

Dover Zoning Board of Adjustment

Thursday, November 18, 2004

MINUTES

Members Present: Richard Callaghan, Bill Colbath, John Levasseur, Masi Denison, 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 7:30 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 October 21, 2004.

Richard Callaghan stated a correction had to be made on page six, and paragraph six will be replaced with the following statement. "Richard Callaghan commented that he is going to suggest or look for the condition, that we approve this to provide two spaces and add the language that allows for the eight additional spaces based on the requirement for the five year permit and that the association has to actively pursue retaining that permit or renewing it." He recommended a correction on page seven, item one, regarding the condition and it should read as follows; "Ten off-site, off street parking spaces shall be provided permanently, in addition to the two spaces on-site.

Motion: Bill Colbath made the motion to approve the minutes with the recommended corrections.
Frank Landford seconded the motion. **VOTE: U/A**

ITEM # 3: OLD BUSINESS

A. 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.

Richard Callaghan read a letter that was submitted by Ryan Lewis, withdrawing the application for the Estate of Charlotte Wood.

B. 1) Consideration of a motion for rehearing request from Trela Associates, (Applicant: Gosport Properties, LLC) 10 Grove Street, a/k/a Assessor's Map 31, Lot 15, ZBA case # Z 04-28, regarding conditions of approval.

Attorney Bruton stated that he is requesting a motion for rehearing due to the condition that required eight additional off-site spaces to be leased on a permanent basis. He stated that his point to the Board was that the applicant had provided eight additional spaces for five years, but could not guarantee that it would be on a permanent basis. He stated that they could not accept the variance as approved because

that condition would make these units unmarketable, because it would create some uncertainty for buyers of potential condominium units.

Bill Colbath asked how it would be any different than it would be for a residential property being required to obtain and maintain those parking spots, as part of their condition for being approved.

Attorney Bruton stated it would not and the project that was proposed for this building prior to this project was a residential use and in his opinion, it could not get a variance from this Board and the project went away, (an application was never submitted). If the document said that the association has to make reasonable efforts for eight extra spaces, that is not a guarantee of permanent spaces and it would make the title marketable and would allow the project to go forward. Parking would occur during the day, that is the difference between the office space versus residential. Giving the unique characteristics of this property it would be impossible to put the parking on-site.

Masi Denison asked if there was room for compromise and suggested a twenty-year lease. She stated that the applicant is putting a use that requires more parking and it is unfair to the residents.

Attorney Bruton stated that he is in favor of a compromise and in the winter the residents have to park off the street, they would not be looking for those spaces during the day, if they have spaces in the winter, they may have those spaces throughout the year. He stated that in the application he added something to say he can only do two on-site spaces, but the applicant went out and added eight leased spaces for five years to this application.

Masi Denison asked why the applicant agrees to only five years.

Tom Clark stated that it is in the Zoning Ordinance, Chapter 170-44 H, which states lease agreements are subject to Planning Board approval, and must have a minimum duration of five years and have provisions for renewal at expiration.

Bill Colbath stated that the applicant would normally be required to provide thirty one spaces and the Board is asking that the applicant provide ten spaces and make them available to the people that will be working at the offices.

Attorney Bruton stated that it should be considered that the regulations state that a lease has to be in place and is subject to renewal. He stated that he would have no problem if the Board said, shall use reasonable efforts to maintain those spaces, that would mean it is not a guarantee but they have an obligation to exercise reasonable efforts to try to lease eight spaces.

Masi Denison asked who would make sure they would exercise reasonable efforts to maintain those spaces, and would twenty years be reasonable.

Tom Clark stated that there are several plans that have come through and the issue has never come up to make sure someone has adequate parking, after so many years has transpired.

Attorney Bruton stated that in twenty years, presumably a parking garage will be located somewhere to rent spaces. If someone has an office space located here, he or she may want to find a better place to park, and lease his or her own space in the municipal lot, or the train station.

Chris Parker stated that a year ago, the Bell Center came before the Board to get a variance to go in to Temple Israel and could only provide one parking space on-site, the Board did not require any off-site

parking, but it was encouraged that the participants park in the municipal lot. What is the difference between that case and this case?

John Levasseur stated that he was not a member at that time but one of the differences that he sees is that this project is in a residential area.

Bill Colbath stated that the Bell Center presented their case as short-term parking. This case would have at least sixteen vehicles that would be located here for eight hours at a time.

Discussion ensued regarding parking issues.

Richard Callaghan stated that he believes that when the people buy these units and turn them into businesses, he thinks it would take care of itself.

Bill Colbath stated that they are asking to place this building in use, into a residential section.

Attorney Bruton stated the Board would have to deny every project that is associated with that building, because every project is going to involve a change in use and will require parking. The developer is proposing a better use for that property, which is one that is a use during the day. No other project will be approved for that property unless they guarantee parking. This would be the best use because the impact associated with parking will not be so great, because it will be during the day and not at night.

John Levasseur stated that he does not feel it is fair for the residents in the area as far as parking and is not for this variance request.

Frank Landford stated that he does not have a problem without the eight parking spaces, but would like to see the applicant make an effort to renew the spaces after five years.

Masi Denison stated that she would like to see this type of project in this area, however is concerned with the length of time and would like to see something that is a little stronger than a reasonable effort in order to reinstate the parking, but does not feel the need of requiring permanent spaces.

Richard Callaghan asked for a show of hands in favor of the request for rehearing.

VOTE: 3 to 2 (Bill Colbath and John Levasseur opposed)

- C. 2) Z 04-28 Trela Associates, (Applicant: Gosport Properties, LLC), 10 Grove St., a/k/a Assessor's Map 31, Lot 15, zoned RM-8, requests a variance from the terms of 1) Article IV, Section 170-12, Table I, Part C-2 to establish an office use; and 2) Article XI, Section 170-45, H and I, to provide ten (10) off street parking spaces, where a maximum of thirty-one (31) spaces may be required.**

Attorney Bruton stated that he is open to understanding what some suggestions might be, because the project will fail if the applicant has to provide parking for more than five years.

Masi Denison asked if it was possible that at the end of the five-year period, if they were not able to get a renewal for the parking spaces could they come back before the Zoning Board again and reapply for a variance.

Attorney Bruton stated that in five years if someone has to go back and get relief, they might not be interested in buying it.

Richard Callaghan suggested that the applicant be required to provide written evidence on a five-year basis that would describe that they were requesting reasonable rental parking spaces from the area and submit the written responses to the Building Department.

Attorney Bruton stated that he believes that the applicant's and his own preference would be to make the effort to lease parking spaces and it would be reported every five years to the City of Dover, and the City can decide whether it is reasonable or not and challenge it.

Discussion ensued regarding the language of renewal and provisions for renewal.

Masi Denison stated that she is comfortable with leaving this in the opinion of the City of Dover if this is reasonable or not.

Richard Callaghan suggested that as a requirement the Board could put together a package that will force them to look for parking spaces. For instance, every five years the applicant has to send out a letter to everybody that has parking spaces requesting to lease those spaces. The applicant must receive a letter back from that landowner that would say they could or could not lease spaces and take this packet of letters into the Building Department every five years to review. If the spaces were available, but the applicant did not lease them for some reason, such as expense reasons, the Building Department would have to decide if it would go back to the Zoning Board.

Bill Colbath stated that he is worried about the people in the residences that surround this building. They would have to deal with the impact of the additional cars. When this is in operation, if you do not require parking somewhere else there would be no place for anyone to park on the street. He stated that he does not like the term of reasonable efforts being used to renew the parking spaces in five years.

Attorney Bruton stated that he drafted what he thinks may or may not be acceptable in terms of language to deal with the parking spaces. He stated that the language would read, that the efforts expended by any future owner or condominium association to maintain the eight off site, and off street parking spaces, shall be documented and documentation will be provided every five years to the City of Dover Building Department after the date of approval.

Richard Callaghan stated to the Board that he needs a motion to either, accept the condition that has been presented, present a different condition, or remove the condition.

Motion: Frank Landford made the motion to accept the condition that has been presented to replace condition number one, page seven from the last meeting. Masi Denison seconded the motion.

Richard Callaghan stated that he would be voting against this because he does not think the language being used is strong enough and would like the applicant to have to go a further distance to lease parking spaces.

Discussion ensued regarding the distance and the Board members asked Attorney Bruton to read the draft with the changes.

Attorney Bruton stated that he has gone beyond the required distance to lease parking spaces and proceeded to read Item B from the motion for rehearing that would replace condition number one, on page seven of the last meeting. He stated that he is adding language to read as follows; The efforts

expended by any future owner, or condominium owners, to maintain the eight off site, and off street parking spaces, shall be documented and said documentation shall be provided every five years, after date of approval to the City of Dover's Code Enforcement Officer.

Richard Callaghan stated that how it is documented and the number of efforts is missing.

Masi Denison stated that at that point it would be up to the Building Department to determine that the documentation that they have received is not reasonable.

Richard Callaghan confirmed with Tom Clark that it would be better to be more general, in order to give the City flexibility.

Public hearing open
None
Public hearing closed

Richard Callaghan asked if the Board was ready to vote and asked for a show of hands in favor of this amended condition. **VOTE: 3 to 2 (Bill Colbath and John Levasseur opposed)**

Tom Clark suggested that Attorney Bruton send over his draft to the Building Department in order for it to be included in the minutes so it can be reviewed at the next meeting.

The draft of the condition was sent from Attorney Bruton and this would replace condition one, page seven from the meeting of October 21, 2004.

As a condition of approval of the variances subject to this Application, any future owner, or condominium owners, if applicable, shall exercise reasonable efforts to maintain eight (8) off-site, and off-street, parking spaces within the City of Dover, to be available for the occupants of the Property. The efforts expended by any future owner, or condominium owners, to maintain the eight (8) off-site, and off-street, parking spaces shall be documented, and said documentation shall be provided every (5) years after the date of approval to the City's Code Enforcement Officer.

ITEM # 4: NEW BUSINESS - NONE

ITEM # 5: OTHER BOARD BUSINESS - NONE

ITEM # 6: ADJOURNMENT

MOTION TO ADJOURN

Bill Colbath made the motion to adjourn at 9:00 p.m. and was seconded by John Levasseur. **VOTE: U/A**

List of Members

Term Expires

Richard Callaghan-regular member	04-13-06
William Colbath-regular member	10-23-06
Frank Landford-regular member	04-10-05
Ruth Gorton-regular member	11-12-06
John Levasseur-regular member	11-12-06
Masi Denison-alternate member	09-08-07