

Dover Zoning Board of Adjustment
Thursday, July 15, 2004

MINUTES

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

Members Absent: Ruth Gorton

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 June 17, 2004.

Richard Callaghan stated a correction had to be made on page 3 that would add the roll call that was made for the applicant Ken McDavitt.

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

ITEM # 3: OLD BUSINESS

- A. Z03-23 192 Washington Square, LLC, 201-205 Washington St., a/k/a Assessor's Map 10, Lots 41 & 42, zoned RM-6, requests a variance from the terms of Article V, Section 170-16, to construct a building within approximately six (6) feet from a front property line as it abuts a street where a minimum of fifteen (15) feet is required.**

Attorney Jim Schulte stated that he is representing the applicant and that this case was originally submitted last fall and it was delayed with the City Council voting to convey some adjacent land. He stated that the property was located across from the apartment building and town houses that the developer built on the left side of the street. This property is on the right hand side of the street, with two dilapidated apartment buildings located on it and they have been deteriorating for some years and need to be torn down. The proposal is to construct seven town house units. The variance is required because the lot is not deep enough to accommodate the seven units and it would encroach on the river on the north side or the street on the south side. Most of the other buildings in this area have setbacks because of the age and they are at least as close or closer to the street as these proposed town houses. If the variance is approved the setback will be consistent with the other development in the neighborhood. Acquiring the property, purchasing land from the City, demolishing the existing buildings and the engineering work will be about \$60,000.00 a unit in land cost invested in this project and when you add in the cost of

constructing the town houses with seven units it would be a break-even operation. The developer is doing this because it adds parking for the units across the street and in order for the project to work for the investment in it they need to build seven units. It would be possible to have an apartment building with eight or ten garden style units, but they would have less parking. When they went to the City council, the neighborhood supported the request that the City sell land to them in order to develop the property. He stated that the City is in support of this and a letter was submitted by Mr. Beecher indicating that the agreement to sell land to the applicant was with a promise to develop this type of town house development.

Richard Callaghan confirmed that the abutter at 197 Washington Street was notified of this meeting. He stated that the abutter was a new homeowner at that time and was not notified in September, but was present and he did have a concern that the plan indicated that some of the waterfront was actually his land and asked if the issues were resolved.

Attorney Schulte stated that the resolution is indicated by the fact that he has not appeared at the meeting. He stated that he went over the matter with the surveyor and the problem is that the lots that currently exist are larger than what the deeds call for. There was some question as to where the property lines ran, but the property that is shown in the plan does not include anything that is contained in his deed, the plan includes land that the applicant is acquiring from the City. The area that he had a question about is in an area where it would not be affected by this variance, if he still has a concern, he could bring it up at the meeting scheduled with the Planning Board.

David Ruoff asked why they need to move that close to the road.

Attorney Schulte stated that if they go any further back the buildings would be encroaching on the setback from the conservation district and they would need a variance. With the two alternatives, it seems better to bring the buildings in alignment with the other buildings on the street than it is to encroach on the wetlands.

John Levasseur asked why the applicant could not narrow the units by eight inches in order to conform.

Attorney Schulte stated that they are the same size as the ones across the street and all rooms would be affected. He stated that eight inches is a significant amount to be lost for each unit.

Bill Colbath stated that it appeared that the parking was against the property line.

Attorney Schulte stated that this would also have to be approved by the Planning Board and the Board could grant a variance to allow paving up to the property line. He stated that they are scheduled for TRC and Planning Board on Thursday July 22.

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

Public Hearing Open

Chris Parker stated that the Planning Department is in favor of this variance request and feels that this is a good use of the variance in the request for the setback to be reduced. The context of the area lends itself to the buildings being close to the road, the railroad line acts as a natural barrier, and you do have houses that are setback more. As you are driving up Washington Street, you have a visual line and this would keep in that nature and context.

Discussion ensued regarding the size of the units and keeping with the neighborhood.

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: Wetlands, historical setting of adjacent buildings and unique slope of land all present a hardship to meeting the current zoning requirements.
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 improvement of the lot and buildings, which are in a current state of disrepair.
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: Keeps reasonable setbacks, which are consistent with adjacent properties.
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: It is the boards opinion that the new structures will improve values and that adjacent structures are similar in setbacks therefore not a diminution in their value.
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: Allow for significant off street parking, improves neighborhood esthetics, and provides for infilling.

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

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

ITEM # 4: NEW BUSINESS

- A. Z 04-20 Joseph Overbey, 21-23 Richmond St., a/k/a Assessor's Map 10, Lot 143, zoned RM-10, requests a special exception under the provisions of Article VI, Section 170-25.1 to convert a three family to a four family dwelling.**

Applicant Joseph Overbey submitted a parking plan for the area and a letter from an abutter in favor of this request to the Board. He stated that the building currently has three apartments and he was looking to divide the second half of the building from six bedrooms to a three-bedroom unit and a one-bedroom unit. The parking already exists and could easily fit nine cars in this space. Space is more than adequate and as shown on the plan submitted shows a proposed way out of the property. He stated that local apartments are needed close to downtown within the bus route and it would not add to a significant increase in traffic since it would only be a one-bedroom unit. He stated that he has done a lot of landscaping and is planning to paint the outside.

David Ruoff confirmed with the applicant that one of the units is a six-bedroom apartment and the other side has two apartments with two bedrooms.

Joseph Overbey stated that he is looking to add this unit for his sister in-law and in the future it would potentially hold fewer people.

Frank Landford asked if the house would have to be sprinklered.

Joseph Overbey confirmed with Tom Clark that all four units would have to be sprinklered.

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

Public Hearing Open

Richard Callaghan read a letter that was submitted in opposition of this request stating that the street is already overcrowded.

Chris Parker stated that the Planning Department does not believe that all of the criteria have been met for the special exception. It is directed specifically to the off-street parking with the requirement that it shall be provided as to avoid vehicles backing into the street. He stated that looking at the plan submitted, in order to use the spaces you would have to back into the street. He referred to Article 170.25.1 and stated that the applicant did not meet the requirement of the parking lot being five feet from the property line and ten feet from the front property line. He stated that the Planning Department does not believe that the Board should vote in favor of this application.

Discussion ensued regarding the requirements that need to be met by the applicant for a special exception.

Public Hearing Closed

David Ruoff asked the applicant if he was aware of the criteria that had to be met.

Joseph Overbey stated that he was not aware of the parking criteria; he stated that he was told he had to provide two parking spaces per unit. In reference to backing into the street, he said that it is the way every car in the area leaves their driveway.

Chris Parker stated that the applicant does need to provide two spaces per unit and it does say that off-street parking shall be provided to avoid vehicles backing into the street. In a special exception case, you need to meet all five criteria.

Richard Callaghan confirmed with the applicant that he did not see the section of the requirements that had to be met for this application.

Tom Clark stated to the applicant that when they first discussed this application he mentioned that he would have to meet the criteria of Article 170.25.1 and 170.52. He stated that the parking was discussed and part of the problem is that unfortunately, Mr. Overbey did not submit the plan until tonight; otherwise, staff may have had an opportunity to look at it and suggest alternates.

Joseph Overbey stated that he did not realize or understand that he had Articles that had to be addressed and did acknowledge the fact that the parking plan should have been submitted sooner than tonight.

Discussion ensued regarding tables of dimensional regulations regarding special exception.

John Levasseur confirmed with the applicant that it was not possible for him to change the design of the existing garage.

David Ruoff stated that he thinks he qualifies for the special exception if he solves the parking problem.

Chris Parker stated that they could rebuild the driveway or parking lot in the back and they could fit eight cars but that is a lot of work for one unit and he would also have to add the sprinklering of the building. If the applicant demolished the garage and eliminated the parking between 19 and 21, he might gain some of the open space. His open space is 30% and the neighborhood is at 22%.

Joseph Overbey stated that he would not be interested in demolishing the garage.

Motion: David Ruoff made the motion to approve the special exception. The motion was not seconded. Richard Callaghan asked for a vote in opposition. **VOTE: 4 to 1 (Ruoff opposed)**

B. Z 04-21 Robert Matchett, Trustee, 17 Fairway Dr., a/k/a Assessor's Map N, Lot 14-S, zoned R-40, requests a variance from the terms of Article V, Section 170-16, to construct a single family dwelling within thirty-five (35) feet of a front property line, where a minimum of fifty (50) feet is required.

Attorney Jim Schulte stated that he was representing the applicant and this is the last lot of this subdivision. The lot is steep and more than half is in the conservation district because either it is near the river or the back part of the lot is steep enough to fall within the definition of the conservation district zone. This lot was previously rezoned and the requirement at that time was a front setback requirement of 35 feet and all of the other houses were built with that setback requirement. The majority of the homes in this development are at the 35-foot mark and a few are closer to the river and further from the street. The property was recently rezoned to R-40 with a 50-foot setback and the concern is that it is only 105 feet from the street to the edge of the conservation district. If the house were placed at 50 feet and built to scale like the other houses in the neighborhood, you would not have a back yard and would be impinging upon the edge of the conservation district. They are asking for a variance to allow this property to be built according to the former setback of 35 feet, it would keep in line with the majority of the homes in the neighborhood and would avoid impinging on the conservation zone.

John Levasseur asked how much the conservation district limits the property.

Tom Clark stated that you could not build anything or alter the surface configuration of the land unless you petition and receive a conditional use permit from the Planning Board, which would first require review, and approval from the conservation commission.

Chris Parker confirmed with Attorney Schulte that the lot would be graded to a gradual slope.

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

Public Hearing Open

Chris Parker stated that the Planning Department is not opposed to this variance. It is in context of the neighborhood and the homes that are back more than 35 feet were by choice of views, not necessitated. In

this case, the environment is more important than the setback and the Planning Department would like to minimize the impact that it would have on the natural environment.

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: The conservation district, drainage easement, and changes in zoning all create a 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 reasonable use consistent with most of the surrounding properties.
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: Complies with original zoning in terms of setback, etc.
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: Location is consistent with neighboring properties and develops a vacant lot equitable to other homes in the area.
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: Minimizes impact on conservation district and drainage easement.

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

C. Z 04-22 Millstone Properties LLC, Back River Rd., a/k/a Assessor's Map 16, Lot 15, zoned UMUD, requests a variance from the terms of Article IV, Section 170-12, Table I, Part A, to construct a three family dwelling.

Attorney Jim Schulte stated that he was representing the applicant and a similar proposal for this lot was before the Board about a year to a year and a half ago and was turned down at that time. This proposal is somewhat different from the last one and some of the standards applicable to variances have changed. A three-unit apartment building was located on this lot before any construction started and it was subdivided into three lots, one lot containing the original three-unit apartment building that was demolished, the second lot has 19 town houses built on it and the lot in the front has an apartment building that is currently under construction. The reason for the variance is that they want to put in less housing than the ordinance requires. The UMUD zone allows for multi-family which is five units or greater. They are asking relief to allow the applicants to build less than what the ordinance requires. It would be possible to put a five-unit apartment building on that site but it would have to be an apartment building as opposed to town houses. The request that they came in with previously was to replace the three-unit apartment building with another apartment building. They would have had two parking spaces coming directly off Back River Road where they would have had to back on to the road in order to leave the spaces. This proposal would reduce the size of the building and the two parking spaces would be eliminated.

Chris Parker asked Attorney Schulte if the two parking spaces that are on the adjacent lot impact the parking calculations for the apartments. He asked him in regards to the elevation, parking would be at the level of the second floor so how would it work for residents to get to the parking, considering the elevation and location of the parking area. He also stated the departments concern for the prior application because of its use of Back River Road for access.

Attorney Schulte stated that according to his engineer, they do have adequate spaces, they did have approval for 20 town houses, and only 19 were built which would result in two spaces. The residents would have to walk down around or some sort of stairway would be constructed from the upper lot down to the back of the property, he stated that there is a retaining wall and it will be somewhat elevated.

Frank Landford confirmed with Attorney Schulte that a common easement was granted for the benefit of all three lots, a parking and an access easement.

Richard Callaghan asked if the design of the structure would be similar to the other town houses.

Attorney Schulte stated that it would be similar to the other units, but may be a little bit smaller than the Millstone Units because the lot is smaller and in this case, the land costs are less so it is a different marketing concern. These units would more directly compete with the apartments that are located up the driveway.

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

Public Hearing Open

Chris Parker stated that the Planning Department is not opposed to this variance request. One of the main concerns last time was the parking and backing out on to Back River Road and that has been resolved.

Richard Callaghan confirmed with Tom Clark that none of the handicap accessibility issues applies in this case.

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: There is no fair and substantial relationship between the general purposes of the zoning ordinance and the specific restriction on the property.
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: Allow for new residential units that are needed.
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 of that district is to encourage larger development; this is less than allowed.
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 use is similar to surrounding homes/properties.
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: Similar with neighboring properties and consistent with zoning.

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

D. Z 04-23 Gudrun Smith, 68 Drew Rd., a/k/a Assessor's Map I, Lot 94-2, zoned R-40, requests a equitable waiver of dimensional requirements from the terms of Article V,

Section 170-16, to maintain a foundation for a single family dwelling within approximately forty-seven (47) feet from a front property line as it abuts a street where a minimum of fifty (50) feet is required.

Applicant Gudrun Smith stated that this is a family lot and she lives next to her mother. She acquired a ledge lot that shows visible ledge. She stated that she was going to build a much larger house, which she decided to scale down to a cape size because of the amount of ledge. It was decided after the excavators had been looking over the topographical and the test pits that the best idea to save money from blasting was to try to shift the home down into the setback. When she was on site with the excavator, there was a great amount of ledge on the front and backside and the house would have to be built on the setback, relative to the ledge. They had tapes called out to measure setbacks and she received a phone call by the excavator stating that he thought that he might be over the setback. She stated that she had her surveyor do a foundation certification and found out that a corner of the foundation was 3 feet into the setback. She stated that she looked over the equitable waiver of dimensional requirements and feels that she meets all four requirements and proceeded to read the application to the Board. She stated that if she had to blast, it would be a minimum of three days at \$5,000.00 per day.

Richard Callaghan asked if the excavator accepts responsibility for this mistake.

Gudrun Smith stated as owner and self-contracting she accepts full responsibility.

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

Public Hearing Open

Anthea Smith abutter stated that she is the applicant's mother and she stated that she has seen the foundation and it does not seem to be any closer to the road than her house. She stated that she is in favor of this request.

Gudrun Smith stated that Stephen Janelle abutter at 80 Drew Road was present but he left the meeting to get ready for work. She stated that he was in favor of this request.

Chris Parker stated that the Planning Department supports this request and do not believe that there was a malicious intent in the placement of the foundation. If you look at the edge of pavement, in regards to the right of way, it is probably about 50 feet or more from edge of pavement to the corner. It is set back behind some trees and you would never know that there was an error made in the location of the foundation.

Public Hearing Closed

David Ruoff confirmed with Tom Clark the procedure of foundation certifications.

Tom Clark stated that he changed the language to location, if you stake it out, ask the surveyor to come out and ask if it were compliant, that would be the location.

David Ruoff stated that every time they get a case like this, somehow the forms or tapes move.

Richard Callaghan confirmed with Tom Clark that it is the builder's responsibility for compliance with the regulations and that comment is on the applications.

Discussion ensued regarding the language of footing and foundation locations.

FOUR CRITERIA:

1. It is the Board's conclusion that the request does involve a dimensional requirement. Vote U/A
2. It is the Board's conclusion that the violation has not existed for 10 years or more with no enforcement action, including written notice, being commenced by the City, or the nonconformity was discovered after the structure was substantially completed or after a vacant lot in violation had been transferred to a bona fide purchaser, and the violation was not an outcome of ignorance of the law or bad faith but resulted from a legitimate mistake. Vote U/A
3. It is the Board's conclusion that the conformity does not constitute a nuisance nor diminish the value or interfere with future uses of other property in the area. Vote U/A
4. It is the Board's conclusion that the cost of correction does outweigh any public benefit to be gained. Vote U/A

Therefore, based upon the foregoing, it is ordered that the application for Equitable Waiver of Dimensional Requirements be granted.

ITEM # 3: OLD BUSINESS

B. Discussion and possible vote on proposed application changes.

David Ruoff submitted the proposed application changes regarding dimensional/area variance requirements and use variance requirements.

Discussion ensued regarding how the requirements would be added in the application and it was determined that they would combine both forms and work off the suggestions provided on the disc by David Ruoff and come up with a consolidated application for the next meeting. The Board also discussed special exception and a possible change to the equitable waiver of dimensional requirements form.

Richard Callaghan stated that he would like to take this time to thank David Ruoff for giving his time and service to the ZBA. All the Board members agreed and wished him the best.

MOTION TO ADJOURN

David Ruoff made the motion to adjourn at 9:40 p.m. and was seconded by Bill Colbath.

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