

Dover Zoning Board of Adjustment
Thursday, June 17, 2004

MINUTES

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

Staff Present: Christopher Parker, City Planner, Jean Glidden, Recording Secretary

ITEM # 1: CALL TO ORDER

Richard Callaghan brought the meeting to order at 7:08 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 May 20, 2004.

Richard Callaghan stated a correction that had to be made on page 3 regarding the motion.

Motion: Ruth Gorton made the motion to accept the minutes as amended. Bill Colbath seconded the motion. **VOTE: U/A**

ITEM # 3: OLD BUSINESS

A. Request to revise special exception granted 12-18-03 relating to Z 03-32 Kenmore Real Estate, (Applicant: Ken McDavitt), 49 Arch St., a/k/a Assessor's Map 10, Lot 15, zoned RM-10, requests a special exception as provided by the terms of Article VI, Section 170-25.1 and Article XII, Section 170-52.C(3) to establish a four-family dwelling.

Applicant Ken McDavitt stated that he would like to change what was approved before because he does not want to change the architectural quality of the three-hundred year old dwelling, instead he would like to place a barn structure attached to the dwelling. He stated that he seen a map from 1845 and it had a sketch of the house with a barn.

Chris Parker confirmed with the applicant, that one tree would have to be removed and that he did not come to an agreement with the neighbors regarding the lot line adjustment because he would have a loss in land and it would increase the percentage of coverage with the average in the neighborhood.

Bill Colbath confirmed that the applicant would like to build two double-story additions. He stated that it looks like he is adding twice as much space since he is going from 696 square feet on the original proposal to 1,320 square feet on the second proposal.

Ken McDavitt stated that he realized that after the renovations took place it would look like an older house on the outside of the house but not the inside, because he would have to remove old post and beams from the house.

Richard Callaghan confirmed with the applicant that the look of the existing house would be the same with a two-story barn looking structure that would have two covered porches built on it.

Chris Parker stated that a way to add more buffer or green space would be to have the connection through the Sherwood property. He stated that Tom Clark asked him to point out that the reason that this came back before the Board is the change and that administratively he could have approved the building permit but he did not want to be in a situation where the neighbors felt there was a change in what the Board approved.

Richard Callaghan stated that the new structure is larger than the house and had some concerns.

Chris Parker stated that when Tom Clark reviews the building permit application he would address those issues with the applicant.

Discussion ensued regarding the number of units and the table of uses.

Motion: Bill Colbath made the motion to accept. Frank Landford seconded the motion.

VOTE: U/A

Public Hearing Open

Paul Nadeau, abutter at 282-284 Washington Street stated that he is opposed to the revision. He stated that he feels it will have a negative impact on his property and the neighborhood. The old plan preserved the single building concept and the design was needed to ensure low impact to abutters and preserve the character of the neighborhood. The new plan results in the opposite and appears to propose an additional multi-family building on a lot that already has an existing building. There is insufficient information regarding the architectural design of the new building, building height, and how the view from the street and abutting properties would be impacted. This information is essential to determine the significance of the visual impact the project will have to the neighborhood residents and the abutters. The applicant gives insufficient information on how this was determined to be essential or desirable to the public convenience or welfare and the measurements for determining the average lot coverage open space are questionable.

Peter Bernier abutter at 281 Washington Street stated that he has lived here since the nineteen fifties and asked the Board to think about the comments that Paul Nadeau expressed and is opposed to this request.

Richard Callaghan read a letter that was submitted by George and Jane Ann Sherwood abutter at 43 Arch Street and they stated that they were concerned with the possibility of occupants crossing their property. They stated that they feel it is a necessity to the applicant to install and maintain a fence and it was designated on the map submitted with the letter.

Chris Parker stated that after reviewing the facts, if the percentage were accurate he would meet all of the other criteria.

Discussion ensued regarding percentage of open space and if it matches the criteria.

David Ruoff stated that the applicant carries the burden of proof and he had noticed that the applicant left the room after the case was accepted for discussion and he was not available to address any of the concerns that were made by the abutters or by the Board members.

Richard Callaghan did an official roll call to see if the applicant was still in the room since it was observed that the applicant left the meeting after the case was accepted.

Motion: Frank Landford made the motion to table the item pending further information. Ruth Gorton seconded the motion.

Discussion ensued regarding the motion.

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

B. Discussion and possible vote on proposed application changes.

Richard Callaghan suggested that this item be discussed at the end of the meeting.

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

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

ITEM # 4: NEW BUSINESS

- A. Z 04-19 Rita Herlihy, (Applicant: McEneaney Survey Associates, Inc.), Oak and Rose Streets, a/k/a Assessor's Map 27, Lots 270 & 271-B, zoned R-12, requests a variance from the terms of Article V, Section 170-16 for a lot line adjustment that would result in a parcel with approximately 8,000 square feet in area, where a minimum of 12,000 square feet is required.**

Kevin McEneaney stated that he was representing the applicant and that the applicant is present with her daughter Patricia. This is an application for a variance for relief from the minimum lot size in an R-12 zone. The applicant currently lives at 53 Oak Street and she owns two parcels that are denoted as Assessors Map 27, Lot 270 on which her house is located, and rear land that fronts onto Rose Street. The second vacant parcel is located on Rose Street and is partially constructed to the point where the applicant's property begins. The applicant and her husband purchased two lots in 1949 and those were based on a subdivision from 1907, listed as lots 35 and 40 on the subdivision plan without any further description. In 1951, they completed construction of their house, which she currently resides in. The second lot 271-B was denoted as parcel 34 on that subdivision and was purchased by the Herlihy's in 1975. At some point the Assessor's Office combined the two lots for assessing purposes because they are nonconforming. The applicant's desire is to keep her house on the original lot, which is approximately 8,000 square feet from the 1907 subdivision plan, and lots 34 and 35 would be combined which would result in one desirable building lot. She is planning to give the combined lots to her daughter.

Richard Callaghan confirmed with Chris Parker that in 1979 and in 1986 the City combined lots for zoning purposes and for tax purposes it is considered that 35 and 40 is one lot. Lot 34 is considered a

separate lot.

Bill Colbath asked why they are not making the lot conforming instead of making two nonconforming lots.

Kevin McEneaney stated that the slope on Rose Street is severe. The rest of the land flows together with the gardens and would make a nice backyard. The applicant feels that it would be a much more desirable lot. The zoning district R-12 superimposed on a whole subdivision that was approved in 1907, which made none of them conforming, when in fact could have made a different zone for that area.

Discussion ensued regarding the tax maps and how the lots are listed in the Assessor's Office.

Kevin McEneaney read through the criteria that was submitted with the application.

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

VOTE: U/A

Public Hearing Open

Sean Hall abutter at 6 Rose Street stated that he lives next to the applicant and is in favor of the variance request.

Rene Ferland abutter at 8 Ela Street stated that he is in favor of the variance request.

Marga Michaud abutter at 51 Oak Street stated that she is in favor of the variance request.

Chris Parker stated that the Planning Department does support this request. They could have three lots and they are keeping with two lots.

Public Hearing Closed

Bill Colbath stated that he is questioning the hardship of the case.

Richard Callaghan stated that all three of the lots are nonconforming at this time.

John Levasseur stated that lot 40 is larger than most of the lots in the area and the logical use of the land would be to separate them.

David Ruoff discussed the area variance and the benefits with the lot line adjustment and stated that he feels that the applicant demonstrated hardship.

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: Hardship is/was created by a combination of rezoning and assessors merging lots in an error that formed an unusable lot size.
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 reasonable use of both lots, which is consistent with the neighborhood.

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 control density by leaving a once conforming lot and creating a new conforming lot, the spirit and intent is met.
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: Many abutters present at the hearing support this.
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: Allows for consistent use within the neighborhood and gives equal rights to property owner.

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

ITEM # 3: OLD BUSINESS

B. Discussion and possible vote on proposed application changes.

David Ruoff stated that he would need to change the application based on the previous case and suggested that it be tabled to the next meeting until another revision would be available.

Motion: Bill Colbath made the motion to table this item to the next meeting. David Ruoff seconded the motion. **VOTE: U/A**

David Ruoff announced that he is moving from the area, therefore would be resigning from the Board after the July meeting.

MOTION TO ADJOURN

Bill Colbath made the motion to adjourn at 8:40 p.m. and was seconded by Frank Landford.
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