

Dover Zoning Board of Adjustment
Thursday, March 18, 2004

MINUTES

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

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

WORKSHOP SESSION

The Board met at 6:30 p.m. to review the variance application form and the order form and make the necessary changes to reflect the discussion of land use issues.

ITEM # 1: NEW BUSINESS

A. Approval of the minutes for regular meeting of February 18, 2004.

Richard Callaghan stated that he had some corrections to make on the minutes. The changes are on page 6, 7 and 12.

Motion: Ruth Gorton made the motion to approve the minutes with the recommended changes.
John Levasseur seconded the motion. **VOTE: U/A**

ITEM # 2: OLD BUSINESS

Richard Callaghan stated that he received the registration form for the New Hampshire OEP and was interested in the Zoning Conference. Tom Clark stated that if any of the members were interested that they could submit the registration forms to the office.

ITEM # 3:

Z 04-07 Ronald Huml, 126 Durham Rd., a/k/a Assessor's Map 3I, Lot 18-1, zoned R-20, requests a variance from the terms of Article II, Section 170-6, definition of accessory structure, to construct an accessory structure (garage/storage) on a vacant lot.

Applicant Ronald Huml resides at 199 Mast Road. He stated that he has a vacant lot consisting of 1.17 acres and would like to build a storage building to house his vehicles, antiques and woodwork equipment from his present location. He stated that he was under the impression when he bought his property that he would be able to build a storage building prior to building a home. He stated that he is requesting a storage building and would like to prepare his home for sale in order to move in a smaller residence that he is going to build on this property at 126 Durham Road within a two-year period. He stated that it would depend on the sale of his current property and he would not have water or sewer in this building, just electricity and heat. He stated that it would be a two-story barn style building, which is the same as the neighbor's house and asked that the variance be granted.

Bill Colbath asked why he had so many antiques.

Ronald Huml stated that he used to be in the business, worked at a hospital part time, and had an antique shop in Michigan and this is a hobby. He stated he is seventy-three years old and two years ago he had surgery and suffered a stroke and it keeps him active at his age. He enjoys it and does not do it as a business for people, although he does have authority from the City to have antique sales in his garage at his current residence.

Ruth Gorton asked if he would be selling the antiques from this site.

Ronald Huml stated that he would not at this time, when he builds his residence at this site he will probably ask for authority for this building to be antique sales, it will strictly be a storage building at this time.

Richard Callaghan asked what he was going to do for the residence, where it would be on the property and asked if he would need any variances in order to have the house on the lot.

Ronald Huml stated that he is placing the storage barn on the east side of the property and the house would be on the west side of the property. He stated that the house might be 28 x 48-ranch style home and stated he would not need any variances.

Tom Clark stated that he would need to be careful because when you have an accessory structure you have to maintain a distance between your house and the accessory structure equal to the height of the barn. He stated that he thinks he has enough room in the building envelope to do it.

Ronald Huml stated that he would check it and make sure it complies.

Motion: David Ruoff made the motion to accept. Ruth Gorton seconded the motion.

VOTE: U/A

Public Hearing Open

Shirley Barrett abutter at six Hemlock forest stated that when she moved at this location she was under the understanding that it was wetlands and nothing could be built in that area. She stated that it is being leveled, and they used to have trees all around that area. She stated that she called the office to see if there was an ordinance for hours of operation on the weekends. She stated that early in the morning on Saturday and Sunday, heavy equipment and chainsaws were being used and the person that she spoke with at the office said that they did not know and did not appreciate the noise going on in the morning. She stated that none of the abutters at Hemlock Forest were notified and the only reason they knew of the meeting tonight, is that she called to complain about the noise with the property next door.

Chris Parker stated that Douglas Anderson is listed on the abutters list for the Hemlock Forest Townhouse Association.

Richard Callaghan stated that it was mailed back, as not deliverable as addressed, unable to forward.

Shirley Barrett stated that she has never heard of this name and she has lived at this residence for ten years.

Jeff Casebeer, abutter at 19 Hemlock Forest stated that he is a member of the condominium association and that the management company did not receive any notification and Douglas Anderson is not a familiar name to him. He stated that he went into the state statutes online regarding wetlands management and felt they should have been notified and is concerned with hazardous materials or containments stored at this facility. He stated that the applicant mentioned that the structure would not have any sewer lines, but is wondering if he will have any furniture stripping.

Bill Colbath asked if the condominium association has an address to receive mail.

Jeff Casebeer stated that it is 31 Hemlock Forest.

Tom Clark stated that it is the applicant's responsibility to give us a list of the abutters as they are listed in the tax records. He stated that he could not imagine Mr. Huml invented this name, this is probably the name and address listed on the tax records in the Assessor's office, and any tax bill for common land would go to that address.

Jeff Casebeer confirmed with Tom Clark the name and address that was recorded for notice and he that 116 Durham Road is the entrance address for Hemlock Forest. He stated that they have allowed condominium associations to use their unit numbers as an address.

Jeff Casebeer stated that they do have a unit 16, but has never heard of a Douglas Anderson, and the person at number 16 has been living at this location for two and half years.

Chris Parker stated that they would need to follow up with the Assessor's office.

Tom Clark stated that as far as the proceedings go, Mr. Huml did do what state statute says you have to do. He stated that if it is an internal addressing error, he does not feel it is enough to justify postponing the hearing, especially since the abutters are here, it may have not been the proper way to notify them and that they will follow up on this in the Assessor's office.

Chris Parker stated that they do apologize for the mix up and will follow up on this issue.

Jeff Casebeer asked if this was going to be a business. He asked if they would have a traffic assessment and asked about the wetlands on the property.

Richard Callaghan stated that if a person wants to run a business they would have to apply to the City, depending on the size of the business. If he were giving a variance to have a business, he would have to meet with Technical Review Committee. He stated that the map presented by the applicant shows the wetlands on the property and what he is proposing is not in the wetlands.

Tom Clark stated that they do have a change, that now establishes a 50' buffer from the wetlands boundary, but this lot predates that regulation. He is grandfathered from the buffer zone, but he is not impacting the wetlands.

Ruth Gorton asked if she understood correctly from Shirley Barrett that the wetlands were being filled.

Tom Clark stated that she did say that, but Mr. Huml did go to the Conservation Commission with this plan.

Ronald Huml stated that the Commission did disapprove a plan that showed the driveway going over the wetlands and asked him to come back with a different plan and comply by going through the high ground. He stated that in reference to the abutter's concern at six Hemlock Forest he does not have any heavy equipment being used. His son owns the property and he is clearing it out with a small chainsaw. He works all week and the only time he can clear his property is on the weekends and none of the equipment or clearing was being completed on his property. He stated that his property cuts off at the first condominium.

Susan Barnes at 24 Hemlock Forest stated that she is also on the condominium board and is concerned with the lighting. She does not want bright lights at this location and is concerned with the noise level with tractors being used.

Richard Callaghan read a letter that was submitted by John McPhee, abutter at 137 Durham Road. He stated that he was concerned and wanted to make sure a home would be built on the property and would like to be assured that this will not be used for any kind of business in which the front of his house would become a parking lot on the weekends.

Chris Parker stated that the Planning Department is against this variance request and they feel the request is abnormal and they do not want to set a precedent of people building accessory structures and then a promise of building a home. As you know, a variance goes with the land not the person, so he could sell the lot in a year and not come through with building the home. If he sells it, the new owner would have a huge barn and may not want to build a house. He stated that it sets a bad precedent. If they get the variance, they could set a condition that they would have to come back within two years if the house has not been built and ask for a new variance to continue.

David Ruoff stated that he felt it should have been an appeal from an administrative decision, rather than a variance and stated that a principal building is not defined anywhere. He stated that he understands the logic that if there is no principal building, then there can be no accessory structure because if it is the only building on the lot it would have to be the principal building, but it is not defined anywhere. What is the variance that he is requesting relief from, is it the use variance, because they cannot have a storage facility in that area?

Tom Clark stated that it is to allow an accessory structure without a principal structure on the lot and it was suggested to Mr. Huml by Tom Clark and Steve Bird that he should have also gone for the administrative appeal and if it fails you can ask for the variance request. He stated that Mr. Huml spoke with Steve Bird and when you read the definition of accessory structure, he felt it was difficult to say that the Building Inspector made a misinterpretation of how it is written, that is why he opted not to do the appeal to an administrative decision.

David Ruoff asked where in the zoning ordinance it says you cannot have an accessory structure on your lot and why are they not here for a different type of variance.

Richard Callaghan asked why he could not just build a barn on his lot. Why do you call it an accessory structure?

Tom Clark stated that you have to classify it as something and it is in the table use regulations. When you look at it and administratively you can attach a condition, but they were not comfortable doing that, he was looking at the table of use regulations, and if you go down the uses, it is up to the applicant to prove that he meets that. If you are talking about a barn or a warehouse facility, none of those things is allowed in an R-20 zoning district. Ultimately, if built, it would revert to an accessory use.

Richard Callaghan confirmed that even if you were to call it a storage facility in a residential area, ultimately you know that it is going to be an accessory structure. He stated that it would be better if the plan included the residence and accessory structure with a contract commitment to make all this happen, so that you don't have a lot with just a building on it, there may have to be some commitment above and beyond the applicant's personal obligation to commit to that process.

Tom Clark stated that they have to call it something, if you do not call it accessory structure, you could call it a storage building and if you look in the table use regulations, you cannot build a storage building in the R-20 zoning district. He stated that it would be an accessory structure, because that is what Mr. Huml has stated its purpose to be. It must stay accessory to the principal use, but how do you hold him to that.

Ronald Huml stated that in response to the question regarding the lighting, he is quite the distance from the condominium buildings and they have quite the forest in between them. The lights would be no different from what would come out of a house.

Chris Parker stated that his thought is if someone wants to have a storage bay, his fear is that where the applicant stated that in two years his health may not allow him to run it as a business. How can they know that in two years your health is not going to prevent you from building a house on that lot?

Ronald Huml stated that even if his life ended, the other house is too big and his wife would have that house built because it is next door to their son and she wants to be close to relatives. He stated that he does not mind a commitment within two years that a home will be built on that lot. He cannot afford right now to pay taxes on two houses and he needs to wait until he sells his home. In response to the letter presented by the abutter at 137 Durham Road regarding the hazardous materials, he stated that all he does is repair wood. He does not have a dip tank and he does not use a remover, if there is any removal at all, he uses a citrus remover. He stated that the noise from the tractors have been present since his son owned the property and he uses it all of the time and he owns nine acres and feels he has the right to use a vehicle on his own property and is trying to clean up the property.

Frank Landford confirmed with Mr. Huml that the trees that have been cut down or cleared are on his son's lot.

Tom Clark stated that they have to make a distinction between a business, as someone might perceive it to be and a customary home occupation, which Mr. Huml has, so the principal use is residential.

Ronald Huml stated that he understands what Mr. Clark is thinking and he wishes he would have known that he could not have an accessory structure, he would not have all of the antiques that he has right now. He was under the assumption that he could build a building.

Public Hearing Closed

David Ruoff stated that the abutters were present, so he does not feel that there is a procedural reason why they cannot go forward with the case. He stated that the City may be at fault and the applicant did comply with what he was asked to do and he is still wrestling with why he needs a variance, he understands all of the issues and would like to see something in code explaining why he cannot build the structure.

Richard Callaghan asked if they showed the proposed dwelling on the plans if that might be helpful.

Bill Colbath stated that the storage building could be a principal structure, but the principal use of that structure being storage seems to be the block.

Tom Clark stated that if you say he could build a storage building in an R-20 zoning district, he thinks that by calling it accessory to the principal use, you are still linking it that it cannot be used as commercial storage, if you just say storage, it is open ended and you then are allowing a use variance.

Bill Colbath stated that his interpretation is that if it contains storage, and he owned the lot beside it, and wanted to build a garage on this lot, would you still have the same argument.

Tom Clark stated that what he would ask for is that you would have some type of a merger to combine the lots. It is clear that it has to be on the same lot as the principal building to be an accessory structure. It would have to classify as something in the ordinance that it is an allowed use and that is the applicant's responsibility to do that.

Bill Colbath stated that if he came in for a building permit without telling you he was not going to put anything inside this building, it would not classify as a principal structure. He stated that the sole obstacle is not based on the use that the building is going to be used for; it is that the building is being constructed without a primary residential structure.

David Ruoff confirmed with Tom Clark that the applicant is trying to pass a variance that fits this building into the definition of accessory structure. He stated that he still does not feel that this is not an appeal from that decision, but he does not know if they have the authority to read it into the definition.

Chris Parker stated that if he built a barn on the first floor and residential on the second floor, he would not have to ask for this variance. He stated that the fact that he came in and said it is going to be an accessory structure to a primary structure, and he does not show the primary structure on the plan. He stated that he might not build the structure and that is the problem.

Ronald Huml stated that if he made the promise that, he builds the two-story garage in 2004 and a residential home in 2005-2006 and it is approved under that basis and if he does not build it, he could shut it down.

Bill Colbath stated that he thinks if he went to the Building Inspector, with a plan that said "I am going to build a garage and my house and you would like to build the garage first, that would house the tools to build the house," you would not have to be here. He stated that he does not understand why the order of construction is a crucial issue, as long as he has a guarantee of completion.

Tom Clark stated that as long as you begin construction within six months of the date when issued and do not abandon the project for six months, the permit would still continue as long as the construction continues.

Chris Parker suggested that if you issue a permit, you could add something that says if the project is not finalized in three years, he would have to agree to remove everything in the building until the house is built.

Bill Colbath confirmed with Tom Clark that a variance is not required if it is done in that format and it is not necessary because he has other options. He stated that he is not going to grant a variance for an accessory structure without seeing a plan for the house, but if he submits plans showing the house he would not need a variance and may receive his permit.

Richard Callaghan asked Mr. Huml if he understood what they were talking about and if he was to decline this variance tonight, you could attach your plan with your house plans, bring in the required plans, and apply for a permit for the house and barn together it would be in compliance.

Ronald Huml asked what would happen if he did not build the house.

Bill Colbath stated that if he is not going to build a house in two years, you should not apply and you would not get a variance to construct a barn.

Ronald Huml stated that he is going to build a house on this lot.

David Ruoff stated that the applicant might want to withdraw the application.

Ronald Huml stated that he wants them to go ahead and make a decision.

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: The requested can be achieved through application with specific requirements.
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: It is an accessory structure and the applicant cannot be held to a commitment to build the principal residence.
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: Allowing the structure would be inconsistent with the ordinance.
4. It is the Board's conclusion that, if granted, the variance will result in diminution in value of surrounding properties. This conclusion is based on the following findings of fact: If the principal structure were not built, it would make the accessory structure non-conforming.

5. It is the Board's conclusion that, if granted, the variance will be contrary to the public or private interests or rights. This conclusion is based on the following findings of fact: It would allow construction privileges not given to others in the zone or proximity.

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

Ruth Gorton announced that she would be stepping down for the evening and would be leaving at 9:00 p.m.

ITEM # 4:

Z 04-08 Kevin Kelley, Trustee of the Strafford Trust, County Farm Rd., a/k/a Assessor's Map E, Lot 32-4, zoned ETP, requests a variance from the terms of 1) Article IV, Section 170-12, Table I, Part A, to permit a four-lot, single family residential subdivision; and 2) Article V, Section 170-16 to create a lot with an area of approximately two (2) acres, where a minimum of three (3) acres is required.

Attorney Charles Griffin stated that he is representing the applicant and stated that Kevin McEneaney from McEneaney Survey Associates is also present. He stated that he has packets to distribute to the Board, which he will be referring to through the course of his presentation. He stated that this is a request for a series of variances in connection with a proposed subdivision of Mr. Kelley's property to create four single-family lots. Exhibit 1 in the packet is the subdivision plan that has been prepared by Kevin McEneaney. Lot 1 has 1.95 acres and 323 feet of frontage on both Watson Road and County Farm Road. Lot 2 has 3.11 acres and has 150' frontage on County Farm Road, lot 3 contains 5.56 acres with 150' frontage on County Farm Road and lot four contains 3.15 acres and has 150' frontage on County Farm Road. The property is currently within the ETP zone. Mr. Kelly acquired this property in 1985 and at that time was zoned R-40 and it contained approximately twenty-five acres, which included a farmhouse at the intersection of County Farm Road and Sixth Street. In 1986, Mr. Kelley obtained approval for a five-lot subdivision. He sold two of the lots in 1987 and then retained twenty acres with the farmhouse. He sold the farmhouse in 1988 and approximately ten acres of land that left him with the thirteen acres that he has now. Exhibit 2 is copies of the deed reflecting those sales. His plan was to subdivide the remaining thirteen acres. In 1987, the City rezoned his land as well as the land lying between the Spaulding Turnpike and County Farm Road to ETP and that zoning was over Mr. Kelley's objection.

David Ruoff asked if he had any record of that objection.

Attorney Griffin stated that he has a letter that he will be introducing later on, that he sent to the Planning Director a couple of years ago, which he indicates that he did object at the time.

Kevin Kelley stated that he is not sure if they keep the minutes of the meeting when the City changed the zoning to ETP. He stated that he did speak in front of the committee stating that he was against it.

Attorney Griffin stated that the property was zoned ETP to attract research, high tech office and manufacturing uses to the site. In the seventeen years since Mr. Kelley's property and the other property has been rezoned ETP, the only use that has been located in that area is Liberty Mutual. There is an engineering company and a veterinary clinic, both of which required variances in the ETP zone. After the property was rezoned, the City of Dover acquired a parcel of real estate across the street, within 1000 feet of the applicant's property and created Enterprise Park. He stated that this has

been in competition with Mr. Kelley's property and it is his understanding that the City has additional land across from his property, which will be an expansion of Enterprise Park and would be in further competition. He stated that over the years, there have been several developers that looked at the Kelley property, but they ultimately purchased land somewhere else, frequently in Enterprise Park. He stated that there are conditions of the property, such as extensive wetlands. Mr. Kelley finds he is unable to use his property for the purposes permitted in an ETP zone and is seeking these variances. He stated that as far as the terms of the requirements for the granting of the variances there will be no diminution in the surrounding properties.

Exhibit 4 is a letter from Ellen Leighton of Caldwell Banker and she is a realtor with over twenty years experience. She indicates that Mr. Kelley's property would be most desirable as residential building lots. If the variance were granted it would not be detrimental to the neighboring properties as there is a predominance of single-family homes in the immediate area. Exhibit 5 is a few photographs that show several of those existing homes along County Farm Road and Watson Road. The proposal is to subdivide the property into four single-family residential lots, three of the lots will have acreage in excess of the three-acre minimum required for the ETP zone. The fourth lot contains just less than two acres and is well in excess of the 40,000 square foot requirement for property in an R-40 zone, which as previously noted represents the dominant use along County Farm Road and a portion of Watson Road. The dominant use in the area is residential in nature; the lots are proposed to sell within the \$100,000 to \$125,000 range per lot. These houses when completed could sell for \$400,000 to \$500,000 range and would enhance the value of the surrounding properties. Granting of the variances would be in the public interest as there continues to be a demand for high quality single-family residences in Dover.

Exhibit 6 is a letter from David Sullivan and he owns the farmhouse on the corner of County Farm Road and Sixth Street. It overlooks Mr. Kelley's property and he indicates that he supports the requests for these variances. He stated that Mr. Kelley brought a document titled, "consent to variance application of Kevin Kelley Trustee," and stated that he has three of them to submit and from the abutters. The document states that they have no objection to the variance request filed by the applicant to create four-residential house lots on real estate along County Farm Road, between Sixth Street and Watson Road. It is preferred, as apposed to the business and office park use, permitted in the existing ETP zone, and presented the originals for the file. Granting of the variances will be consistent with the spirit and intent of the ordinance, because it will not endanger the health, safety and general welfare of the residents and it is the most appropriate use of the land, considering the fact that this property is surrounded on two sides by properties zoned R-40. Denying the variances would result in an unnecessary hardship in this particular case interferes with the reasonable use, because there is no demand to use this property for the uses permitted in the ETP zone. The property has been listed with several brokers in the last ten years with the goal of selling it for development for ETP purposes.

Exhibit 7 is copies of leasing agreements and letters from the realtors. Despite consistent attempts to sell this property for ETP purposes, not one person has come forth indicating they want to use it for that purpose. He stated that a letter was sent to Mr. Kelley in May of 2000 from the Boulos Companies and it told Mr. Kelley that his property is in direct competition with City owned land and he should consider dropping the price to \$25,000 per acre, he did and nothing materialized. He stated that the next document is from Dan Gabriel from Coldwell Banker and he indicates that he had the listing for this property twice over the past ten years. The only interest he received were for uses not allowed in the ETP zone and Mr. Kelley has listed the property with other brokers who have been

equally unsuccessful in finding a buyer even with favorable pricing. Based upon the recent ruling of Bacon v. Town of Enfield, the special concurring opinion in that case said that the economic impact on the owner can be considered as an element of an unnecessary hardship in granting a variance. The economic impact of the zoning ordinance is part of determining whether the zoning ordinance interferes with the reasonable use of the property, including such factors as the land in question cannot yield a reasonable return if used only for a purpose allowed by the zoning ordinance and that impact must be more than a mere inconvenience. He stated he believes that holding fits this case and there is a severe economic impact on the owner. He has been unable to obtain any reasonable return for his investment by developing the property for the purposes permitted in an ETP zone. He has attempted to do so, for at least ten years, therefore denying these variances is more than just a mere inconvenience. It requires that the owner continue to pay taxes on a piece of property zoned for a purpose for which he has been unable to sell it, not only because of the competition with the City, but also the portion of wetlands on the site.

Exhibit 8 is a letter that Mr. Kelley sent to the Planning Board in 2002 and asked that the elderly assisted care facilities be added as a permitted use in the ETP zone as some interest had been shown for that use. He concluded by saying "After a fifteen year experiment, it is clear that potential uses do not exist within the specific terms of the regulations for ETP, especially in light of the fact that not only is Pease a competitor, but so is the City of Dover. The property has substantial wetlands that preclude its development for purposes allowed in an ETP zone and in addition, the City recently changed its wetland ordinance to require a 50-foot buffer from wetlands, which makes this development for ETP purposes even more difficult. Lot 2 is 40% wetlands; lot 3 is 51% percent wetlands, lot four 62.5 % wetlands. The wetlands and uneven topography makes the property unique in its environment and makes it unreasonable to use this property for ETP purposes. The proposed use is single-family lots and those lots are reasonable. Although zoned ETP, because of the extensive wetlands the property is not suitable for development for ETP purposes and as previously noted the use proposed is far less intense than the uses in an ETP zone.

Exhibit 9 depicts evergreen trees that are along the rear of this property and have the affect of separating this property from a balance of the ETP zone to the rear, so it acts as a natural buffer between this property and the remaining undeveloped land in the ETP zone. Although lot 1 does not meet the front setback requirements, it has 62 ½ feet, where one-hundred feet is required. The 100' foot setback requirements are unique to the ETP zone and deal with ETP uses, so it is his position that if the use is not going to be ETP nature, then there is no reason to uphold this structure to the 100' setback in the ETP zone. Majority of the land in the ETP zone will remain ETP and available for those uses should the demand arise. Enterprise Park allows for uses that are similar to the uses on this property and remain as such, the subdivision and development of this property for residential purposes will be consistent with the character of the neighborhood. There is ample ETP land available in Dover and it should not outweigh Mr. Kelley's right to develop his property and use it as a reasonable purpose, the evidence is clear that the property is not developable for ETP purposes, both because of it's characteristics of land and being in competition with the City. Mr. Kelley wants to use this property to retain a return in his investment. The purpose of the ordinance will be better served by allowing this property to be used for residential purposes and would allow him to make a reasonable use of his property. He stated that he believes that the requirements for the granting of the variance exist, evidence was presented demonstrating that and he asks that it be granted.

Chris Parker confirmed with Kevin McEneaney that the wetlands were jurisdiction wetlands. He stated that if the lot was not combined or if the lot were presented as one lot without the four lots, you would not be holding to the 50' setback, as it is exempt from the zoning changes for four years.

Kevin McEneaney stated that he would interpret that this would come in to the 50' buffer.

Chris Parker asked if Ellen Leighton was a residential broker and asked if she had the commercial experience. He asked if she was an appraiser as well as a realtor.

Attorney Griffin stated that the letter was presented to indicate desirability for residential purposes. He stated that to the best of his knowledge she is not an appraiser.

Chris Parker stated that this is her opinion, but not fact, that it is not detrimental to neighboring properties. He asked if the residential properties were allowed on this piece, would they have a negative affect on the compliant commercial properties that are out there.

Attorney Griffin stated that he feels if you have twenty-years experience in residential real estate he would think they would have an idea of what is or is not detrimental to residential properties. He stated that he does not see how it could affect them.

Chris Parker asked if the applicant's goal from 1985 going forward was to sell as residential property.

Attorney Griffin stated that he acquired it as a residential property and began to develop as residential property until it was rezoned to ETP. He acquired the parcel of land and was able to subdivide the property into five lots, three lots were sold off and his goal was to subdivide this parcel, and the City changed the zone in 1987.

Bill Colbath stated that between 1987 and 1991, he could have divided under the old rules and the applicant was asked why he did not do it at that time if that was the intention all along.

Kevin Kelley stated that he had a meeting with Bill Collins who was the Planning Director in 1987. He stated that it may be his error, but nobody at that time told him he had a certain amount of time to go forward with the subdivision. He stated that he had a number of meetings with Bill Collins and he was told that the ETP zone would be to his benefit.

Attorney Griffin stated that his recollection is that, if there is a change in subdivision regulations, he thinks they have a four year time period for its previous purpose. The rezoning takes affect once it is passed.

Tom Clark stated that if you had a subdivision plat approved by the Planning Board for those lots, and those were grandfathered and the one residential structure on it was built prior to the expiration of that four year period it may take affect. If that was subdivided and then it was passed he would have four years to build up the subdivision, but where it is a vacant lot, the changes are effective as is the posting of the ordinance.

Chris Parker stated that he could have put one house on this lot, but he could not subdivide.

Kevin Kelley stated that the only thing he could do was to subdivide the house at that time and leave the rest.

Frank Landford asked what the variance was that they are asking for.

Tom Clark stated that when he received the application and they talked about the variance from the use, it would establish a single-family residential subdivision in a zone that does not allow it. He stated that is a use variance and based on the language on the application, to create a four lot residential subdivision in an ETP zone, with one lot having less than the required area. He presumed that was the only dimensional regulation that they were asking for relief from. It appears to be different with the setbacks and the location of the houses on the lots shown on the plan.

Attorney Griffin stated that after they filed the application he spoke with Chris Parker and it is with respect to lot one.

Tom Clark stated that he is also showing R-40 zone setbacks in an ETP zone and that he would need to make that request.

Frank Landford confirmed the setbacks in an ETP zone and asked if the building envelope shown is in an R-40 zone.

Chris Parker confirmed with Tom Clark that a variance was required for the veterinary clinic but the office was a dimensional variance. Chris Parker stated that you could put offices in these areas with one common road in, where you would not require frontage and asked if he looked at this sort of use.

Attorney Griffin stated that they did not, because when you say you can put offices on this property, you assume that someone is going to want to put offices on the property and it has not happened in ten years.

Richard Callaghan confirmed that they did not have any professional appraisal companies used for any of these assessments.

David Ruoff confirmed with Kevin Kelley the cost of the property for the five different lots was \$400,000 and the Three one-acre lots were sold off for \$30,000 a piece and confirmed with the applicant that \$30,000 was still owed on the property, since the applicant was making an economic argument.

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

Public Hearing Open

Beth Thompson, Economic Development Director for the City of Dover stated that she came here when she heard that this was coming before the Board and she is very concerned. She stated that for more than fifteen years the City has been working to balance growth in our community. The past two Master Plans, they have identified the need for Dover to have more commercial and industrial land to balance the growth of our residential components. The City has not yet reached that desired amount of land to give the balance we want and need, yet tonight the City has been asked to step backwards and

add more homes at a time when the community is making every effort to limit this type of growth. The rezoning efforts are long-term efforts, to provide land for various uses for twenty or more years. The fact that they are talking about fifteen to sixteen years is not unusual. She stated that she heard about the competition across the street. The Dover Economic Development Corporation owns Enterprise Park and they have seventy-five acres left. They have eleven tenants, seventy-five acres is all that the organization owns and they do not have any more. The uses out there are more intense than across the street and she would challenge the owners to say which companies they have stolen from them. Companies make decisions on their economics' and what is the best use for their business. Dover was anticipating a change in the types of industry by making this ETP land. They are beginning to see development in this zone, Liberty Mutual has two buildings of over two-hundred and fifty thousand square feet, and we are now seeing Measured Progress coming in with two buildings that will be over one-hundred and fifty thousand square feet. The City has spent a lot of money over the years to position them for this use, they are able to manage the traffic anticipated in that area, and they are looking at another set of traffic lights across from Measured Progress. She stated that putting residential uses in that area would be a burden to the businesses and asked that they please keep it ETP land.

Richard Callaghan asked if the City ever expressed interest in buying this land.

Beth Thompson stated that they are not interested in buying this land, because they do not have enough money. Years ago, when they developed Enterprise Park, they took a bond out and after several years DEDC was unable to pay it back without putting it on the City's tax rolls. So right now, they do not have any plans to buy any land. It took seven to eight years for tax revenue at Enterprise Park to pay the debt service on the bond.

Richard Callaghan asked Beth Thompson if she could provide an idea of what the land is worth, since he has some experience in working with this commercial real estate.

Beth Thompson stated that she would be uncomfortable with providing that and she stated that she does know what the demand is and what people are expecting.

David Ruoff asked if the City sells or leases the land and asked if the City goes through a real estate agency. He asked her how they determine what market price to ask for the land that you sell.

Beth Thompson stated that they normally sell the land, any realtor can come to them, with a client and they give them commission on the sale. She stated that they are a little bit below market, which is probably the reflection of competition. The Dover Economic Development Corporation is an agent of the City and their mission is jobs and taxes and they do not need to be making a profit on the land, they are looking at companies that meet the zoning and provide good jobs for the residents.

David Ruoff asked if Beth Thompson had, any sense how an increase in a residential use in the area would affect your ability to market your property.

Beth Thompson stated that it would diminish her ability to market the property because experience has been residential users are a burden, for example they demand that they do not want to hear dumpsters at five thirty in the morning, even though it is a commercial, and industrial zone it would need additional buffers.

Joanne Young stated that she owns the Veterinary Hospital on 187 Watson Road and she is not opposed to the applicant developing his land for residential use, if that is what he feels he needs to do to sell his property.

Attorney Griffin stated that he would like to respond to some of the issues that Mrs. Thompson raised, her suggestion that one should be content to wait fifteen to sixteen years before you can make a reasonable use of your property is not realistic or fair. She spoke about inquiries she has, but did not hear her say at any time she has referred anyone seeking to make a commercial or ETP use of this property to Mr. Kelley. If this property were so desirable for ETP use, you would think that at least she would say someone was interested in the property. The other thing is that Enterprise Park is being sold below market value and this reinforces their statement that indeed, they have unfair competition and that has precluded people expressing interest in Mr. Kelley's property in addition to the wetlands. If there is a shortage of available ETP land, why is it that none of them, other than Liberty Mutual, since 1987 have seen fit to locate in the applicants parcel? Mr. Kelley has suffered and is giving up and is saying he cannot make ETP use of this property and the City is saying, not only have we undercut you and knocked you out of the competition, but also a variance law does not say you have to wait sixteen years to make a reasonable use out of your property.

Richard Callaghan read a letter that was submitted from Measured Progress, which states that they are concerned and feel this waiver would not be in the best interest of the intended zoning.

Chris Parker stated that the Planning Department is against this variance request. He stated that if you agree to allow this user to create residential lots, you would find other ETP users that will want to do the same. He stated that they do feel the same as Beth Thompson pointed out, zoning is a long term use, you put in zoning to promote economic or residential growth, whichever the zone is geared for and zoned for the long term. He stated that of the direct abutters of this property, only one is a residential use. As you heard the other user came in, under the four-year rule to become a residential use, this does put an undue pressure on the existing abutters that are not residential and if they ever want to expand, they would have to maintain buffers for existing residential uses. They do not see that they have no other options, as Attorney Griffin said they have not looked at it, but they could have a situation where they have pods of offices. Offices are allowed in the ETP zone, he stated that he does sympathize as far as the use goes, but the fact is, they rezoned for the long term and the goal is to promote economic development in this zone. He stated that they feel that Measured Progress will help spur economic development in this area.

Bill Colbath asked if they could subdivide this into four lots.

Tom Clark stated that he did not think that they could get four lots, because the minimum lot size is three acres in ETP zone and you have to have your minimum lot size exclusive of any wetlands.

Bill Colbath asked if anyone tried to market this, other than one huge lot.

Kevin Kelley stated that in order to do that, he would have to take it out of a current use and that is really the only reason why he is holding on to the property today. He stated that he had every broker to promote this property, such as campus style, individual buildings, and there have been no takers. They have had a number of people look at it, nobody is interested, and he is open to anything. He stated that he has had a number of meetings with Beth Thompson and Steve Stancel over the years and they have not received one person or a phone call from the City of Dover for this property. Campus style may

work when his child is ready to retire, but certainly not right now and he cannot afford to not have use of this property.

David Ruoff confirmed with the applicant that he did have a prospective buyer for the residential lots.

Richard Callaghan stated that they seen a letter that recommended the applicant to lower the price to \$25,000 an acre and asked if they ever made any other recommendations as lowering it even more.

Kevin Kelley stated that there is a fine line between giving the property away and trying to hold on to it when it will be valuable, and he cannot give it away.

Richard Callaghan stated that he was asking the question, because the City of Dover is assisting others in getting property at a reduced cost, and felt he may want to do the same.

Kevin Kelley stated that he has not received a phone call offering anything like that and does not know anything about it.

Public Hearing Closed

Frank Landford stated that he would like to know exactly what the variance is that they are voting on.

Chris Parker stated that they are voting on one lot that is 1.95 acres versus 3 acres and the separate issue is the maximum lot size. If you approve the use and the substandard size, you would have to come back for a variance.

Tom Clark stated that it looks like he has planned this out as R-40 zone, so as long as he has at least 40,000 square feet of contiguous upland, then it meets the dimension and it seemed that it should be a separate variance. He could have a minimum 3-acre lot in an ETP zone included with wetlands and could get four ETP lots.

Chris Parker stated that in an R-40 zone, a major subdivision has to be an open space subdivision in which half the land remains in open space, so the lots could not comply with this. You should be focusing on a residential use in the ETP zone.

Discussion ensued regarding the ETP and R-40 zone.

Tom Clark asked Kevin McEneaney if the houses could be in compliance with ETP setbacks.

Kevin McEneaney stated that it probably would not be for lot one, if there is a 100' setback from the road and a 50' side setback. The application intended to bring in all of the dimensional requirements, which includes the R-40 zone and he submitted a plan as part of the application to depict that.

Tom Clark stated that this is part of the issue. This was the plan submitted, but on the application it says create a four lot residential subdivision with one lot having less than the required area.

Kevin McEneaney stated that the intent was to go back to the original residential zone, which was R-40 and incorporate all of those appropriate setbacks.

Chris Parker stated that if you are going back to the R-40, then you would have to be holding to the Open Space Subdivision, refer to Chapter 155 subdivision of land, for minimum lot size for a major subdivision. Four lots or more is a major subdivision if you refer to that it says an Open Space Subdivision, so it could not look like this.

Kevin McEneaney stated that he contends that if he went with an Open Space Subdivision it would look exactly like that, and would leave the wetlands and some of the buffer as open space. The subdivision that you are looking at has only two driveways, one of the driveways will access three lots, which is commonly done in an Open Space Subdivision and lot one will have its own driveway. If you look at any cluster subdivision that come before the Planning Board, that is what they look like and does not feel it would change that much and the fact that he is asking for relief from the dimensional requirements.

Frank Landford stated that his problem is that he is asking for a use and a relief from dimensional requirements, but the only dimensional requirement listed is the size of that one lot and not the setbacks.

Chris Parker stated that the posting is incorrect, because the posting called out the smaller lot and did not call out for the relief from the back lot.

Frank Landford stated that he would have voted for it, if all of the information were presented.

Tom Clark stated that the way it is posted on the agenda, it does say Article V, Section 170-16, but he took the language on the application to create a lot with an area of two acres.

Richard Callaghan stated that a minimum of three acres is required, but that is based on the ETP zone.

Chris Parker stated that it is R-40 across the street. On the same side as Sixth Street, it is ETP. Across the street is I-4 and B-4. He stated that in the R-40 zone the table of dimensional regulations says that it is a 40,000 square feet minimum lot size and read the footnote next to it. He stated that it is written that if you are doing a major subdivision, which this is, because they are creating four lots, you need to refer to the subdivision chapter, which gives what the lot sizes need to be and it says it has to be the Open Space style subdivision. This mandates that they are 20,000 square foot lots of which the remaining 20,000 square feet has to be open space.

Richard Callaghan stated that they have to decide what they are voting on.

Kevin McEneaney stated that Mr. Kelley is here to ask for four residential lots. If this was an R-40 zone and he came in with a cluster subdivision, he could probably get eight lots on that property. He stated that this is a reasonable use of this property and that is all that they are asking for.

Tom Clark confirmed with David Ruoff that they should proceed with the plan submitted, as it was part of the application and if they are asking for a variance from the dimensional regulations based on this plat, the setbacks could be as depicted on the plat and that could be made as a condition if it were granted.

John Levasseur asked if Mr. Kelley would be willing to settle for one lot and leave the rest as ETP. If they set a precedent, let the whole thing go, he is not sure what the neighbors will want to do.

Chris Parker stated that if the property use changes, the vacant lot next to it will say the City did it for him, so they have to do it for me.

Tom Clark stated that they should vote on them separately, since one is a use variance and the other an area variance.

Bill Colbath stated that he has read four letters from four different realtors that say that they did not sell it. He stated that he does not see any details of why they did not sell it or what they asked for it. He stated that he does not have data that tells him what a comparable lot sold for and he does not have the right information to tell him it is an economic hardship. He stated that if you want him to do a financial hardship, you have to show the hardship.

Attorney Griffin stated that the applicant did indicate that he was advised to drop the price to \$25,000 an acre and he did, but he is still not getting any takers at that figure.

Bill Colbath asked if he could show him a comparable lot, which has a comparable use that has sold for a higher cost. He asked if they had something on paper that says that the City of Dover has been selling them for \$15,000 across the street. He stated that the applicant has not shown anything on paper; he has only told him that he dropped the price and it did not sell.

Attorney Griffin stated that if you look at the letter presented from The Boulos Companies it is written and it states that due to the fact that you will be in constant competition with the City of Dover, an appropriate price should be determined. "Commercial land north of Portsmouth sells between \$25,000 to \$40,000 per useable acre and I recommend that you ask \$25,000 per useable acre in order to position the property on the low side of the market." Dan Gabriel in his letter stated that Mr. Kelley has listed the property with other brokers who equally have been unsuccessful in finding a buyer even with favorable pricing. Under normal circumstances, you have to be able to get between \$25,000 and \$40,000 per useable acre, that is what commercial land north of Portsmouth goes for, but given the fact that you are in constant competition with the City of Dover, you have to determine an appropriate price.

Chris Parker suggested that if they had proof, for instance, that Measured Progress paid \$10,000 or \$40,000 an acre, and they cannot even sell them for \$25,000 an acre that would be the type of proof that they are looking to see.

Richard Callaghan stated that they do not assess the value of a real estate agents appraisal as much as they would a true appraisal from an appraisal company. Realtors have a goal in mind and they have the concern of their customers as well. An appraisal company takes estimates and shows actual sales of property, and that is what they would like to see.

Attorney Griffin stated that when you have letters from four different brokers indicating that none of them could come up with anything over a ten-year period for this property, he feels that they do have evidence that there was competition across the street

Richard Callaghan stated that he could not take that to the bank and get a loan, you would have to get an appraisal.

Attorney Griffin stated that he agreed, but they were not asking for a loan, they are asking for a variance and these people are experts. Kevin McEneaney has given you his personal opinion. The question is "do they have evidence here of inability to sell his property for submitted purposes" and stated that he believes they have showed evidence of this.

Kevin Kelley stated that his last requested price was \$259,000 and he never got an offer for even \$100,000.

Bill Colbath confirmed that 50% of the land is wetlands, leaving six acres useable and stated that he is asking for more than what the realtors are telling him to ask for this property and his point is that if the brokers are saying that you can get \$25,000 per useable acre that price would be \$150,000. He stated that the applicant is asking the Board to accept the financial problem, but the applicant is requesting a sale price of \$259,000.00. The applicant states it is caused by the zone.

Frank Landford agreed with the applicant, that it is a financial problem, because house lots are selling for more and he would rather see the applicant sell this as three-acre lots.

Attorney Griffin stated that is why they have use variance as well as area variance.

Bill Colbath stated that they are asking them to produce documentation to come up with the argument that they are pleading and he does not think that they have done that.

Richard Callaghan asked if they were willing to get appraisals on the lot as one piece and as individual house lots.

Kevin McEneaney stated that he felt that was excessive.

Kevin Kelley stated that he could not find a buyer to develop this property and he cannot take this property out of current use, because he cannot afford the taxes to do this and that is his dilemma.

Attorney Griffin stated that they are focusing on the economics, but the other aspect under Simplex, if the ordinance interferes with the reasonable use of the property, considering its unique setting in its environment and his argument is that it does interfere with the reasonable use of the property because of the preponderance of the wetlands.

Tom Clark asked if he could elaborate on the unique setting in its environment and asked how this lot is any different from any of the abutting ETP vacant lots.

Attorney Griffin stated that its uniqueness comes from a preponderance of wetlands and there is no indication of that problem pertaining on any of this other ETP zone. It does distinguish the property from the other parcels in the area and the setting of the property in its environment. This property is set in an environment where it is abutted on two sides by residentially zoned property so its environment is that it is surrounded by residential uses.

Chris Parker asked if he had a wetlands map for all of the other ETP property's and stated that it might not be unique, because the other property's may also be wet, such as Liberty Mutual and Measured Progress.

Attorney Griffin stated that the Planning Department has all of the information and he suspects that if there were other portions of this area covered with wetlands, then all of the arguments that have been made against this request tonight by the department and City Officials; someone would have said the whole place is wet.

Richard Callaghan stated that they did hear that comment.

Attorney Griffin stated that under the new Simplex standard, the question is a reasonable use and the Board is focusing on pre-Simplex with the pod lots and if they were theoretically possible. Even if they could make a permitted use of this property, which they contend they can not, under Simplex, they are not limited to that and the question is, is the use reasonable considering the setting of the property in its environment. It is their position that this use for four residential lots is reasonable considering the unique setting of this property.

John Levasseur stated that they also have to consider the consequences that would happen to the ETP area, it is not just the use, and they would be setting a precedent by changing that area back to residential.

Richard Callaghan stated that they would be going through the criteria for item one.

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 (Richard Callaghan and Frank Landford voted does) face an unnecessary hardship. This conclusion is based on the following findings of fact: The applicant has failed to demonstrate that no fair and substantial relationship exists between the general purposes of the ETP zonings with specific restriction on the property. Granting the variance would injure the public and private right as given in testimony and that the competing economic hardships expressed by the applicant do not outweigh the other two factors considered above. The evidence provided did not meet the burden of proof.
2. It is the Board's conclusion that, if granted, the variance will not (Frank Landford voted will) deliver substantial justice. This conclusion is based on the following findings of fact: Lead to the erosion of ETP zone.
3. It is the Board's conclusion that, if granted, the variance will not (Frank Landford voted will) be in harmony with the spirit and intent of the zoning ordinance. This conclusion is based on the following findings of fact: Spirit and intent of ETP is not residential.
4. It is the Board's conclusion that, if granted, the variance will not (Richard Callaghan and Frank Landford voted will) result in diminution in value of surrounding properties. This conclusion is based on the following findings of fact: The applicant has not provided any evidence that showed the effect on surrounding properties.
5. It is the Board's conclusion that, if granted, the variance will (Frank Landford voted will not) be contrary to the public or private interests or rights. This conclusion is based on the following findings of fact: It will have a direct result on the existing ETP and the Master Plan.

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

Richard Callaghan stated that they were going to vote on item two and Attorney Griffin stated that he was withdrawing, since the first request was denied.

ITEM # 5:

Z 04-09 Henry Kuziomko, 308 Dover Point Rd., a/k/a Assessor's Map L, Lot 112, zoned R-20, requests a variance from the terms of Article 170-41.A to increase non-conforming structures.

David Hanna from AG Architects stated that he was representing the applicant and prepared the application and the drawings for Mr. Kuziomko. The lot has Dover Point on one side of it and the Piscataqua River on the other side of it, the property has three existing residential structures on the property, they will be referring to them as the Guest House, the Main house and the Road House. All of the structures currently have power, water and sewer to them. The previous owner maintained the structures, and this was the condition that the houses were in, when the applicant bought the property. He would like to take the residences and bring them up to today's living standards and code. Currently the guesthouse is about seven hundred square feet and is in poor disrepair, the house is located entirely within the 100' setback of the Conservation District. He stated that there is no way to expand this house out into a build-able area; they are proposing to change the roof with a 12:12 pitch, so that the space under the roof is now inhabitable. They could have a bedroom and a bathroom located upstairs and this way they are not increasing the non-conformity in any way, they are not asking to expand the house in any way further into that Conservation District, and they are proposing to bring it to twelve-hundred square feet. He stated that this is a reasonable and fair use of this structure.

Tom Clark confirmed with David Hanna that there would be a net increase of the building height.

David Hanna stated that they are allowed up to 45' in that zone and this would bring it into the mid twenties. He stated that this would increase the esthetic value and a positive impact on property values in the area. The Main House is in poor disrepair and this is also located entirely within the 100' Conservation setback, however it is only approximately 2' to 6' from the 100' limit. He stated that they are proposing to expand the Main House into the build-able lot; they feel that it is a reasonable way to address the issue. The City's codes stated that we are allowed to add on to existing non-conforming structures within the Conservation zone, if they do not increase the conformity and that they do not get closer than seventy-five feet. He stated that he feels they meet both of those requirements, by developing the house out in to that build-able area of the lot. The footprint of the existing house will be the same and expand out into that one direction.

Chris Parker asked what part of the existing house is remaining; it does not look like the existing house is just having an addition by looking at the drawing.

David Hanna stated that they are building it up to today's living standards, a modern comfortable house. He stated that you would not know that this use to be a dilapidated un-maintained house.

John Levasseur asked if they would be putting in a foundation.

David Hanna stated that they would like to do that, but they may have issues with digging in a Conservation zone, and they would have other permits that are required in order to do the foundation. Once they get in to that build-able area, they would no longer be in the Conservation District and they could dig a full foundation.

Richard Callaghan asked if they were going to overhaul the existing house.

David Hanna stated that they would maintain the footprint, with an addition and renovations to the interior and exterior. He stated that the only changes to the Road House would be to install a dormer addition on the South side to the rear of the house.

David Ruoff confirmed that if he understands it correctly, the variance that they will be voting on is because there are two increases in non-conforming use.

Tom Clark stated that based on his interpretation, in his opinion, irrespective of the Conservation District and because it is a separate issue, if you have three houses on one lot, the use of them in a non-conforming structure you cannot have more than one principle building on a lot. Any expansion is not allowed, in his opinion, the second floor addition in the Guest House is an increase in a non-conforming structure, they are talking about the existence of the house, just being there, is non-conforming. If they wanted to pursue the new foundation, that would be a conditional use permit under the Planning Board and it is a completely separate process, but what you are asking to be approved is the physical expansion of these buildings in the first place.

David Ruoff asked about the expansion of the Road House that seems to violate the side setback to the North of the property.

Tom Clark stated that if all of these houses were by themselves, but you would need a conditional use permit, because any expansion of any of them in his opinion increases the non-conformity.

David Hanna stated that he does understand what he is saying, but in the code, it never addresses more than one on a structure.

Tom Clark stated that it does address that and it is in the definition of lot, it allows only one principle building. He stated that they are grandfathered as non-conforming structures.

David Hanna stated that he agrees that they are non-conforming and he feels that he is super imposing on to the code.

Bill Colbath stated that he is asking for a variance to expand a non-conforming structure, three times.

David Hanna read Section 170-41, non-conforming structures, paragraph D. He stated that it allows additions to non-conforming structures, single family structures, that were made non-conforming by the zoning amendment change in the front, side and rear setbacks, provided that the addition is no closer to the lot line in an existing non-conforming structure and no closer than ten feet from the lot line, the proposed renovation for each of these buildings follows this criteria in the reasonable manner.

Tom Clark stated that he needs to focus on the first sentence. These are not non-conforming because the City came around and changed the front, side or rear setbacks, these were made non-conforming because the City in 1956, said that you cannot have more than one principle building per lot. He stated that one of the things he discussed with Art Guadano was if he disagreed; you could appeal the administrative decision of that interpretation prior to having to go for a variance. Based on the application submitted he opted not to take that route.

John Levasseur asked Tom Clark how condominiums are dealt with.

Tom Clark stated that they are in an RM zoning district and the Planning Board has the authority to approve more than one building on a lot.

Chris Parker stated that in regards to the Main House, you are creating such a major addition, why not build the whole thing and remove the existing house. He stated that this is a new house, not a renovation.

David Hanna stated that with today's codes and the Conservation District, they would never be able to build a structure this close to the river.

Hank Kuziomko stated that he has lived in Dover for eighteen years, and has passed up opportunities in the past to acquire waterfront property's and this one came along and he decided to buy it, he didn't realize he was battling into an unknown area. He stated that he loves the property and the area and would like to have a place that his family could come and visit in the summer time. He stated that this is why he has chosen the names of these houses and would appreciate having some level of income. He stated that his idea was to rent out the Road House, he would live in the Main House and the Guest House would be for his family and visitors. He stated that he is here looking for guidance and would like to know what he can and cannot do. He realizes he will have to revise and come back again, but eventually that property will be the best that it can be. It is very difficult to design anything when you do not know what the boundaries are. He stated that he could not do anything on this property, so he is asking the Board on what he can do.

Tom Clark stated that several real estate agents contacted him, all of these things were addressed with the agents, and he did offer suggestions, he stated as you know any existing home that is constructed prior to May 1964 can legally be converted to a duplex. He stated that one of his suggestions was to demolish the Guest House and the Road House, and you could have an addition on the Main House and convert it to a duplex. You could still have two units; the overall idea of a non-conforming structure issue is eventually they go away, if he allows this type of expansion, they will be here for a number of years.

Henry Kuziomko stated that his problem that he sees for the City is that if you do not allow substantial improvements to be done you would have these shacks. He stated that he could rent them out, but the quality of the tenant goes with the quality of the building.

Tom Clark stated that he would like to point out that there is a provision specifically addressing repairs and maintenance of non-conforming structures, he did issue a permit for the remodel of the Guest House as it sits with no physical expansion, you could certainly do that to all of the structures.

Henry Kuziomko stated that he realizes he can do that, but he is coming before us to say this is what I would like to do and his objective is to have a house that he can live in. He stated that he has no idea if this meets any hardship requirement and stated that he needs some direction.

Tom Clark stated that it was suggested to Mr. Guadano that if the owner, wanted any expansion at any point in the future of anything, he should ask right now instead of coming back multiple times.

Chris Parker asked about the elevation of the Guest House and how it relates to the existing neighbor behind the house.

David Hanna stated that it sits considerably lower.

Henry Kuziomko stated that the land slopes towards the river and by time his neighbor is on his first floor, he has a line of sight to the river.

Motion: David Ruoff made the motion to accept. John Levasseur seconded the motion.

VOTE: U/A

Public Hearing Open

Debbie James abutter at 306 C Dover Point Road stated that she called the applicant when she saw what he wanted to do and she stated that she would like the piece of property next to her to look nicer. She stated that she bought her land for total privacy about five years ago and she has a stockade fence where the shacks are located. They are rented to seasonal people and one issue she has is that the applicant is eight feet from her and if he builds up that high, he would be in her face, but the applicant stated that he would be very good about not putting windows on that side and make sure it stays private. She does support him in what he wants to do, but would like to see a stockade fence placed on the property, so it would stay private.

Tom Clark stated that the Zoning Board has the authority to attach any reasonable conditions to an approval, however, even just to have the fence in a conservation district, it would be up to the applicant, and it would require a conditional use permit.

Debbie James stated that she is concerned with her privacy and if the fence was up, she feels it would make a difference and she stated that the applicant said that he was willing to do that.

David Hanna stated that they matched the roof pitch of the Main House to the Guest House at a 12:12 pitch, they do not need all of that space on the roof in the Main House. The highest portion of this roof is thirty-two feet at the peak.

Tom Clark stated that the residents that live at 312 Dover Point Road were present tonight, but they had to leave and they met with Chris Parker, Steve Bird and himself when they went out to that location and they were concerned with the impact. If the building was to increase on the Guest House, how would it affect his lot and his values, he does have water views in different directions and was concerned with what would happen to the view with the new roof.

Chris Parker stated that the Planning Department is not in favor of this variance, based on the clause that Mr. Clark pointed out earlier, a non-conforming regulation is to whittle them down, and this is an extension of the non-conforming structure. He would like the policy to continue and not encourage expansions. He stated that if he wants a bigger house, he could demolish all structures, start at the Main House at the 100' foot line, and still build a reasonable house and he would be more in favor of that type of request.

David Hanna asked what would be required as far as demolition. He asked where do you draw the line of the demolitions, what you are basing that on, do we have to demolish one or all.

Tom Clark stated that when Chris Parkers says he would be more inclined to approve that request, which is from a Planning perspective, not that the Zoning Board would agree or disagree.

Public Hearing Closed

David Ruoff stated that he does not have a problem with the plan. The buildings are similarly situated apart like all of the other buildings in that area and feels it is an unnecessary hardship.

John Levasseur stated that the only problem he would have is the Guest House being too high, but felt it would be quite an improvement for the area.

Discussion ensued regarding the non-conforming structures and the concern with the height of the proposed structures.

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 (David Ruoff voted does) face an unnecessary hardship. This conclusion is based on the following findings of fact: Already has a use that is greater than that of surrounding properties.
2. It is the Board's conclusion that, if granted, the variance will not (John Levasseur and David Ruoff voted will) deliver substantial justice. This conclusion is based on the following findings of fact: Allowing the request would allow for continuations with expansion of non-conformity.
3. It is the Board's conclusion that, if granted, the variance will not (David Ruoff voted will) be in harmony with the spirit and intent of the zoning ordinance. This conclusion is based on the following findings of fact: Allowance would increase density and have a great impact on the conservation zone.
4. It is the Board's conclusion that, if granted, the variance will (David Ruoff voted will not) result in diminution in value of surrounding properties. This conclusion is based on the following findings of fact: There has not been any qualified information provided that shows it will not.
5. It is the Board's conclusion that, if granted, the variance will (David Ruoff and John Levasseur voted will not) be contrary to the public or private interests or rights. This conclusion is based on the following findings of fact: This will have a negative impact on abutter's privacy.

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

Richard Callaghan stated to the applicant that he would have a right to appeal and could speak with Mr. Clark.

Henry Kuziomko questioned Mr. Colbath's statement that indicated that if he left the Guest House alone, he would have possibly been in favor of the request.

Richard Callaghan stated that he would have made a change to the request prior to them voting and if it did not impact the public notice in any negative way, they could have considered that, but at this point, you would have to reapply for another variance.

Frank Landford stated the height of the buildings was his main objection to the request.

Tom Clark stated that the applicant needs to understand that they are expressing an opinion and it does not imply that if you came back with that, the variance would be granted.

Henry Kuziomko stated that he is confused. He stated that during the presentation, he got a sense that the variance would be granted and during the voting, it was clear that it would be denied. He stated that he thinks he is hearing that if he made some changes, they would have been happy to discuss them and yet he is cautioned that it may not be approved.

Chris Parker suggested to the applicant that if he is going to come back, he should receive a copy of the minutes to understand what the views were from the Board members.

MOTION TO ADJOURN

Bill Colbath made the motion to adjourn at 11:40 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