

Dover Zoning Board of Adjustment  
Thursday, February 19, 2004

MINUTES

**Members Present:** Richard Callaghan, Chairperson, Bill Colbath, Vice Chair, Ruth Gorton, John Levasseur, Frank Landford (arrived at 8:12 p.m.)

**Members Absent:** David Ruoff

**Staff Present:** Thomas Clark, Building Official, Steve Bird, City Planner, Jean Glidden, Recording Secretary

Richard Callaghan announced to the general public that four members of the Board were present and the applicants would have the option to be heard tonight or wait until the next meeting.

**ITEM # 1: NEW BUSINESS**

**A. Approval of the minutes for regular meeting of January 15, 2004.**

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

**ITEM # 2: OLD BUSINESS - None**

Richard Callaghan announced that the next case was tabled from last month.

**ITEM # 3:**

**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 permit off-site advertising and 2) 170.32.L to install signage that exceeds the maximum allowed (100 sq ft).**

Attorney Bill Tanguay stated that he is representing the applicant Peter Russell and also present is the developer Mark Landry, who is with Lafrance Hospitality. He stated that they are seeking two variances and discussed the lot line adjustment approved by the Planning Board on May 7, 2003. He stated that this plan created three lots and pointed out that lot one is where the Hotel is constructed and Indian Brook Drive is the access way to the turnpike and Route 108. Lot two is the parcel in the back where the proposed restaurant would be located, it has frontage on Route 108, and frontage on Hotel Drive. He stated that he shows this plan because these lots were created at the same time and the plan shows access over lot three in order to get to lot two and through lot two, in order to get to lot one. He stated that there is an agreement among the owners of those lots to share the cost and expenses, including the costs of maintaining Hotel Drive. He stated that the developer could have created a plaza, similar to the one on the other side of the street, where they would have common ownership and they lease pads of ground where the buildings would be located and if the developer had done that, they probably would not have to seek a variance. He stated that across the street they

have a free standing sign that identifies all the indicators for the tenants who are on the various pads and the signs would have been accepted without the necessity for a variance. He stated that the developer did not choose to do it this way, but the end result is the same, it will be a commonly developed plan, with the only difference being the method of ownership and felt it shouldn't be a determining factor. He stated that on the site plan they are proposing to have two pylon signs, one next to the restaurant parcel, near the entrance to Hotel Drive and one on Indian Brook Road, on the turnpike connector. He stated that the ordinance in Dover states that they can have one free standing sign with a maximum of one-hundred square feet per sign and it states that if you have frontage on more than one street you could have more than one of these freestanding signs. He stated that parcel number one actually has frontage on three streets, Route 108, Indian Brook Drive, and Old Rochester Road and arguably, he could have three of these signs, except that the ordinance says that they could not have a freestanding sign on Old Rochester Road. Lots one and two have the prospect of two freestanding signs and it is an awkward situation with the Hotel parcel having frontage on three streets, but it only has access on one street, the street that cannot have a sign. Lot two could have two freestanding signs, with frontage on Route 108 and Hotel Drive and the only access to this is on Hotel Drive.

Bill Colbath questioned Hotel Drive, as it being a right of way and not a new public city street.

Tom Clark stated that it was printed in Chris Parkers memo that it will be a publicly maintained private road, and it stipulates Public Street, not right of way. Hotel Drive will be privately owned and maintained, but it will be considered a public street for access.

Bill Tanguay stated that they could have four signs, but they are asking for two and they need a variance, not because of the size of the sign, but because they need a sign that would identify all three lots that were created in the lot line adjustment plan. He stated that they want a sign on each of these two lots, similar to the one across the street, which will compliment the common plan and identify the uses of all three lots. He read the Sign Ordinance, Section 170-32.A and stated that if a car was coming from Rochester and traveling along Route 108, you would like them to be able to identify the Hotel as quickly as possible. He stated that they would then start feeling that they have no place to turn around and feel like they are getting on to the turnpike, creating a safety problem. He stated that people coming South on Route 108 should be able to identify both of the locations as quickly as possible. People coming off the turnpike would need to identify both of these uses and would not be able to turn left on Old Rochester Road and they would need to be directed where to go. The stated purpose of the ordinance is that it is a means of communication, done in a way that is safe, attractive, and consistent with the neighborhood. He presented a colored sketch of what they had in mind for the sign and stated that it is much like the signs across the street. He stated that they would like to put at the very top, an identifying sign of what it is, which is The Weeks Crossing Plaza and below it would identify the Comfort Inn, the restaurant and also identify what ever the use is for lot three. They may have some variation between how much Comfort Inn takes of the sign in one location, versus the other location and it would be worked out between the parties. He stated that in the packet they show the restaurant and the location of the signs that comply with what they believe the ordinance intended. You also received a letter from Peter Russell on February 4, 2004, which sets forth the proposed signs in both of these buildings, and you can see that they more than adequately fall within the regulations. He stated that what brings us here, are the wall signs and it is not that they failed to meet the specifications, he stated that he feels it is a typographical error that is contained in the sign review and regulation table. He stated that under the zone B-5, the maximum

sign area is said to be one-hundred square feet and he believes that this is incorrect because they have spoken with Tom Clark and they feel that everything they have done complies with all of the regulations. He stated that he is looking for two variances, the first variance to allow two freestanding signs of one-hundred square feet each, but they need to identify more than one lot on each of these signs. He stated that it is appropriate giving the neighborhood and the unusual locations of these properties and they believe they are seeking the second variance because of a typographical error and asked that the variance be granted.

Bill Colbath asked if they are looking at a third pylon sign for the third lot.

Bill Tanguay stated that they are not here to talk about the third lot or the signage for this lot.

Tom Clark stated that based on the conversations that he and Chris Parker had with David Letulippe and Peter Russell, they wanted to leave the option open for the potential tenant of the third lot. He stated that just in case they would want to be placed on the pylon sign, they asked them to include it in the sketch for off-site advertising, with the understanding under the sign permit that if the third lot goes on this sign, that person would not have their own one-hundred square foot sign. He stated that the user might want their own sign at the same entrance off from Route 108 as opposed to being located on one of the signs presented. He stated that he asked them to leave the option open for a little flexibility, but with the understanding that if the third person has their own sign, they will not be able to advertise on this sign.

Bill Tanguay stated that he does acknowledge that if a freestanding sign goes on lot three, they would have to remove the two signs from the signs presented tonight.

Richard Callaghan asked what happens to the sign that goes on the front of the building. Do they have enough sign allowance left for a sign on the wall of the building?

Tom Clark stated if they get a tenant for the third lot before the City is able to correct the mistake and if that person wants a wall sign in addition to a freestanding sign and the combined total exceeds one-hundred square feet, they would have to come before the Board. The potential third tenant may come in before they can correct this, if it is corrected they can have one-hundred square feet on the pylon sign and the wall sign based on their business frontage.

Richard Callaghan confirmed with Tom Clark that the third lot will automatically have two off-site signs but the understanding is that if they use them, they cannot have their own freestanding sign on their lot.

Bill Colbath questioned where the signs were going to be placed on the building.

Peter Russell stated that each building would have signs on two different walls because they are on corner lots.

Ruth Gorton asked if they would have any type of signage to instruct how to enter the hotel or restaurant off from the turnpike.

Bill Tanguay stated that he felt that what they are trying to do is to identify as soon as they can for someone coming off from the turnpike and they will see the sign for the hotel and restaurant and know where to make the turn.

Tom Clark stated that the hotel is large and with the logo going on the gable end, it is pointing in the same direction and is apparent where the building is located.

**Motion:** Bill Colbath made the motion to accept. John Levasseur seconded the motion.

**VOTE:** U/A

Public Hearing Open

Richard Callaghan asked for staff recommendations.

Steve Bird stated that the Planning Department is in support of these variance requests. The first being off-site advertising, by potentially having all three businesses located on one sign will make for a safer situation for the traveling public and that the situation is no different on the ground then it is across the street at the other plaza. He stated that the second variance, as Tom Clark indicated, was an error in the sign table that was adopted and they support both variance requests.

Public Hearing Closed

Richard Callaghan announced that when they go through the criteria, they would be looking at both variance requests at the same time and noting them separately as listed on the agenda.

**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: (1) Placement of entrances compiled with the proximity to multi-lane roads makes it necessary to allow this request. (2) Clerical error in sign ordinance creates undue hardship.
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: (1) Contributes to public safety and only requires minimum variance to accommodate good signage. (2) Clerical error in sign ordinance creates undue hardship.
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: (1) Keeps the number of signs reasonable for the property's number of businesses. Does not interfere with the traffic or cause any public injustice. (2) Clerical error in sign ordinance creates undue hardship.
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: (1) Signage is consistent with surrounding properties. (2) Clerical error in sign ordinance creates undue hardship.
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:

- (1) Location allows better public information and eases traffic congestion. (2) Clerical error in sign ordinance creates undue hardship.

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

1. If the posting of the third property is not put on the two approved pylon signs, then the third property can put up a freestanding sign, also if the third property uses sign space on the two pylons, they cannot have a freestanding sign.

**ITEM # 4:**

**Z 04-04 Peter & Tara Meserve, 200 County Farm Cross Rd., a/k/a Assessor's Map B, Lot 20-A, zoned R-40, requests a variance from the terms of Article IV, Section 170-12, Table I, Part A, to allow an existing duplex to remain.**

Applicant Peter Meserve stated that he purchased his home in 1986 and it was listed in the multiple listing under multi-family homes as a duplex. He stated that over the past few years he has obtained copies from the Assessor's office of inspections that they did at this location. He stated that they listed it as an apartment in the basement in 1993 and in 1988 and they listed it as a two-family home. The most recent inspection was completed on August 8, 2002, he has always paid taxes as the home being a duplex, and it is noted on the tax card as being a duplex. He stated that they did refinance the home on two different occasions and it was listed as a legal conforming structure. He stated that about six months ago, they went to refinance and they were told that a building permit was never obtained to convert the home to a duplex, and it was listed as an illegal non-conforming structure, so it is being held up for the refinancing of the home. He stated that they did purchase the home as being a duplex and has not changed anything or done anything illegally. He stated that he has always allowed the inspectors to come in to do the inspections as a duplex.

Tom Clark stated that Mr. Meserve and his wife are innocent bystanders and that they did inherit this problem. He stated that in an R-40 zoning district, you could legally convert a single family to an additional dwelling unit, if the house was first constructed in May 1964. They tracked back to see if that would work for the applicant, but the parcel was not created until April 1965. The first tax record that they found was in 1966, the foundation was constructed by itself, and it appears that the first owners lived in the basement as they were constructing the second floor. He stated that the dwelling was completed in 1970 and eventually it became a second unit with the former owners of the property and the applicant has to come before the Board to get it legalized.

Ruth Gorton confirmed with the applicant that it was rented out to another family.

Richard Callaghan asked if he had copies of the inspections that were completed at his home.

Peter Meserve stated that he did not have copies.

Tom Clark stated that he could locate the copies from the office and place them in the file.

**Motion:** Bill Colbath made the motion to accept. John Levasseur seconded the motion.

**VOTE: U/A**

Public Hearing Open

Richard Callaghan asked for staff recommendations.

Steve Bird stated that they are not opposed to this variance request and the second unit has existed for more than thirty years and feels that enforcement of the ordinance would serve no public purpose. The only recommendation that they would make is that since the second unit has not legally existed until this time, it might benefit both the City and the owner if they could obtain a certificate of occupancy.

Public Hearing Closed

John Levasseur stated that it has been used as two units for a number of years and it is obvious that it is serving a useful purpose.

Bill Colbath stated that he agreed, since no complaints were made to the Building Inspector prior to the variance request.

**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: Duplex has existed for thirty years and to force compliance would be needless and unnecessary.
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: It will allow applicant to continue present lifestyle in the same manner.
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: It is an allowed use.
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: Has been in existence for thirty years, there will be no change.
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: No additional impact of private or public interests and maintains a living unit.

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

1. Applicant must obtain a certificate of occupancy.

**ITEM # 5:**

**Z 04-05 Jum Lyndes, 24 Sunny Brook Dr., a/k/a Assessor's Map I, Lot 30-B-13, zoned R-40, requests a variance from the terms of Chapter 126, Section 126-5.F to construct a manufactured home within approximately fifteen (15) feet of a front property line where a minimum of twenty (20) feet is required.**

Applicant Jum Lyndes, resides at 14 Alder Lane and stated that he purchased the land in February 2003 and spoke with Tom Clark to see what size house could be placed on this property. He stated

that he was approved to place a 24 x 48 doublewide mobile home on the property and that he got the land surveyed to accommodate the mobile home. He stated that he hired Ron Hutchins to construct the house and when the footings were poured and it was inspected, he received a phone call from Tom Clark stating that it was set incorrectly on the lot and stated that Ron Hutchins could explain what happened with the foundation.

Ron Hutchins, resides at 24 Wentworth Terrace, stated that he was doing excavation work for the foundation and stated that when the surveyor set the stakes out on the front setback line, he did not realize that they were placed as a curve and not a straight line. He stated that the beavers caused the wet area in the back to be a lot lower than what was originally on the plan and if he pushed it back further, it would encroach more in the wetlands. He stated that in the original plot plan it looked like they had room and that is why the City gave him a permit, but the existing conditions are different from the original subdivision. He stated that he is asking for a variance for the front setback and presented pictures showing the property and the footings.

Richard Callaghan confirmed with Ron Hutchins that the line showing the wetlands is farther forward than on the original drawing.

Ruth Gorton asked if the lot has been filled in and asked why the land drops off.

Ron Hutchins stated that some of it was filled in because it was an old pit and that he had to haul out fourteen loads of stumps. He stated that where the location of the home is, he had to dig out below the bottom of the home and refill with ledge to bring it back for a stable spot for the home. He stated that in his judgment he feels that it was the best spot that he could locate the home.

Richard Callaghan confirmed with Tom Clark the wetlands moving closer to the home.

Bill Colbath confirmed with Tom Clark that each unit is individually owned and confirmed the bulk of the lot being defined as wetlands.

**Motion:** Bill Colbath made the motion to accept. John Levasseur seconded the motion.

**VOTE:** U/A

Public Hearing Open

Richard Callaghan asked for staff recommendations.

Steve Bird stated that this is an unfortunate situation, but it is one reason why they require a foundation certification before they get too far along to catch these types of mistakes. He stated that they are against this variance request, because both the owner and the contractor knew what the setback requirement was, the subdivision plan shows the setback being an arch not a straight line, there are locations on the property where this size foundation could be placed and still meet the setback requirements. He stated that he feels that it does not meet the test for a variance, the solution would be to do it correctly, and it was a mistake made by the contractor, so they are not in favor of this variance request.

Public Hearing Closed

John Levasseur asked how much of the foundation was completed and stated that even right now the foundation is very close to the swamp.

Ron Hutchins stated that they did not have the floor completed, just the footings. He stated that he did not think they could move it back further, because they would be encroaching even more on the wetlands.

Bill Colbath stated that they should look at it as a group and think of it as if someone who would come forward with this request and ask to move it forward into that piece because of the wetlands in the rear of the existing lot and would they have said yes or no. He stated that he thinks that they would arguably say "yes" because of the extensive amount of wetlands and the building envelope is limited.

John Levasseur stated that he did not think the five feet would do it, he stated that it was very wet and by looking at the lot, he did not feel there's enough room on the whole lot to construct a house.

Steve Bird stated that the size of the foundation was a choice of the owner and he could place a singlewide trailer on this lot.

Ron Hutchins stated that the home is already purchased and it is waiting to be moved on the property.

Richard Callaghan stated that what he is looking at is, it is not the whole building that is over five feet, it is a small part of the building that would be inside that five-foot range and gets smaller inside the arch. He stated that if he were to present an argument about where he wanted to put the building on this property, he would think they would ask for some yard space in the front.

John Levasseur asked Tom Clark if he knew what was underneath and if he is allowed to put a foundation because of the wetlands.

Tom Clark stated that he could have the foundation.

Ron Hutchins stated that he brought in eleven loads of ledge in the bottom of the hole.

Bill Colbath asked if it was something that has to be corrected.

Tom Clark stated that he felt it was a stable location for the footings, going by Ron's description and felt it should be under control.

**FIVE CRITERIA:**

1. It is the Board's conclusion that if the applicant complies with the strict letter of the ordinance he/she does (John Levasseur and Ruth Gorton does not) face an unnecessary hardship. This conclusion is based on the following findings of fact: The wetlands consume a lot of land leaving a small building envelope.

2. It is the Board's conclusion that, if granted, the variance will (John Levasseur and Ruth Gorton will not) deliver substantial justice. This conclusion is based on the following findings of fact: Will allow reasonable use of the lot.
3. It is the Board's conclusion that, if granted, the variance will (John Levasseur and Ruth Gorton will not) be in harmony with the spirit and intent of the zoning ordinance. This conclusion is based on the following findings of fact: Allow placement of the building without encroachment toward neighbors, only toward cul-de-sac.
4. It is the Board's conclusion that, if granted, the variance will not (John Levasseur and Ruth Gorton will) result in diminution in value of surrounding properties. This conclusion is based on the following findings of fact: The private road is the only affected abutter.
5. It is the Board's conclusion that, if granted, the variance will not (John Levasseur and Ruth Gorton will) be contrary to the public or private interests or rights. This conclusion is based on the following findings of fact: The variance requires a maximum of five feet at one point and declines in a radius across the front. The cul-de-sac situation allows for this without impact on the public.

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

**ITEM # 6:**

**Z 04-06 Daniel Ayer, 160 Back Rd., a/k/a Assessor's Map N, Lot 21, zoned R-40, requests a variance from the terms of Article IV, Section 170-12, Table I, Part A. to allow a duplex to be converted into a three-family dwelling.**

Applicant Dan Ayer resides at 10 McKone Lane, which is to the rear across the field from this property. He is requesting a variance to change a two-family dwelling into a three-family dwelling on 2.29 acres. He stated that the home was converted to two units in 1993 and there has been on going construction since that time. The purpose of the duplex was to build a home to the rear, while his daughter and her husband went to college. In the area of this particular home, they have different mixes of uses, such as the radio station, elderly assistant housing, and home business farms. He stated that he studied Article IV of the existing ordinance, which indicated a use of not only two families, but also three and four family homes in an open space subdivision, which is now mandated in the R-40 zone. He feels that the language in the ordinance does permit two, three, and four family houses and he does not feel it would diminish the value of surrounding properties. He stated that he spoke with the abutters and stated that they were in favor of his request and presented a document with five signatures in favor of the conversion to a three family dwelling unit. He presented some pictures to indicate that he was not asking for a commercial apartment building and feels that architecturally it does fit in with the buildings around it.

Richard Callaghan asked why he states it is due to recent construction. What was the actual intent of the construction that makes it convenient to convert it to a three-family dwelling?

Dan Ayer stated that he took the permit out in 1993 to build an apartment for the backside of the existing building. He stated that he had a discussion with Tom Clark and mentioned having an in-law apartment as part of this complex and Tom suggested that he would need a variance.

Frank Landford confirmed with the applicant the three structures being inter-connected and asked where the units were located by looking at the pictures presented.

Dan Ayer stated that they have an existing unit over the garage and a unit in the front.

Tom Clark stated that when the permit was first issued the front addition was to be added living space to the small original home.

Dan Ayer stated that over time he believes that the ordinance allows two, three, and four family homes in the R-40 zone under certain conditions.

Steve Bird stated that this is only allowed in certain special circumstances, it would have to be part of an open space subdivision that has a minimum of fifty acres and under that circumstance, a commercial component is allowed which also includes three or four dwelling units.

Dan Ayer stated that he is pointing that out and while he is not proposing an open space subdivision, he has an abutting neighbor that could and is not asking for something that would not be allowed to others.

Bill Colbath stated that he does not understand how he connects his lot being treated as an open space subdivision, when he only has 2.29 acres and he confirmed with Steve Bird the ordinance of being able to have more than one, three or four family dwelling, not just one single unit in a fifty-acre open space subdivision.

Steve Bird stated that the overall density is going to be regulated by the number of lots that you can get in a conventional subdivision. He stated that there is a limit to how much of an open space subdivision can have a commercial component on it and did not want the whole thing to be multi-family or commercial, so it limits the area to a third.

Frank Landford asked how large the lot is behind him that he owns.

Dan Ayer stated that it was about twenty-seven acres.

**Motion:** Frank Landford made the motion to accept. John Levasseur seconded the motion.  
**VOTE: U/A**

Public Hearing Open

Richard Callaghan asked for staff recommendations.

Steve Bird stated that the Planning Department is not in favor of this variance request, the owner already has a reasonable use of the property that is actually greater than most of the neighboring parcels. The majority of the parcels in the neighborhood are still single-family homes, they do have a few commercial uses, like the radio station, but the majority of the parcels in the immediate area are still single-family homes. Some of them could be turned into duplexes, if they were older than 1964, but none of them could be converted into a three unit building without a variance. He stated that the three or the four units that is allowed under the open space subdivision regulations are only allowed in limited circumstances, you would have to have fifty acres, and it can only be a small component of that overall plan development, it would have to be an overall planning of that large parcel. In this

case, the three units would be on a separate lot that is substantially smaller than the required code, it would give this property owner more rights than similarly situated lots in the area, and they are not in favor of the variance.

#### Public Hearing Closed

Frank Landford asked what the plans were for the three units and confirmed that they would be rental units.

Dan Ayer stated that the third unit is not that he wants something that nobody else can get or not that he wants to oppose the wishes of others. His interest in getting the third unit is that he will end up with one apartment with two bedrooms and the other apartment will be seven to eight bedrooms. He stated that he and his neighbor prefer that he be allowed to have three, two bedroom apartments, instead of one unit having seven bedrooms. He stated that presently one of his sons is living in one of the units, he built the other unit for his daughter and her husband, and he would like to finish construction on the proposed third unit. He stated that it is a slight chance that if he had three units he may occupy one, he has the thought that if one of his children were in one, he could occupy the other as an in-law apartment. He stated that he is looking to downsize and he spends a fair amount of time out of the area and it was a thought he had and could not say that it would actually happen.

Bill Colbath asked if he was correct in the assumption that this all grew out of the one small house in the front.

Dan Ayer stated that in the sequence of construction, the foundation was built entirely to the back. He stated that if you look at the picture, you have the small blockhouse up front and the footings went from that house all the way to the back unit. While the back unit was physically being built and occupied, he moved up front and connected the building between them.

Frank Landford stated that if it were to be granted he would have some conditions. He stated that he would make sure it could only be three, two bedroom units, with no more construction on this lot.

Richard Callaghan asked Tom Clark what has to be done when you convert to a three-family dwelling.

Tom Clark stated that the fire rating would be able to be down graded to one hour, because a sprinkler system is required in three units.

Dan Ayer stated that it does have a sprinkler system at this time and without having the variance granted, he would be in position to either leave things the way they are and leave the blockhouse vacant or the other option would be to take the kitchen, living room, and dining area and make it all into bedrooms.

Richard Callaghan confirmed with Tom Clark that two-hundred square feet was allowed per person.

Tom Clark stated that he thinks they have enough area, but the issue is that as Dan stated, it is self created and he did such a large addition up front but the intent was that it was going to be a house and the ordinance does allow the conversion if the original house was constructed prior to 1964. If

the main house is that large, then it is not out of scale to add the second unit over the garage and that was the original intent to have the front house as a dwelling unit.

Dan Ayer stated that if the variance were granted, he would end up with two, two bedroom apartments and one, one bedroom apartment, which would be the blockhouse.

Bill Colbath confirmed that the original permit was issued as a building permit to convert an existing dwelling to a duplex and asked Tom Clark if he was able to do this without a variance, add to the existing dwelling to convert it to a duplex.

Tom Clark stated that yes, you can, but that is one of the things that is a very liberal interpretation of that regulation in years past. He stated that for instance, if you had a house of fifteen-hundred square feet and you wanted to convert it, you could technically come in and get a building permit for an addition. When you come back in a year or so and if the original house was constructed prior to May 1964, you could convert this twenty-five hundred square foot house to a duplex. He stated that they would issue a permit and if you came in and said you had a fifteen hundred square foot house and now I want to build a five-thousand square foot apartment on to it, in his mind it would go against the intent, which is to convert the existing dwelling to accommodate one more unit. He stated that this was done because the front addition was adding to the original house, so now you have the original house and the apartment being over the rear-attached garage. He stated that they did have a floor plan and it was a nice configuration with the original blockhouse tied into this wood framed addition and the apartment over the garage in the rear.

John Levasseur asked the applicant if he would occupy one of the three units.

Dan Ayer stated that it was a possibility, but he could not state it as a fact. He stated that his son lives in one and the other one is rented. He stated that he and his wife spend some time out of the area and this would be a small place for them to go while they were in the area.

Bill Colbath asked if he already had three kitchens installed.

Dan Ayer stated no, he has an existing kitchen in the apartment over the garage, and one in the front part. He stated that they do have a proposed kitchen in the addition, but it is not installed, it is wired and plumbed, but it is not sheet-rocked.

Tom Clark stated that the intent being, with the original permit, was once this new kitchen was constructed, then the original house would be renovated and would remove the old kitchen.

Richard Callaghan stated that he has a hard time with the hardship on this case.

#### **FIVE CRITERIA:**

1. It is the Board's conclusion that if the applicant complies with the strict letter of the ordinance he/she does not face an unnecessary hardship. This conclusion is based on the following findings of fact: Already has greater use than the neighbors and has adequate living space.

2. It is the Board's conclusion that, if granted, the variance will not deliver substantial justice. This conclusion is based on the following findings of fact: Would allow more rights than other properties in the proximity.
3. It is the Board's conclusion that, if granted, the variance will not be in harmony with the spirit and intent of the zoning ordinance. This conclusion is based on the following findings of fact: This is a single-family neighborhood and a three unit would greatly contradict the zoning.
4. It is the Board's conclusion that, if granted, the variance will (Richard Callaghan voted will not) result in diminution in value of surrounding properties. This conclusion is based on the following findings of fact: By allowing a three unit, the applicant would be allowed greater privileges than the neighbors would, and an additional living unit might increase traffic flow, etc.
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: Violates privacy of neighbors, increases population density, and is biased towards the applicant.

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

Tom Clark discussed the handout that was in the packets from George Wattendorf regarding a ZBA case that was upheld by the Supreme Court. He stated that they could review the proposed changes to the ZBA application that David Ruoff presented and could schedule a workshop earlier for next month. George Wattendorf, the City Attorney would be happy to come in to discuss any questions that you may have regarding the Supreme Court decision and could also answer any questions or provide some input before you vote on the proposed changes to the ZBA application and order form.

Richard Callaghan stated that he thought that would be an excellent idea.

Tom Clark stated that they could schedule a workshop at 6:00 pm at the meeting in March and start the meeting at 7:30 pm to ensure that the items would be reviewed adequately or they could schedule a separate day for a workshop.

Richard Callaghan stated that it would be better for him to be here earlier than to schedule on a different day and confirmed with Tom Clark that they could see how many cases they have and schedule a workshop on March 18, 2004.

### **MOTION TO ADJOURN**

Bill Colbath made the motion to adjourn at 9:35 and was seconded by John Levasseur.

**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