

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

Members Present: Richard Callaghan, Bill Colbath, Frank Landford, John Levasseur, Sam Reid, Masi Denison
Members Absent: Ruth Gorton
Staff Present: Thomas Clark; Building Official, Christopher Parker; City Planner, Jean Glidden;
Recording Secretary

ITEM # 1: CALL TO ORDER

Richard Callaghan brought the meeting to order at 6:35 p.m.

Tom Clark announced that due to improper abutter notification case Z 05-37 Free Trade Inc., will not be heard and will be postponed to next months meeting.

ITEM # 2: APPROVAL OF MINUTES

A. Approval of the minutes for regular meeting of November 17, 2005.

Motion: Richard Callaghan made the motion to table acceptance of the minutes to next months meeting.
Masi Denison seconded the motion. **VOTE: U/A**

Masi Denison will not be voting

ITEM # 3: OLD BUSINESS

A. 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.

Attorney Bruton stated that Chris Wyatt, who is a representative for the applicant is present. One of the important comments that was made with respect to that site plan is that it showed that the existing project was located entirely in Dover and a memorandum indicated that there was a subdivision process at that time. He stated that he was surprised by some of the language that he read in Attorney Waugh's letter and some of the comments were somewhat belittling. He stated that Attorney Waugh's entire summary was based on inaccurate facts. He did not look at the site plan that showed that the entire project was in Dover and he said since it cuts the line into Rollinsford and the project included parking and a pool in Rollinsford, it must have been in both. His opinion was based upon not reviewing the facts. If you make a decision and rely on Attorney Waugh's opinion, you are doing it based upon inaccurate facts. He asked that the members exercise their own judgment. There is no proposed development in Dover; the certificate of occupancy will be issued in Rollinsford because this is a Rollinsford project. He stated that this is a project that will suffice for workforce housing and asked that the Board come up with their own opinion as to why this appeal should be granted or not. The opinion you received from Attorney Waugh may be based on inaccurate information.

Sam Reid stated that he was embarrassed by the tone of the e-mail with respect to Attorney Bruton. He felt it was unnecessary. He asked Attorney Bruton to summarize the case since the first meeting from August.

Attorney Bruton stated that the project started out with Dover and Rollinsford and letting them know what they would like to do. Because all of the development will occur in Rollinsford except for access and utilities, they went to Rollinsford with an application. He stated that he had site walks with that Planning Board and went through the normal course of a Planning Board review. At a TRC meeting in Dover, they were advised that the project may not be able to proceed because they did not satisfy the density issues in Dover. Additionally at that meeting, they were advised that all of the Dover Zoning Ordinance restrictions would apply to the project. The Dover density

requirements would preclude further development on the land if you considered this one lot. If you did the calculations, combining two lots you would not be able to build any further and Attorney Waugh agrees. Attorney Bruton stated that his point was that this is a vested grandfathered project, they are not doing any development in Dover, and they have a commitment on file from Dover with respect to being able to provide utilities. They are engaged in doing a traffic study to deal with the access issues on Central Avenue. The opinion that was eventually sought by Dover was by Attorney Waugh that they could not meet the Dover density issue. It has been argued from the beginning that the provisions of this difficult statute to read suggests that where you have a municipality, a owner of contiguous land, that owner can treat this as two separate lots and the development in one community has to satisfy the requirements in that community. They meet all requirements in Rollinsford. Attorney Waugh's interpretation was that in fact that was not the case that this would be considered one lot and therefore would need to meet all density requirements in Dover. The position that he advanced really is inconsistent with what is going on here. The site plan shows a tree line at the town line and there is a subdivision plan that went along with this too. In the memo provided it states that this is a subdivision of six acres. The other part of confusion from Attorney Waugh's prospective is that you have a building in Rollinsford and at the time in the 70's they did not, it was in Dover. Science got better over the last thirty years and someone determined that the municipal boundary is different from what was presented in that plan. The developer had no intent to build in Rollinsford as Attorney Waugh is suggesting. Because survey techniques got better, they found out the line does go through one of the buildings as it does through other buildings in the area. The developer did not do this intentionally. This subdivision is on record at the Strafford County Registry of Deeds and a memo in the file states that this is a subdivision.

Bill Colbath asked how he would know a subdivision took place by reading through these deeds.

Attorney Bruton said that there is a subdivision on record that professes a subdivision. The Dover Planning Board approved it in 1973. The deeds do not make reference to a subdivision, those deeds were issued prior to that subdivision, a deed was issued afterwards showing a perimeter description.

Bill Colbath asked if he would agree that the written word of the deed takes precedence over a planned file. When was the subdivision that you are referring to dated?

Attorney Bruton said that he agrees with respect to the actual location of the boundary location, but that does not void a subdivision. He said that it was dated October 1972. The Planning Board approved it on the exact same day clearly indicating intent that this is a project in Dover. I am claiming there is a density breaker; Attorney Waugh claims there is not and he has never given a reason why. He has not reviewed the facts. We have invested a lot of time to be respectful and to be thorough for your benefit and ours, and in his opinion, he does not believe he has done the same and is a disservice to this Town.

John Levasseur confirmed that the boundary line goes up to Weeks Traffic Circle. He asked if any other landowners have had a discrepancy with their lot.

Attorney Bruton said that they would if they were dealing with owning a contiguous lot.

Masi Denison confirmed that if they construct a new building they will be taxed from Rollinsford and they would service police, fire, and educational needs for this project. The services provided from Dover will be paid for.

Discussion ensued regarding the boundary line.

Tom Clark stated that part of the concern is that the decision that that is being appealed here is his decision based on his interpretation of that RSA. Attorney Waugh and Attorney Bates, both of whom are coauthors of this RSA, confirmed this. The City of Dover is not reaching out and paying someone to say something that the City wants them to say. In 1972, none of these issues existed. He stated that Attorney Bruton wants this project to exist in a time capsule, unchanged by any zoning issues. Zoning changed in Dover in 1979 and that is when the density

requirements were changed. The project is borrowing land from Rollinsford now. If you do the calculations for Dover, you cannot just look at the Dover buildings in the Dover land and exclude all of Rollinsford. The Rollinsford land has to be included as per RSA 674:53. The pool and the parking lots are in Rollinsford and they do not show up on the original site plan. They were constructed subsequent to the site plan, clearly over the line in Rollinsford using Rollinsford land for a Dover project. Attorney Waugh has his opinion from day one when it was first requested. Attorney Waugh has not seen some of the information but it is irrelevant. The site plan shows what was proposed not what is physically there. This is an appeal from administrative decision. He stated that he has personally spoken with Ed Jansen who is a Chairman of the Selectman in Rollinsford and they are not in favor of this project, and they are currently changing their ordinance to preclude such development. He stated that they should focus on the RSA, whether or not we have to use Dover density requirements in the Town of Rollinsford. He respectfully requests that you uphold the administrative decision and deny the appeal.

Frank Landford confirmed that the date of the plan was June 1972 and was approved October 1972. In November of 1973, the plan shows the parking and pool being in Rollinsford. He stated that improvements are part of the site plan that is shown in Rollinsford and it looks like one lot to him.

Attorney Bruton stated that the memo says that this is a subdivision of six acres and that is what they were doing.

Tom Clark stated that if you have improvements in Rollinsford over the town line after that October meeting it is one lot, they used land in Rollinsford to support the buildings in Dover. He stated that he does not see either town approving a lot without frontage. If this were indeed a subdivision, there is no access through Rollinsford and that parcel has no frontage in Rollinsford. In 1972 is one thing, this is 2006.

Attorney Bruton said they did not use it to obtain approval of that site plan.

Sam Reid asked what the relevance of two lots versus one lot was.

Attorney Bruton said that it is the concept identified by Attorney Waugh, "density breaker" which he means that if there were two lots you do not have to satisfy the Dover density. If there are two lots, it is a breaker.

Sam Reid confirmed that Attorney Bruton's argument is that it is two lots because of the subdivision plan and the memo in the file, which says it was a subdivision.

Masi Denison stated that she has one piece of evidence that she would like to mention and it is one of the conditions of the Dover Planning Board. It is a stipulation that the road system in this project serve no use in Rollinsford other than as a means of access to parking and recreation facilities intended solely for the tenants of the project. In her opinion, this would imply that it is one lot and if they want to build, you would not be able to use the road to get there, and this would mean you could not build more units in Rollinsford.

Attorney Bruton stated that it said that if you had to go and use this road for construction in Rollinsford you would have to come to the Planning Board or City Council and this is what the applicant is doing. They have come to Dover to say they intend to build in Rollinsford and they know that they need that access review.

Bill Colbath stated that this is one lot under ownership of one deed. The understanding of this is that the written deed takes precedence over a drawn plan. The building straddles the line, so clearly Rollinsford land has some obligation to be considered in the Dover development. Furthermore, they even stipulated that any further development is going to take place in Rollinsford you would need to come back in front of Dover's Planning Board because they knew that there was a large chunk of land here and they knew the buildings were clustered in Dover at that point in time.

Sam Reid stated that Attorney Waugh did write the law and it would be interesting that if he did see the site plan and if it would change his opinion.

Tom Clark said that maybe in the distant past it may have been considered to be two lots but that would have been over thirty years ago and time has changed.

Frank Landford stated that it appears to be one lot because they did use part of it when they constructed it. They did not construct it quite as approved but the stipulation was that the road should not be used for anything in Rollinsford other than the project at that time.

John Levasseur said that the aspect of being a 250-foot error as noted in the memo is a stretch of the imagination that it would be that much of an error without somebody else complaining.

Richard Callaghan stated that he has done a lot of research on this and he is in favor of upholding the administrative decision for a variety of reasons. In his opinion, he thought it would be more important to go out on his own and he read RSA 674:53 repeatedly. Zoning, Land Use and State Laws change and they affect how somebody else will use that land in the future. In his opinion, there is no such thing as grandfathering. The change in the boundary line seems to be that new technology moved a boundary line in and on top of the buildings and it almost reinforces the law even more. Although discovered later than originally built the land now officially belongs in Rollinsford. The Statute started seventeen years after that plan was approved. He stated that Attorney Waugh has a position to represent Mr. Clark and the Board and he has done it extremely professionally. He stated that Attorney Waugh's information may support his position but it did not influence his decision. He proceeded to read his motion to explain his position and read it for the record as submitted for the file.

Frank Landford said that his motion explained some of his reasons and that it refers to one lot.

Motion: Richard Callaghan made the motion to uphold the administrative decision. Bill Colbath seconded the motion. **VOTE: U/A**

Masi Denison will not be voting

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

Attorney Schulte represented the applicant. It appeared that there was some confusion among members of the Board to what the particular requirements are for each type of variance. The discussion concerning the dimensional variance and the Board was told that density is a dimensional issue and is a question of the number and size of buildings not the number of people living on a lot. It is a dimensional concern but discussion of density occurred primarily in the section when you were discussing the use variance not the dimensional variance. A few questions that you have to answer on the hardship question of the dimensional variance is can this project be done if you do not get a variance? Almost by definition, the fact that you have an applicant asking for a variance the first half of the question is usually answered with a yes. Some Board members confused the requirements that pertain to each application and did not appear to understand the particular criteria required for use variances and for area variances.

Bill Colbath asked if Attorney Schulte meant that because a person is here for a variance the Board has to give it to him.

Attorney Schulte stated that what he said was that on one of the five issues you have to vote yes on that issue. In his opinion the question of, is there a hardship with the test that is announced on dimensional variances in Boccia the answer is almost always "yes". You would not get many cases where you can answer the question "no" and can this

be done without a variance. He does not think they answered the question that was being asked. He stated that he is not being disrespectful; he is trying to be helpful.

Masi Denison stated that she disagrees with Attorney Schulte's logic. She stated that if you apply for a variance it does not mean you have an automatic hardship. She stated that she has read the minutes from the previous meeting and as per the minutes every item for both area and use variances were unanimous and it was pretty clear that a lot of time and consideration was taken to go through each of the questions. She stated that she has not seen anything in the motion for rehearing that was new or different evidence and does not see what would be gained by granting the motion for rehearing.

Bill Colbath stated that he understands this is a procedural question. He stated that he does not believe that the way they answered a question will change the outcome of any of the results. We are being told that we made a mistake in the way the questions were answered.

Richard Callaghan said that he does not believe they answered it incorrectly. What he sees is a re-argument of the case and on almost every page, there is the words that "the building is too far away to be connected" and in his opinion this is not a hardship as suggested in order to allow them to do it.

Sam Reid stated that he disagrees with the broad comment. In specific cases, he may be right with the only way that the applicant's relief can be granted is through a variance..

Richard Callaghan stated that there was an issue where they used "density" as a rationale on page 9 in the motion for rehearing. Attorney Schulte is correct in saying that the Board should not have used that word that way. He suggested that they be more careful and use other words if that is there intent.

Frank Landford stated that he has not seen anything in the motion for rehearing that changes his opinion.

Motion: Frank Landford made the motion to deny the motion for rehearing. John Levasseur seconded the motion.

VOTE: U/A

Richard Callaghan explained to the general public how the cases should be represented to the Zoning Board of Adjustment.

Masi Denison will be voting

ITEM # 4: NEW BUSINESS

C. 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 to construct a two-family dwelling.

Joyce Mackey stated that she lives at 412 Dover Point Road. She would like to construct a duplex. The house that she now lives in is old and in need of repairs. She has a large yard that needs constant attention. Her son's situation is comparable and she would like to build a duplex to benefit the both of them. The house would not be a large building to what is in comparison to what is popular today. They are hoping to find a duplex plan of one story as this would relieve her of stairs, home repairs, yard work, and shoveling snow. She proceeded to read through the criteria as submitted.

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

Public Hearing Open

Chris Parker stated that the Planning Department supports this variance request. The unique setting of the vacant lot in an established neighborhood could have conversions to create a building that is being proposed as well as the

mixture of the houses in that area. If granted this house would fit into a contextual reasonable use of the property. If this were a single-family dwelling and was of the correct age, it would meet the lot and dimensional requirements to allow it to be a duplex. It is a reasonable request and the department supports it.

Public Hearing Closed

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. 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? Yes, Vote U/A. ii. This conclusion is based on the following findings of fact: Variety of housing types are in the area and they include duplexes. 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? Yes, Vote U/A. This conclusion is based on the following findings of fact : Use already exists in the neighborhood. iii. Did the Applicant demonstrate that the variance would not injure the public or private rights of others? Yes, U/A. This conclusion is based on the following findings of fact: Neighbors approve of the 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: The requested use is consistent with surrounding properties and allows applicant to maintain the property.
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: The house selected is compatible with other houses nearby and the building will increase density but it will be consistent with the spirit and intent.
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: Letter from the realtor was provided and unanimous support from the abutters was shown.
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: Shown support of all abutters and it is reasonable for that vacant lot.

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

1. Building shall be no more than a two family residence.

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

VOTE: U/A

Recess at 8:22, resumed at 8:27

Sam Reid will be voting

- B. 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 represented the applicant. He proceeded to explain the plan that was submitted with the application showing the lot. According to the tax map, this lot has 175 feet of frontage; according to the original subdivision plan from 1904, they actually have 178.3 feet of frontage. The variance being sought is to allow one lot to have less than the 100 feet of frontage. This was rezoned within the last several years into the office zone which allows different sorts of uses and they intend to use this for residential purposes.

John Levasseur confirmed that the frontage would include lot 259, 193, and 194.

Richard Callaghan confirmed that they are trying to divide that single lot which is 40,000 square feet so that they have 15,000 feet in the front part and 25,000 in the back part. They will go with the maximum frontage for the back piece.

John Levasseur asked why he did not present a diagram showing the proposed lots.

Attorney Schulte stated that he intended on presenting that information to the Planning Board. He stated that the lot would be bigger than the other lots in the neighborhood. The total dimension of the entire property is 40,340 square feet. The variance is for the back portion of the lot that has water frontage with the existing residence, which would have 75 or 78 feet. The front portion would have 100 feet of frontage and would pick up some of the back land so that it would have 15,000 square feet. All of the land adjacent to the applicant's property is owned by the City and they refused to enter into an exchange of land with the applicant. He proceeded to address the criteria as submitted with the application. He stated that the Planning Department suggested that they would have a preference that this lot be developed for office use and that it is not a practical suggestion. There are currently three houses on Earl Street and they would probably be putting three units on the front piece. They would be installing water and sewer and it would be available to the other houses existing on Earl Street. The lot for which they are seeking the variance will have ample spacing. Mr. Patch is present who is a realtor and will address some issues

Chris Parker confirmed that one unit exists on the back property. He asked what their intentions were for the front piece. He clarified to Attorney Schulte that lot 40-17, is actually part of the lot that Willand Pond Park sits on and the park upgrades were done with Federal funding and would preclude the City from selling that lot. He said that the department did not say that they would not sell lot 40-13; they would sell it if someone wanted to buy it for a nonresidential office use.

Attorney Schulte stated that they intend to construct three units on the front piece. He said that when he applied to the City Manager for that piece of land he submitted it to the City Council and the Council did not respond.

Discussion ensued regarding office use in this area.

Bill Colbath asked if he has anything to show what the proposed lot lines would be. Do you know how many square feet each lot will end up being?

Attorney Schulte said that he could sketch out what it could be but they have not designed it. It will comply with Planning Board requirements. He said he could come up with a design that shows the piece closer to New Rochester Road having 15,000 square feet and the waterfront lot having all of the remaining land, which would be 25,300 square feet.

Bill Colbath stated that this is why he has a hard time with accepting this case. He would like to see where the lot lines are going to be. He is not comfortable with granting a variance for frontage without any indication as to where the lot lines are going to be located.

Richard Callaghan asked if they have enough information to accept this case as he feels that he would be more comfortable knowing what the result will be. What will be going on this property?

Discussion ensued regarding accepting the case and what the Board would like to see.

Attorney Schulte stated that he does not want to come in with an exact plan because they do not know what the Planning Board is going to require. This is a concept and it will work, but it may change slightly. It is impossible to lock into a concrete design.

Bill Colbath said that it is possible and if the Planning Board changes substantially what the ZBA approved, it needs to return to this Board.

Sam Reid confirmed with Tom Clark that if the variance were granted and this goes to the Planning Board, they would need a surveyed plan showing proposed building location and wetlands. There is a potential of some variation stipulated by the Planning Board.

Tom Clark stated that he did inform Attorney Schulte that he did not submit specific details of the proposed lots as this Board likes to see that information.

Richard Callaghan asked if he were out of line by saying that before they give a 75-foot variance, he would like to know what is going to happen with the property. He believes it is part of the consideration of how it is going to be used.

Tom Clark said that he is not sure that it is, as he believes that the applicant is requesting a dimensional variance. The use is allowed. It is difficult for the Board to either approve or deny the application based on whether or not you like the use or the location of the use or its configuration. They have a potential of the existing building that could be demolished. The majority of the land is in the office zone and a three unit building could be built on that. He is asking for the variance in a residential zone.

Sam Reid stated that he would prefer to have a plan but he feels that they have heard enough that they can accept the case and go forward. The use is allowed in this zone.

Motion: John Levasseur made the motion to accept. Frank Landford seconded the motion. **VOTE: 3 to 2 (Bill Colbath and Richard Callaghan opposed)**

Public Hearing Open

Margaret Cote, 37 New Rochester Road stated that the people in the neighborhood signed a petition and do not want to see this happen to the area. The City Council did not want to negotiate with the piece of land. If the City was not willing to see it happen, they do not want to see it happen either. Willand Pond is a beautiful place and her concern is what is going to happen to that area if this were to be granted. She submitted the petition for the file, which listed 30 signatures in the neighborhood.

Greg Patch, 31 New Rochester Road stated that he is not a direct abutter but is in the general neighborhood and asked to see the petition, as he was not approached to sign it. He stated that he is a realtor and has a line of sight to this property and represents both buyers and sellers of the property. It is his professional opinion that buying or selling and using 25 feet of this particular property will not have any negative affect on property value and if the abutters were to put their house on the market this would not affect the value. He is in favor of the project because of the proposed use, as it would represent the least amount of impact with regard as to what they could do in this area.

Brian Athern, 2 Earl Street stated that he has lived here for 46 years and this would affect his property. He would have three units across the street from him and it would make it very difficult for him to sell his home because people would be in and out of it all of the time. He discussed the petition as to why he does not want this to be granted. This is all single-family homes, Willand pond is special to everybody, and constructing these units will take the value away from his home. This road is only 250 feet long and they already have enough traffic.

Diane McMillen, 3 Gage Street stated that she has resided here for four years and now she is finding out that things are changing. This is a beautiful area and a beautiful pond. She realizes change is coming but is in support of things staying the way they are at this time.

Neal Hubbard stated that this is a plan to construct three, nice looking and well-landscaped townhouses and would be updating the other house. He would be installing water and sewer and would be enhancing that road which has three houses located on it. Traffic in and out of there is on Route 108. If a dead end City road cannot handle six residences, there is probably a different issue as to why there is a problem. He is looking to put up a quality townhouse project at this location. Change is going to happen and now is the time.

Richard Callaghan confirmed with the applicant that the existing house on the waterfront lot will be updated and will conform to the proposed townhouse project.

Attorney Schulte stated a number of commercial uses are permitted and in his opinion, it is not the right place to do it.

Chris Parker stated that the Planning Department is against this variance request. One of the reasons is that 50% of what would be frontage is actually on a paper street, the pavement only goes 95 feet onto the property. He clarified that there is no through traffic because Lakeview Street and Earl Street do not connect. Once you get to Earl Street it becomes almost a driveway, it services the two properties. They would have to build a street at 78 feet because the street does not exist at that point. The department believes that there is no hardship as they have a reasonable use; you could put three units on the property today. You would have to knock down the existing single family home but it is a reasonable use. To clarify again the Planning Department has never been against the use. The department agrees with the abutters that there is a diminution of value to the neighborhood and the neighbors of this property. There is no hardship and no public good with this proposal and the department opposes this request.

John Levasseur asked if the department would be concerned if this were turned into an office building as that would have a lot more traffic.

Chris Parker stated that it is an allowed use and the department does not question the usage. The focus should be on the frontage as it located on a paper street.

Public Hearing Closed

Bill Colbath stated that when you take out the required conservation district and required setbacks, you are now creating a lot that is relatively good size, but you would not be able to build anything without coming back here to get a variance. It would have no building envelope left. That is why he wanted the lot lines denoted on the plan. He does not want to create something that is going to need adjustment after the fact. He did not vote to accept the case because the lot lines were not denoted anywhere.

Attorney Schulte stated that if the other Board members have the same concern they could table it to next month and come back with a plan.

Discussion ensued regarding the configuration of the lot and the buildable envelope.

Richard Callaghan asked if the members wanted to consider the offer for the applicant to come back with a new drawing or would they like to move to criteria.

John Levasseur said that he would like to see more drawings. Many of the neighbors are against this request so it is important that they review it carefully.

Sam Reid said that he know the neighbors are here because the reality has finally arrived and this area is changing and personally the office use in this section does not make a lot of sense. He would like to see the plan drawn out and he understands the fact that applicants do not want to go through the expense of a survey.

Bill Colbath stated that he does not need to have it surveyed he is looking for proposed lot lines drawn on a plan.

Richard Callaghan stated that he would like to see the building envelope with the setbacks defined on a plan. He is opposed to creating a lot that is nonconforming, which would require variances to do anything on it.

Frank Landford stated that he does not think the new plan is going to be helpful. This will not change his opinion. He believes that they can tear down the existing and build on the inland part of it. That alternative has been mentioned and he does not see a hardship.

Richard Callaghan stated that the new plan may or may not change his mind. He is more anxious to see residential then business here. He said that Mr. Schulte has four out of five members that would like to see revised drawings, not necessarily done by a professional surveyor but something that would show as much detail as can be provided.

Attorney Schulte suggested a motion to adjourn the public hearing and table this matter in order to make a presentation with the new plan so abutters can respond to it.

Motion: Sam Reid made the motion to adjourn the public hearing and table this to the next meeting.
John Levasseur seconded the motion. **VOTE: 4 to 1 (Frank Landford opposed)**

- C. Z 05-37 Free Trade Inc., 40 Maple St., a/k/a Tax Map 30, Lot 18, zoned I-1/RM-10, requests a variance from the terms of Article I, Section 170-6, definition of accessory structure, to construct an accessory structure (detached garage) in a different zoning district from the principal building.**

Due to improper abutter notification, this case is postponed to next months meeting.

ITEM # 5: OTHER BOARD BUSINESS – NONE

ITEM # 6: ADJOURNMENT

MOTION TO ADJOURN

Bill Colbath made the motion to adjourn at 10:08 p.m. and was seconded by Sam Reid. **VOTE: U/A**

List of Members

Term Expires

| | |
|----------------------------------|----------|
| Richard Callaghan-regular member | 04-13-06 |
| William Colbath-regular member | 10-23-06 |
| Frank Landford-regular member | 04-10-08 |
| Ruth Gorton-regular member | 11-12-06 |
| John Levasseur-regular member | 11-12-06 |
| Masi Denison-alternate member | 09-08-07 |
| Sam Reid-alternate member | 04-13-08 |