

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

1. ATTENDANCE

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

Vice Chair Bill Colbath will sit in for Chair Masi Denison.
Vice Chair Bill Colbath introduced the members of the Board.

2. APPROVAL OF PRIOR MINUTES OF JUNE 19, 2008

Clark and Atty. Schulte asked Denison why the applicant was allowed to speak. Left out. Landford stated 1st page, Landford left out of voting. Need to list that Landford opposed when Perry motioned to hear from the City Attorney. Vote incorrect 4-1.
2nd page, 4th paragraph, Colbath referred to the Green vs. Shaw case states that any tax payer has the standing to appeal the illegal acts of a City Official. Colbath referred to the statutes in his handout but they weren't mentioned in the minutes. Listed his allegations of illegal acts by the City Official.

Motion: Perry made the motion to approve the minutes, Kelley seconded. Vote: U/A with corrections.

3. OLD BUSINESS – NONE

Colbath, Landford, Reid, Kelley and Prior will be voting.

4. NEW BUSINESS

- A. * Z 08-12 - Jack & Jennifer McCarthy (applicant: Justin Corrow), 18 Preble St., a/k/a tax map 4, lot 42, zoned RM-8, requests a Variance from the terms of Article X, Section 170-41 A and D to construct a second story addition onto a building within approx. five and one-half (5 ½) feet from a front property line where a minimum of ten (10) feet is required.

Justin Corrow presented his case for the variance. The addition will be placed on an existing foundation. There will be no increase to the footprint. He would like a variance for the setbacks so they can get their addition approved and built. The variance would allow the addition and increase the value of the home. He proceeded to read from his application.

Colbath asked the applicant if he would be going up from the existing foundation.

Corrow stated yes. They would like to build straight up and tie into the peak of the house. He submitted drawings of the proposed addition. (Copies in file) Discussion ensued regarding the roof.

Reid asked to see the plan of the addition with the photos.



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

Colbath confirmed with Clark that when the zoning ordinance was amended to address this type of situation, one of the criteria was it could come no closer to the street. The second criteria is you have to be at least 10 ft from the front property line.

Public Hearing Open – None - Public Hearing Closed

Prior stated that when he drove by the property, he observed that everyone had a two story home. To allow the addition would make everything cohesive in the neighborhood.

Kelly stated that the only issue would be more massing. But it seems that no one is opposed to that.

Landford stated closest neighbor is already a two-story house.

Colbath stated that the bulk of the neighborhood is already in the same situation.

Reid stated he does not see an adverse reaction. No diminution in value.

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. It's consistent with the neighborhood. They're not enlarging the footprint of the home.

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. By taking advantage of the existing footprint it makes this reasonably feasible. No other method would be cost effective.

2. Did the Applicant provide proof that demonstrates how granting the variance will result in substantial justice? Yes, Vote: U/A. Allow the use of existing footprints and still be consistent with other homes in the area.

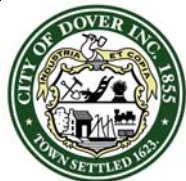
3. Did the Applicant provide proof that demonstrates how a variance would be consistent with the spirit and intent of the ordinance? Yes, Vote: U/A. Spirit and intent was to allow reasonable expansion of existing structures.

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. Photos show it to be consistent with the bulk of the neighborhood.

5. Did the Applicant provide proof that demonstrates the variance would not be contrary to the public interest? Yes, Vote: U/A. It's consistent with the bulk of the neighboring properties. There is no damage to the public interest.

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

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



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- B. * Z 08-13 – Boston & Maine Railroad (applicant: Ridgewood Realty), a/k/a tax map 24, lots 2 A-1 and 2 A-2, zoned RM-10, requests a Special Exception as provided by the terms of Article VI, Section 170-25.1 and Article XII, Section 170-52.C (3) to construct a four-family dwelling on each lot.

John Sullivan, Ridgewood Realty, stated that he was contracted with B&M Railroad to purchase the property.
He submitted a handout to the board.

Bob Stowell, Tri Tech Engineering, stated they would like to construct a four unit dwelling on each of the two lots that they propose to subdivide. If they're successful with the special exception request, they will proceed forward to Planning Board to request a subdivision of land. This believe that it is desirable for public convenience. It's a good opportunity to provide new affordable construction that will be very desirable and convenient to the City of Dover. The property is an eyesore at the present time. It's a storage yard for B&M debris. These units will be on the affordable side of what it costs to live in Dover. There will be no issues with traffic or pedestrian traffic. This is located at the intersection of Hancock and Portland. Traffic flow is extremely good. They are only proposing one curb cut onto the roadway. There is a pedestrian buffer of sidewalks on both sides of street. Refers to handouts. (In file) There is a letter from Dave White, City Engineer, addressed to the Planning Dept. that outlines that they've reviewed this plan and that there is adequate sewer at the frontage of the property. They would be permitted to tie into the water and sewer. On the utility side they are in great condition. He reads his cover letter to the application. (In file)

Reid asked about the plan showing the screening of the parking areas.

Stowell stated that they worked with a landscape architect to detail the specific plantings that would be done to achieve adequate screening.

Landford asked why the setup was changed?

Stowell stated after submission of the initial application, Tom Clark stated that two duplexes were not the same as four units so they needed to combine them into one building. Otherwise, they would have to ask for a special exception and a variance.

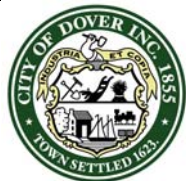
Landford questioned the three parcels being subdivided; is the Railroad keeping the third parcel?

Stowell said yes the railroad is keeping it as an active yard.

Kelley stated that this layout leaves an access to the other lot.

Stowell stated it would be a gated and locked access to be used for emergency use.

Discussion ensued regarding the common driveway.



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Motion: Perry motions to accept the application. Landford seconded. Vote: U/A.

Public Hearing Open

Byron Cass, 36 Forest St, stated that several times the Police have had problems with speeding cars. He doesn't want the units. If they are approved, he's asking for 5, 6, 7 and 8 to be set back 50 feet? He doesn't want to look out his bedroom windows and see them. He'd also like to see the trees left where they are since it is Forest St.

Colbath stated that this hearing is for the approval of the application. It isn't up to the Zoning Board to modify the plans. It would be up to the developers.

Janice Silver, 13 Forest St, stated that her concerns are safety. The neighborhood decorum is New Englanders and Colonials not tenement apartments. She is against the subdivision. There are five streets there; three of them are dead ends. They would be putting too many people in a small space. There are a lot of small children in that area. How will they keep the children off of the train tracks? The owner will not be living there; she doesn't think the owner would care about problems that arise later. It's meant to be one lot, it should stay one lot.

Betts Davis, 58 Forest St, stated she moved there because she liked the look of the neighborhood. The houses are modest but well kept. It is a quiet street. She believes the neighborhood would suffer if any more units were added. It does not serve the purpose of the neighborhood. She disagrees that traffic is not an issue. She stated that she has two letters from opposing abutters. She proceeded to read the letters for the record (copy in file)

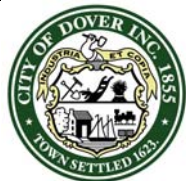
Michael Johansmeyer, 11 Forest St, stated that the neighborhood has worked hard to build on the Hancock Park. Adding residents to the neighborhood would not make it better, it would make it worse. Safety of the children is important.

Barbara Hart, 57 Forest St, stated she moved to the neighborhood because of the charm and character. She does not see how the units can fit. The neighborhood is full of children running around the street. There will be sixteen new cars and each unit will have visitors. They do not need more cars on the street. She believes that this will affect their property values. The only people this will benefit are the people living on that property.

Pauline Roberts, 24 Forest St, stated that the units are out of character with neighborhood. It is a horrible intersection. Angle of roads makes it bad, they would be adding another angle into it. She's not opposed to housing when it's kept in character. This will destroy the character of the neighborhood. There is not a single person living on the street who is in favor of it.

Roland Hebert, 20 Forest St, stated if you look at the survey, the house on the corner has lost some of their property. He asked how come they have lost half of their driveway?

Colbath asked if Hebert was contesting that it was an inaccurate survey?



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Discussion ensued regarding adverse possession.

Nicole Cloutier, 50 Forest St, stated she helped build the park and loves the neighborhood. Hancock Street is the root for the children to get into the park. There will be an unreasonable amount of cars going throughout the neighborhood. The comment from Stowell about the lot being unsightly is untrue. It has woods and rocks. She agrees with her neighbors that these units do not fit into the neighborhood.

Kim Roule, 48 Forest St, stated she feels it would be a safety issue to have more cars coming in. She moved to the neighborhood due to its character. That area has been redistricted. She wanted to move there so her child could go to Horne St but because the district is crowded; her child will have to go to Garrison. Units do not fit in with how the neighborhood looks.

James Lebrasseur, 40 Forest St, stated Roland Hebert was talking about his property. He has a map that squared the properties off. Police are constantly policing the train traffic. This will bring a lot of traffic to area. It is a family orientated street. It's a good community and he wants it stay the way that it is.

Landford asked if he received something in writing regarding a deed change.

Lebrasseur stated that when he acquired his property, he contacted Gilford RR/B&M RR about purchasing a little piece of land behind his house. They sent him a bill for \$64,000.00 for the piece of land. He sent them a \$2,000.00 deposit. The building inspector, at that time, told him that everyone on Forest St. was in the same position. Just use the land and don't worry about it.

Colbath asked if he had anything from the railroad that deeds the property to the homeowners.

Lebrasseur stated what he has is the survey that squared off the properties.

Colbath stated that if he has something from the railroad showing the properties, please bring it forward.

Liz Chamberlain, 34 Forest St, asked what the criteria were for the special exception.

Colbath read from zoning chapter 170-25.1. He stated it's a question of has the applicant met the criteria.

Chamberlain stated that the two issues that have come up tonight is the size of her neighbor's lot and traffic.

Landford stated that it is more safety and traffic.

Chamberlain stated she is a big proponent of affordable housing. It is already an affordable neighborhood. Traffic is already a problem. Children are always in the street. People parking on the street make it hard to see children and allow other cars to get through. She does not see how the street could accommodate anyone new.



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Stu Krupnick, 54 Forest St, stated that in regards to the applicant meeting the criteria, the main things heard are traffic and safety. He noticed that when there was a party on Hancock St, it was impossible to get your car through there. He urges them to look into the traffic.

Colbath reads a letter from Pan Am Railways. (In file)

Stowell stated he would like to clear a couple of areas. This is not an affordable housing project. When he said affordable, he meant affordable in the scheme of Dover, NH real estate. This project is intended to be consistent with the Forest St neighborhood.

Landford asked if they would be condominium units or apartments.

Stowell stated they will be town home apartments. He heard a lot of comments about them not fitting into the neighborhood. They have not presented sketches of homes yet. The neighbors do not know if the homes will fit. The footprint is smaller than a lot of the surrounding lots.

Kelley asked how many sq ft per unit.

John Sullivan, Ridgewood Realty, stated that they would be 1,000-1,200 sq ft.

Stowell stated in regards to the traffic they didn't go out and observe speeders, they looked at the quality of roadway system. He has excess road capacity and the underlying roadway conditions are adequate.

Discussion ensued regarding adverse possession, parking and screening.

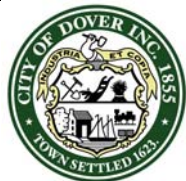
Public Hearing Closed

Perry stated until the subdivision occurs, they do meet the requirements. The lot line does not exist until the subdivision occurs. The Board can not pass a special exception that provides a circumstance to the rule. He suggests tabling decision so the applicant can change their plans.

Colbath stated that with two units facing each other, he was concerned with screening the parking from the abutting lot.

Kelley stated he drove to the lot today but it's obvious from the neighborhood, the flow of traffic is a concern. There's no data to base an approval or objection on other than neighborhood or applicant comment. Could the Planning Board ask for traffic study?

Colbath stated that before the Board votes yes or no on this; all of the criteria will have to be met. This plan does not address distances from the property line and screening for the abutting lots. On the plan provided he thinks that it fails on two counts.



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Perry stated he's concerned about the design of road. It is not part of the special exception, its part of engineering and design. He's in favor of in field development. The new lot line is a concern for him in regards to parking criteria.

Kelley stated two properties could go off onto separate paths in terms of ownership.

Colbath stated there would be cross access easements. That falls into the Technical Review Planning.

Landford stated that he does feel that it is a busy neighborhood. It's a 32 ft street but it did not seem that wide when there were cars parked on the side of the road.

Reid suggested that he wants the applicant to address the technical issues and come back to next months meeting.

Colbath felt that there were technical issues on the plans submitted.

Motion: Perry motions to table the application. Reid seconded. Vote: 4 to 1 (Colbath opposed)

Recessed at 9:17pm, resumed at 9:26pm.

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

- C. * Z 08-14 – Heron Bay Partners, LLC, a/k/a tax map H, lot 4, zoned I-4, requests a variance from the terms of Article VII, Section 170-28.2 E 1 to construct site-built homes as an alternative to installing mobile home units.

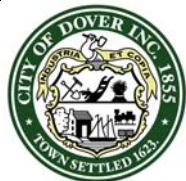
Atty. James Schulte represented the applicant. He stated that Colbath has filed an action in the Superior Court related to a matter that was before the ZBA last year. Atty. Schulte represents an abutter and would like Colbath to recuse himself.

Colbath stated that he wanted the board's opinion because he didn't think that it would make him un-objective. Coming into the meeting, he didn't realize that Atty. Schulte was representing an abutter associated with his case. Colbath stated that Atty. Schulte has been before the board numerous times and he doesn't have a problem sitting in on this case.

Reid asked Atty. Schulte if he had a problem with Colbath sitting in on the case as a preliminary matter knowing that they are on opposite sides.

Atty. Schulte stated yes because it creates an appearance of impropriety for him to be involved in litigation where he's representing a party on the opposite side and it creates an unnecessary distraction to these proceedings.

Colbath stated that if he recuses himself the board will have to appoint someone to run the meeting. He does not have a problem with stepping aside.



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Motion: Perry nominated Reid to Chair. Kelley seconded. Vote: U/A

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

Atty. Schulte represents the applicant. He stated that as a general rule in Dover, mobile homes are only allowed in R-40 zone. They are allowed only by special exception. In the table of dimensional requirements there is a specific provision for mobile homes in the R-40 zone that says that they have to meet HUD standards. The exception to the general rule is the Residential/Commercial/Mixed Use overlay district. That applies only to two lots in this city. His client purchased the project from the people that went before the Planning Board and got it approved as a senior citizen mobile home park. The provisions of the overlay district say that for mobile home parks, they have to comply with the mobile home statute, Chapter 126.

The property is unique because it is across from the gravel pits. It would not be well suited for large colonial type homes. A mobile home park is good for this property due to its location. Mortgages are harder to get in general. If the variance is approved they are asking that site built homes be allowed as an alternative. They will have full foundations with basements, attached garages, etc. The mobile homes are purchased out of state from a company in PA. They will come on rented axels and wheels. They will be pulled to the site and permanently fastened to the foundations. They will be offering 40 year leases. It's as close to permanent as you can have in a mobile home park. It is easier to accommodate the PB requirements if they allow site built homes. He proceeded to read the application as submitted for the file. He reads from the Mallard v Glenn case that states "to be contrary to the public interest the variance must unduly and in a market degree conflict with the ordinance such that it violates the ordinances basic zoning objectives."

Discussion ensued regarding the cost benefits of site built homes.

Motion: Landford moved to accept the application, Perry seconded. Vote: U/A

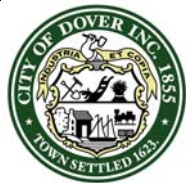
Public Hearing Open

Reid stated that the ZBA received a letter from Planning Director stating the Planning Dept. is in favor of the variance request.

Bill Colbath, 82 Spruce Lane asked how the Planning Board approved a mobile home subdivision for construction of a mobile home park when in their own definition a mobile home, a prefabricated residential unit, shall not be construed as a mobile home if said unit is supported by a permanent foundation. They can allow a mobile home park but it has to conform to their own definition.

Reid asked Colbath to read the section he's referring to.

Colbath stated that he is reading from the definitions of a mobile home, section 170-6, pg. 170.14 of the zoning ordinance. The idea that they're going to put 60 homes on rented land to increase the density of



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the homes, that's not what a mobile home park is. He does not understand how they received an approved plan when it is not according to their own rules.

Clark stated that his objection would be better in front of the Planning Board. Discussion ensued regarding the approval from the Planning Board.

Public Hearing Closed

Perry stated the issue of density and ownership, leased land or fee ownership, is irrelevant. He knows of a 500 unit stick built houses with foundations where owner of the houses pay the owner of the land a rent every month. If the rent is not paid, the home is demolished. It's not common in this country. The end product for the people that will be living there would be the same or better by doing a stick built structure than one transported over the roads.

Clark stated it will be better. It will not be the same as the ones that are manufactured under the regulations that are 30 years out of date. Discussion ensued regarding updating the mobile home ordinance.

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 the ordinance interferes with the reasonable use of the property, considering their unique setting of the property in its' environment? Yes, Vote: U/A. The property is near the gravel pits and the property will be used for elderly housing.

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. The ordinance provides for quality housing and stick built homes will be built per building codes.

iii. Did the applicant demonstrate that the variance would not injure the public or private rights of others? Yes, Vote: U/A The neighborhood will not be affected by the proposed type of structure.

2. Did the Applicant provide proof that demonstrates how granting the variance will result in substantial justice? Yes, Vote: U/A. The interest rate for mortgages will be less and mortgages will be more attainable.

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. The density and impact on the community will not change.

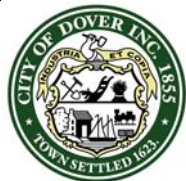
4. Did the Applicant provide proof that demonstrates the variance will not result in a diminution in value of surrounding properties? Yes, Vote: U/A. The abutting properties are a gravel pit and City owned land.

5. Did the Applicant provide proof that demonstrates the variance would not be contrary to the public interest? Yes, Vote: U/A. the proposal will not affect density or quality of the homes.

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

5. OTHER BOARD BUSINESS

The ZBA proceeds to go over the Rules of Procedure changes. Perry stated if something is written down, it should be in the file.



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Motion: Landford moved to accept the Rules of Procedure without changes. Reid seconded. Vote: U/A.

Motion: Perry moves to refer the Rules of Procedure changes to a public hearing. Kelley seconded. Vote: U/A.

6. ADJOURN

Motion: Reid made the motion to adjourn at 10:26pm. Kelley Seconded. Vote: U/A

List of Members

Term Expires

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