

# Dover Zoning Board of Adjustment

Thursday, October 16, 2003

## MINUTES

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

**Members Absent:** Tom Dolbec

**Staff Present:** Christopher Parker, City Planner; Jean Glidden, Recording Secretary

Bill Colbath announced to the general public that four members of the Board are present and the applicants would have the option to be heard tonight or wait until the next meeting. It was also announced to the public that case #Z 03-23, 192 Washington St., LLC has been postponed to the next meeting.

### **ITEM # 1: NEW BUSINESS**

#### **A. Special Election of Officers**

Chris Parker advised the Board to postpone the election. He stated that they have applications on file for people wanting to join the ZBA and suggested that the Board wait for better attendance for the Election of Officers.

#### **B. Approval of the minutes for the regular meeting of September 18, 2003**

Richard Callaghan stated that there was one correction that had to be made on page one. It should read; Richard Callaghan confirmed that the storage area at the rear of the property is discontinued and the natural barrier will be restored.

**Motion:** David Ruoff made the motion to accept the minutes as amended. Frank Landford seconded the motion. **VOTE: U/A**

### **ITEM # 2: OLD BUSINESS**

#### **A. 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 was here in August and is proposing an addition to the rear of his home and mistakenly characterized it as a garage. He stated that it is an addition with space above the garage, the existing one-car garage encroaches on the side, and the rear setbacks and the proposal would be to demolish the one car garage and construct the rear addition. He stated that he submitted elevation drawings and along the rear of his property, he has some large pine trees and deciduous trees that act as a buffer between his property and the property to the rear, which is a condominium project. He stated he spoke with Denise Jorgensen, President of the Condo Association, Mr. Gillis and Dana Lynch regarding the elevation plans and they stated that they do not have any objections to the proposal. He stated that he spoke with his contractor and the architect and they both stated that eight feet would be enough room for maintaining the addition with scaffolding.

He stated that the reason for the room above the garage is for esthetics, it would not look right to have a one ½-story garage with a three-story home and it would be in keeping with the style and character of the house. The concern with drainage regarding the slope of the land heads towards the river and they propose to excavate it out to natural drainage.

Bill Colbath confirmed the distance between Mrs. Jorgensen's garage and his proposed addition.

Richard Callaghan asked the applicant the height of the proposed structure and the existing structure. He stated that he was concerned with the requirements of the distances between each structure.

Chris Parker stated that his understanding is the rule applies to buildings on the same lot and would discuss it with Tom Clark.

Public Hearing Open

None

Public Hearing Closed

Chris Parker stated that the department does encourage the variance. The new structure will relieve the non-conformity on the side lot. He stated they feel that it is in the context of the neighborhood and would fit in aesthetically and architecturally. He stated that he does not like the idea of putting in the height distance as a condition of approval and that Tom Clark would not issue a building permit if the structure did not meet the requirements regarding the appropriate distances of the structures.

David Ruoff stated that the applicant addressed all of the concerns and feels that it is a reasonable use and the site elevation that he seen is consistent with what is in the neighborhood. He stated that he does not agree with the issue of the condition and felt that this would be required before he was issued the building permit and would not be able to build anything that is in violation of the code.

#### **FIVE CRITERIA:**

1. It is the Board's conclusion that if the applicant complies with the strict letter of the ordinance he/she does face an unnecessary hardship. This conclusion is based on the following findings of fact: The location of the garage is located logically in the most useful spot and will actually leave a larger rear setback than the existing structure.
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 use of this property consistent with the neighboring properties.
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: No increase in density and lessens the impact on side and rear setbacks.
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: New structure is in keeping with architecture of the neighborhood.
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: Allows for a use consistent with neighboring properties and is an improvement to the property.

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

1. Structure meets the height and distance requirements relating to existing structures.

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

**ITEM # 3:**

**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.**

A letter was submitted on October 14, 2003 requesting that the hearing on this matter be postponed to the next meeting of the Dover Zoning Board of Adjustment.

**ITEM # 4:**

**A) Z03-25-A Corriveau Routhier, Inc., (Applicant: Frank Phennicie), 71 Broadway, a/k/a Assessor's Map 24, Lot 2-J, zoned B-3/I-1, requests an Appeal from an Administrative Decision regarding Article IV, Section 170-12, Table I, Part C-2, to allow a used car sales place as accessory to an auto body facility.**

*Note: the following item will be heard if the previous item was denied.*

**B) Z03-25-B Corriveau Routhier, Inc., (Applicant: Frank Phennicie), 71 Broadway, a/k/a Assessor's Map 24, Lot 2-J, zoned B-3/I-1, requests a variance from the terms of Article IV, Section 170-12, Table I, Part C-2, to operate a used car sales place as accessory to an auto body facility.**

Applicant Frank Phennicie stated that he would like to postpone his case until next month when a full Board would be present.

**ITEM # 5:**

**Z03-26 Susan Gonye, Sarah Shaheen, Kathy Hughes & Stephen Gonye (Applicant: Christine Rockefeller, Esquire, 231 Dover Point Rd., a/k/a Assessor's Map L, Lot 71, zoned R-20, requests a variance from the terms of Article V, Section 170-16, to subdivide a parcel into two (2) lots, one with one-hundred nineteen (119) feet of frontage and one with one-hundred fifteen (115) feet of frontage, both where a minimum of one-hundred twenty-five (125) feet of frontage is required.**

Applicant Christine Rockefeller stated that she filed the application on behalf of Susan Gonye; also present is the other owner of the property, Kathy Hughes. She stated that this property has been in the Gonye family for forty years and they moved into the house in 1963 but did not purchase it until 1978 at which time the required frontage was one-hundred feet rather than the one-hundred twenty-five feet that is required today. Both parents have passed away and the children own it. If the plan were approved, Susan Gonye would like to construct a retirement home for herself on the parcel next to lot with the 250-year-old Cape. Both of the proposed lots would be in excess of 25,000

square feet, the frontage on one lot would be 115 feet and the other at 119 feet. The frontage minimum would be a very small deviation from the existing frontage requirements. She stated that most of the homes in the vicinity have less than the required frontage.

Chris Parker asked why was one of the lots not made conforming in frontage requirement. He stated that if the Board approves this variance he would like to see the driveway relocated to the lot line. Parker also asked if the applicant has any issues with that.

Christine Rockefeller stated that it would be okay with them and they would like to keep it as less of an impact as possible and make one lot smaller, but the structures would be closer and it was an attempt to have as little an impact as possible, to have both lots shy of the requirements.

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

**VOTE:** U/A

#### Public Hearing Open

Frank Manha, abutter at 227 Dover Point Rd., stated that he does not object to create the two lots. He is concerned with the plan that was submitted regarding the North West corner and asked if someone could survey the lot and place a stake where it supposed to be to eliminate problems in the future.

Chris Parker stated that if the variance is approved the property would be surveyed and at that time request to permanently mark the boundary lines.

Edward Hoginski, abutter at 230 Dover Point Rd., lives directly across the street and stated that his frontage on his lot is 93 feet, not 83 feet as stated by Christine Rockefeller and he opposes the request for the following reasons; He stated that they are creating two non-conforming lots not one, which would be two septic systems and is not in the spirit and intent of the ordinance. He stated he does not see a hardship with the land and he can not see how it could qualify for a variance and stated that in 1982 he was before the Board when he was buying land and trying to create his own subdivision, he did not have enough frontage and the same family came forward and opposed it and he was denied because of their opposition on August 18, 1983. He stated that he had to buy additional land to conform and would like to see equal treatment for everybody.

Michelle Connelly, abutter at 3 Landing Way stated that she opposes the subdivision, partly because she does not want to see their home values go down any lower. She did not want to see a trend of her neighbors subdividing their lots.

#### Public Hearing Closed

Chris Parker stated that the staff recommends approval of this variance. In this case, many lots in the neighborhood do not conform to the 125-foot frontage and they would request that one of the lots conform. He stated that in five years from now you would not know that it was non-conformity because of the consistency with the other lots. He does not feel that this is setting a precedent because it is a uniqueness of an established area and would encourage that the driveway be relocated to the lot line as a shared driveway to prevent additional curb cut.

Richard Callaghan stated that he is trying to analyze the potential of this turning into the layered affect and is not sure if it applies to this case.

David Ruoff stated that both lots are 20% larger than they need to be in that zone. The issue is the shape of the lot, it is actually a bigger lot than is required to be in the area, it has similar frontage or less. He stated that when the parents bought the lot they might have been thinking that maybe someday they thought they could subdivide it when the requirements at that time were one-hundred feet and give some land to their children, but the law changed and now they cannot subdivide. He understands a couple of the abutter's opposition, but the laws have changed since 1982 and are not as restricted as it used to be.

**FIVE CRITERIA:**

1. It is the Board's conclusion that if the applicant complies with the strict letter of the ordinance he/she does face an unnecessary hardship. This conclusion is based on the following findings of fact: Strict compliance to the ordinance would impose a needless and unnecessary restriction on the applicant.
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 a use consistent with the neighboring properties.
3. It is the Board's conclusion that, if granted, the variance will (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: The spirit and intent is to control density and it will be less densely settled than most of the neighborhood.
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: Created building lot will be more consistent with lots within ¼ mile of location.
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 lot will be consistent with surrounding properties.

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

1. The two lots must utilize a common driveway and if it is not the existing driveway, the existing driveway must be removed.

**Motion:** Richard Callaghan made the motion to grant the variance with the following conditions. Frank Landford seconded the motion. (David Ruoff opposed)

**ITEM # 6:**

**Z03-27 Matthew Mayberry, 410 Dover Point Rd., a/k/a Assessor's Map 8, Lot 44, zoned B-1, requests a Special Exception as allowed by Article XII, Section 170-52.C (3) for the conversion of an existing dwelling to accommodate not more than two units (Article IV, Section 170-12, Table I, Part A)**

Matthew Mayberry stated that he lives in a 1900 square foot ranch that has five bedrooms and is seeking permission to convert it to two separate units, a two-bedroom unit and a one-bedroom unit.

He stated that it was a home business prior to his purchase two years ago and it is already sprinklered, has smoke detectors and has a large parking lot in the back.

Richard Callaghan asked how he would reduce the number of people living in the home by converting it to two units as described on his application and asked what the square footage of each unit would be.

Matthew Mayberry stated that he would use one of the rooms as a kitchen and the two-bedroom side would have a maximum four people in the unit. He stated that it would be 1000 square feet in the two-bedroom side and 900 square feet in the one-bedroom side.

David Ruoff confirmed that 400 square feet per person is required.

Matthew Mayberry stated that he would be using the one bedroom unit for himself and rent out the two-bedroom side.

Bill Colbath asked how many parking spaces are in the back.

Matthew Mayberry stated that twenty spaces are available.

**Motion:** David Ruoff made the motion to accept. Frank Landford seconded the motion.

**VOTE:** U/A

Public Hearing Open

None

Public Hearing Closed

Chris Parker stated that the criteria has been met and the Special Exception should be granted.

**Motion:** David Ruoff made the motion to grant the Special Exception. Frank Landford seconded the motion. **VOTE:** U/A

**ITEM # 7:**

**Z03-28 David & Pamela Hogan, 14 Cherokee St., a/k/a Assessor's Map A, Lot 15.N, zoned R-12, requests a variance from the terms of Article V, Section 170-17, to construct an accessory structure within two (2) feet of a rear property line where a minimum of ten (10) feet is required.**

Pamela Hogan stated that she is present with her husband David. She stated that they would like to put a garage on the left hand side of the house behind the driveway. She stated that they only have a distance of two feet from one side of the abutter's property, which is forty-four acres behind them. She stated that it is noted in her application that on each side of her property line runs a stream of water where her land starts behind her property line and stated that it could never be utilized unless they fill the wetlands. She stated that she has contacted the abutter and did not feel she was against this variance, since she did not hear from her. She stated that she has also noted on her plan that she submitted, the obstructions on the right hand side of the house, such as low power lines from the

pole to the meter, the leach field and the bedrooms are located on that side. These are reasons why she did not want to build on that side of the home and it would be an additional cost to them.

Bill Colbath asked why the garage had to be back that far.

Pamela Hogan stated that when her house was built in 1976, they put a hip roof on their house and could not attach the garage per several different contractors that have looked at it. She stated that it would have to set back ten feet from the house and if they did attach it to the house, it would be an additional expense to change the roofline.

David Ruoff asked why she wants to build a thirty foot deep garage as opposed to a twenty foot deep garage.

David Hogan stated that it is because he has a full size van and she has a pickup truck along with their daughter's vehicle, two motorcycles, a lawn mower and a snow blower.

Chris Parker confirmed with the applicants the height of the garage and asked why the hip roof would prevent them from having an attached garage. He stated that they could have a garage that would conform, a one car or one and a half car garage with storage.

Pamela Hogan stated they would like a two-car garage for the vehicles that they have in the family. She also stated that it would be an additional cost, possibly more than what the house cost them to attach and it is not affordable for them. If they did attach it and change the roofline, she stated they would not have much of a driveway.

Discussion ensued regarding the setbacks and the reasons why they need a 28' x 30' detached garage.

Richard Callaghan asked what the status of the land behind her property was.

Pamela Hogan stated that it is forty-four acres, mainly wetland. Access to this property is on Varney road and stated she spoke with her and assumed she did not have any objections.

Chris Parker stated that the abutter, Teresa Picard did submit a letter today with some questions and concerns she had regarding the garage being too close to her property and it was placed in the file.

**Motion:** David Ruoff made the motion to accept. Frank Landford seconded the motion.

**VOTE:** U/A

Public Hearing Open

Chris Parker proceeded to read the letter submitted today from Teresa Picard regarding the proposed garage and read the questions and concerns she had with the garage being too close to her property.

Pamela Hogan stated that she could not build on the other side of the house and it would be too costly for them.

Bill Colbath stated that the cost to do something is not a relevant issue in the State of NH, as far as requesting a zoning variance. The cost of moving wires and the other concerns regarding cost are not relevant to the argument.

David Hogan stated that the attached garage could probably be tied in, but it would not look right. He stated that he could change his roof to match the garage, but the roof is only five years old and did not want to change it.

#### Public Hearing Closed

Chris Parker stated that the department did not feel that they have a hardship and they have other options. He stated a one-car garage or a small two-car garage would fit within the setbacks, it would be a less non-conforming structure. He stated that not knowing that the bedrooms are on the other side, they felt that was the other option to put the structure on that side of the house and put the power lines into the garage and then in to the house. He stated that knowing that finance is not applicable it is a possibility to have an attached garage in this case and does not support this variance request.

David Ruoff stated that a thirty-foot garage is very deep and the abutters letter did express a concern to maintain the proposed garage and would possibly have to go on to her land to do this. He also discussed the possibility of wetlands and he stated that if they did grant a variance, by definition that is telling the Building Inspector that they do not have any other place to put the building, which would grant a wetlands exemption.

#### **FIVE CRITERIA:**

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: Other alternative locations are available.
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: Two-foot encroachment is unnecessary and the garage could be located at other locations on the property.
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. This conclusion is based on the following findings of fact: Spirit and intent is to allow reasonable setbacks, this application does not allow that intent.
4. It is the Board's conclusion that, if granted, the variance will result in diminution in value of surrounding properties. This conclusion is based on the following findings of fact: Proximity of garage to property line devalues the neighbors land and limits use at property line.
5. It is the Board's conclusion that, if granted, the variance will be contrary to the public or private interests or rights. This conclusion is based on the following findings of fact: Private interests of abutter would be violated and access to the rear of structure is limited.

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

**ITEM # 8:**

**Z03-29 Lorraine & Eric Johnson, 6-A Evans Dr., a/k/a Assessor's Map L, Lot L.14.G, zoned R-20, requests a variance Special Exception as allowed by Article XII, Section 170-52.C (3) for the conversion of an existing dwelling to accommodate not more than two units (Article IV, Section 170-12, Table I, Part**

Eric Johnson stated that he is present with his wife Lorraine and seven years ago, he came down with a critical illness and was in a coma for two weeks. He had to re-learn how to walk, talk, eat and function, he has two very young children and likes to be an active father and would like to spend time with his children. He stated he cannot ski anymore and cannot do many of the things that he used to be able to do. He stated that they were thinking of ways to create a controlled environment in order for him to spend time with the kids and to help him with his therapy and accommodate the large pieces of exercise equipment that he needs for rehab. He stated that his children are very athletic and like playing basketball. He stated he has a fake hip and submitted a letter from his physical therapist, which states he is in his second round of physical therapy twice weekly and he needs to make a concerted lifetime effort to exercise and stretch. He stated that the addition does encroach five feet and submitted letters from his abutters that are in favor of the proposed rehab recreation room addition.

David Ruoff asked to see the letters that were from the abutters and physical therapist.

Frank Landford asked what the style of the house is and how many stories the addition will be.

Lorraine Johnson stated that it is a saltbox and it would be a cathedral type ceiling with skylights.

Chris Parker asked if they looked at other configurations. The front could be as close as the nonconforming house is, the normal setback in that zone is thirty-five feet and you are at 28.7 feet and could bring the addition closer to the road and make it longer.

Lorraine Johnson stated that aesthetically she was thinking it would look better if it was against the house and if it were closer to the road, it would create a different roof style and would not look right.

Eric Johnson stated that one thing they like to do as a family is play basketball and they would like to have a basketball court.

Bill Colbath asked how far the addition would be to the neighbors.

Chris Parker stated that he measured it to be thirty feet.

Frank Landford asked where the door would be located.

Lorraine Johnson stated that they would put a door on the backside of the addition.

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

**VOTE: U/A**

Public Hearing Open  
None  
Public Hearing Closed

Chris Parker stated that the department is in favor of this variance and the only abutter it does affect is the Thompson property. The slope and the tree line does provide a buffer and the other lots have additions that have been done to them. In the context of the neighborhood it will fit in, it is a unique lot with the slope. If the house were angled straighter on the property, they would not have a problem with the addition.

David Ruoff stated that he agrees that it is a hardship with the configuration of the lot.

**FIVE CRITERIA:**

1. It is the Board's conclusion that if the applicant complies with the strict letter of the ordinance he/she does face an unnecessary hardship. This conclusion is based on the following findings of fact: Configuration of the lot, topography of the lot and location of the home on the lot.
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 expanded reasonable use of the house consistent with family needs.
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 protect abutters and their rights and this application does not affect abutters.
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: Improvement to home will serve to increase the value of all 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: Allow for reasonable expansion of home with no effect on abutters rights.

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

**MOTION TO ADJOURN**

David Ruoff made the motion to adjourn at 9:30 and was seconded by Frank Landford.

**VOTE: U/A**

**List of Members**

Richard Callaghan-regular member  
Thomas Dolbec-regular member  
David Ruoff-regular member  
William Colbath-regular member  
Frank Landford-regular member

**Term Expires**

04-13-06  
12-15-04  
07-18-04  
10-23-06  
04-10-05