

Dover Zoning Board of Adjustment

Thursday, September 18, 2003

MINUTES

Members Present: Bill Colbath, Vice Chair, Richard Callaghan, David Ruoff

Members Absent: Frank Landford, Tom Dolbec

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

Bill Colbath announced to the general public that there are only three members of the Board present and the applicants would have the option to be heard tonight or wait until the next meeting.

ITEM # 1: NEW BUSINESS

A. Approval of the minutes for the regular meeting of August 21, 2003

Motion: David Ruoff made the motion to accept the minutes. Richard Callaghan seconded the motion. **VOTE: U/A**

ITEM # 2: OLD BUSINESS

A. Discussion of withdrawal for variance request regarding case # Z03-16 Bonnie Leavitt, 99 Columbus Ave, a/k/a Assessor's Map G, Lot 27.

Attorney Chris Wyskiel stated that he is here to announce that Tom Clark has received Jim Schulte's letter formalizing the withdrawal of the application. The rehearing was granted and this meeting was to reconsider if they still feel there was something before them regarding the withdrawal for variance. He stated that the next appropriate step is to apply for a building permit.

Tom Clark stated that he had a conversation with Jim Schulte and the initial decision was that there was an expansion of a non-conforming use. It was brought to their attention that the area has continually been used by the business for a number of years, it may be an expansion of the building, but the building itself meets setbacks. He stated that it is not an expansion of a non-conforming structure and because of enclosing an area that is currently being used, it is not an expansion of use. He stated that the abutters brought up that there was an expansion of the use to the rear of the property with the storage area being extended. He stated that Mr. Leavitt agreed to restore it to the original size and they will process the building permit for the small addition.

Richard Callaghan confirmed that the storage area at the rear of the property is discontinued and the natural barrier will be restored.

B. Z 03-21 Paula & Samuel Reid, 22 Lexington St., a/k/a Assessor's map 10, Lot 109, zoned RM-10, requests a variance from the terms of Article V, Section 170-16, to construct a rear addition with garage under within approximately eight (8) feet of a rear property line where a minimum of fifteen (15) feet is required.

Applicant, Samuel Reid stated that he would like to defer consideration of his case until next month when a full Board is present.

Tom Clark stated that since this case was accepted last month and tabled they should vote to extend the tabled item.

Motion: Richard Callaghan made the motion to accept the tabled item and extend it to the next ZBA meeting. David Ruoff seconded the motion. **VOTE: U/A**

C. Request for modification of variance request regarding case # Z03-2, 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.

Applicant Janice Gardner stated that the only thing that is changing is the footprint of the building. The building was going to be 56' long and 29.2' wide and it is going to change to 24' wide and 66' feet long. She stated that they eliminated a ten-foot connector between the existing structure and the new structure. The back corner of the new building will be sixty-six feet from the back corner of the existing building. She stated that it moves it farther from the south side of the property.

Tom Clark stated that the reason for this is for a clarification, he stated that he did not think that another vote is necessary. He wanted to make them aware of the change in the footprint of the building.

Bill Colbath asked if the building comes closer to any property line than it did before and asked if any of the conditions have changed.

Tom Clark stated that it did not move any closer to a property line. He felt that it was a significant change and wanted to bring it to the Boards attention.

Richard Callaghan confirmed with the applicant that the sound requirements and other conditions remain the same.

Janice Gardner stated that the conditions have not changed, only the footprint of the building.

Steve Bird stated that the conditions of approval were going to be placed in a document and asked if it had been completed.

Janice Gardner stated that she was not sure and she spoke with her attorney a couple of weeks ago and was under the impression that it was sent to the Registry of Deeds.

David Ruoff stated that before issuing the building permit he felt that Tom Clark would review the document to confirm the applicant has met all of the conditions.

Motion: Richard Callaghan made the motion to accept the reaffirmed variance. David Ruoff seconded the motion. **VOTE: U/A**

ITEM # 3:

Z03-22 Tim Ayer, 15 Niles St., a/k/a Assessor's Map 20, Lot 7, zoned R-12, requests a variance from the terms of Article V, Section 170-16, to subdivide a parcel, after a lot line adjustment into two (2) lots, one having an area of 11,188 square feet, where a minimum of 12,000 square feet is required and approximately ninety-eight (98) feet of frontage, where a minimum of one-hundred (100) feet is required; and one having an area of 11,190 square feet, where a minimum of 12,000 square feet is required.

Dan Ayer stated that he is representing the applicant. He stated that his son needs the variance to construct a home for one of his daughters. He stated that one of the abutters is giving up some property to make this possible for his son.

David Ruoff confirmed with the applicant the changed lot line on the plan.

Bill Colbath asked if he would like to go through the criteria to answer some questions of hardship in the property.

Dan Ayer proceeded to go through the five criteria submitted on the application. He stated that these lots conform to the majority of the lots on the street.

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

Public Hearing Open
None
Public Hearing Closed

Steve Bird stated that the Planning Department supports this variance request. He stated that it is a reasonable use of the property and the two lots proposed are larger and have more frontage than the existing lots in the neighborhood. In this case, the dimensional regulations are almost ninety-three and ninety-eight percent of the requirement and the lot size and frontage requirements in this case is a needless and unnecessary restriction. He stated that they support the variance request.

Richard Callaghan asked when the zoning changed in this area.

Tom Clark stated that the last City wide rezoning was in May of 1979. He stated that it would have been less frontage required and smaller lot sizes prior to the rezoning.

David Ruoff stated that he agrees with the staff recommendations and he feels that it is a needless and unnecessary restriction.

FIVE CRITERIA:

1. It is the Board's conclusion that if the applicant complies with the strict letter of the ordinance he does face an unnecessary hardship. This conclusion is based on the following findings of fact: Needless and unnecessary restriction to impose current dimension due to change in zoning and other property sizes in area.
2. It is the Board's conclusion that, if granted, the variance will deliver substantial justice. This conclusion is based on the following findings of fact: Allows for a reasonable use of both lots consistent with the neighborhood.
3. It is the Board's conclusion that, if granted, the variance will be in harmony with the spirit and intent of the zoning ordinance. This conclusion is based on the following findings of fact: Spirit and intent is to control density and the minor discrepancies in the lot sizes will not affect density.
4. It is the Board's conclusion that, if granted, the variance will not result in diminution in value of surrounding properties. This conclusion is based on the following findings of fact: Proposal is consistent with 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: Consistent with neighborhood and a reasonable use of unused land.

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

ITEM # 4:

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

Attorney Chris Wyskiel stated that he would like to wait until the next meeting for a full Board to vote for his applicant.

ITEM # 5:

Z03-24 CA Investment Trust, Webb Place, a/k/a Assessor's Map D, Lot 2, zoned B-3, requests a variance from the terms of Article V, Section 170-16, to construct a building with a height of forty-seven (47) feet where the maximum building height is forty (40) feet.

Attorney Karen Forbes stated that she represents CA Investment. She stated that part of the development also has three residential multi-unit apartment complexes. She stated that also present is Bob Richards from Pilot Construction and Skip Baghdoyan from Ambit Engineering.

She stated that this property is screened from the highway, although you may be able to see some of the apartment complexes. She stated that they did receive permission to build a three-story office building and it meets the forty feet requirement and for esthetics purposes, a flat top roof is not as attractive. She stated that the hotel was also before the board for a height variance and she submitted a drawing of the proposed building and roof and that none of the extra space will be used as storage, she stated it is purely for esthetic reasons. She proceeded to go through the five criteria and explain the reasons for the proposed pitched roof.

Architect Skip Baghdoyan presented the plans and explained the area.

David Ruoff asked what they had planned to go on the top of the roof, such as ventilation, stacks or chimneys.

Bob Richards stated that it would just be the typical plumbing stacks.

Bill Colbath asked why they would need this kind of height for the building.

Bob Richards stated that when you build a Class A building, which is steel and bricks, you need bar joists between the floors for the strength that is needed for this type of building, which raises the distance between each floor.

Motion: Richard Callaghan made the motion to accept. David Ruoff seconded the motion.

VOTE: U/A

Public Hearing Open

None

Public Hearing Closed

Steve Bird stated that the Planning Department supports this variance request. He stated that this was discussed in the approval process as it was going through the Planning Board and TRC. They also supported the variance request for the hotel for similar reasons. He stated that this building, from an esthetic point of view, would improve with this height variance, giving its location, it is screened from the highway. He stated that he did not think that the additional height would have any negative effect on the abutters and stated that they support the request.

Richard Callaghan asked where the exhaust would go on the roof.

Bob Richards stated that the ventilation would be going through a typical plumbing stack and the air would be pushed out of the gable ends.

FIVE CRITERIA:

1. It is the Board's conclusion that if the applicant complies with the strict letter of the ordinance he does face an unnecessary hardship. This conclusion is based on the following findings of fact: Zoning regulations for maximum height is needless and unnecessary because the area needed for the roof is not useable space and will not effectively add to interior use.

2. It is the Board's conclusion that, if granted, the variance will deliver substantial justice. This conclusion is based on the following findings of fact: Allow for an esthetically pleasing office building in an area that needs it.
3. It is the Board's conclusion that, if granted, the variance will be in harmony with the spirit and intent of the zoning ordinance. This conclusion is based on the following findings of fact: The spirit and intent is to allow for abutters rights of light and free space and no abutter will be affected.
4. It is the Board's conclusion that, if granted, the variance will not result in diminution in value of surrounding properties. This conclusion is based on the following findings of fact: Consistent use with surrounding and will have a consistent appearance with 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: The additional 7' has no effect on any abutter.

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

1. Roof will be pitched as per plan provided.
2. Nothing will be above the roof surface other than plumbing stacks and masonry chimneys consistent with the architectural design of the building.

Motion: David Ruoff made the motion to grant the variance with the following conditions. Richard Callaghan seconded the motion. **VOTE: U/A**

David Ruoff stated that he was working on the variance application that was brought to his attention from the last meeting regarding the hardship analysis.

MOTION TO ADJOURN

Bill Colbath made the motion to adjourn at 8:30 and was seconded by David Ruoff.
VOTE: U/A

List of Members

Term Expires

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
Frank Landford-regular member	04-10-05