



CITY OF DOVER

DOVER ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers - 288 Central Avenue, Dover, NH 03820
Meeting Date: **Thursday, January 17, 2008**
Meeting Time: **7:00 pm**

1. ATTENDANCE

- Regular Members Present: Chair Masi Denison, Vice Chair Bill Colbath
- Alternate Members Present: Jim Kelley
- Regular Members Absent: Sam Reid, Frank Landford
- Alternate Members Absent: Otis Perry
- Staff Present: Tom Clark; Building Official, Steve Bird; City Planner, Jean Glidden; Recording Secretary

Chair Masi Denison informed the public that three members are present and in order to receive an approval you would need three votes in your favor. The applicants may continue or postpone.

2. APPROVAL OF PRIOR MINUTES OF DECEMBER 20, 2007

Motion: Colbath made the motion to accept. Kelley seconded. Vote: U/A

3. OLD BUSINESS

- A. Request for motion for rehearing regarding case Z 05-35 Neal A. Hubbard, Earl St., a/k/a Tax Map 40, Lot 12, zoned Office and R-12 requests a Variance from the terms of Article V, Section 170-16, to subdivide a parcel into 2 lots, one with frontage of seventy-five (75) feet along a public right of way, where a minimum of one-hundred (100) feet is required.

Denison asked if the members had discussion regarding the rehearing.

Clark informed the members that he did speak with Attorney Schulte regarding his letter in which it states that he would like the ZBA to consider and act on this Motion in his absence; however, we did not anticipate only three members of the Board being present.

Denison suggested continuing with the request.

Kelley agreed and stated that after reading the motion he would not alter his vote, he would deny the motion.

Colbath stated that this was remanded back to the ZBA and he feels that the Board did a good job with understanding what the Judges concerns were, therefore would support the motion to deny.

Denison stated that she read the motion and has a rebuttal. She submitted a copy and read the following for the record.

1. There is a significant inaccuracy regarding the Findings of Fact that needs to be corrected. The former chair Rick Callaghan **and** member Sam Reid *together* drafted the findings of fact. Moreover, Mr. Reid had voted in favor of the variance as one of the two-member minority. Therefore, each side was represented in the drafting of these findings of fact. This inaccuracy is repeated in paragraphs 16, 33, 48, 50, and 61.



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2. The applicant's key argument appears to be that the findings of fact discuss use rather than area considerations. Paragraphs 22, 25, 40, 42, 50, 58, 59, and 61 state that the ZBA members disagreed with the proposed use and/or only focused on use. However, the findings of fact do not discuss use. Moreover, the findings of fact do discuss the effect of a lot with less than the required 100 feet of frontage. Less frontage has several effects, including **but not limited to** building placement. Other effects of less than permitted frontage include impacts on vehicular traffic and safety, pedestrian safety, and usage of city services. These issues of increased density are what were addressed in the findings of fact and are not use-oriented arguments.

3. In paragraphs 31C & E and paragraph 55, the applicant claims that a ZBA member talking about increased usage of the street is an inappropriate argument against the variance. However, that increased usage of the street is an argument related to density and area, and not to use of the property. It is unreasonable to assume that a second lot will remain vacant. Therefore any use of that lot will increase traffic on the street. It is not usage of the *property* that is being discussed, but the usage of the *common access* to the property.

4. The applicant himself discusses use in paragraphs 4, 6, 32, 34, 35, 38, 39, 54, 55 as arguments in his favor. In particular, in paragraphs 35 and 39, the applicant argues that the city owned land serves as a space buffer that the ZBA should consider in granting the variance. Technically, the applicant is trying to employ a "use argument" (i.e. the current use of the city lot as open space or parkland) in order to justify his own variance. He can't have it both ways. He wants the ZBA to consider use only when it suits him.

5. Paragraph 27 states that "findings are not based on the evidence submitted to the ZBA during the hearing on this matter" However, the findings are based on the the entire record for this case, since the October 2007 hearing was not *de novo*.

6. The applicant argues "injustice" because he will be unable to subdivide his land. By that line of reasoning, every applicant for any area variance can claim injustice if they don't get their variance. By this reasoning, any amount of subdivision is acceptable because there is an injustice if the applicant cannot do something he wants to do, regardless of the zoning regulations. Why bother with having a zoning board? Indeed, why even bother with a zoning code at all?

Motion: Kelley made the motion to deny the motion for rehearing. Colbath seconded. Vote: U/A.

4. NEW BUSINESS

- A. * Z 08-01 Corey Corrette, 67 Durham Rd., a/k/a Tax Map H, Lot 9-A, zoned R-20, requests a Variance from the terms of Article IV, Section 170-12, Table I, Part B, Footnote 2, to raise and board poultry on a parcel within an area of approximately 75,360 square feet, where a minimum of 100,000 square feet is required.



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Corey Corrette applicant proceeded with his request for a variance with three voting members. He stated that he is looking to provide eggs for his family and is looking for approval to acquire less than ten birds. His lot is 1.75 acres and is not allowed to have one single bird. He believes if he had a 2.25 acre lot he would be allowed to have a farm with many chickens and cattle. His lot is not located directly on the road as it is located behind another property as shown on the map submitted with the application. The birds will be housed in a small non-permanent mobile chicken coop and will be located 100 feet from the property lines. He stated that he has an 18 ft right of way to his property. The Middle School is located behind his lot.

Denison confirmed with the applicant that fencing is surrounding the area.

Kelley asked if roosters would be used and questioned the size of the chicken coop.

Corrette said that roosters would not be used. The chickens would be housed in a 4 x 8 mobile chicken coop, commonly referred to as a "chicken tractor" but would have access to an enclosed area outside. This shelter can be moved slightly to a new area and will be healthier for the chickens.

Colbath confirmed with the applicant that even though the coop is going to move around the lot it would be 100 ft from the property lines. He confirmed that he intends to have less than ten chickens.

Motion: Colbath made the motion to accept. Kelley seconded. Vote: U/A

Public Hearing Open

Bird stated that the Planning Department supports this variance request. Less than ten chickens is a small enough agricultural use and will not have an impact on the neighbors. The property is set back off from the road and the width of the property is sufficient to fit the 4 x 8 coop that was described by the applicant. If the applicant complies with the 100 ft setback and if a condition is placed regarding the number of chickens that will be housed, the department supports the request.

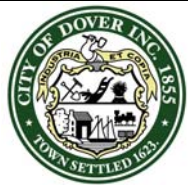
Public Hearing Closed

FINDINGS OF FACT: 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? Yes, Vote: U/A. This conclusion is based on the following findings of fact: Sufficient area to satisfy setbacks particularly considering the limited scope of proposed use.

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? Yes, Vote: U/A. This conclusion is based on the following findings of fact: The ordinance does not distinguish between full scale agriculture and small scale use for personal consumption.



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iii. Did the Applicant demonstrate that the variance would not injure the public or private rights of others? Yes, Vote: U/A. This conclusion is based on the following findings of fact: Limited scope and containing use to the required setback and absence of roosters.

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: Applicant seeks to use the land to feed himself and his family only with small scale egg production.

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 spirit and intent is to prevent large scale farming in a residential area. This use is not large scale farming.

4. Did the Applicant provide proof that demonstrates the variance will not result in a diminution in value of surrounding properties? Yes, Vote: U/A. This conclusion is based on the following findings of fact: Unique condition of the property being set back from the road and maintaining the required one-hundred (100) foot setbacks.

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: Small scale use set back from the road will not impact the public.

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

1. No roosters will be housed on the property.
2. No more than ten birds will be housed on the property.
3. Maintain the required 100 foot setbacks.

Motion: Colbath made the motion to grant with the conditions. Kelley seconded. Vote: U/A

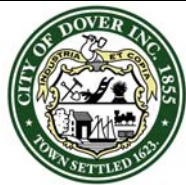
- B. * Z 08-02 700 Central LLC, (Applicant: Brad Dudley, Direct Sign), 700 Central Ave., a/k/a Tax Map 29, Lot 9, zoned Office, requests a Variance from the terms of Article IX, Section 170-32, Regulation Table to install a freestanding sign with an area of twenty (20) square feet, where a maximum area of twelve (12) square feet is allowed.

Denison reminded the applicant that there would only be three members voting.

Brad Dudley owner of Direct Sign proceeded. He stated that Dover Women's Health is looking to increase the signage allowed. They have constructed a new building, a larger sign will help clientele locate the building, and they feel this will help with the flow of traffic in this area. He submitted a handout of a visibility chart that recommends a four-inch letter at least from a 100 ft viewing distance.

Motion: Colbath made the motion to accept. Kelley seconded. Vote: U/A

Kelley confirmed where the building was located.



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Colbath confirmed with Clark that Rite Aid, which is located across the street, is in the B-3 zone and in that zone you are allowed to have a sign that is based on 2 sq ft per lineal foot of frontage. In the Office zone, it is 12 sq ft regardless of the building size.

Bird questioned the size of the recently removed sign.

Dudley said it was an oval shaped sign, measuring 89" x 48". He presented a photo showing the old sign.

Colbath questioned if the sign had to be moved. Was it a suggestion from the applicant or from TRC?

Bird said that when this went through the site plan process for the new building, discussions took place that regarded a new location for the sign. The old sign was in a non-conforming location.

Clark added that the proposal was from the applicant to have the sign moved due to the location and TRC agreed and applauded the suggestion. The owners could not keep the same size sign due to the sign being relocated. He said in his opinion, he does not believe that TRC and the Planning Board would agree to this project with the same existing signage.

Public Hearing Open

Denison read a letter submitted by Linda Merullo (copy in file). She asked that the Board deny the request.

Public Hearing Closed

Bird questioned if the owner intended on lighting the sign.

Dudley stated that it would be a constant indirect source of lighting as required in that zone.

Bird said that the Planning Department supports this variance request. This requested sign is smaller than the previous sign and the overall impact would be less. The northbound motorists looking for this site will need to use Reservoir Street to access the property. The northern driveway is a one-way in driveway and is situated in a location that is not conducive to making a left turn in this site. If you look at the abutting properties and the context of the neighborhood this is a reasonable compromise and for those reasons, the department supports the variance request.

Kelley expressed concern that if this is approved it would set a precedent. He felt that the driver going to this building would be able to locate it rather easy, as the two pharmacies are located across the street.

Bird stated that each case is unique. This is a rehab of the building and there already was an existing sign located here. From a public safety point of view, the people heading north need to be able to identify the building as their destination and make that turn safely. This type of business may have new clients.

Kelley confirmed with the applicant that the sign will be 6 ½ ft high. He asked the applicant if he thought of different designs in order to abide by the allowed square footage.



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Dudley said they did look at other ways but it would look awkward. He explained what the new sign would sit in a cement base with a decorative planter and cedar shakes to mimic the building.

Kelley asked Bird if the Planning Departments recommendation of approval was based on the safety concern.

Bird said it is important that motorists heading north realize that this is their destination. Three lanes are located here and they need to make a choice of which lane they need to be in. To go to this facility you need to be in the left lane.

Public Hearing Closed

Kelley stated that he is troubled, as with any variance you are giving up zoning. He does understand the safety concern and the fact that the City would gain by having a smaller sign in a better location.

Denison confirmed with Clark that if a new tenant moves in and the face of the sign changes, no permit is required. The City has a specific provision that if there is any change in size or location a new permit is required.

Colbath said he would rather see a reduction of signage and this being relocated away from the corner. Some adjustments need to be made and a strong argument could be made as to what is located across the street. As a board of adjustment, you have to give some adjustment to the fact that someone can have a different size sign directly across the street. In his opinion, this is a reduction in signage not an addition.

FINDINGS OF FACT: 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.

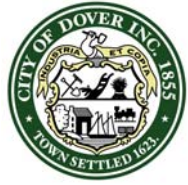
a) AREA: i. Did the Applicant demonstrate that an area variance is needed to enable the proposed use of the property given the special conditions of the property? Yes, Vote U/A. This conclusion is based on the following findings of fact: To have a larger sign than twelve (12) square feet a variance is required.

ii. Did the Applicant demonstrate that the benefit sought cannot be achieved by some other method reasonably feasible to pursue, without the area variance? Yes, Vote U/A. This conclusion is based on the following findings of fact: Makes sign visible to northbound traffic.

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: Applicant is across from significant signage "competition" from the pharmacies in the B-3 zone on the other side of Central Avenue. Due to the traffic safety needs, the sign must be legible from the road.

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: Design is unobtrusive yet is visible from the road and encourages safe traffic behavior.

4. Did the Applicant provide proof that demonstrates the variance will not result in a diminution in value of surrounding properties? Yes, Vote: U/A. This conclusion is based on the following findings of fact: Improvement on the prior sign. Smaller than the original sign and more properly and more safely located.



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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: This sign is in the interest of the public to maintain safe travel through a busy intersection. In particular, northbound motorists will be able to see the sign in time to safely change lanes.

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

5. OTHER BOARD BUSINESS

A. Annual Election of Chairperson and Vice Chairperson will be held.

Colbath suggested tabling to next month when a full Board was present. Kelley agreed.

Denison introduced Councilor Rick Callaghan.

Callaghan stated that he has been elected to City Council and has been placed on the Appointments Committee. He informed the members that he realizes that this Board is short a couple of members and he will do his best to fill those vacancies. He reminded the members that an alternate member cannot fill his vacancy and if the members would like to voice an opinion of whom they would like to take as an alternate member and move them to a regular member he would be happy to share that with the committee or they can make a selection for you.

Denison stated that she was hoping that both alternate members were present so they could make a decision for the appropriate candidate as a Board. She stated that the board would be better served to have someone as soon as possible, but does not feel comfortable with only three members present and making a Board decision without all of the members being present.

Colbath said in his opinion, the appointments committee should move up whomever they would like to move up, ultimately it is their decision.

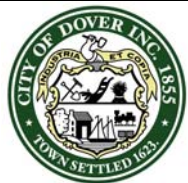
Callaghan stated he would prefer hearing from the Board as a whole. He added that the committee would work on getting more alternates for the ZBA.

Bird asked if anyone has spoke with the alternates to see if they would be interested in being appointed a regular member.

Denison felt that was a good point and suggested that the appointments committee interview both alternate members.

After further discussion, it was decided that Councilor Callaghan would move forward, inform the appointments committee about conducting interviews, and make a decision.

Motion: Colbath made the motion to postpone election to next month when all members would be present. Kelley seconded. Vote: U/A



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6. ADJOURN

Motion: Colbath made the motion to adjourn at 8:38 p.m. Kelley seconded. Vote: U/A

List of Members

Term Expires

William Colbath-regular member	10-23-09
Frank Landford-regular member	04-10-08
Masi Denison-regular member	01-24-10
Sam Reid-regular member	11-12-09
Otis Perry-alternate member	02-08-09
Jim Kelley-alternate member	05-23-10