



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, April 17, 2008**
Meeting Time: **7:00 pm**

1. ATTENDANCE

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

Chair Masi Denison introduced the members of the Board.

2. APPROVAL OF PRIOR MINUTES OF MARCH 20, 2008

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

3. OLD BUSINESS

Denison reminded the Board that case Z 08-04 538 B Middle Road has been withdrawn and will not be heard tonight.

Denison, Reid, Kelley, Perry, and Prior will be voting.

4. NEW BUSINESS

- A. * Z 08-05 Sabrina Flayhan-Sanborn (Applicant: David King), 40 ½ Broadway., a/k/a Tax Map 4, Lot 55, zoned RM-8, requests a Variance from the terms of Article V, Section 170-16, to demo a dwelling and construct a dwelling within four (4) feet from a front property line as it abuts a street where fifteen (15) feet is required and within two (2) feet from a side property line, where fifteen (15) feet is required.

Diana Saunders and David King approached the podium and stated that they are co-owners of the property. She stated that Sabrina could not make the meeting but they are all in the same company, which is Seasons Realty. She explained that they purchased the building 1 ½ years ago. They received a building permit to do an extensive renovation on the building; however, one of the tenants ruined the interior of the unit with major water damage. She stated that they are looking to demo the current building and build in the footprint of the existing building. If they built within the required setbacks, they would only have a 5 x 19 building envelope or a vacant lot if they cannot build. She stated that Tom Clark did an inspection and felt that there was sufficient damage.

Motion: Perry made the motion to accept. Reid seconded. Vote: U/A

Public Hearing Open

Diane Saunders mentioned the letters that were in the file stating that both direct abutters are in favor.

Denison read both letters for the record (copy in file).

Public Hearing Closed

Kelley questioned the building at 40 Broadway and asked if it would remain residential.



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Saunders explained the condition of the property and stated that by backfilling they would support the foundation at 40 and 40 ½ and in doing so would create two off street parking spaces.

Denison confirmed that two one bedroom one bath garden style units exist. The bottom unit was the one that was destroyed by extensive water damage.

Kelley asked Clark about the structural integrity. Clark said that the structural beams were showing signs of dry rot and the condition of the foundation is in an advanced state of disrepair. The building may crumble if lifted to repair the foundation and floor of the building.

Perry confirmed with Clark that due to a change in policy the Planning Staff does not have any recommendations at this time.

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: Size and shape of the lot require a variance to address adequate footprint.
 - 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: Size and shape of the lot require a variance to address adequate footprint.
- 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: Will not change the existing use of lot and will allow the lot to continue to be useable.
- 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: Footprint and location proposed was present when ordinance was passed.
- 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: Will improve the current state of a run down/vacant building. Written testimony 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: Replacing a structure not in compliance with modern building codes within the existing footprint.

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

1. As per the application, replacement building will be the same size and footprint as existing building.

Denison, Landford, Reid, Kelley, and Perry will be voting.

Attorney Schulte handed out a motion to deny application to all Board members to review.



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Denison stated that the applicant can present, we will allow a rebuttal and will then decide if we will actually accept the application.

- B. * Z 08-06 Charles Cheney, representing Don Cheney of 53 Back River Road requests an Appeal from an Administrative Decision as provided by Article XII, Section 170-52.C (2) (b) in connection with the issuance of a building permit (BP #08-26) at 55 Back River Rd, a/k/a Tax Map I, Lot 60, zoned R-12 to repair/renovate a fire damaged single family dwelling.

A lengthy discussion took place regarding the appeal and the issuance of the building permit. Cheney explained that he filed this appeal as he was informed by Mr. Parker that this is what normally is done. He proceeded to present his case and informed the members of the Board that he wrote Mr. Clark a letter and received a letter back in regards to the repairs & renovations to the dwelling. Attorney Schulte explained his motion to deny application. Members of the Board were concerned with what was actually advertised and the wording of "issuance" versus enforcement. In addition, is the date of the request past the thirty-day requirement and is there a technicality on the application of what was filled out and filed. They also felt that they should have received copies of the letters that Mr. Cheney spoke of and for those reasons it was decided by the Board to make a motion.

Motion: Reid made the motion to deny acceptance of the case. Landford seconded. Vote: 4 to 1 (Kelley opposed)

Denison informed the applicant that he could reapply, as there are too many technicalities that need to be addressed before the Board can accept the application.

5. OTHER BOARD BUSINESS

Denison said that she sent Reid some documents and forms. The Rules of Procedure are outdated and they are working on revising the forms in order to make more sense on how the Board operates. The goal is to finish a final version and distribute them in the packets for the next meeting for discussion. She also mentioned that in discussions with Mike Joyal and Chris Parker some changes would take place due to the budget and tax cap. One of the changes is that Tom Clark may not be available to the Board. She stated that she would inform the members as soon as she receives new information on the staff changes. Discussion continued regarding administration changes. Denison informed the Board that she has requested an Executive Session with Attorney Alan Krans to update them on some cases that were appealed to Superior Court. Kelley announced that he might not be able to attend the May meeting.

6. ADJOURN

Motion: Reid made the motion to adjourn at 8:24 p.m. Perry seconded. Vote: U/A

<u>List of Members</u>	<u>Term Expires</u>
Masi Denison-regular member	01-24-10
William Colbath-regular member	10-23-09
Frank Landford-regular member	04-10-08
Sam Reid-regular member	11-12-09
Jim Kelley-regular member	05-23-10
Otis Perry-alternate member	02-08-09
Chris Prior-alternate member	02-01-11