



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, May 15, 2008**
Meeting Time: **7:00 pm**

1. ATTENDANCE

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

Chair Masi Denison introduced the members of the Board.

2. APPROVAL OF PRIOR MINUTES OF APRIL 17, 2008

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

3. OLD BUSINESS - NONE

*Colbath stated that he is stepping down on the next case.
Denison, Reid, Kelley, Perry, and Prior will be voting.*

4. NEW BUSINESS

- A. * Z 08-07 Ronald & Gloria Maxfield, 5 Danbury Ln., a/k/a Tax Map 25, Lot 76, zoned R-12, requests a Variance from the terms of 1) Article VII, Section 170-27 D, to subdivide a parcel creating one lot with an area of approximately 9,700 square feet outside the Conservation District where a minimum of 12,000 square feet is required and 2) Article V, Section 170-16 to construct a single family dwelling within ten (10) feet from a front property line as it abuts a street where a minimum of thirty (30) feet is required.

Kevin McEneaney represented the applicant. The lot size is 36,900 sq ft and contains a single family home. They would like to subdivide the property into 2 lots. It is an R-12 zone, the minimum lot size is 12,000 sq ft, 100 ft minimum frontage and the setbacks are 30 ft front, 15 ft side and rear. In 1987, the zoning ordinance changed. It stated that any slopes that were in an excess of 20% are considered a conservation district and therefore come under the conservation district rules. A stipulation, in those rules, is in order to subdivide a piece of property and make it buildable, the minimum zoning lot size requirement, outside of the conservation district, has to be met. On the lot they're trying to subdivide, at the rear of the lot, there's a steep slope in excess of 30%. The amount of area, outside of the conservation district is 9,740 sq ft. They're under by 2500 sq ft. Need 80% of the lot size requirements for the ordinance. The slope issue is actually a man made slope. In 1970's, the City of Dover had a sewer reconstruction project in town. They used that site for excess materials. He proceeded to explain the lot. Couple of other things to note, house could be converted to a duplex. They are willing to add a condition that the house would not be converted into duplex if the variance is passed. He proceeded to read the application as submitted in the file and mentioned the petition signed by the neighbors (copy in file). The neighbors directly affected by this on Danbury Ct, Deer Run and one on Cocheco have signed the petition in favor of the request.

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

Public Hearing Open



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Parks Christenbury, 98 Cocheco St, stated that he is the abutter below their property. They are great neighbors. There has been some multi-family development off of Atlantic Ave. He believes it would be conducive to leave the neighborhood as single family homes. It would change the character of the neighborhood if there were duplexes in his area. He has two letters from abutters that disagree with this variance request (copy in file). They have concerns regarding drainage and privacy. Regarding the hardship, it would be in everyone's best interest if the house was set closer to the road. The closer the home is to Danbury St, it would be further away from Cocheco St. It would give the people on Cocheco St a relief from the drainage issues.

Denison proceeded to read the petition in favor of the variance and the three opposing letters (copy in file).

Clark explained that the 20% slope issue is something that needs to be revised in the ordinance. When created, in 1987, the intent was slopes down to rivers, waterways, lakes, etc. All that was written was 20% slope. Due to the extent of development, more slope issues are coming before the board.

Reid asks Christenbury if he believes there is validity to the concern from the Cocheco St abutters, regarding the drainage?

Christenbury states drainage is not coming from Danbury Ln., it's coming from a development on Deer Hill. The City allowed a private road and a private development at the very top of Cocheco St and 90% of the water issue is coming from the top of Cocheco St, which is where the Deer Hill development is located.

Reid confirmed with Christenbury that if the variance is granted he does not believe it would reduce his property value.

Public Hearing Closed

Prior confirmed with Denison that this still has to go before the Planning Board and the Conservation Commission and a potential condition that the proposed condition by the applicant is to remove the opportunity to make the residence a duplex.

Denison expressed concern with the opposing abutters. Discussion ensued regarding drainage.

Two variance requests will be voted on separately as listed on the agenda.

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? 1) Yes, Vote: U/A. This conclusion is based on the following findings of fact: The Maxfield's lot is larger than four other lots on Danbury Ln. The slope is man made. 2) Yes, Vote: U/A. This conclusion is based on the following findings of fact: The lay of the land requires encroachment on 30 ft setback.



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ii. Did the Applicant demonstrate that the benefit sought cannot be achieved by some other method reasonably feasible to pursue, without the area variance? 1) Yes, Vote: U/A. This conclusion is based on the following findings of fact: The lot line adjustment was not available. The applicant tried to purchase additional property. The shape of the lot does not allow division in another way. 2) Yes, Vote: U/A. The building envelope would be mostly on a significant slope without a setback variance given the other variance was granted.

2. Did the Applicant provide proof that demonstrates how granting the variance will result in substantial justice? 1) Yes, Vote: U/A. This conclusion is based on the following findings of fact: The man made slope is forcing a variance. 2) Yes, Vote: U/A. This conclusion is based on the following findings of fact: Variance 1 necessitates the setback. Variance due to limiting building on a significant slope.

3. Did the Applicant provide proof that demonstrates how a variance would be consistent with the spirit and intent of the ordinance? 1) Yes, Vote: U/A. This conclusion is based on the following findings of fact: This slope is not typical of the slopes (natural, to water) that the ordinance was designed to protect. 2) Yes, Vote: U/A. This conclusion is based on the following findings of fact: The proposed setback is consistent with the other houses on the street.

4. Did the Applicant provide proof that demonstrates the variance will not result in a diminution in value of surrounding properties? 1) Yes, Vote: U/A. This conclusion is based on the following findings of fact: Testimony of abutters, including petition. Mr. Christenbury provided evidence that water/drainage issues are from another source than Danbury Ln. 2) Yes, Vote: U/A. This conclusion is based on the following findings of fact: Petition from neighbors. Retain character of the neighborhood.

5. Did the Applicant provide proof that demonstrates the variance would not be contrary to the public interest? 1) Yes, Vote: U/A. This conclusion is based on the following findings of fact: Keeps the character of single family neighborhood. 2) Yes, Vote: U/A. This conclusion is based on the following findings of fact: Keeps the character of single family neighborhood.

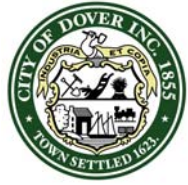
Therefore, based upon the foregoing, it is ordered that the application for the variance be granted with the following conditions:

1. Deed restriction on 5 Danbury Ln to remove the right to convert older building into a duplex.
2. This proposal will be heard by and approved by the Planning Board and the Conservation Commission.

Perry steps down. Prior, Colbath, Denison, Reid and Landford will vote.

- B. * Z 08-08 Dale & Mary Sylvia, 20 Linda Ave., a/k/a Tax Map I, Lot 80-W, zoned R-12 requests a Variance from the terms of 1) Article V, Section 170-16 to construct a rear addition within approximately twelve (12) feet from a side property line where a minimum of fifteen (15) feet is required and 2) Article X, Section 170-41 to construct an addition within eighteen (18) feet from a front property line as it abuts a street where a minimum of twenty-five (25) feet is required.

Dale Sylvia, 20 Linda Ave, applicant stated his plan is to remove the existing attached garage and replace it with a garage that meets current safety codes. The current garage has outdated electrical and needs a new roof. The existing property is a 3 bedroom, 1 bath. The proposed addition would be 3 bedrooms, 2 baths, office and a dining room. The property does not meet the current setbacks. The new addition would be running parallel with the existing garage but adding 10 ft. The remodeled structure would still be 12'6" away



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from the neighbors' property. In turn it would be 2'6" over the current setbacks. Neighbors stated that they are in favor of the request. Sylvia explained the hardships (as submitted with the application). These changes will not result in lower property values. The bank said it should increase the value by \$70,000. It will not be a burden on the City; this will increase the safety of the house.

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

Denison asks Mr. Sylvia about the setbacks for PSNH and the slope.

Sylvia explains the map and the setbacks.

Prior asks if a second story is an option.

Sylvia states yes but financially not feasible. The family plans on living in the house during the renovations and with a 5 month old, we would not be able to do it. If they put a 2nd floor over the garage they would still have to replace the electric due to safety issues.

Public Hearing Open

Denison reads the letters from the abutters for the record.

Prior confirmed with Mr. Sylvia that only one abutter has seen the actual plans, however it has been explained to the others.

Public Hearing Closed

Reid stated that he does not see another alternative for the applicant.

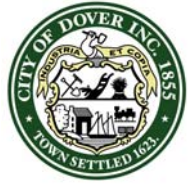
Denison stated that the existence of the power line easement is significant for hardship and a variance is their only option.

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: Power line easement eliminates all other options.

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: Applicants tried several other methods (sale, negotiations with PSNH) but failed.

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 allow reasonable expansion and upgrade to meet current building codes.



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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: Encroachment is small (3 ft). Lot is already nonconforming; increase in nonconformity is not significant.
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: Bank assessment of increase in property value after remodel. Neighbors are all in support.
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: Will allow dwelling to be in greater compliance with building/safety codes.

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

Recess at 8:40. Resumed at 8:45pm.

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

- C. * Z 08-09 KPRP/606 Sixth Street, LLC , 606 Sixth St., a/k/a Tax Map B, Lot 6-A, zoned R-40 requests a Variance from the terms of Article V, Section 170-16, Footnote 34 to subdivide a parcel creating a lot with approximately 39,600 square feet of contiguous upland where a minimum of 40,000 square feet is required.

John Berry with Berry Surveying and Engineering represented the applicant Derek Peters a partner with KPRP is here as well. They would like to subdivide the 2.46 acre lot into two lots. Lot 6a will have an area of 57,027 sq ft with 45,701 sq ft of the lot contiguous upland meeting the requirements of the ordinance. Lot 6A-1 will have an area of 50,228 sq ft of the lot contiguous upland not meeting the required 40,000 sq ft of contiguous upland by 388 sq ft. They are asking for the relief of the 388 sq ft. There is a total of 40,410 sq ft of upland on the proposed lot 6A-1. He proceeded to read the application, as submitted in the file.

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

Perry asks about setbacks.

Berry explains the maps.

Denison asks about moving house and septic.

Berry explains State of NH states that the well radius be completely or you could go 10 ft off of the property line. In this case, the existing well radius is more than 10 ft off of the property line. Have to show potential well that meets requirements. It does not have to be built, just planned.

Colbath states the house envelope cannot be in the 75 ft radius either. Is that correct?

Berry explains the septic leech field cannot be within 50 ft of well. Typical septic is 30 ft long 10 ft wide. There is ample room on the lot for development. Plans will be submitted to the state for their approval.



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Public Hearing Open - No one spoke - Public Hearing Closed

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: Wetlands bisect the property. Difficult if not impossible to draw lot lines any other way.

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: Lot line adjustment not available to them. Ordinance requires contiguous upland.

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: Only short of required size of contiguous uplands by less than 1%.

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: A conforming dwelling meeting all other zoning, septic, etc. Requirements can be placed on the lot.

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: Subdivision consistent with development taking place in the local area.

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: Meet all other zoning requirements including setbacks for septic and well.

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

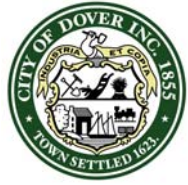
1. Review by Planning Board.

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

- D. * Z 08-10 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 administration 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.

Charles Cheney stated that he is representing his father, Don Cheney. He's appealing the decision made by Building Inspector, Tom Clark as discussed at last months meeting.

Denison stated that the board needs to decide if they have the jurisdiction to hear the appeal. She asked him to describe and elaborate the decision.



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Cheney stated he came before the board, a year ago, when the Turgeon's tried to get a variance that would allow the existing building to construct an addition that would allow the home to be converted to a duplex. The permit states that you can repair or renovate the existing building. The spirit of the permit was not followed and things were done well beyond the scope of the permit. He believes the owners' did not follow the intent of permit.

Colbath asked Clark what the permit was for.

Clark stated that there are two permits, one for an addition to an existing single family dwelling to convert it to a two family dwelling and a subsequent permit was issued to make repairs and renovate a fire damaged building. Process of repairing allowed the owner to gut the building to find out what the extent of the damage was. The plan was to lift the single family dwelling, to put in a foundation. However, after gutting, they realized if they lifted the house, it would have fallen apart. During this process they realized there was a lot more damage to this building.

Cheney stated that the decision to not revoke the building permit is what he's appealing.

Colbath questioned how the applicant's were able to demolish the home and rebuild. Discussion ensued regarding whether the permit should have been issued.

Reid asks Clark if that is his jurisdiction to revoke permits.

Clark stated that he did go to the property after receiving the first letter from Mr. Cheney.

Denison felt that this is an enforcement issue, not a zoning issue.

Motion: Perry made the motion not to accept the case, Landford seconded. Vote: 4 to 1 (Colbath opposes)

Cheney asked what his next step would be. Denison stated that he should meet with the City Manager.

5. OTHER BOARD BUSINESS

Denison spoke about the OEP conference and discussed handouts that were copied for all members. The rules of procedure were discussed. City Attorney, Alan Krans, commented on the rules of procedure. Discussions will continue at next months meeting.

6. ADJOURN

Motion: Reid made the motion to adjourn at 10:51 p.m. Colbath 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