

Dover Zoning Board of Adjustment

Thursday, July 17, 2003

MINUTES

Members Present: Bill Colbath, Vice Chair, Richard Callaghan, Tom Dolbec, Art Corte,
Frank Landford

Members Absent: Dean Trefethen, David Ruoff, Doug Cummings

Staff Present: Steve Bird, City Planner; Jean Glidden, Recording Secretary

ITEM # 1: NEW BUSINESS

A. Approval of the minutes for the regular meeting of June 19, 2003

Motion: Richard Callaghan made the motion to accept the minutes as amended. Frank Landford seconded the motion.

VOTE: U/A

ITEM # 2: OLD BUSINESS

A. Z 03-02 Janice Gardner, 165 Dover Point Rd., 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 I, Part B, to establish and operate a kennel.

Bill Colbath stated that this item was tabled from the meeting of February 20, 2003 for further information.

Attorney John Ratigan, represented the applicant and informed the board that he has also brought along Steve Jensen, the architect for the project. He stated that he had new information to present to the board and that the applicant has provided the board with a description of construction materials, a new site plan with setbacks and has also presented them with a letter stating what the hours and the maximum amount of dogs on site would be at the kennel.

Steve Jensen Architect, stated that he has extensive experience in designing or building animal facilities, including the local NH SPCA facility in Stratham. He stated that he is always asked to specifically speak about noise levels for a kennel. In contemporary kennel facilities they do have a lot of resources for noise containment and that they will be using sound absorbing panels. This building will need heat and air-conditioning and stated that they will not have windows that open or exhaust fans on the outside that would cause noise. He stated that the sound absorption walls that they will use takes the barking of a dog at 110 decibels and lowers it to 60 decibels. He stated that the noise issue is under control.

Bill Colbath stated that he wanted to see more on paper, written hours of operation, sound levels, etc. He stated that the variance goes with the land itself and when she decides to sell her home or does not want to run the kennel anymore, it will be passed on to the next owner of the property.

He stated that this was addressed at the last meeting and wanted to specifically see on paper what was going to be done to mitigate the noise.

John Ratigan stated that to fully design the architectural drawings would cost thousands of dollars and did not want to put the applicant through this without knowing if they could get a variance. He stated that he would like to put in a condition of approval.

Bill Colbath stated that he wanted to see more information with what they intended to do and how they intended to do it, he stated that they should have had specific information regarding outside and inside noise levels and hours of operation.

Frank Landford stated that his problem was not with how many dogs inside the building, he wanted to know how many would be outside. He stated that he is concerned for the neighbors.

Janice Gardner stated that eight dogs would be outside at one time. She stated that they are fenced in areas and the dogs are not going to be able to see each other, they are going to be supervised. She stated that it will be a specialized care facility for the dogs and that she understands the concern with who is going to run this facility after her. She also stated that she has a petition signed from the neighbors.

Bill Colbath stated that she needs to come up with an iron clad plan regarding how noise is going to be mitigated, animals will be handled and hours of operation.

Frank Landford stated that they need a written method of operation for the kennel.

Bill Colbath stated that he is concerned with who takes over the kennel and the variance would need to be iron clad for all involved.

Richard Callaghan stated that it should be written in the deed for the property that if it is sold it should be agreed to by the purchaser regarding the operation of the kennel.

John Ratigan asked if they could suspend the consideration of the case, so they can gather together and write down the information that the board is requesting and present it to the board at the end of the evening.

Motion: Richard Callaghan made the motion to accept the recess of the case and be tabled after the other cases have been heard. Tom Dolbec seconded the motion. **VOTE: U/A**

B. Consideration of motion for rehearing request from John Dobe, 12 Richardson Dr., a/k/a Assessor's Map F, Lot 34-Y, RE: ZBA case # Z03-10.

Attorney James Schulte, represented the applicant. He stated that he was not at the first hearing and Mr. Dobe gave him a copy of the application and asked if he could represent him. He stated that Mr. Dobe has a single family residence, a cape built in the 1950's at a time when setback requirements were different, the lot is irregular shaped and sits on a curb, the boundary line is closest to the corner of the house where they want to build the addition and the house is constructed at a slight angle to the side line. He stated that the addition would be 6'x 20' addition to the rear of the property and would be encroaching an additional one foot in the setback requirement and that part of the property presently contains the bathroom and a tiny bedroom,

which measures 9' x 13'. He stated that Mrs. Dobe has a medical condition which prevents her from climbing stairs and they need to provide laundry facilities on the first floor of the home and change the master bedroom location to the back of the house in order to accommodate the doorway for a wheelchair or stretcher. He stated that this has happened in the past and the emergency medical team was not able to bring a stretcher in the bedroom because of the angle of the hallway and the door. He stated that the new bedroom would measure 15'x 13' if the requested variance is granted, and would accommodate for a wider doorway for all of the advantages of subsequent emergency removals, otherwise the space would be nine feet deep with a two foot jog and it would be awkward for a bedroom. He stated that emergency vehicles would not be able to reach the back yard will all of the structures on the other side of the house, which includes trees, fence and a large shrub. He stated the neighbors are in favor of the variance and therefore asks the board to grant the rehearing. He stated that a question regarding the septic line was asked to Mr. Dobe and he feels he misunderstood the question and based upon that is asking to grant a rehearing.

Bill Colbath requested that the applicant have a floor plan with the proposed addition to review at the next meeting.

Motion: Frank Landford made the motion to grant the rehearing request. Art Corte seconded the motion. **VOTE: U/A**

ITEM # 3:

Z 03-13 Deborah Coppins, 40 Piscataqua Rd., a/k/a Assessor's Map J, Lot 13-K, zoned R-40, requests an equitable waiver of dimensional requirements from the terms of Article V, Section 170-16, to maintain a front porch addition within approximately thirty-nine (39) feet from a front property line as it abuts a street where a minimum of fifty (50) feet is required.

Deborah Coppins, applicant, stated that she purchased her home in January of 1996 and had a plot plan done at that time and showed the front on the house being 45 feet from the road and was not raised as an issue and the house was built prior to the fifty foot setback and was grandfathered at the time. In 1996 she wanted to put a porch on the front of the house. The contractor measured her property and submitted the drawing to the building inspector for a building permit. The permit was approved and the porch was added on to the existing home. She stated that she refinanced the home three years ago and the question did not come up at that time. She stated that she tried to refinance again in March, they pulled a new plot plan and realized that the porch did not meet the set-backs and it was questioned.

Bill Colbath asked the applicant when she bought the house in 1996 did they do a plot plan at that time and if the initial plot plan that she used to buy the house show the setbacks.

Deborah Coppins stated that she does not recall seeing the information, it was not raised at the time and did not think it was an issue.

Bill Colbath asked if they did a certified plot plan in 1996 when she purchased the home and did it show if her house was in the setbacks.

Deborah Coppins stated that it showed the house being 45 feet from the road.

Bill Colbath asked Steve Bird if the setback have always been fifty feet and asked if the permit was issued due to incorrect information submitted to Tom Clark.

Steve Bird stated that the area has not always been R-40. The drawing submitted with the application was not a certified drawing. He stated that it was a hand drawn plan and the contractor certified with the building inspector that it did meet the fifty foot setback and that is what the building inspector based the permit on.

Motion: Frank Landford made the motion to accept. Richard Callaghan seconded the motion.

VOTE: U/A

Public Hearing opened

None

Public Hearing closed

Steve Bird stated that the planning department supports the equitable waiver request. They believe it meets the test and that it was discovered six years after the structure was complete. He stated that they believe the violation was not an outcome of ignorance of law and that the contractor knew it was a 50 foot requirement and submitted it on the application and the building inspector issued the permit based on the information submitted. He stated that is was not discovered until she tried to refinance and in their opinion the equitable waiver is a method of relief that is available and the only alternative would to tear the porch off or to come before the board for a variance.

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 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 # 4:

Z03-14 McBeau LLC, Portland Ave, a/k/a Assessor's Map 24, Lots 129-1 & 129-2, zoned RM-10, requests a special exception under the provisions of Article VI, Section 170-25.I and Article XII, Section 170-52.C (3) to construct a four-family dwelling on each lot.

Attorney James Schulte, represented the applicant, McBeau LLC. He stated that Kevin McEneaney is present and he is the engineer of the project. He stated that he has prepared a plan and that the subdivision approval granted was to divide a large lot into three lots, one of the lots already has a four unit building on it. The proposal is to construct two more four unit buildings on either side of the lot. He stated that the lots are substantially in excess of the open space requirements and is equal to the average amount of open space on all developed lots in the RM-10 district and all three lots will comply. Two off street parking spaces for each unit and the parking lots are five feet from the side line and ten feet from the front line. Parking area is to be screened and is provided in the plan and the structures be set back twenty feet from the front and fifteen feet from the side and rear. For the specific requirements for three or four family dwellings we have complied with all of those. For the special exception requirements he stated that this project would provide additional apartments in an area close to down town and within walking distance in a neighborhood which is zoned for this type of use where similar structures already in the neighborhood. He stated that the four units that will be constructed on each of the lots will not add a significant amount of traffic to Portland Avenue which is one of the widest streets in the city, more than adequate site distance, east and west in the location. They will be minimizing traffic impact to some extent because two of the lots will share a single driveway. The three lots will only have two driveways and will have a sidewalk in front for pedestrian safety. He stated that he had to provide information that there will be no overload of public water drainage or sewer system and stated that there is adequate city water/sewer drainage to accommodate these units and asked for approval.

Frank Landford asked James Schulte to explain the sidewalk and asked if it would be to City specifications.

James Schulte stated that it would be along Portland Avenue and would be to City specifications.

Bill Colbath asked about parking for the southerly most four-unit building.

James Schulte stated that there would be six spaces and two designated spaces on the second lot to be serviced by the walkway and would be a deeded easement.

Bill Colbath asked if the lots would be divided or sold individually.

James Schulte stated that right now it is one owner owning all three of the units.

Bill Colbath asked if the two parking spaces will be deeded in, to 129 serving 129-1.

Jim Schulte said that the deed would receive an easement that will burden 129.

Bill Colbath stated that the rear of the property is non-developed at this time, what is the implication for future use.

Kevin McEneaney stated that one of the conditions of approval that the planning board made on the subdivision would be a deed restriction that would state, no further development on the remaining land on lot 129-1.

Bill Colbath confirmed with Kevin McEneaney that it would be shown on the deed and that is

was a condition of approval with the subdivision.

Richard Callaghan asked if the building could get pushed back so all of the parking for the building could go out in the lot in front.

Kevin McEneaney stated that the dash line on his plan is the top of a bank with a slope and as it starts down the slope in the area, it exceeds 20% and is automatically a conservation district.

Motion: Richard Callaghan made the motion to accept. Frank Landford seconded the motion.

VOTE: U/A

Steve Bird asked what type of landscaping were they considering and what would be the minimum height of the landscaping or fence in that area.

Kevin McEneaney stated that he was not sure what he would be putting in the area, he stated that it may be vegetated screening and a fence or a combination of the two. He stated that he anticipates that it would be a limited size.

Public Hearing opened

None

Public Hearing closed

Steve Bird recommends approval of the special exception with suggested conditions being that the access easement for the two parking spaces be in the deed for the property and the applicant be required to install a sidewalk to City specifications along the frontage of the developed sections and that the plan be presented to the planning department to go through TRC.

Richard Callaghan asked if the shrubs would block the view of the sidewalk and asked if the TRC would ensure that the shrubs would not block a cars sight of the road. He stated that he feels that the vehicle would be on the sidewalk in order to see down the road and the shrubbery would block the view of pedestrians.

Steve Bird stated that the sidewalk would be abutting the property line and stated it would be in the public right of way and would pass on the concern to the committee. He stated in order for the special exception, the applicant would need to demonstrate to your satisfaction that the parking areas are adequately screened from abutting properties and he could put a stipulation of height or distance of the screening.

Art Corte asked if he could have the specs for the shrubbery in the size and it's location to the boundary line.

Richard Callaghan asked if they would be willing to give up some of the screening to provide safety on the sidewalk.

Steve Bird stated that the board can put any reasonable condition that they feel necessary.

Bill Colbath stated that they should put in the condition that TRC review and approve screening material, installation, location and be non-obstructive.

Motion: Richard Callaghan made the motion to grant the Special Exception with the condition that the TRC reviews it and that all issues listed below are resolved. Frank Landford seconded the motion. **VOTE: U/A**

1. Must go to TRC and they would have the responsibility to design the screening so as to allow a clear line of sight to both directions on the sidewalk even if it requires eliminating screening on the street side of property 129-1.
2. Access easement on the deed for lot 129-1 to lot 129.
3. Install a sidewalk across the three developed sections of land to city specifications.

ITEM # 5:

Z03-15 Robert Mairs, 278 Washington St., a/k/a Assessor's Map 10, Lots 149, zoned RM-10, requests a variance from the terms of Article IV, Section 170-12, to establish an office use.

Attorney Mark Kearns, represented the applicant. He stated that when Bob purchased the property it had three apartments and a grocery store. The store was not an allowable use at that time, but was grandfathered since it has been there for over fifty years. He stated that Bob renovated all three apartments completely, new wiring, plumbing, roof, windows etc., and had a long term lease with the owner of the store. The store is out of business and is now vacant. He stated that they are requesting a variance for the 950 square feet of store space to be used as an office. He reviewed the allowable uses for the property. He stated that he could have an office if it is a customary home occupation and feels it would be unlikely for an apartment dweller to have a home occupation. He stated he could put in a fourth family dwelling but would have to tear out all of the reconstruction that he has done and sprinkle the entire building. He stated that the only use that could be used is a barber or beauty shop. He stated that across the street they do have an office building and because it is a small space it is likely to be consistent with the neighborhood and the owner has very little use for it besides an office. All of the other uses simply do not fit the 950 square feet and requests the board to provide an office use variance for that portion of the building.

Bill Colbath asked Bob Mairs what the date was when the store closed.

Bob Mairs stated a year and a half ago.

Tom Dolbec asked what the cost would be for an exposed sprinkler system.

Bob Mairs stated that he would have to remove all of the tenants and they have leases and would have to rip all of the ceilings down and the sprinkler system itself is about twenty five thousand, he would have to run a new water line and stated that it would be close to two hundred thousand to do all three apartments.

Art Corte asked how many parking spaces are available.

Mark Kearns stated that they have parking for nine cars.

Frank Landford confirmed the three apartments in the structure along with the available space and confirmed that they would have a couple of parking spaces left for this space.

Bill Colbath asked where the requirement for the sprinkler system came from for the fourth dwelling.

Bob Mairs stated the fire department required the sprinkler system.

Mark Kearns stated the fire department said that if they put in a fourth residential unit, they would have to sprinkle the entire building.

Motion: Frank Landford made the motion to accept. Richard Callaghan seconded the motion.

VOTE: U/A

Public Hearing open

None

Public Hearing closed

Steve Bird stated that the planning department is in favor of this variance request. Primary reasons are that it used to be a retail use in the property up until the last couple of years and this use being proposed would be less of an impact then the store that was currently open. He stated that there are some commercial uses in the area and that it would be compatible with the neighborhood and feels it would be very limited impact in the neighborhood and for those reasons they support the variance request.

Richard Callaghan asked what the intended office use would be at this time and what type of signs are they going to be putting up. He asked if they would be doing any outside appearance of the building.

Mark Kearns stated that the person that is interested at this time is a property management company and stated that they would have a small sign and it would comply with the ordinance.

Bob Mairs stated that they will be putting in new windows and a glass door.

FIVE CRITERIA:

1. It is the Board's conclusion that if the applicant complies with the strict letter of the ordinance he does (Tom Dolbec voted does not) face an unnecessary hardship. This conclusion is based on the following findings of fact: Finding a reasonable compatible use that allows use without major renovations.
2. It is the Board's conclusion that, if granted, the variance will (Tom Dolbec voted will not) deliver substantial justice. This conclusion is based on the following findings of fact: Allows reasonable use of property, consistent with neighboring uses.
3. It is the Board's conclusion that, if granted, the variance will (Tom Dolbec voted will not) be in harmony with the spirit and intent of the zoning ordinance. This conclusion is based on the following findings of fact: Proposed use will not adversely effect surrounding property.
4. It is the Board's conclusion that, if granted, the variance will not result in a diminution in value of surrounding properties. This conclusion is based on the following findings of fact: Use will be consistent with past uses and similar to surrounding 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: It has no adverse impact on the neighborhood and abutters.

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

ITEM # 6:

Z03-16 Bonnie Leavitt, (Applicant: John Leavitt, Leavitt & Boucher Equipment, LLC, 99 Columbus Ave, a/k/a Assessor's Map G, Lot 27, zoned R-20, requests a variance from the terms of Article X, Section 170-40, to expand a non-conforming use (light industrial use).

Attorney James Schulte, represented the applicant. He stated that he does not feel that the variance is required and stated that Section 170-40 is for a non-conforming use of land, and Section 170-41 is for non-conforming structures and stated that it is a constant struggle to keep separate the concept of non-conforming structures and non-conforming uses. He stated that non-conforming uses are particular uses and are allowed in particular districts and the use that is being made here is currently non-conforming use (light industrial use) he stated that uses of this type on this property in the building have been used for fifty years. He stated that the Leavitts use of the property is that they buy, sell, lease and repair. They also do some fabrication and light assembly on commercial trash structures. They deal with dumpsters and compactors. He stated that the request for application is to either put a 56' X 12' trailer or put an addition to the front of the building. He stated that they have four office employees and six production employees working in the business. Three of the office employees are in a 10' X 12' room. They want to create an office area with a small reception area and make the existing bathroom handicapped accessible. He stated that they would not increase the production area or increase the use of the property. He stated that what they are asking permission for is to change the structure, although the use on this property is non-conforming, the structure is conforming. They are asking to expand the structure and feels it does not require a variance because the structure is and will continue to be conforming.

Frank Landford asked why is this a non-conforming use. He asked the size of the lot.

Jim Schulte stated that this is a residential zone and this is a light industrial use and the Leavitt's have been there ten years and before that a plastic manufacturing facility, a contractor's area and used as storage space.

Steve Bird stated that it is 2.36 acres.

Bill Colbath asked Jim Schulte why he thinks the use of the property does not change. He asked Mr. Schulte why does he propose that the expansion of the office use does not require a variance.

Frank Landford stated that it is not the same use, but it is part of the business.

James Schulte stated that they are not changing the use of the land because it is currently being used as a non-conforming use. He stated that they are not moving from one portion of the lot to

another. He stated that the addition to the front is closer to the street, but it would meet all setback requirements.

Discussion ensued regarding non-conforming uses of land and non-conforming structures.

Bill Colbath stated that they applied for a variance, not an appeal from an administrative decision, if he wants to appeal they would have to start all over again and stated the he should stay with the variance request, otherwise the idea that the variance is not required would fall under another category.

James Schulte stated that Tom Clark has been to the site and stated that he has not found anything that needs his attention, other than a request for this expansion.

Bill Colbath stated that for many years the property had been used as commercial property.

Steve Bird stated that he spoke with Tom Clark about the issue and he shares the opinion if the applicant felt that he incorrectly characterized this as a variance then he would have suggested to the applicant, if they had raised it with them at that time, that they could appeal for administrative decision, in absence of that, he would stick with his ruling that it needs a variance under 170-40.

James Schulte agreed to go along with the variance under 170-40. He stated that the five requirements they need for the variance and the hardest one to establish is the question of hardship, he stated that the lot is fairly large and predates all of the other houses in the neighborhood. He stated that the outside is used for storage and products and that the hardship exists because zoning was changed because of the residential uses and stated that the expansion of the building would approve the appearance of the property, handicapped accessible and would not change the impact on the neighborhood. He asked if they would grant a variance to either place a trailer on the side of the property or build an addition to the front of the property.

Frank Landford asked if the addition was the preference.

John Leavitt stated he would like either one.

Bill Colbath asked Steve Bird if he would need a variance to place the trailer.

Steve Bird answered yes, the trailer option was on the application and that the building inspector would consider that to be an expansion of a non-conforming use.

Motion: Frank Landford made the motion to accept. Richard Callaghan seconded the motion.

VOTE: U/A

Public Hearing opened

Stephen Flewelling, abutter at 24 Wallace Dr., stated that he built his home in 1999, and the business existed at that time. Over the past couple of years he stated that the business has expanded and the property has been cleared in the back with additional clearing this spring. They have seen additional garbage bins stored on the property. He stated that Mr. Leavitt has been cooperative with them, working together to build a buffer. He stated his concern with the

increase of trucks and noise. He stated that he would like to know if the business could or would expand again.

Frank Landford asked how much of the lot does he see the business using, expanding and storing dumpsters.

Stephen Flewelling stated that the back portion of the property has been leveled off and pushed back as well as the piece of property that abuts his property. He stated that they did have a buffer of trees between his residence and the business and as the property was cleared it created a gaping hole that is very visible. He stated that he did not expect the business to grow when he built his home and if he can not get any guarantees that the business will not expand again, he is opposed to the expansion.

William Kish, abutter at 18 Wallace Dr., asked the board "what does it mean to be grandfathered and what is light industrial" does that mean it is limited to I-2 and can not exceed that capacity?

Steve Bird stated that it is grandfathered to the use being conducted on the property, if it were to change use the building inspector would have to make an interpretation that the proposed use was similar enough to the previous use that it would not be a change of use. It does not mean that any I-2 use could go there.

William Kish stated that he does not know what the limitations are as far as what the applicant can do with the business.

Frank Landford asked if his problem was with the building or the storage use of the property.

William Kish stated that if it is classified or can not exceed the limitations of I-2, does that mean that they are not allowed to have outdoor storage. He stated that Mr. Leavitt's son was operating an electrical contracting business out of the building and asked if that was within compliance. He stated that he is opposed to the applicant's request.

Steve Bird stated that this is not an I-2 district. The use that is there today is what he is restricted to and the rules governing non-conforming uses of the land is set out in zoning Chapter 170-40. If the building changes or expands the building inspector has to make an interpretation as to whether that violates that part of the zoning ordinance, in this case he has interpreted adding on to the building as an expansion of the non-conforming use, which is why he is seeking a variance.

Bill Colbath stated that the facility has been there for manufacturing storage in various forms over the years and is being used as a light industrial use. He stated that he is allowed to pursue in a similar fashion to what he is doing know, which is light manufacturing. He stated that the building is grandfathered.

Alan, abutter at 12 Wallace Dr., stated that he believes the business has expanded. He stated that he does not expect the business to go away and is opposed to the addition because of safety reasons with the trucks and heavy equipment driving in and out of the property and other vehicles in the area.

Public Hearing closed.

Steve Bird stated that as some may know, the Planning Department proposed rezoning of this area as industrial on two separate occasions in the past and they recognize the fact that this is an existing business and he stated that one of the things that they would be interested in seeing is an architectural rendering of what the building would actually look like and they implied that it would improve the appearance of the building and stated that he feels that it should be a requirement of any variance. He stated that the business has existed for the number of years and has pre-existed most, if not all of the residential structures in the area and the fact that the addition to the building itself is a reasonable size and according to the testimony of the applicant won't increase the activity on the site, they would be in favor of this variance request and recommend the condition of no further clearing of the lot beyond what is existing today and that the parking for customers and employees be limited to the front of the building

Frank Landford asked Steve Bird how much expansion does this business allow before it comes under site review again, he asked if there is a requirement for outdoor storage on the site plan review.

Steve Bird stated that in terms of the site review regulations any addition over 2500 square feet would require site plan review, he stated that if this was to come before the Planning board for site plan review they would review outdoor storage as the process, the definition of light industrial does not have any bearing because this business existed for a number of years and the particulars of this business is what the building inspector would have to look at in determining what is an expansion and what is not, the fact that the definition of light industrial says that you can not have outdoor storage, does not matter in this case, since it has existing outdoor storage. He stated when the Wallace drive subdivision was approved by the Planning board there was a requirement stipulated that the developer install a buffer to screen proposed houses from this existing business. He stated that there may be an outstanding issue on the developer's part on this condition.

Discussion ensued regarding non-conforming use.

Richard Callaghan stated that according to the abutters the business has expanded and they are thinking of giving a variance to a piece of property that is already non-conforming to the code and has not been sited as such, he stated that he believes that the building inspector probably does not have any knowledge of it, he stated the board has heard tonight that there has been tree cutting and he views this is a non-conforming use of the land that has already been enlarged and is being done so without a variance, he stated that he has a problem with giving a variance to a property that is violating the code and has not been addressed.

Jim Schulte stated that this is a request for a variance to expand a building and stated that the outdoor storage is not an issue at this hearing.

Bill Colbath asked the members if they were ready to vote.

FIVE CRITERIA:

1. It is the Board's conclusion that if the applicant complies with the strict letter of the ordinance he does (Richard Callaghan voted does not) face an unnecessary hardship.

This conclusion is based on the following findings of fact: Allow for a reasonable expansion of a grandfathered use.

2. It is the Board's conclusion that, if granted, the variance will (Tom Dolbec and Richard Callaghan voted will not) deliver substantial justice. This conclusion is based on the following findings of fact: Allow for improving business activities.
3. It is the Board's conclusion that, if granted, the variance will (Tom Dolbec and Richard Callaghan voted will not) 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 was not to eliminate existing business, but to allow them to exist.
4. It is the Board's conclusion that, if granted, the variance will not (Tom Dolbec and Richard Callaghan voted will) result in a diminution in value of surrounding properties. This conclusion is based on the following findings of fact: Will improve appearance and not impact abutters.
5. It is the Board's conclusion that, if granted, the variance will (Bill Colbath and Art Corte voted will not) be contrary to the public or private interests or rights. This conclusion is based on the following findings of fact: Adversely effects the abutters.

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

This item was recessed at the beginning of the evening to give the applicant an opportunity to address the concerns of the board.

ITEM # 2: OLD BUSINESS

A. Z 03-02 Janice Gardner, 165 Dover Point Rd., 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 I, Part B, to establish and operate a kennel.

Attorney John Ratigan, stated that they had devised conditions of approval that would address the concerns that have been expressed.

1. The building that houses the animals will be constructed to attenuate interior building noise, so that it is not audible at any property line.
2. Locate the eight exterior runs on the north side of the new proposed building that shall house the animals.
3. The maximum number of animals boarded on the property shall be thirty cats and thirty dogs at any time.
4. No more than eight dogs shall be in the outdoor runs at any one time. At all times they shall be supervised.
5. No dogs shall be outside unsupervised.
6. Animals outside shall be continuously monitored by a noise monitor.
7. Any dog that is disruptive or barking while outside shall be removed from the outside pen areas within ten minutes of the onset of barking or disruption.
8. No dogs shall be outside before 7:00 am or after 8:30 pm with the exception that an individual dog may be escorted outside to attend to basic need at other times.
9. The typical daily schedule of operation is as follows:
 - In the early morning, animal food and medicine is prepared;
 - A group of dogs less than eight will be taken to their runs;
 - The rest of the dogs are fed;

- The dog rooms are cleaned;
 - The dogs outside are brought in, the dogs inside are brought out;
 - The remainder of the day, animal needs are attended to;
 - Animals are fed in the evening between 4-5 pm;
 - Animals are let out for the last time between 8-8:30 pm;
10. All deliveries shall be from 9am-5pm. Monday thru Friday.
 11. Animal pickups and drop-offs are scheduled between 9 am and 5 pm, no more than five pickups or drop-offs are scheduled per hour.
 12. Trash is handled by municipal curbside pickup.
 13. There will be no more than two employees on the premises at any time.
 14. All boarding animals shall be fully vaccinated, with documentation on the premises.
 15. Landscaping buffer, to the extent that there are gaps in the existing trees and shrub line, additional conifers shall be planted.
 16. The applicant shall place these conditions of approval in a suitable deed restriction acceptable to the legal counsel.

Discussion ensued regarding the amount of dogs and the procedures of the kennel.

Applicant stated that if the home is sold, that she will have stipulations in the deed that if anyone were to continue the operation as a kennel, they would have to follow the same procedures or she would not let them buy her home.

Richard Callaghan asked the applicant if she would agree or be willing to put in the deed, if a buyer buys the property with the intent to operate the kennel they will be and must be a resident of the house.

Art Corte asked if the level of detail on the property can be put in a deed restriction.

Attorney John Ratigan, stated that if the conditions are in a deed restriction they are enforceable and if they are violated the variance could be revoked for violation of the terms of the conditions.

Bill Colbath stated that if the kennel becomes a nuisance and if it is documented the kennel would have to be closed. He stated that he wants to make sure it can not become a nuisance, now or in the future and if it does become a nuisance the variance is void.

Steve Bird confirmed with the applicant that the addition was not a part of the animal operation and stated that the goal of the zoning requires kennels to be a hundred feet from each property line and that building is eighty-seven feet away and the proposed building of eighty-four feet is an issue. He stated that in an R-40 district if you had a kennel part of the zoning requirement would be that the building that has the animals and any runs would have to be one-hundred feet from a property line and he came here tonight with the theory that he was going to suggest that they get as close to the hundred feet as possible if the board was to grant the variance. He stated that the setback of one hundred feet is good for the R-40 district which is a more rural district, then the same principle should apply in an R-20 district where the houses are closer together and the lots are smaller. He stated that not knowing that the kennel was going to be a sound proof building is a different circumstance and that his goal coming in was to try and get everything one-hundred feet from the property line.

Public hearing open

Jon Cherry, abutter stated that he thought at the first meeting it was a cat business, he stated that he did not realize that she was going to also have dogs. He stated he would not have a problem with the animals. He stated that she is far away from her that he felt it would not bother him and she is living on the premises, which helps control the animals.

Public hearing closed

Richard Callaghan stated to Bill Colbath that they still have to see the final document. He stated that if they vote in favor of this, somehow they would have to see the final document or someone they trust read it and approve it. He confirmed with the lawyer that the final copy go to the legal counsel to be recorded.

Steve Bird stated that they could possibly tie that in with the building permit.

Richard Callaghan asked if they could get Tom to provide them with the final copy when it arrives and Bill Colbath asked Richard Callaghan if he wanted to make the approval contingent on reading the final copy. He stated that he did not want it to lose any of their intent.

John Ratigan stated that usually they impose the conditions. He stated that they would agree to put it in a document that is acceptable to your legal counsel.

Bill Colbath stated that they would bring this under old business to review and approve before issuing a building permit.

Tom Dolbec stated that he is concerned with the 100 foot setback.

Bill Colbath stated that he thought part of the application, is that the distance would become 84.1 feet.

Frank Landford asked Steve Bird if that would require a separate variance

Steve Bird stated no, and that his goal was to get this close to 100 feet and to be in spirit and intent of the ordinance, but if the board is satisfied with the soundproof building, which is better protection for the abutter than a building sixteen feet away with slats in the side and no soundproofing, that would be their decision to make.

FIVE CRITERIA:

1. It is the Board's conclusion that if the applicant complies with the strict letter of the ordinance he does (Art Corte voted does not) face an unnecessary hardship. This conclusion is based on the following findings of fact: Fair use of land given the surrounding land uses and the construction of the building to mitigate noise.
2. It is the Board's conclusion that, if granted, the variance will (Art Corte voted will not) deliver substantial justice. This conclusion is based on the following findings of fact: Provide a service to the community that is not currently available.
3. It is the Board's conclusion that, if granted, the variance will (Art Corte voted will not) 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 was to limit use in residential area and with sound proofing it has protected abutters.

4. It is the Board's conclusion that, if granted, the variance will not (Art Corte voted will) result in a diminution in value of surrounding properties. This conclusion is based on the following findings of fact: Applicant will maintain high standards and the conditions will assure that it continues.
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: No impact on abutters and business will continue and provide needed services.

Therefore, based upon the foregoing, it is ordered that the application for the variance be granted and if granted, it is subject to the following conditions:

1. Amendment to the deed to include operational plans as presented on 7-17-03 and such plan after final preparation shall be presented to the ZBA for final approval along with a method of implementation.
2. Owner of the kennel shall occupy the attached dwelling unit.
3. Drawings shall be amended to reflect changes to site plan and submitted to ZBA for final approval.

John Ratigan confirmed with the board to send the operational plans to get them in a deed or a covenant that will be sent over to the city's legal counsel for review and subsequent approval.

MOTION TO ADJOURN:

Richard Callaghan made the motion to adjourn at 11:30 and was seconded by Tom Dolbec.
VOTE U/A

List of Members

Term Expires

Dean Trefethen-regular member	10-23-03
Richard Callaghan-regular member	04-13-06
Thomas Dolbec-regular member	12-15-04
David Ruoff-regular member	07-18-04
William Colbath-regular member	10-23-03
Arthur Corte-alternate member	02-13-05
Frank Landford-alternate member	04-10-05