

Dover Zoning Board of Adjustment
Thursday, January 15, 2004

MINUTES

Members Present: Richard Callaghan, Chairperson, Bill Colbath, Vice Chair, Frank Landford, David Ruoff, Ruth Gorton, John Levasseur

Staff Present: Thomas Clark, Building Official, Christopher Parker, City Planner, Jean Glidden, Recording Secretary

ITEM # 1: NEW BUSINESS

A. Annual Election of Chairperson and Vice-Chairperson

Motion: Frank Landford made the motion that Richard Callaghan continue to be the Chairperson and Bill Colbath the Vice Chairperson. Ruth Gorton seconded the motion.
VOTE: U/A

B. Approval of the minutes for regular meeting of December 18, 2003.

Motion: Ruth Gorton made the motion to accept the minutes. Frank Landford seconded the motion. **VOTE: U/A**

ITEM # 2: OLD BUSINESS

A. Selection of Alternate Member.

Richard Callaghan announced that John Levasseur submitted a letter requesting that he would like to be selected as the alternate member and read the letter to the members of the Board.

Motion: David Ruoff made the motion to accept the request. Frank Landford seconded the motion. **VOTE: U/A**

ITEM # 3:

Z 04-01 Matt & Helen Williams, 26 Dover Point Rd., a/k/a Assessor's Map K, Lot 26, zoned R-12 & ETP, requests a variance from the terms of Article V, Section 170-16 to subdivide a lot into two (2) parcels, each having approximately ninety (90) feet of frontage along a public right of way, where a minimum of one-hundred (100) feet is required per lot.

Chip Williams announced that he would be representing his parents, Matt & Helen Williams. He stated that the lot that they have has 181.16 feet of frontage on Dover Point. The lot is 5.92 acres in size and extends back 900 feet from Dover Point. The property is unique and the zoning in this area

represents the boundary between R-12 and B-3 on the other side, in addition they have two areas of wetlands upon the lot, the first adjacent to the stream running from side to side on the property. The second area is on the easterly side of the pond at the rear. In addition to the twenty-foot wide sewer easement that goes through the center of the property, the lot also abuts a 100-foot public service easement on the easterly boundary. The applicant proposes to subdivide lot 26, with one lot consisting of 90.58 feet of frontage with 5.175 acres and the other lot consisting of 90.58 feet of frontage and contain 18,145 square feet. The proposed lot 26-1 would lie entirely within the R-12 district, while the larger lot would lie within the R-12 and ETP district. The applicant is seeking a variance to allow the proposed lots to have 90.58 feet of frontage, where one-hundred feet of frontage is required. He stated that the application meets the five criteria necessary for the Board to grant the requested variance and presented a map with the other lots in the area that are less than one-hundred feet and 85% is less than ninety feet. He stated that because the lots are presently vacant, construction of dwelling units upon the lots with the appropriate location of the driveways could be accomplished and the water and sewer services are already located on-site. He stated that the applicants have met the five criteria and is asking that the variance be granted.

Bill Colbath asked the applicant what his intention is with dividing the lot. He asked if it was going to be a single house lot.

Chip Williams stated that it will be a single house lot for now and the back portion is zoned ETP and could not be used for house lots.

Chris Parker stated that the back portion could be subdivided for other purposes.

Bill Colbath asked why he could not have the correct frontage for the one lot and would only need a fifty-foot right of way to subdivide the other lots and leave the other lot for development. He stated that it is clear that it is not going to be a single house lot.

Chip Williams stated that currently you could build two houses on each lot along the Dover Point frontage. He stated that as far as the back area of the lot, he could not answer that question today. He stated that technically with the lot zoned ETP and the adjacent parcel being zoned ETP if a purchaser came in to buy the adjacent parcel he would probably pick up that parcel to add to the larger piece. He stated that he thinks that he felt that it was the intent of the Planning Board and the Council, when they chose to change the zoning to ETP for the back section and a new road that was built on Dover Point that will connect to the rear parcel at some date.

Chris Parker stated to keep in mind the wetlands and the crossing to get to the back would be substantial, but also our ordinance provides for restrictions on non-residential traffic entering and exiting through a residential area, so the department would not support one lot with 125-feet of frontage and a fifty-foot piece for a right of way. He stated that the staff does recommend a shared driveway.

Chip Williams stated that his parents are retired and are just trying to maximize the value of the piece of property.

Ruth Gorton asked if the applicant knew where the driveway would be located.

Chip Williams stated that he has not gone that far yet and stated that he would be discussing it with the Planning Board and TRC as they site the houses and the driveways.

Tom Clark stated that it does have to go to the Planning Board for minor subdivision, assuming he gets the approval. He does suggest that the lots have a common drive in the center and as Chris Parker stated, you cannot put a driveway from R-12 to ETP and Thornwood Lane is currently under construction, and this would provide access to this back lot in the future.

Richard Callaghan asked Tom Clark about the road and if it was in the wetlands.

Tom Clark stated that it is located where the driveway is right now for Thornwood Farms, where the house was demolished and that he did get wetlands approval, which was part of the site plan.

Ruth Gorton asked how deep the purposed lots are and is wondering if there is ample space to build the dwellings and have a buffer zone between the buildings and the wetlands.

Tom Clark stated that the applicant does meet the setback requirements for R-12.

Motion: Bill Colbath made the motion to accept. Frank Landford seconded the motion.
VOTE: U/A

Public Hearing Open
None
Public Hearing Closed

Chris Parker stated that the Planning Department is in favor of this variance request. The lot sizes are consistent with the surrounding lots, but they do ask that they have a shared driveway to help with the congestion.

David Ruoff asked the applicant why he split it down the middle, why he did not request a variance for a smaller lot and a lot that conforms to the variance.

Chip Williams stated that with the discussions that he had with the Planning Department they suggested that the lots be equal in size.

Chris Parker stated that it would look more natural because of the adjacent lots and it would look awkward with a smaller lot.

Frank Landford asked the applicant if the shared driveway would share land in the middle.

Chip Williams stated that it will be handled through deeds and the deed would covenant that they would have to maintain the driveway until both of the dwellings are built.

Richard Callaghan stated that he has a concern with the shared driveway and feels it is an unnecessary restriction and it would take away from the individual houses.

Frank Landford agreed that this would change the design of the houses.

FIVE CRITERIA:

1. It is the Board's conclusion that if the applicant complies with the strict letter of the ordinance he/she does face an unnecessary hardship. This conclusion is based on the following findings of fact: Applicant would be held to a higher standard than other properties in the proximity.
2. It is the Board's conclusion that, if granted, the variance will deliver substantial justice. This conclusion is based on the following findings of fact: Offers maximization of value to residential lots that border the B-3 zones.
3. It is the Board's conclusion that, if granted, the variance will be in harmony with the spirit and intent of the zoning ordinance. This conclusion is based on the following findings of fact: Allows adequate space and lots exceed required square footage.
4. It is the Board's conclusion that, if granted, the variance will not result in diminution in value of surrounding properties. This conclusion is based on the following findings of fact: Use is consistent with properties in the proximity.
5. It is the Board's conclusion that, if granted, the variance will not be contrary to the public or private interests or rights. This conclusion is based on the following findings of fact: Minimum impact on public systems.

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

ITEM # 4:

Z 04-02 Holgate LTD Partnership, (Applicant: Mark Slover), 23 Ham St., a/k/a Assessor's Map 27, Lot 30, zoned RM-8, requests a variance from the terms of Article IV, Section 170-12, Table I, Part C-2 and Article X, Section 170-40.C to re-establish a retail use (convenience store).

Applicant Mark Slover stated that he resides at 6 Everett Street. He stated that he is requesting a variance to re-establish a convenience store at the former location of Busy Hill Market on Ham Street. He stated that this location operated as a retail grocery until it closed in 1997 and since that time, the property has remained vacant. He would like to open the grocery store again as a neighborhood market providing goods and services for the surrounding neighborhood. He stated that he has owned and operated two different convenience stores, one in York Beach, Maine, and the other one in Rollinsford, New Hampshire and he has sold both of these locations and would like to concentrate his efforts as an in-house owner at this location. Since the closing and demolition of the market on Central Avenue several years ago, the surrounding neighborhood has been missing a store. He stated that the residents have to travel on Central Avenue down to Brooks Drug or Rite Aid or further down Central Avenue to Store 24 or other markets. He believes that filling this vacant building would be a positive affect on surrounding properties. The neighborhood is comprised of multi-unit and rental dwellings and a neighborhood market is a positive for property owners and tenants and stated that he believes neighborhood markets are a critical part of maintaining a positive environment.

David Ruoff asked what the square footage of the lot size was.

Mark Slover stated that he does not know what the lot size is, but the convenient store comprises approximately 2000 square feet and the location has nine lined existing spaces at this location.

Bill Colbath asked if the parking was on the lot.

Mark Slover stated that they have an entrance and all of the parking is inside the boundary of the lot.

Richard Callaghan asked the applicant what kinds of things he would be selling in the store.

Mark Slover stated that it was going to be a commodity store, canned goods, bread, milk, newspapers, and hopes to obtain a wine and beer license. He is going to have a small sandwich case to serve deli sandwiches.

Richard Callaghan confirmed with the applicant that the items sold in the store would be like the former stores commodities.

Chris Parker asked the applicant when the store would open if he were granted the variance.

Mark Slover stated that if granted he would sign his lease with the property owner tomorrow and would like to open February 1.

Ruth Gorton asked if the applicant would be operating the business himself and asked if he had plans to sell the store, since he did state that he sold the other businesses.

Mark Slover stated that he would operate the business himself as well as the two business partners that are present. He stated that he is hoping to enter in to a twenty-year lease with the property owner.

Motion: Bill Colbath made the motion to accept. David Ruoff seconded the motion.

VOTE: U/A

Public Hearing Open

None

Public Hearing Closed

Chris Parker stated that the Planning Department does support this request. He stated that it is good planning and the parking and signage is adequate, and they encourage neighborhood groceries, convenience stores, and they like the fact that in a multi family district they would like something of this nature instead of more multi family units.

Frank Landford asked if they have residential units on this lot or is it just the store.

Mark Slover stated that there is an apartment above the store and they would install an insulated firewall between the store and the residence as requested by the Fire Department.

Discussion ensued regarding the retail use in this district and hours of operation. It was suggested that the store should close at a reasonable time, the hours discussed were to close at 9:00 pm, Sunday through Thursday, and 10:00 pm, on Friday and Saturday.

FIVE CRITERIA:

1. It is the Board's conclusion that if the applicant complies with the strict letter of the ordinance he/she does face an unnecessary hardship. This conclusion is based on the following findings of fact: Reasonable use of the property without building modification and provides a needed service to that neighborhood.
2. It is the Board's conclusion that, if granted, the variance will deliver substantial justice. This conclusion is based on the following findings of fact: Allows vacant property to be put to good use and a new opportunity for a small business.
3. It is the Board's conclusion that, if granted, the variance will be in harmony with the spirit and intent of the zoning ordinance. This conclusion is based on the following findings of fact: A convenience store is a good addition to a neighborhood.
4. It is the Board's conclusion that, if granted, the variance will not result in diminution in value of surrounding properties. This conclusion is based on the following findings of fact: A vacant property upgraded and put to use should increase area values.
5. It is the Board's conclusion that, if granted, the variance will not be contrary to the public or private interests or rights. This conclusion is based on the following findings of fact: Provides a needed and necessary service to the neighborhood.

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

1. Hours of operation to be restricted to Sunday through Thursday, 6:00 am to 9:00 pm.
Friday and Saturday, 6:00 am to 10:00 pm.

Motion: Ruth Gorton made the motion to accept the variance with the condition. Bill Colbath seconded the motion. **VOTE: 3 to 2 (David Ruoff and Frank Landford opposed to the condition)**

Frank Landford announced that he would be stepping down on the next case. John Levasseur will be voting on this case.

ITEM # 5:

Z 04-03 Peter Russell, Hotel Dr., a/k/a Assessor's Map 39, Lots 83, 93 & 94, zoned B-5, requests a variance from the terms of Article IX, Section 170-32.D (1) to maintain permit off-site advertising and 2) 170.32.L to install signage that exceeds the maximum allowed (100 sq ft).

David Letulippe stated that he was with the Richmond Company, which is based out of Peabody Massachusetts, and he is here representing Peter Russell and Lafrance Hospitality, the owners of lots 83, 93, and 94. He stated that they need a variance to share signage because of the way the lots are configured and with the new improvements along New Rochester Road, the access point was dedicated to line up with the light across from Indian Brook Commons, therefore a public and a private access easement was created. They resolved the access problem by sharing access and that created three lots within that five to six acre area and the applicants are looking to solve the signage, the same way that they resolved the access, which is to share the allowable signage from each lot. He stated that they would have one pylon sign that would say the hotel name on it and one by the Indian Brook entrance that would have the proposed restaurant and hotel name. They want to take that sign area and divide it between three different users. The intent is to properly notify the public that there

is a restaurant behind the hotel and also an important criteria for the hotel, is that the entrance is not in front of their building, so you would have to take a left, go down New Rochester Road to the light and they would have signage in that area. The hardship criteria are the lack of access on the connector road, no access points on New Rochester Road, except for the lighted intersection. He stated that when it was rezoned B-5, there was no signage allowed on Old Rochester Road. He stated that it would be very consistent with the spirit and intent of the zoning with all of the other commercial developments in the area. It would be similar to Indian Brook Commons and Chili's, they all share signage, so instead of just one name on the sign, they would have all three with no reduce in value to the surrounding properties.

Bill Colbath asked who the third tenant would be and asked if they were giving up the right to have another sign.

David Letulippe stated that it is unknown because lot three is undeveloped and would be a blank panel for right now. He stated that lot three has an odd shape to it because of the way it was done to create the public access when the hotel property was developed. He stated that he does not believe that they are giving up the right for another sign.

Bill Colbath asked why they would have tenant space on the other two if they were not giving up that space.

Frank Landford stated that he assumed the only sign they would have would be on the structure.

David Letulippe stated that was correct and they would not have any signage on the connector road except for on the pylon.

Chris Parker stated that they are giving up the right for another pylon.

Bill Colbath confirmed that lots one and two are going to have signage for both lots one, two, and three, and lot three is not to have a pylon sign.

David Letulippe stated that he cannot speak for lot three and suggested that Peter Russell answer the question.

Peter Russell stated that they have no perspective buyer or tenant for the third lot, however it is logical that a user would like to have signage in the future and if they are sharing the signage for the other two lots that have been created, then they are asking if they can share it three ways. As far as lot three having a separate pylon, it may or may not be necessary.

Chris Parker stated that they were thinking globally and advised the applicant to apply so they would not have to come back in the future if lot three wanted to be on the other two pylons.

Frank Landford confirmed with Chris Parker that they would be similar to the ones across the street.

Bill Colbath asked if each tenant would be allowed one-hundred square feet of pylon sign and asked if each lot could have a pylon sign. He stated that the real request is actually not for area, but only for sharing signage.

Tom Clark stated that it would be for off-site advertising and sharing signage. He stated that he thinks that what they may be asking for is if the third party chooses to have his own pylon sign he would not be on the other two signs.

Peter Russell stated that the third party could share the provided space and would not have to go to the expense of putting up a pylon sign, but he thought that under the ordinance if he came back and said he wants both, he would have the right to ask for it.

Tom Clark stated that he has the right to ask for it, but it does not necessarily mean that it would be approved. He stated that the conversations that he and David had were regarding two parties, the hotel, and the restaurant, he did not know about the third party and stated that they do need to clarify what they are asking for and the third party could not have a pylon, unless you turn to the Board for a variance.

Peter Russell asked if the Board would be approving this on the condition that another lot, that meets all other zoning criteria, could not have a sign on it.

Bill Colbath stated that what this sounds like and what is implied here, is that you would like to have it both ways, you would like to have three vendors on both signs and then allow lot three to erect their own pylon sign, if they wish. He stated that if you want to advertise for the three parties, it should have been part of the application, not to ask if lot one and two can share signage.

Peter Russell stated that he thought he made it clear that they may have three and stated that he was not asking to increase the signage allowed under the ordinance, therefore if you take away the right to put up a sign in the future on lot three, you will unfairly penalize lot three for no reason.

Bill Colbath stated that the applicant is asking to erect a sign with three advertisers on it, in three different places. He stated that at this time, it is only two different places and it would eventually be in three different places, which would be tripling the advertisement. He stated that they should have a clear definition of what they want to do.

David Letulippe stated that he is not asking for signage on lot three, only lots one and two.

Bill Colbath stated that if lot three comes in and requests a one-hundred square feet pylon sign, then lot three would have its own pylon sign, as well as the portion of the other two signs.

Frank Landford stated that if they make that a condition, they would give up their right to the freestanding sign if they want to be on these two pylons.

Chris Parker stated that they are both locating on these two pylons and he would have one more to place and asked if they would be using it on the third pylon or on the building.

Tom Clark stated that when they did the sign amendment they inadvertently deleted a section that now prohibits them from putting a wall sign, in addition to a freestanding sign. He stated that they would be putting that back in, it was left out and it should be allowed to have a separate wall sign. He stated that the way the ordinance is currently written they cannot have one unless a variance is

granted. He stated that the previous ordinance in the B-5 zone, states that you can have a freestanding sign and the sign area shall not exceed one-hundred square feet for the freestanding sign.

Chris Parker stated that overall they can have three signs.

David Ruoff stated that what he thinks they are asking for is a variance for all three lots to have off-site signage.

Tom Clark stated that lot three is not asking to advertise with the restaurant and hotel. If lot three comes in, they would be allowed to have whatever the max is of square footage, if they choose to advertise on one of the pylons, then that will be counted as one of their signs and they are entitled to a total of three.

Bill Colbath stated that on the application it was asked that they have three lots use off-site signage, not to exceed one-hundred square feet per lot, per sign. He stated that they have yet another pylon, up to one-hundred square feet that will have up to three parties on it and they need to clarify the confusion, because they have a third sign in this plan.

David Ruoff asked if under this proposal, could lot one and two, have a third sign with just their name on it located on the building.

Tom Clark answered yes, assuming he receives the second portion of this request.

Bill Colbath stated that each lot is allowed three signs on their property, which would mean the restaurant and the hotel will only be able to have one wall sign and asked if the applicant was aware of the situation.

Peter Russell stated that he was not aware of it and that it would be a disaster and he thought that the ordinance allowed square footage of signage based on the dimension of the building.

Tom Clark stated that you can have a maximum of three signs and if the restaurant were on two pylons, you would have one left to use.

David Letulippe stated that he did not interpret the ordinance as counting the pylons on its property and off its property as the three signs allowed. He stated that his intent was to advertise the hotel and where the entrance was and the restaurant could advertise that it is actually behind the hotel. The sharing would be on the two pylon signs and lot three could have its own sign in the future, with its own name and nothing to do with lot one or two.

Bill Colbath stated that he thinks that what they are asking for is not the same thing the Board thinks you are asking for and the confusion needs to be clarified.

David Letulippe stated that he believes the confusion is with the number of signs and his interpretation of the signs.

Peter Russell stated that in the City of Dover, in the B-5 zone, on the other side of the street they are allowing signage on two pylons, and on both sides of the building.

Tom Clark stated that it is because they are on a corner lot and that is what he was looking into for the hotel, it would raise a separate issue, which is to be allowed signage for each frontage and asked what the timeline was for the signs to be installed.

Mark Landry, Vice President of Lafrance Hospitality stated that the timeline would be in the middle to late May.

Tom Clark stated that he, David, Peter, and Chris should meet to resolve the confusion with the information on the application and what they are actually requesting.

Peter Russell stated that he agreed and would like the Board to understand and resolve any issues that they may have regarding the application.

Richard Callaghan stated that when they do post it publicly, it should be clear for everyone around the area of what you are asking for.

David Letulippe stated that he would like to continue the discussion to the next meeting and asked if anyone had questions, because he felt he would not be able to attend the next meeting.

John Levasseur asked if they could bring a diagram showing where the signs would be located on the building.

Richard Callaghan stated that they should make sure that they have a clear understanding of signage for all of the properties.

David Letulippe announced that he would like to voluntarily withdraw the application and continue the case at the next meeting after he clarifies the questions presented tonight by meeting with Tom Clark and Chris Parker, and make sure that they all have a clear understanding of what they are actually asking for in the application.

Richard Callaghan read a letter of resignation from Tom Dolbec.

MOTION TO ADJOURN

Bill Colbath made the motion to adjourn at 8:45 and was seconded by David Ruoff.

VOTE: U/A

List of Members

Richard Callaghan-regular member
David Ruoff-regular member
William Colbath-regular member
Frank Landford-regular member
Ruth Gorton-regular member
John Levasseur-alternate member

Term Expires

04-13-06
07-18-04
10-23-06
04-10-05
11-12-06
11-12-06