

Dover Zoning Board of Adjustment

DRAFT

Thursday, February 20, 2003

MINUTES

Members Present: Dean Trefethen, Chair, Vice Chair, Rick Callaghan, Doug Cummings, Art Corte, Tom Dolbec, David Ruoff, Frank Landford, Alternate

Staff Present: Tom Clark, Chris Parker, Kate Pelletier

Trefethen stated that there would be an adjustment to the agenda under new business as an item b needed to be added for the election of officers, as they did not have a January meeting.

ITEM #1: NEW BUSINESS

A. **Minutes** Approval of the minutes for the regular meeting of December 19, 2002.

Motion: Dolbec made the motion to accept the minutes. Cummings seconded the motion. Vote U/A.

B. **Election of Officers** – Trefethen stated that it has been the custom of the board for a number of years to be self-nominating. He asked anyone that wished to serve as Chairman or Vice Chairman to speak now. There was a vote and a second that the existing officers be re-elected.

Clark mentioned to the board his memo about the court case of Rancourt vs. Manchester, concerning the Supreme Court decision clarifying the new hardship requirement regarding the Simplex situation.

ITEM #2: OLD BUSINESS

Z 03-1 Tri-City Builders, 10 Atlantic Avenue, A/K/A Assessor's Map 25, Lots 45 & 45-1 zoned RM-10, requests a special exception under the provisions of Article VI, Section 170-25.1 and Article XII, Section 170-52.C (3) to construct a four family dwelling on each lot.

Jim Shulte, 660 Central Avenue was present to speak on behalf of the applicants. He stated that the application is for two lots upon each of which they propose to construct a building containing four town house units. He stated that previously the board approved a Special Exception for two front lots having frontage directly Atlantic Avenue, for buildings that will essentially be identical to the two more buildings they are proposing today. He stated that those front buildings also received approval by the Planning Board going through the site review process. He stated that next week he would be in front of the Planning Board seeking a lot line adjustment to create a configuration that is shown on the site plan that was submitted to the board. He went through the site plan with the board. He stated that access to the four lots would be a single driveway from Atlantic Avenue, adding that there will not be any vehicle access to Granite Street. He stated that the water will come along Granite Street, and will probably connect to the sewer and storm drainage is on Atlantic Avenue.

He stated that the buildings will be serviced by natural gas, and that will likely come up from Atlantic Avenue. He stated that tonight they are requesting a Special Exception from the board for the two new units. He stated that the Special Exception requirements were set forth in their application, and he went through them.

1. Explain how the requested use would be essential or desirable to the public convenience or welfare: The Zoning Ordinance allows for the construction of three to four family dwellings provided that a special exception is granted. There is a shortage of housing for residential units of the size and price that will be involved in this project.
2. Detail how the requested use would not create undue traffic congestion or unduly impair pedestrian safety: The four units that will be constructed on each lot will not significantly add to the traffic on Atlantic Avenue. Traffic impact will be minimized by using a single driveway for the two lots. There will be no impact on pedestrian safety.
3. Describe how the requested use would not overload any public water, drainage or sewerage system or any other municipal system to such an extent that the requested use or any developed use in the immediate area or in any other area of the City will be unduly subjected to hazards affecting health, safety or the general welfare: These eight residential units will not overload public water, drainage or sewerage systems. The existing City sewer along Atlantic Avenue has sufficient capacity to accommodate these units. Water will be provided to the site from Granite Street across adjacent property owned by the applicant.

He stated that compared to the previous application, which was approved, at that time, the requirements of the City was that there be 2 parking spaces per unit, and they satisfied that requirement by having one in the garage underneath the unit, and one outside. He stated that the two new lots that they are talking about tonight will each have a garage underneath, but in addition will have 2 outside parking spaces for each unit. He stated that the site plan has eliminated two parking spaces on the two front units, and instead they will be constructing six parking spaces in addition to the two plus one for each unit. He stated that each unit would have a garage underneath and two parking spaces, with six extra parking spaces. He stated that they will also be providing a dumpster for these units.

There was some discussion on the water line. It was mentioned that there is hydrant on the property between the front and back units.

Schulte stated that there would be some minor changes based on the Technical Review Committee conference to the configuration. He stated that the parking spaces that are furthest away from Atlantic Avenue will be pushed to the side to create a hammer head back there, so that fire trucks will have enough room to turn around, and they do not have to back down. He stated that as a result of that change, they would be able to add an additional parking space to make a total of six.

A member asked about Schulte's statement that there is a shortage of this type of housing, and asked if he had a study showing that. Schulte stated that based on these types of Condo's that the developer has built, there is significant demand for them, and they do not stay on the market very long.

He stated that based on his familiarity with several developers, and their ability to construct and market the units, the demand seems to still be strong. He stated that the price range for these condo's is \$170,000-\$190,000 with two bedrooms. Trefethen asked about the parking, since two spaces are being moved from the front two lots to the back two lots, will there be some type of easement for the right to use. Schulte stated yes, that there is already recorded a shared easement for the two lots and buildings in the front as they are actually separate lots. He stated that there would be a similar common use easement and maintenance agreement all the way back.

Trefethen asked if there would be one association for all four lots. Schulte stated that he expects that there will be two separate associations, one for the two front and one for the two back, as the land in front is owned by one company and the land in back is owned by a different company. Trefethen stated that there is an awful lot that you are sharing here, dumpster location, hydrant, parking, and it seems a little cumbersome to have two different associations. Schulte stated that if the Planning Board agrees, that might be changed, but at this point, that is our intension.

A member asked if Schulte anticipated any more townhouses going up behind those two units? Schulte stated that as you can see on the site plan, coming out of Granite Street, and running parallel to Atlantic Avenue is the zoning line, and the townhouses would not be permitted in the R-12 district. He stated that the reason for this unusual configuration of lots is that if more than 50% of the lot is in the RM-10 zone then you can extend the development into the more restricted R-12 zone. He stated that that is why all of the land in back is associated with the existing foundation piece because we are not going to be doing any building out there, adding that given the zoning that applies we do not anticipate anything out there. He stated that this driveway will receive a name, so it will be designated, adding that he does not know if it will become a City street. He stated that when the board approved the Special Exception for the front ones last time, one of the conditions that were imposed was receiving lot line adjustment approval from the Planning Board, and he would expect that the board would require that again tonight. He stated that in the past the property in the back where the two new units are located, in 1998, a Special Exception was granted to build a four unit building. He stated that he believes that that approval was relinquished by this developer when you subsequently approved a Special Exception for a care facility and with this application; we are relinquishing both of those. He stated that if this is approved, they would be relinquishing those prior approvals, and all that would be left would be the Special Exception for these four buildings.

Motion: Cummings made the motion to accept the application. Lanford seconded the motion. Vote U/A.

Trefethen asked if the applicants would be before the board again. The applicant stated no.

PUBLIC HEARING OPENED

George Snell, abutter, stated that it is a win win situation for the Granite Street people, adding that he is not opposed to it, he is for it.

PUBLIC HEARING CLOSED

Staff recommendations: Parker stated that the staff supports this Special Exception. He stated that this is a good use of the land, and it makes sense to have it connect in with the previously approved to develop the same sort of design.

There was some discussion on the rear of lot 45A-1 being left as open space. Schulte stated it would depend on how it was phrased, adding that the association members may want to put up recreational structures in that area. It was mentioned that the reference made to open space was that there not be any building of any residential units. The applicant stated that they did not have a problem with that. Trefethen stated that it could be worded in a way referencing residential structures.

Trefethen stated that before the vote, he had notes that would indicate three conditions: The lot line adjustment must be approved by the Planning Board, the applicant relinquish all prior Special Exceptions on lot 45, and no more residential structures to be built on any of these four lots.

Motion: Callahan made the motion to approve the Special Exception, and the motion was seconded. ~~Vote U/A.~~

Motion: Callahan made the motion to approve the Special Exception with those three conditions, and the motion was seconded. Vote U/A.

Z 03-2 Janice Gardner, 165 Dover Point Road, A/K/A Assessor's Map L, Lot 87, zoned R-20 requests a variance from the terms of Article IV, Section 170-12, Table 1 Part B, to establish and operate a kennel.

Clark stated that he meant to draw up a memo for the board as they like to do when there is an outstanding variance on a property, and unfortunately he neglected to. He stated that back in 1998 the applicant received a variance to establish a facility for cats to be operated as a customary home occupation, which was granted. He stated that he has all of the documentation and the minutes if the board needed it.

Attorney John Ratigan, of Donahue, Tucker and Ciandella, 325 Water Street, Exeter, is representing the applicant. He stated that his client has a cat boarding business that is an accessory use to her home that was granted by a variance several years ago. He stated that the reason they are requesting a variance is that her parcel of property is quite unusual compared to the others in the R-20 zone. He stated it is allowed for those lots to be developed and they are only 20,000 square feet in size, where Ms. Gardner has almost a 5-acre lot. He stated that what is peculiar about the zone is that the area in general has several large lots that are prime use that are adjacent on several sides. He stated that the Ordinance permits the raising of livestock on any property in zone with 72,500 square feet, and Ms. Gardner has about double that. He stated that they believe that this use, while not permitted in the Ordinance is consistent with the spirit of the Ordinance. He stated that this could be designed in a way that would be unobtrusive and will not have impacts on abutters. He referenced the materials that were submitted with Ms. Gardner's application.

Referencing the requirements for a variance, he stated that the hardship issue really could be addressed by the fact that this lot, the Tuttle's lot, are larger areas in this neighborhood, and are probably not best served being in an R-20 zone, but they are. He stated that on a lot this size, as of right, Ms. Gardner could raise pigs, chickens, livestock, roosters, and any number of related animals, which would be outside, and if there were roosters anyway, it could tend to be very noisy. He stated that they believe that it is entirely appropriate to have this mild, unobtrusive expansion of use on a parcel of property that is 5-acres in size and will not have any offsite impacts.

He stated that he addressed the other criteria in his application, and could go into more detail if the board wished, but he believes that he addressed the statutory standard sufficiently in the application. He stated that unless there were specific questions he would reference what he has submitted. He stated that Ms. Gardner and her family have had permits issued by the City to have dog licenses and they have had large number of pets on the property, taking care of these pets and providing a service to the community. He stated that what they are seeking is the authority to have what is called kennel use. He stated that this use has been going on at the property for many years, long before the Ordinance adopted this specific provision about kennel uses. He stated that they believe that this use is consistent with the use that has gone on at the property, and would urge the board to consider that as well.

Ms. Gardner stated that since she purchased the property in April of 1968, they have had 7 horses, a number of cats of their own, and other small pets. She stated that in her application, under the history of the dog licensure at this address, in the second paragraph, it explains that between 1979 and 1982 she actually had over 50 dogs and were licensed for those 50 dogs. She stated that all of the neighbors that she has talked to, except one, Mr. Cherry were her neighbors at that time, and she is confident, because she has asked them all, that the fact that she would admit a large number of dogs there never caused them any problems what so ever. She stated that there wasn't any noise, smell, and annoyance for anyone on site. She stated that the licensure that she is referring to is called a group license. She stated that she wanted to explain why she decided she wanted to do this, and it all has to do with the fact that she has a dog that is fifteen years old with a chronic illness. She stated that she also fortunately has a wonderful person who is a trained Vet Tech who stays at her house when she has to travel, but she is only one person. She stated that she travels on business about 3 times a year, and if the Vet Tech was unavailable, she would not be able to go, so she set out for a back up plan, which would be the commercial boarding kennel. She stated that she has visited several boarding kennels, and she is sad to say that she could not find one that she would want to leave her dog in. She stated that after speaking to some friends of hers who are Veterinarians, it was decided that she should have a boarding kennel.

She went through the attachments that were submitted with her application showing the type of kennel she will have. She stated that with the kind of construction she is planning, there would not be any noise heard outside of the building. Ratigan stated that the lot has enough frontage and area to be subdivided without disturbing the initial residents. He stated that Ms. Gardner would be happy to condition the variance to insure, not that they think there would be a buffer issue, but to insure any concerns the board has regarding a buffer, they would relinquish any rights to subdivide the property as long as that use shall be in place, adding that no future subdivision could occur until that variance was relinquished.

A member asked how often the owners come in and out of the kennel once their dog is placed there. Ms. Gardner stated that they do not as they drop off the dog/cat and do not return until it is time to pick them up. She stated that the cat boarding that she does now is done by appointment only, and they do not take walk-ins, and there are never two people booked at the same time. Parker asked if her business is going to be a place to board and train dogs and cats. Ms. Gardner stated that there are people in Dover and the area, who are very confident dog trainers. She stated that what she does with her clients is train them with issues such as not listening, a cat scratching the furniture, and generally that kind of issue can be remedied very easily, and does not require a set of classes to deal with one issue. She stated that if the problems deal with aggression or extreme fear issues, she does not deal with those nor should any trainer, and she refers them to a certified animal behaviorist.

There was some discussion on the site plan.

Trefethen asked if with the expansion of use, if there is going to be an issue with parking, adding that he is assuming that this will mean additional customers. Ms. Gardner stated no, that she will be doing the same exact thing as she does now. She stated that the primary employee is her, and that she cannot deal with two clients at the same time, so the number of clients is not going to change. She stated that there is currently a paved area for five cars that has never been used, adding that it is way more than they have needed. She stated that the board had made the stipulation on the number of housing units for the cats, which was ten, and she had eight. She stated that they stipulated on the maximum number of cats she could house at one time, which was twenty, and she has never had close to twenty.

A member asked for an approximate number in the new proposal. Ms. Gardner stated that the space for the cats would increase from; (currently it's eight) to six or seven units. She stated that as far as the space for the dogs, she believes that they are working with something between 15-20 maximum spaces. She stated that the average kennel around here has well over 80 spaces. A member asked how many employees would be working at the facility. Ms. Gardner stated that she has a family member that can fill in for her if needed, and she has a woman that fills in for her when she goes on business trips, and she will be working with her about 12-15 hours a week in the mornings to help with the serious cleaning, but the rest of it will be her.

A member asked Clark how many employees you could have under a customary home occupation. Clark stated that you can have no more than one non-resident employed there at a time. Clark stated that as you recall, this was approved as a customary home occupation for cat care because at the time even though we had kennel listed in the table of use regulations, we did not have a definition. He stated that since then, they have added one, and this does fit the definition of a kennel.

There was more discussion on the site plan.

Ms. Gardner stated that she is planning on having her property surveyed. A member stated that the dimensions on the site plan do not add up. It was mentioned that the dimensions on the site plan need to be accurate. A member asked Ms. Gardner if it was her intention to abandon the customary home occupation. Ms. Gardner stated absolutely. Ratigan stated to get back to the question of hardship; he stated that the zoning restriction as applied to the property interferes with the reasonable use of the property considering the unique setting of the property in its environment. He stated that given the size, the uses and the management, the historic use, given that livestock on 100,000 square foot parcel is permitted, we would submit that this is a reasonable use. He stated that if you look at the environment the houses around the property, the uses around there, that this is okay in this unique setting. Trefethan stated that even though this zone does not allow a kennel, when you look at the zones that do allow kennels, and the restrictions that are placed on the kennels, i.e., the number of feet away from abutting properties, in his mind, if he was to agree to granting this variance he would ask Ms. Gardner to adhere to all of the other stipulations that go along with a kennel regardless of the zone. He stated that that brings us back to what the dimensions are here, and do we have enough frontage going across there to do all of this. He stated that to him the numbers do not add up. Parker stated that if the customary home occupation is going to be dropped, and Ms. Gardner is going with the variance for the kennel, the restrictions for the kennel would have to be adhered to.

Parker stated that perhaps where the board is going is that the application should be tabled until we can get some proper numbers. Ratigan stated that he understands what Parker is saying and does not disagree with him, adding that the Ordinance is what it is, but he believes that the 100-feet is being an odor and noise buffer to adjacent property.

Trefethan suggested to the board that the case be accepted, and ask for a definitive plot plan, and table the case until we have that. He stated that he recognizes the environmental conditions that we are all living under right now in terms of finding stakes, and it may be a while until that can be done, but given the apparent discrepancy of what we have now and what may actually be there, the only prudent thing to do is to table the application. Ms. Gardner asked if what the board wants to be assured is that the space where the dogs will be housed as opposed to therapy or hot baths, is 100-feet from either boundary. Parker stated that the building and any runs or enclosures that they will be in. Ms. Gardner stated that the building as designed so far is going to be 30-feet wide. She stated that if she understands the boards concerns, that brings her well within that 100-foot boundary.

Parker stated that his concern is that if the lot was a perfect rectangle, 233 feet straight across the front and straight sides, and you put a 30-foot wide building on it you have 100-feet on either side with no problem, but with this lot is shaped diagonally and he has concerns with the side setback.

There was some discussion regarding the dimensional requirements.

Trefethen stated that there is a distinction between the breeding and selling of dogs versus running a kennel/boarding home, and the board cannot just arbitrarily waive that just because of Ms. Gardner's experience. He stated that the variance goes with the land, and unfortunately, Ms. Gardner will not always be here on this planet, and in theory, a number of years down the road someone else can be running a kennel at this location. Trefethen stated that he also wanted to point out that the 70-feet in front is from the property line and not the pavement. He wanted to clarify the number of animals that would at the property. Ms. Gardner stated approximately 15 units/rooms for cats and 15-20 units/rooms, adding that some animals come singly, but occasionally two may come from one family, so the number could double. She stated that after talking with the architect, with the space and configuration she wants, the maximum number of units would be 20. Trefethen stated that it is reasonable to assume that Ms. Gardner could have 20 dogs at a time, with some of them being multiples.

Trefethen stated that as he suggested earlier, he believed that tabling the item and getting a certified plot plan so that the board knows what they have to work with. He stated that given the snow condition, it could be a few months, and he didn't know the time frame that Ms. Gardner was under. Ms. Gardner stated that she wanted to break ground soon.

Trefethen stated that where Ms. Gardner is asking for something special, she might have to wait.

Motion: A motion was made to accept the case. Lanford seconded the motion.

Discussion on accepting: It was stated that the board is accepting this plan, that is clearly not what is there, adding that that is the problem, that it is going to be accepted and tabled pending the plan approval. A member stated that looking at the plan, and one side of the building that is clearly wider than 6-inches, you have 130-feet, and on the other side of the building it says 125-feet, which without the building being 1-inch wide, it's a total of 255-feet across the property.

Ratigan stated that they understand that the board needs a plan of the property. A member stated that if the board is going to approve the use of a kennel based on it being a certain number of feet of the property line, based on sound omission, and what is going to be built, somewhere down the line we have to see what is going to be built, more than a picture.

Ratigan stated that the architect was unable to attend the meeting, but they will come back with a plan and the architect can explain what is going to be in the building, the number of bedrooms, etc. A member stated that he would like to see a detailed plan of what is going to be built. A member stated that the idea of approving a kennel without details and dimensions, he would not be in favor of it. Vote: All but one member agrees.

PUBLIC HEARING OPENED

John Cherry, neighbor, stated that he is closing tomorrow on the adjacent lot to Ms. Gardner. He stated that he signed a letter, as he thought Ms. Gardner was expanding with the cats, and he found out today that it was the dogs. He stated that the noise is a big concern of his. He stated that the expansion of cats he has no problem with, but the dogs he has some questions on. He stated that there is a bit of a conflict on the property line that separates the two of us, which he believes the Building Department has on file that may help to clarify the dimension that the board is looking for across the front as he just had a survey done. He stated that there is a pie shaped piece that is on Dover Point Road that is in question. He stated that he just wanted clarification on the boards thoughts, and how often the dogs would be out, waste, and that type of thing.

Ronald Fenerty, 159 Dover Point Road, neighbor, stated that he has lived next to Ms. Gardner for 33 years, and there have never been any problems at all, and he would recommend that Ms. Gardner be able to do this.

PUBLIC HEARING CLOSED

Staff recommendations: Parker stated he can give the board their recommendation, but he would prefer to wait, adding that the staff was going to mildly recommend it with setbacks, as the front setback is not an issue, but the abutting lot setback would be an issue. He stated that he was going to recommend as close to the 100-feet as possible. He stated that if this had been the customary home use, the staff would not have recommended it, but as a kennel, we do believe they can get the 100-feet if it is truly a 5-acre lot.

Motion: A member made the motion to table the request until the board receives a plot plan, clarification of the actual acreage, exact footages of the sidelines and the front and rear lines and their shape, the distances of the present structures and what the new structures will be, and a breakdown of what will be inside the new structures as far as the units that you are going to put in. A member seconded the motion.

Respectfully submitted,

Jamie Nye

Jamie Nye
Secretary

Note: These minutes were derived from the recording tape only. Deciphering these minutes without notes made it difficult to determine the member's present/absent, who was speaking, or made the motions and seconds.