

Dover Zoning Board of Adjustment
Thursday, May 20, 2004

MINUTES

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

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

ITEM # 1: CALL TO ORDER

Richard Callaghan brought the meeting to order at 7:05 p.m. and explained to the general public how the cases should be represented to the Zoning Board of Adjustment.

ITEM # 2: APPROVAL OF MINUTES

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

Motion: Bill Colbath made the motion to accept the minutes. David Ruoff seconded the motion.
VOTE: U/A

ITEM # 3: OLD BUSINESS

- A. Request for motion of rehearing regarding ZBA case 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 appeared in March representing Mr. Kelley and the Board denied the request for variance so he filed a motion for a rehearing. He stated that the first issue that was raised from the Board was a letter from a couple of realtors indicating no devaluation in surrounding property's and it was expressed by one board member that they did not have anything from an appraiser. He stated that he does not believe that he has to have something from an appraiser and that the law says that "evidence on any of these matters may be submitted by realtors or other concerned parties". He stated that the Master plan shows a continuing need for high quality housing in Dover. The City recently rezoned a parcel of land in the Southerly part of the City to allow for future ETP purposes. He stated that his impression was that only 75 acres of land was left that could be used for that purpose and somehow allowing this land to be used for non-ETP purposes would undermine the City's efforts to continue to attract industry. In the packet, is additional evidence that Mr. Kelley could not compete with the City on the fact that the property was in competition with the City and copies of deeds in the packet show several sales in the Industrial Park where the City sold acreages of land at a low value to attract businesses. A private contract between Mr. Kelly and Mr. Poole was made and because of the wetlands on this property

he walked away from that contract. He stated this shows evidence that this property is not suitable for ETP purposes. Because of the new evidence that has been produced, he stated that it is possible to grant these variances and still achieve the purposes of preserving ETP land and asked that the matter be reheard.

Bill Colbath stated that his primary concern was that the statement the applicant made was that it was attempted to be sold for so many years and was unable to be sold. The argument was somewhat based on finance and it is a financial question at this point. He has not seen the listings that go with it and the offers that were placed.

David Ruoff stated that he could not see that the Board did anything unlawful or unreasonable. The applicant did submit additional information but does not see that it qualifies as the credible evidence that they were asking for from the applicant.

John Levasseur stated that he has not seen any changes and the appraiser would have weight on the case. The Board was asked to make a judgment on hardship but would like to see more documentation and data in the report.

Richard Callaghan stated that the burden of bringing that information to the Board was on the applicant at the time of the original hearing and the presentation for the appeal has to sway the Boards judgment that there is a due cause for that rehearing.

Richard Callaghan stated that the Board members that originally voted on the variance request should vote on the rehearing request.

Motion: Bill Colbath made the motion to deny the request for rehearing. David Ruoff seconded the motion. **VOTE: 4 to 1 (Frank Landford opposed)**

- B. Z 04-14 Charlotte Wood, 256 Knox Marsh Rd., a/k/a Assessor's Map H, Lots 40-C & 40-C-1, zoned B-4, requests a variance from the terms of Article IV, Section 170-12, Table I, Part A, to construct a multi-family project.**

Tom Clark stated that he was unable to contact Pamela Young and suggested that the Board continue to table the case until she contacts the office with more information.

Motion: Bill Colbath made the motion to table the item. Ruth Gorton seconded the motion. **VOTE: U/A**

ITEM # 4: NEW BUSINESS

- A. Z 04-10 Susan Norman, 188 Bay View Rd., a/k/a Assessor's Map J, Lot 22-A, zoned R-40, requests a variance from the terms of Article V, Section 170-16, to construct an addition on to a single-family dwelling within approximately twelve (12) feet of a side property line, where a minimum of twenty-five (25) feet is required.**

Attorney Bill Tanguay stated that he was representing the applicant and submitted copies of the tax map to show the unusual nature of the lot, it shows the proposed addition and renovations and it comes within 12' 3 1/2" from the abutting property line. He stated that the applicant's surveyor John Berry and designer Charles Hoyt are present to answer any questions. The house has one bedroom, a loft, and a septic system

that was approved for two bedrooms in 1989. After construction is completed, she will have a two-bedroom house. The property is uniquely situated in an area of horse farms and more homes that are substantial. All of the homes have views of the bay and this house is in a corner of an oddly shaped lot and is close to the abutter's property line in an unusual way.

David Ruoff asked what the lot line is that is shown on the plan that may indicate the end of a road.

Susan Norman stated that she thinks it was an old school bus turn around.

Bill Tanguay stated that the odd shape of the lot includes the circular unbuildable area owned by the people across the street. The uniqueness of this is the small size of the house, positioning of the house on the odd shaped lot and the odd shape of the abutters property line. It will be in keeping with the area and the proposed addition is to allow a converted barn to become a two-bedroom house, without affecting the view of the bay from any existing house or abutting property. He stated that he has two letters to submit, one is from Elisha Huggins at 99 Bayview road, and Helen Coon at 63 Bayview Road and it stated that they agree that there will be no diminution in surrounding property values. He stated that they do not have a natural place to bring an addition to the rear, it would block the view of the bay, and it would get into the area of the septic tank and chamber system.

Charles Hoyt stated that he is the designer of the additions and renovations. He stated that this was a difficult house to design and they came up with only one place that worked well, they chose to put the addition where the existing hallway would be an extension to the new hallway to lead to the rooms that they are proposing. The other option would be to put it in the front of the house but it would create another corridor or another hallway through an existing living room that has a large fireplace and it would also impede on the views of the bay.

Discussion ensued regarding the abutting lots and the circular unbuildable area.

Surveyor John Berry stated that the work that he did was originally going to be a potential subdivision and it has been identified that it is wetlands soil and the building envelope line shows the 50' setback.

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

VOTE: U/A

Public Hearing Open

Robert Mrak abutter at 72 Bayview Road stated that he is the abutter on the other side of the street and owns the circular nonbuildable area. The building that the applicant is proposing is a fair building and the plans provided suits the existing house. This will improve the home and the value of the area. He stated that the circular piece of land is a nonbuildable buffer. He stated that he does not see a problem with being 10' to 12' away from that property line and hopes the Board considers that issue when deciding the case.

Richard Callaghan read two letters from the abutters stating that they were in favor of this request.

Chris Parker stated that the Planning Department is not opposed to this variance request because of the unique shape of the lot and the orientation of the building.

Public Hearing Closed

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: Unique shape of lot, location of buildings and existence of road all create an unnecessary 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: Allows for continued reasonable use of property and for an improved residence that is consistent with existing lots.
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: Spirit and intent is to regulate congestion and this will be avoided because the lot abuts a nonbuildable property.
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: Will not restrict views of the bay and the abutters have stated the values will increase.
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: Should have no appreciable effect on anyone and the abutters have stated it will improve the neighborhood.

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

Bill Colbath announced that he would be stepping down on the next case. John Levasseur will be voting.

B. Z 04-15 Ray Martineau, Back River Rd., a/k/a Assessor's Map I, Lot 56, zoned R-12, requests a variance from the terms of Article IV, Section 170-12, Table I, Part E, to establish a congregate care facility.

Attorney Christopher Wyskiel stated that he was representing the applicant and Craig Welch from Grubb & Ellis is present and is working with a perspective purchaser of the property to build the proposed Congregate Care Facility. The request is a use variance to authorize the construction of the facility, subject to the density limitation of one unit per 3,000 square feet of land and is with the special exception provision 170-25.4. Elderly Assisted Care home is allowed in the R-12 zone subject to the density limitation of 3,000 square feet of land per bedroom, but a Congregate Care Facility is not allowed and he proceeded to read the definition of both facilities to the Board. He stated that this would be a structure with studio or one and two bedroom units, a permanent residential facility for elderly people with common dining facilities and very limited parking and this would fit the definition. He stated that what is likely to be planned for this property is a development that will include some Congregate Care Housing, 50 to 115 units and eventually would like to have another facility built and it would fit the definition of Elderly Assisted Care.

David Ruoff confirmed with Craig Welch the proper licensing or certificates that would be needed for the facilities.

Discussion ensued regarding Congregate Care and Elderly Assisted Care and confirmed that the applicant would like the option to call the facility either Elderly Care or Congregate Care.

Attorney Wyskiel stated that before they go to the Planning Board for site review, they would have to come before the ZBA because of the number of units they will be requesting for the Elderly Assisted Housing. He stated that with the variance and the special exception they would go to the Planning Board

for site plan approval to make sure that the designs are in keeping with the site. He stated that the current negotiations between the owner and a prospective buyer of the property is hoping to design a facility that may have a range from 50 to 115 units for Congregate Care and submitted pictures of a standard type of building that they have built in other places.

Ray Martineau stated that the property was previously zoned RM-12 and RM-20. He stated that all of it was recently rezoned to R-12.

Discussion ensued regarding impact on surrounding properties and definition of a unit.

Attorney Christopher Wyskiel stated that he would like permission for the Congregate Care so that the applicant can design and figure out what is best for the property, come before the Board for a special exception for Elderly Care, and go to the Planning Board for approval of both.

Tom Clark stated that they have multiple steps to go through before anything can be built and the Planning Board will look at all of that information.

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

VOTE: U/A

Public Hearing Open

Marc Hiller abutter resides at 10 Grady's Lane stated that he believes this is an ideal use of this property but his concern is that he would like to hear more information regarding what is required by the State and what degree of medical care may or may not be required of the future residents. He stated that he would like to hear a detailed description of what the proposed facility will be that the applicant is requesting. Dover needs long-term care services and this may be an excellent use for the property and is asking for more information before the Board makes a decision.

Craig Welch, advisor with Grubb & Ellis explained to the Board the floor plan that is in this type of facility and read some traffic estimates on an average 115-suite facility.

Richard Callaghan read two letters from abutters that are in favor of this variance request.

Chris Parker stated that the Planning Department is in favor of this variance request. This lot is one of the top three largest parcels remaining in the R-12' zone. If you were to subdivide, you could get about 70 units, single family, and or duplexes. Because of it being larger than 20 acres, they could add commercial components to this lot, which would increase the density and the traffic volume. The department feels this is a better use of the land and the area. It adds to a market of housing style that the City does not have enough of and adds to the character of the neighborhood.

Public Hearing Closed

Frank Landford confirmed that a wetland traffic study was completed and the easement shown on the plan is a sewer easement.

Discussion ensued regarding the use variance and conditions that may apply if granted.

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: Strict adherence to the table of uses is a needless and unnecessary hardship for this application.
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 enable the use of the property in a way that impacts the traffic for services in a lesser way than approved zoning.
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: Zoning already allows for assisted elderly care and this is a very similar 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: This will be less density than residential use and is a quiet business, thus having a lower impact than other uses.
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: To the contrary, this will provide a service that the City needs and will in the end, provide for a greater amount of open space than the approved zoning allowance.

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

1. Any Congregate Care Facility is subject to the density limitation of one unit per 3,000 square feet of land.
2. All zoning regulations that are related to the structure use should be met and a site review will be conducted.

Motion: David Ruoff made the motion to approve the conditions. John Levasseur seconded the motion. **VOTE: U/A**

- C. Z 04-16 James Cole., 6 Cranbrook Ln., a/k/a Assessor's Map D, Lot 53-A, zoned R-12 requests a variance from the terms of Article V, Section 170-17 to construct an accessory structure (storage shed) within four (4) feet of a side property line and two (2) feet of a rear property line, where a minimum of ten (10) feet is required in both locations.**

Applicant James Cole stated that he is looking to place a shed on his lot and if he located the 8 x 8 x 8 shed in the ten-foot setback it would take up the open space in the middle of his yard. He stated that currently he is storing his items under his deck and for safety reasons he would like to use the shed for storage of a lawnmower, snow blower, gas cans, and other garden utilities. He stated that he spoke with the abutters prior to the meeting and the only concern was made from Mrs. Guay. She informed the applicant that she did not want her chain link fence ruined and the applicant stated that he would stay two-feet away from her fence in order to maintain the shed.

John Levasseur confirmed with the applicant that the shed is prefabricated from Home Depot and would be set on concrete blocks and the applicant stated that he would place crushed stone behind the shed to the chain link fence.

David Ruoff announced at 9:30 p.m. that he was volunteering to step down on this case.

Richard Callaghan stated that John Levasseur would be voting.

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

VOTE: U/A

Public Hearing Open

Chris Parker stated that normally the Planning Department would suggest other alternative areas. By placing this in the middle of the yard, it would disrupt the yard. He stated that it would be consistent with the rest of the neighborhood by placing it next to the lot line, therefore the department is not opposed to this variance.

Public Hearing Closed

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: Strict adherence to the ordinance would force the applicant to place the shed in an unreasonable location.
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: Provides a safe place to store equipment from children.
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: Keep the use of property similar to other property's in the proximity.
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: Allows for as much open space as reasonably possible and will be similar to neighborhood.
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: Most of the properties in the area have sheds in similar proximity to lot lines.

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

Ruth Gorton announced that she would be stepping down on the next case.

David Ruoff and John Levasseur will be voting on the next case.

- D. Z 04-17 34 Floral Ave., LLC, (Applicant: The Brikadia Group, LLC), 34 Floral Ave., a/k/a Assessor's Map 28, Lot 34, zoned RM-20, requests a variance from the terms of Article IV, Section 170-12, Table 1, Part A, footnote (1) to establish a multi-family (6 units) dwelling on a lot with 32,400 square feet, where a minimum of 60,000 square feet is required.**

Attorney Bill Tanguay stated that he was representing the applicants who are present with him, Jarrod Craig and Joe Coco. He stated that they are here to seek an area variance. The property currently has an old house located on it and sits high on a hill. A large apartment complex is located above the hill and below the hill. Currently it has three apartment units in the main house, a real estate office in the barn that takes up all three floors, a garage that has an office used by an architect and they did have an auto repair shop in one of the bays of the garage. The proposal is to convert the property to a six-unit multi-family property. He stated that the market seems to be for small condominium units and he stated all of the

projects that the applicants have completed in Dover and submitted pictures of the most recent rehabbed condominium units on 191 Washington Street. He stated that they have a 3/4-acre site but they do not have 10,000 square feet of land for six dwelling units. They would not be changing the footprint of the building, they would be getting rid of the nonconforming uses, and the commercial uses on this property would be eliminated. Once the conversion is complete, the property will be totally in keeping with the intended uses designed by the ordinance. This property is uniquely situated; it is an odd shaped, steep lot and is surrounded by high intensity multi-family dwellings. They are asking for a variance because of a density issue and this will not create overcrowding because they are not expanding. He stated that they would probably lessen the overcrowding because they will be lessening the amount of traffic, the buildings will be upgraded, and the garage area will be completely rehabilitated.

David Ruoff asked why they would need six units as opposed to five units with the garage for parking purposes and asked if they would have room for storage for the condominium units.

Attorney Bill Tanguay stated that the barn is 2500 square feet and is larger than the existing three-unit house, and they are thinking of making one unit on the first floor, half of the second floor and the second unit half of the second floor and the entire third floor of the barn. The garage would be one unit as a separate structure. He stated that they have plenty of parking at this location; they already have twelve parking spaces in front and six parking spaces up above.

Jarrod Craig stated that they have a whole floor under the barn for storage.

Chris Parker asked if they would be willing to give up some of the front parking spaces and place some grass in its place. He reminded the applicant that by giving up any commercial uses on the property, in order to get them back you would have to come back before the Board.

Discussion ensued regarding the structures on the property and means of egress.

Motion: David Ruoff made the motion to accept. Frank Landford seconded the motion.

VOTE: U/A

Public Hearing Open

Dave Degagne stated that he was the property manager from McQuade Realty, abutter at Floral Gardens and is here representing that corporation. They have a few concerns about the proposed project and the primary concern is the lack of square footage, which provides adequate parking, living space for tenants and enough grounds for them to have daily activities. Because of the layout of the property, it inclines at a steep level and does not allow the type of lawn area to be utilized as play area and it forces that type of activity down on their property, which currently occurs from surrounding neighborhood houses and apartments. He stated that they have a drainage issue and any changes would make it worse. Removing the commercial aspects that exist is a wise move but asked if they would consider putting in less than six units.

Attorney Bill Tanguay stated that when you create a condominium, you could designate parking spaces and prohibit parking. He stated that they have more than enough parking spaces and if they get rid of some of them, it would actually help the drainage issue.

Discussion ensued regarding TRC and conditions of approval.

Chris Parker stated that they are in favor of lessening the nonconformity of the uses and would request that if approved a condition be placed that this goes to TRC to discuss snow removal and parking. He stated that if they are willing to get rid of some of the parking in the front to add a useable area it may possibly take care of some of the drainage issues.

Furthermore, the Planning Department is in favor of the variance due to the neighborhood context. Neighboring multi-family units were built when the density was one unit per 4,000 square feet. Currently, 10,000 square feet is required per unit. The lot is 32,000 square feet, under old regulations they could get eight units, so the department feels that six units is reasonable. The department feels that the units will fit the character of the neighborhood and will blend in with surrounding complexes.

Public Hearing Closed

Bill Colbath stated that he has a density issue with the case.

John Levasseur stated that six units would be too many for this lot.

Discussion ensued regarding density issues, open space, and rezoning.

FIVE CRITERIA:

1. It is the Board's conclusion that if the applicant complies with the strict letter of the ordinance he/she does (Bill Colbath and John Levasseur voted does not) face an unnecessary hardship. This conclusion is based on the following findings of fact: The location and size of the building is among multi-units with more congestion and strict compliance to the ordinance would cause an unnecessary hardship.
2. It is the Board's conclusion that, if granted, the variance will (Bill Colbath and John Levasseur voted will not) deliver substantial justice. This conclusion is based on the following findings of fact: Reconditioning and infilling would improve the lot to a standard that matches surrounding conditions.
3. It is the Board's conclusion that, if granted, the variance will (Bill Colbath and John Levasseur voted will not) 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 is to restrict congestion and this variance provides a level consistent with the neighborhood.
4. It is the Board's conclusion that, if granted, the variance will not result in diminution in value of surrounding properties. This conclusion is based on the following findings of fact: To the contrary, removal of the commercial use and establishing condominium residences among rentals will be an improvement.
5. It is the Board's conclusion that, if granted, the variance will not (Bill Colbath and John Levasseur will) be contrary to the public or private interests or rights. This conclusion is based on the following findings of fact: It lessens nonconforming issues, and corrects ground water issues via TRC and perhaps increases useable space.

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

1. Physical delineation shall be put up per TRC to identify property lines.
2. These units shall be condominiums with a condominium association and condominium rules with deeded parking spaces.
3. Must go to TRC for all related TRC concerns to include parking reduction and drainage.

Motion: David Ruoff made the motion to approve the conditions. Frank Landford seconded the motion. **VOTE: 3 to 2 (Bill Colbath and John Levasseur opposed)**

- E. **Z 04-14 Deborah Sousane, 24 Littleworth Rd., a/k/a Assessor's Map H, Lot 31, zoned R-20, requests a special exception as provided by the terms of Article VI, Section 170-25, to establish a roadside stand.**

Applicant Deborah Sousane stated that she owns Green Leaf Farms and currently they have a small farm stand and would like to expand to a larger one. She stated that she has a building permit for a garage that is 18' x 24' and this would be within the required setbacks. They have six off street parking spaces that are already in place and they are currently going through the driveway permit process with the State. She stated that she currently sells fresh organic produce, herbs, flowers, and hand soap and may get back into selling jellies and vinegars. She stated that she would like to place these products in a secure building and she would not have any public bathrooms and most of the traffic is from local neighbors.

Discussion ensued regarding the business and impact of traffic.

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

Public Hearing Open

Chris Parker stated that the Planning Department reviewed the application and all criteria have been met. The applicant would need to provide the appropriate driveway permit from the State of NH and everything sold would be made on site.

Public Hearing Closed

Motion: David Ruoff made the motion to approve the Special Exception with the condition being contingent upon receipt of the driveway permit. Ruth Gorton seconded the motion
VOTE: U/A

MOTION TO ADJOURN

Bill Colbath made the motion to adjourn at 11:10 p.m. and was seconded by David Ruoff.
VOTE: U/A

List of Members

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

Term Expires

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