

Dover Zoning Board of Adjustment  
Thursday, June 19, 2003

MINUTES

Members Present: Dean Trefethen, Chair, Bill Colbath, Vice Chair, Richard Callaghan,  
David Ruoff, Art Corte, Frank Landford

Members Absent: Thomas Dolbec, Doug Cummings

Staff Present: Tom Clark, Building Inspector; Steve Bird, City Planner; Jean Glidden,  
Recording Secretary

**ITEM # 1: NEW BUSINESS**

**a. Approval of the minutes for the regular meeting of May 15, 2003**

Art Corte stated a correction on page 6, case Z 03-8.

William Colbath stated that on page 5, case Z 03-7 Business Partners Inc, Garrison Road that the motion should read the approval of Special Exception with the conditions that the sidewalk is extended along the entire frontage of the project and that the plan goes to TRC review for an acceptable driveway plan.

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

**ITEM # 2: OLD BUSINESS - None**

**Z 03-10 John Dobe, 12 Richardson Dr., a/k/a Assessor's Map F, Lot 34-Y, zoned R-40 requests a variance from the terms of Article X, Section 170.41.D, to construct a one-story rear addition within eight (8) feet of a side lot line where a minimum of ten (10) feet is required.**

John Dobe, 12 Richardson Drive stated that he was requesting a variance to be able to construct a one-story addition for a laundry facility and increase the size of the bedroom. He stated that the way the home is constructed now does not meet the setbacks of ten feet and is requesting a 6' addition which would only bring it another foot closer to the property line. He also stated the he has three letters from the immediate abutters and they have no objections and stated that they understand the circumstance is for his wife regarding her medical condition.

Dean Trefethen asked if he had a septic system and asked where it was located.

John Dobe stated that it was in the back yard.

Dean Trefethen asked if there was a reason why he could not shift the addition one foot away from the property line.

John Dobe stated that even if he shifted it, he felt it would still be encroaching another foot and still be nine feet. He stated that it would ruin the lines of the existing structure and take away from the value and appearance of the property.

Bill Colbath asked the applicant why he felt that if he took one foot off the side and set it back squarely why it would be a problem.

John Dobe stated that he feels he would lose a lot of space and ruin the architecture of his home.

**Motion:** Richard Callaghan made the motion to accept. Bill Colbath seconded the motion.

**VOTE:** U/A

Dean Trefethen confirmed with Tom Clark regarding the side set backs being 10 feet.

Public hearing opened.

Dean Trefethen would like to note that we have three letters from abutters and they are part of the public record, the abutters live at 10, 14 and 16 Richardson Drive.

Public hearing closed.

Dean Trefethen asked for staff recommendations.

Steve Bird stated that they looked at a way to make the addition conforming and not require a variance. They had to weigh the adherence to the zoning code versus the aesthetics of the building and the inconvenience of having a 2' jog in the wall. The Planning Department feels that given that it would take a simple 2' shift to comply with the ordinance, there is no hardship in the land. He stated that the applicant has other options and they are not in favor of the variance in this case.

Dean Trefethen asked the members if they had any concerns.

Richard Callaghan asked what is the living space extending.

John Dobe stated that it is the master bedroom.

Richard Callaghan asked what was going to be in the 6' x 22' space.

John Dobe stated that it would bring the washer and dryer to the first floor since his wife has a hard time negotiating the stairs.

David Ruoff asked where the leach field and septic is located on the lot. He asked Mr. Dobe if he could show him on the diagram where the plumbing goes out the back of the home.

Dean asked the members if they were ready to vote.

#### FINDINGS OF FACT

1. It is the Board's conclusion that the applicant complies with the strict letter of the ordinance, he does not (Arthur Corte vote does) face an unnecessary hardship. This conclusion is based on the following findings of fact: There are options that would allow an addition without relief, therefore no hardship.
2. It is the Board's conclusion that, if granted, the variance will not (Arthur Corte voted will) deliver substantial justice. This conclusion is based on the following findings of fact: The proposal would extend an already non-conforming situation causing a potential unfair situation to the abutters.
3. It is the Board's conclusion that, if granted, the variance will not (Arthur Corte voted will) be in harmony with the spirit and intent of the zoning ordinance. The conclusion is based on the following findings of facts: The proposal needlessly increases density along the side property line.
4. It is the Board's conclusion that, if granted, the variance will (Dean Trefethen and Arthur Corte voted will not) result in a diminution in value of surrounding properties. This conclusion is based on the following findings of fact: The proposal decreases the already minimal open space between this structure and the abutters.
5. It is the Board's conclusion that, if granted, the variance will not (Richard Callaghan and David Ruoff voted will) be contrary to the public or private interests or rights. This conclusion is based on the following findings of fact: The proposal does not interfere with anyone's rights.

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

Richard Callaghan will be stepping down on the next case.

**Z03-11 Jonathan Kenyon, 15 Horne St., a/k/a Assessor's Map 30, Lot 9, zoned RM-10, requests a variance from the terms of Article V, Section 170-16, to construct a two-story side addition within eleven (11) feet of a side lot line where a minimum of fifteen (15) feet is required and within six and a half (6 ½) feet from a rear lot line where a minimum of ten (10) feet is required.**

Jonathan Kenyon, applicant, stated that he was seeking a variance to construct a 20'x 23' two-story addition for a one car garage and added living space. He stated he recognizes the hardship of the property with its current setbacks would mean putting the structure on the other side of the house and relocating the driveway and he feels that would take away from the outdoor living space in the backyard. He stated that the garage and kitchen expansion would provide much needed auto and outdoor maintenance equipment storage and a functional kitchen area.

He stated that his plan will blend the garage into the house while remaining unobtrusive to the neighboring properties. He presents photos of his property to the board members.

Dean Trefethen asked what the second story would be used for in their home.

Jonathan Kenyon stated it would be used for a bedroom. He stated he currently has three bedrooms, one that he does not consider a bedroom. He stated it is a very small room measuring 8'x 8' with a closet under the staircase and the proposed bedroom would be over the garage.

Bill Colbath asked if his property line was 31 feet from the side of his house. He stated that his picture does not support that measurement. He stated that it looks like his neighbors driveway is on his property and questions the width of his dumpster sitting in his driveway.

Jonathan Kenyon stated that the measurement of 31 feet is correct and he measured it today. He stated the dumpster is 8 feet wide and is 6 feet off from the building and stated there is a 2 foot jog that you can not see because of the dumpster is blocking the view.

Bill Colbath stated that it amounts to 14 feet and it is half of what he is asking for, he questions where he got his dimensions for the drawing. He stated that his evidence does not support 31 feet.

Jonathan Kenyon stated that he measured his property line today. He stated he measured it when he made the plot plan and found a discrepancy to a dimension on an aerial tax map. He stated he measured it again today and is indeed 31 feet. He feels the angle of the photo and the depth of the room that is there is not being justified.

Tom Clark asked Mr. Kenyon if the portion of the building to the chain link fence is 29 feet.

Dean Trefethen asked if he is sure that the chain link fence is the property line.

Jonathan Kenyon stated he located three of the property line pins and he measured 29 feet.

Steve Bird stated that when they viewed the site they also had some concern. They used the computerized mapping system to look at the property, which is not an accurate survey. He stated the distance to the property line to the side of the house measured approximately 20 feet which is based on aerial photography, the back portion about 23 feet. He stated they questioned the accuracy of the drawings with the application and informed the applicant about the discrepancies. The applicant stated that his sketch is accurate. Steve Bird stated that there is a discrepancy in terms of what is accurate and what is not on the measurements.

Discussion ensued regarding the measurements.

Bill Colbath questioned his measurements and stated that he will vote against it being accepted because he does not have accurate information.

David Ruoff stated that the measurements do not add up to 115 feet, he stated it is 4 feet off. If they grant a variance for 11 feet and you need to pour footings and if you do not have 11 feet you would have to return in front of the board for inaccurate information.

Dean Trefethen asked why the applicant could not put the addition on the other side of the house where he would not need relief.

John Kenyon stated that the driveway exists on that side of the home and feels that he would have to reconfigure the entire layout of the floor and backyard usage.

Dean Trefethen explained that the options of the board was to not accept, or accept and table to get a proper plot plan or go forward and agree with the 11 feet and the width of the addition would need to comply with the dimensions that are left over.

Tom Clark stated that the applicant should get accurate dimensions and explained his options to him. He stated he should get a certified plot plan.

Dean Trefethen stated that if they were not to accept they would waive the application fee and we would need to re-notify the abutters due to inadvertently omitting the requirement for relief from the minimum rear setback of ten feet on the agenda.

Steve Bird stated that if he does return with a certified plot plan it would not be a guarantee that the board would approve the variance based on the new information.

**Motion:** Bill Colbath made the motion to not accept the application. Art Corte seconded the motion. **VOTE: U/A**

Dean Trefethen explains to the applicant that it has not been accepted and that he needs to present a certified plot plan.

Richard Callaghan resumed his position on the board.

**Z03-12 George and Shanna Farrell, 10 Jackson Brook Terrace, a/k/a Assessor's Map B, Lot 18-13, zoned R-40 requests a variance from the terms of Chapter 155, Article IX, Section 155-22.F to maintain a side deck addition within approximately fifteen (15) feet from an abutting building where a minimum of forty (40) feet is required.**

Shana Farrell, applicant, stated that this is the second time that she and her husband have approached the board for the completion of the attached deck, which is approximately four hours away from completion. She stated that two years ago they discussed an attached two car garage with their neighbors and the neighbors understood and would sign any documents that they needed to complete the project. She stated that she then refinanced their house for the project and that after the acceptance of the refinancing on their home the neighbors approached them and stated that they have been thinking about the project and believe the garage would

decrease the value of their home. She stated that after the discussion with her neighbors they decided not to build the garage. They decided to revamp their driveway and used the same paving company that her neighbors used. While the project was going on they discussed plans to enclose the current deck into a screened in porch and attach a deck.

Shanna Farrell stated that she discussed this with her neighbors and they thought it was a wonderful idea. She stated that they found a builder and he drew out his project and stated 38 feet from line to house, she stated her building permit was granted and the date was scheduled for construction. She stated that she pointed out to Amy, her neighbor, what was going to be done, which included the stakes in the ground to show her the outline of the dimensions of the deck. The contractor started the project and with four hours left to complete their deck they received a phone call stating that they had to stop construction immediately. She stated that the neighbors contacted the building inspector and informed him that they were violating the 40 foot separation. She stated they contacted a lawyer for a consultation and drafted up paperwork for a variance and had to borrow money from a family member. During the discussion with the building inspector she stated he recommended that they go for an equitable waiver. She stated that they filed the paper work and realized that after listening to the board they should have gone with their original plans and requested a variance. Since the denial of the equitable waiver, she stated she has been dealing with a stressed related medical issue which has not allowed her to approach the board and apologizes to the board for the delay.

She stated that the deck not being able to be completed is an unnecessary hardship. She stated they had to move boards on top of the unfinished deck to provide an evacuation route in case of emergencies. She stated the exit through the kitchen goes through the screened in porch and it is the only exit other than the unfinished deck.

Tom Clark stated that this case goes back to November, where the equitable waiver was filed and at that time submitted information that the Farrell's submitted to obtain the building permit and stated that the information did state 38 feet to side property line and the arrow from the deck to the abutters is 38 feet. Tom Clark stated he misinterpreted that to be 38 feet left over after the deck was built. He stated he should have asked for more information with the setbacks and the proposed deck to the existing structure and that he unfortunately based it on the information that was submitted to him.

Richard Callaghan asked Tom Clark regarding the equitable waiver and Tom Clark stated that it was denied.

Shanna Farrell stated that she was told that they should have gone for a variance since they could not meet with all four of the criteria on the equitable waiver and she stated the board felt bad and wished that they would have gone for the variance instead. Tom Clark stated that he did not recall that they said she should have gone for the variance, he stated that the next step would be a variance. He stated that the variance is the last ditch effort and if you had the option of seeking the waiver that was the avenue you chose. He stated he feels that was the correct avenue to go at that time.

Tom Clark stated that at the last hearing the equitable waiver failed on two of the four criteria.

1. Did involve a dimensional requirement
2. Nonconforming was discovered after the structure was substantially completed
3. It does constitute a nuisance and does diminish the value
4. Conclusion that the cost of correction does not outweigh any public benefit

Dean Trefethen confirmed with Tom Clark on the issuance of the building permit. Tom Clark stated that the assumption was 38 feet from the deck. Dean asked the applicant what she is concerned about at this time.

Shanna stated that she wants to complete the deck and needs an evacuation route, an entrance from the driveway into the porch and to take care of the financial burden, she feels it is not attractive to the community.

Bill Colbath questions the dimensions that she presented with her application and questioned her drawing.

Discussion ensued regarding the dimensions of the property regarding the 40 foot foundation setback.

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

#### Public Hearing Opened

Amy Settele, abutter at 4 Jackson Brook Terrace, stated that she and her husband Doug are opposed to the deck addition and stated that they were also at the hearing in November. She stated that they do not believe that this is a hardship. She stated that they have other options that they could comply with and it would not break codes or infringe on the abutters and stated that this was discussed at the last hearing. She stated that the deck would adversely affect their property value. She stated that if they wanted to sell their home it is possible that a potential buyer would see this as an invasion of privacy. She stated that the deck is out of character with the rest of the neighborhood and it gives the property a cluttered appearance.

#### Public Hearing Closed

Dean Trefethen asked for staff recommendation.

Steve Bird stated that the evidence presented to them has not changed their opinion regarding the deck being too close to the abutting property line and that they have other options for the placement of the deck to the rear of the house. He stated when you compare this property to other properties in the development most of the decks are on the rear of the properties. He stated that the argument of hardship is not convincing and that the building permit was clearly based on inaccurate information supplied with the application, therefore the staff does not recommend the variance.

Dave Ruoff asked Tom Clark about any inspections that took place regarding the deck prior to framing.

Tom Clark stated that it is hard to do a footing or foundation inspection because it is poured and backfilled, he stated he was out there the same day it started, but the contractor had completed most of the deck.

Richard Callaghan stated that he feels it is not a hardship. He stated he has a concern with the deck being too close to the property line and the plans submitted show that it is thirty-eight feet from the line of the house and in fact it is not. He stated that he feels it is an intrusion to the neighbor's rights and creates a density problem.

Dean Trefethen stated he agrees that it is not a hardship. He stated that he would vote no and at that point and time he believes it may become a civil matter if they are looking for avenues to recover. He stated he does not see how the board can give proper justice to all parties concerned.

Dean Trefethen asked if the board was ready to vote.

#### FINDINGS OF FACT

1. It is the Board's conclusion that, if the applicant complies with the strict letter of the ordinance, he/she does not face an unnecessary hardship. This conclusion is based on the following findings of fact: An error in the original specifications, causing a misinterpretation by the building inspector and thus issuance of a building permit, does not constitute a hardship. Also there are other options on the property for a deck not requiring relief from zoning.
2. It is the Board's conclusion that, if granted, the variance will not deliver substantial justice. This conclusion is based on the following findings of fact: The proposal constitutes too much of an intrusion of the open space that rightfully belongs to the abutter.
3. It is the Board's conclusion that, if granted, the variance will not be in harmony with the spirit and intent of the zoning ordinance. The conclusion is based on the following findings of fact: The proposal would be a gross violation of the goal to keep density at a reasonable level.
4. It is the Board's conclusion that, if granted, the variance will result in a diminution in value of surrounding properties. This conclusion is based on the following findings of fact: The proposal will deplete the aesthetics of the abutter's house.
5. It is the Board's conclusion that, if granted, the variance will be contrary to the public or private interests of rights. This conclusion is based on the following findings of fact: The proposal would grant greater rights to the applicant while infringing on the abutters.

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