusion is based on the following findings of fact: Provided letters from the

abutters.

5. Did the Applicant provide proof that demonstrates the variance would not be contrary to the public interest? Yes, Vote U/A. This conclusion is based on the following findings of fact: To the contrary, the agreement with the City is to the benefit of the public.

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

1. No further subdivision
2. Lot 1 & 2 will be allowed to be subdivided from lot B-17 and the balance of lot B-17 and B-17 B will be combined to create a single lot that cannot be further subdivided and shall have a conservation easement.
3. Lot 1 & 2 will have a shared driveway.

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

C. Z 05-33 Strafford County Board of Commissioners (Applicant: Seacoast Hospice), 203 County Farm Cross Rd., a/k/a Tax Map B, Lot 20, zoned R-40, requests a special exception as provided by the terms of Article VI, Section 170-25.5 And Article XII, Section 170-52.C (3) to construct a nursing home.

Jennifer Verengo with Appledore Engineering represented the applicant. A plan was presented to show the hospice facility on a 5-acre parcel, which is a leased parcel owned by Strafford County. A 14-bed hospice house will serve the terminally ill of the community. The proposed construction consists of an approximately 12,750 square foot building and associated parking, utilities and landscaping. This project will be going to TRC and the Planning Board. She proceeded to read the letter that was submitted with the application, which explains Seacoast Hospice. She stated that the sewer line has been upgraded and believes that the Engineering Department does not have a concern with the usage. She believes that they have met the requirements for the special exception.

John Levasseur asked why they were only requesting 14 bedrooms and if they intended on expanding.

Jennifer Verengo stated that the project manager from Seacoast Hospice is present and could answer that question.

Mark Hepp stated that he is also a volunteer and this facility is geared towards terminally ill so they have many medical needs. The population of both Strafford and Rockingham County that are served was the basis with coming up with the size of the facility. They have sited the building on the property in order for the ability to expand to another seven-room wing.

Steve Bird confirmed that the capacity would be increased to 21 patients if the other wing were to be constructed.

Bill Colbath asked if they had a letter from the Engineering Department stating that the water and sewer is or is not an issue. Normally when they review a special exception there is a letter attached from that department and it is part of the criteria.

Jennifer Verengo stated that she did try to get a letter but was unsuccessful in obtaining it for this meeting.

Steve Bird stated that it is on the TRC agenda for December 1st and at that time, there will be a thorough review of the site plan.

Tom Clark stated that he has not spoken with a City Engineer but in his opinion, they should have adequate capacity. Normally there is a letter submitted from the department. This is going to TRC and the Planning Board.

Richard Callaghan asked if they could place a condition on the request.

Tom Clark stated that he believes you can attach a condition. We could include the letter in the packets for your review next month.

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

Public Hearing Open

John Murphy abutter at 203 County Farm Cross Road stated that he supports the request.

Steve Bird stated that the Planning Department supports the request. All of the criteria has been met, with the exception of a letter confirming that water and sewer is not an issue from the Engineering Department.

Public Hearing Closed

Motion: Bill Colbath made the motion to approve the special exception with the contingency that they receive approval from the Engineering Department regarding water and sewer and this goes to TRC. Frank Landford seconded the motion. **VOTE: U/A**

Ruth Gorton left the meeting @ 10:45. Four members will be voting.

D. Z 05-34 Joyce L. Mackey, Dover Point Rd., a/k/a Tax Map L, Lot 60-2, zoned R-20, requests a variance from the terms of Article IV, Section 170-12, Table I, Part A to construct a two-family dwelling.

Joyce Mackey requested that this be tabled to next month.

E. Z 05-35 Neale A. Hubbard, Earl St., a/k/a Tax Map 40, Lot 12, zoned Office & R-12, requests a variance from the terms of Article V, Section 170-16, to subdivide a parcel into 2 lots, one of which a frontage of seventy-five (75) feet along a public right of way, where a minimum of one-hundred (100) feet is required.

Attorney Schulte requested that this be tabled to next month.

B. The Board will continue deliberations regarding case 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 an administrative decision as it relates to Article X, Section 170-40 and RSA 674:53.

Motion: Bill Colbath made the motion to remove the case from the table. Frank Landford seconded the motion.
VOTE: U/A

Attorney Bruton stated that John Chagnon with Ambit Engineering is present and is very familiar with the project. He submitted handouts for review. This is a project of workforce housing with 63 units in Rollinsford. They went through TRC process in Dover and it requires that the density issue be addressed. This is an important project for the region and it is something that has been gone through with Rollinsford and is currently in a holding pattern. This project will be built in Rollinsford but they do need utilities and access through Dover. Mr. Colbath asked at the last meeting if they could get a copy of some of the historical documents that the City of Dover has and that is what was submitted. In addition, he confirmed that Tom Clark provided copies of relevant documents. Referring to the information submitted the administrative decision is that the Dover density requirements have to be met and Tom Clark adopted a series of opinions from Attorney Waugh. Attorney Bruton confirmed with Tom Clark that his letters have been placed in the file for the record. He believes that they do not need to satisfy the Dover density requirements and that is the reason why they are here. Referencing the material handed out; a subdivision plan is on record at the Registry of Deeds along with a plan of site review. The Dover Planning Board approved both of these on October 3, 1972.

Bill Colbath asked if this is a separate lot of record.

Attorney Bruton stated that in his opinion, it is a lot of record and the first question that Attorney Waugh asked was if this was a subdivision of this lot and in his response he asks that question, but he indicated what he had seen, which was this plan. He may not have seen the first document in the packet, which is a memorandum, dated June 1, 1972 that talked about this process and gave a background. It indicated that the applicant is proposing to develop the site of four residential structures. Prior to that, it said this lot is located behind Pizza Hut and is currently vacant, zoned B-3, and contains approximately 6 acres, it was referring to one lot, and that is the Dover parcel. It then referred to that same background that the applicant has an option on an additional 11 acres of land in Rollinsford, which abuts this project to the northeast. He stated that he does not think Attorney Waugh understood that this in fact was creating a lot with 6 acres just as this memorandum suggests, therefore questioned what the intent of this plan was. If he had read that, he may not have had that question. Nonetheless, that is something that is in the file and is clearly indicative of the fact that this is a lot of record. It is at the Registry of Deeds, which is what would be defined as a lot of record.

Bill Colbath asked if he had the deed that corresponds with this. The written deed would take precedent over the drawn plan.

Attorney Bruton stated that the deed that deals with this property conveyed both parcels as a perimeter conveyance. It was conveyed about a month after this plan was approved and was conveyed as one entire parcel. The deed can convey a perimeter of a number of lots and that does happen. The plan is a plan of record and shows a lot of record. The background suggests that this is what is going on; it is one lot with 6 acres.

Bill Colbath stated that the problem that he sees with that argument is that you have buildings straddling both lots and he asked to see the deed.

Attorney Bruton stated he has the deed and the deed says that it talks about the perimeter as a whole and it is conveyed as one piece of land. The difference of opinion is that you are saying it is one lot on the deed. It is one legal description but it is a perimeter description. When lots are subdivided if you convey the entirety of that subdivision, it is permissible and legal to use a perimeter description. In Attorney Waugh's first letter, it indicates that this situation might be different if the Town line were somehow vested as a grandfathered lot line. He also came up with this concept called the "density breaker" which means that if there were a grandfathered lot line that it would be a density breaker or you would not have to satisfy the Dover density. Because there has never been a subdivision established and the town line is a grandfathered parcel then he finds that there is no density breaker and therefore finds that you have to meet the density. If you refer to the site plan for that project you will see that it is not based upon developing land in Rollinsford, it is intended to be entirely within Dover. A tree line goes all the way around the project but is entirely within the area of Rollinsford and this highlights the factual inaccuracy that the applicant intended to build in Rollinsford. As shown on the plan you see the Rollinsford line going through the building but that was not intentional and John Chagnon will talk about that very briefly. There was an intent not to go into Rollinsford and that is what the plan was based upon, staying within Dover. Surveying techniques changed and all of a sudden, there may be a portion of it in Rollinsford. Another document was provided which identifies a current issue that is going on in the Town of Milford and the Town of Amherst where people now understand that they may actually live in the wrong Town. He asked John Chagnon to discuss the line and the straddling issue.

John Chagnon stated that the development in this area is in the 1972 subdivision plan. That survey from 1968 kicked off the survey location of the town line, which was noticed this subdivision plan in 1972. This type of situation occurs where a town line was surveyed and then subsequent to that, some years later, that location was found to be different than the surveyor had placed on the plan in 1972. In this particular case, some research was done by the City of Dover back in 1990. Copies were submitted and it references the town line between Rollinsford and Dover. It is a straight line between the town bound and the stone bound off from old Rollinsford road and it lists in the research the perambulations. Mr. Vlasich indicates that the City established State plane coordinates on those two bounds. Some years later, they have now established a coordinate system. In the 70's they did not have the technology that is available today. A document was submitted which was a copy of the City of Dover's GIS, which shows that numerous buildings that straddle the line.

Attorney Bruton proceeded to discuss the most recent letter of Attorney Waugh that related to his concept of abandonment where he indicated that the density breaker would cause a problem that would require them to meet the Dover density. This plan shows the applicant in 1972 did not intend to use any portion of Rollinsford to satisfy any requirements and the record indicates that there were no density requirements at the time. They satisfy all of the requirements in Rollinsford and would like the Board to determine that there is a density breaker here and that in fact do not need to satisfy the Dover density requirements. He stated that they are not waiving the original arguments that were made in August.

Bill Colbath confirmed with Attorney Bruton what the note said on the plan.

John Levasseur confirmed with Attorney Bruton that the straddle line was carried forward for quite some time. This only came up when this was being prepared by John Chagnon. If you look at the GIS, the snapped straight line puts many buildings in Rollinsford.

Bill Colbath stated that there is a parking area, pool and playground area and other buildings that were built in Rollinsford. When were they built?

Attorney Bruton stated that he was not sure but it was built after this plan was approved and was not part of this plan.

Tom Clark stated that he cannot speak for Attorney Waugh but in his letter, Attorney Bruton is correct that it is not quite clear whether that town line was supposed to be a subdivision line, but it appears from Attorney Waugh's letter the more relevant question is what the intent of the parties was at that time. Was it the intent of the Planning Board to authorize Rollinsford portion line to be conveyed separately and in his view it appears that the answer would be no.

Attorney Bruton stated that he does not think that Attorney Waugh had the memo that provides a background in regards to if this is a separate lot or not. In his letter, he says he only got a copy of the plan and if had seen the memo he would understand that they are talking about one lot that was made up of six acres and the applicant had an option for the Rollinsford lot, which was the 11 acres. They created a right of way for future access and it is on the plan. The plan provides for a right of way. The memo suggests that the background was that they were dealing with 6 acres and the developer had an option for the 11 acres in Rollinsford. In his opinion, they are clearly treating it as two separate lots.

Tom Clark asked if his position was that you are claiming that a conveyance did occur.

Attorney Bruton said yes but it does not have to occur. It occurred with respect to creating a site plan for one project. Attorney Waugh in his second point was that they broke it with this density. You are dealing with a situation where he thought that the current plan was what they were looking at in 1972 and they now know that it was not the case. Had he seen what was in the file as a self-contained plan and project in Dover he would not have said that they broke the density.

Tom Clark stated that he did see the plan and the packets were put together for the Zoning Board, which included that memo from the original subdivision and the site plan review.

Bill Colbath asked why it makes a difference.

Attorney Bruton said because it speaks exactly to what the issue Tom is raising. He is saying Attorney Waugh is saying we do not really know the intent whether it is treated as one or two parcels. This memo does completely suggest that they were treating them as separate parcels, a 6-acre lot, and 11-acre lot.

Bill Colbath stated that you may have been looking at it as two parcels of land but your own information says that the land in Rollinsford may be used as part of this.

Attorney Bruton stated that it says there is no restriction on the use of the Dover side for improvements to the Rollinsford side. It did not require parking for the approval of the site plan. The plan was approved as a complete plan, one plan on one parcel located in Dover.

Richard Callaghan confirmed with Tom Clark that the density issue in 1972 had no density requirements. Density requirements have since been adopted in Dover, not Rollinsford, and it is his position that if this is considered as one lot the land in Rollinsford must be used to calculate the appropriate density for the proposed buildings. When you do the calculations, it is not sufficient land to support additional buildings. This is a parcel irrespective of the town line.

Steve Bird stated that the memo says the developer had an option of Rollinsford land but it was said that he purchased them at the same time.

Attorney Bruton stated that an applicant does not have to be an owner. The owner conveyed the parcel as one but it was developed and the subdivision plan was placed on record to create this lot at the same time. The memo says the developer has an option on the other 11 acres. It is legal to take one subdivision made up of different lots and convey it by one perimeter. The owner conveyed this parcel in the deed a month after the site plan and the subdivision was done. The subdivision was put on record at the Strafford County Registry of Deeds. The road was conveyed about a month after that subdivision plan went on record.

Tom Clark said that the deed is the metes and bounds of the entire parcel but it does not describe it as two separate lots.

Discussion ensued regarding difference of opinion regarding the subdivision plan.

Attorney Bruton stated that this is two separate lots. The subdivision plan was approved by the Planning Board and was put on record. That site plan was based entirely in Dover and that was the intent.

Bill Colbath stated that the subdivision plan does not take precedent over the deed. As far as tax purposes a line had to be drawn somewhere. It is a tax line not a lot line. Do you have the deeds that preceded this anywhere to tell us it was one parcel prior to this?

Attorney Bruton said he could get them for the members. It is the same description going backwards.

Bill Colbath asked if it has ever been two deeds. Two pieces of land under separate ownership.

Attorney Bruton stated that the owner at that time conveyed to another person, but they only conveyed the Dover land in that deed. They intended to convey all of the land owned by that owner and they went by the subdivision plan. Years later when somebody figured out that it was only 6 acres not 18 acres they went and got a confirming deed and had that prior conveyer confirm that they meant to convey the whole thing. They segregated it and found it to be 6 acres in the beginning because that is the way it was projected as a separate lot.

Tom Clark stated that he is not sure if that is relevant, because even with the intended action of the builder at that time, straddling the lot line you are still dealing with the owner using that entire parcel for that development. In his opinion, he still thinks that they need to expand the density into the density requirements of Dover onto that lot whether it is separate or not to see if there is sufficient area to allow the additional building.

Attorney Bruton stated that he understands his point, but respectfully disagrees. His point is that he has been asked by a number of people why does Dover care about Rollinsford, and he cannot answer that question.

Tom Clark stated that it would impact traffic, water, and sewer.

Attorney Bruton stated that he has a commitment from Dover regarding water and sewer and is part of the record. They already have a traffic study and they have to go to site plan review in Dover for those issues.

Richard Callaghan stated that he would like to consider this at the beginning of next months meeting. He asked that the Board members read all of the paperwork and come back prepared with a written list of a few questions if necessary.

Tom Clark stated that if you were not considering an answer tonight he would send the memorandum of June 1972 to Attorney Waugh to make sure he has it, to see if it would alter his opinion.

Richard Callaghan confirmed that copies of the other deeds that are available and any documentation that has been referenced at this meeting would be delivered to the members.

Attorney Bruton recommended that when you send information to Bernie Waugh could you make sure he has the site plan.

Richard Callaghan confirmed with Tom Clark that the new information would be delivered as soon as available in order to review and will be addressed at the next meeting at 6:30.

Motion: Bill Colbath made the motion to table the case to next months meeting. Frank Landford seconded the motion. **VOTE:** U/A

F. Z 05-36 Shawn McKay (Applicant: Gerard Thibault), 53 Horne St., a/k/a Tax Map 29, Lot 60, zoned R-12, requests a variance from the terms of Article X , Section 170-41, to construct an addition onto a nonconforming single family dwelling within eight (8) feet of a side lot line, where a minimum of ten (10) feet is required.

Gerard Thibault stated that he is the contractor representing the applicant and submitted pictures for the file. They are proposing to construct an eight-foot addition to the side of the house.

Frank Landford confirmed the location of the addition.

Discussion ensued regarding nonconforming structures.

Steve Bird asked why he could not jog the addition.

Gerard Thibault stated that the reason for the addition is to accommodate the homeowners plumbing. A two-foot jog would not work in the bathroom.

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

Public Hearing Open

Gerard Thibault read a letter submitted from the abutters located at 55 Horne Street in favor of this variance request.

Steve Bird stated that the Planning Department supports this variance request. The department feels that it is minimum impact on abutters. If you look at the tax map submitted many nonconforming structures in this neighborhood that are almost right on the lot line. The amount of relief that they are asking for is only two feet and they feel it is a reasonable request.

FIVE CRITERIA:

1. The Applicant was to provide proof that special conditions exist and that literal enforcement of the ordinance would result in an unnecessary hardship. a) AREA: i. Did the Applicant demonstrate that the area variance is needed to enable the proposed use of the property given the special conditions of the property? Yes, Vote U/A. This conclusion is based on the following findings of fact. Changes in zoning, location of house on lot would preclude addition without variance. ii. Did the Applicant demonstrate that the benefit sought cannot be achieved by some other method reasonable feasible to pursue without the area variance? Yes, Vote U/A. This conclusion is based on the following findings of fact: Drawings were provided to support request.
2. Did the Applicant provide proof that demonstrates how granting the variance will result in substantial justice? Yes, Vote U/A. This conclusion is based on the following findings of fact: Allows reasonable expansion to building without any effect on abutters.
3. Did the Applicant provide proof that demonstrates how a variance would be consistent with the spirit and intent of the ordinance? Yes, Vote U/A. This conclusion is based on the following findings of fact: Minimum relief of two feet was requested.
4. Did the Applicant provide proof that demonstrates the variance will not result in a diminution in value of surround properties? Yes, Vote U/A. This conclusion is based on the following findings of fact: Provided letter from abutter.
5. Did the Applicant provide proof that demonstrates the variance would not be contrary to the public interest? Yes, Vote U/A. This conclusion is based on the following findings of fact: There is no effect on abutters.

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

1. As per plan provided.

Motion: Bill Colbath made the motion to approve the conditions. Frank Landford seconded the motion.

ITEM # 5: OTHER BOARD BUSINESS

Tom Clark submitted information for the Board members to review.

Discussion ensued regarding Rules of Procedure and it was decided that the number of cases that should be heard per meeting is six cases, which would include old business.

Richard Callaghan asked that the application include a sentence that would state that a decision might not be made the same night of the hearing.

ITEM # 6: ADJOURNMENT

MOTION TO ADJOURN

Bill Colbath made the motion to adjourn at 12:15 a.m. and was seconded by Frank Landford. **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