

Dover Zoning Board of Adjustment
Thursday, December 18, 2003

MINUTES

Members Present: Richard Callaghan, Chairperson, Bill Colbath, Vice Chair, Frank Landford, Ruth Gorton, John Levasseur

Members Absent: David Ruoff

Staff Present: Thomas Clark; Building Official, Christopher Parker, City Planner; Jean Glidden, Recording Secretary

ITEM # 1: NEW BUSINESS

A. Approval of the minutes for regular meeting of November 20, 2003.

Motion: Ruth Gorton made the motion to accept the minutes. Bill Colbath seconded the motion.
VOTE: U/A

ITEM # 2: OLD BUSINESS – NONE

ITEM # 3:

Z03-31 Robert Sherwood, 55 Knox Marsh Rd., a/k/a Assessor's Map H, Lot 32-A-1, zoned B-4, requests a variance from the terms of Article V, Section 170-16 to construct a storage building within thirty-five (35) feet of side and rear property lines where a minimum of seventy-five (75) feet is required from both.

Bill Colbath announced that he would be stepping down off the case.

Richard Callaghan informed the applicant that it is required that he will need to have three votes in order to have his case voted in his favor and with only four Board members voting, he has the option to postpone his case when a full Board is present.

Attorney Jim Schulte represented the applicant and stated that he would like proceed with the case. He stated that Mr. Sherwood owns a landscape business on Knox Marsh Road and that the applicant purchased his property a number of years ago and it was zoned differently than it is today. He stated that it was the rezoning, which reclassified this property and some abutting properties as the B-4 zone, which creates the problem and when he bought the property and constructed the main building the setback requirements at that time was twenty feet. He always contemplated on constructing another building on his property, but did not do it at that time because he expected that he could do it when he needed to. He stated that the business has expanded and he has undeveloped land on the left side of his property but is not able to build on that side because it is low and wet and on the right hand side with the new zone, the setback for the front, rear and the sides is seventy-five feet all the

way around. He stated that this is actually a non-conforming lot because a lot in the B-4 zone is required to have four hundred feet of frontage and this lot has three hundred feet in the back and three hundred and fifty feet of frontage. He stated that because it was an existing lot, it is non-conforming because it does not meet all the criteria that the new zone requires and makes it difficult to comply with the requirements of the ordinance. He stated that he has shown on the plan submitted the existing building and that next to it is a paved parking area on the other side of the driveway and the existing leach field is within the seventy-five foot setback. He stated what you do not see on the plan submitted, beyond the existing leach field, there is a structure set on telephone poles with a roof, it measures thirty feet wide and fifteen to twenty feet deep, which covers materials that are not supposed to get wet. He stated that on the left hand side of the property he has a series of stalls with different types of landscaping materials available for customers and at the rear of the property, on the main sketch is a series of open storage bins, which are fenced off with granite or cement structures for a display of other materials. He stated that when he received deliveries from tractor-trailer trucks they would have to stop traffic on route 155 to allow the tractor-trailers to back in to the property because there was no place on-site for the trailers to turn around because of the soil conditions and the existence of the leach field. He stated that beyond the paved parking area is now a gravel driveway, which circles where the storage place is and tractor-trailers can now drive in, unload, and turn around within his property and as a matter of safety concern, it is important to maintain the traffic flow within Mr. Sherwood's property. He is proposing to construct a building thirty by forty feet and he needs a variance in order to place it thirty-five feet from the property line. He stated that he would use the building for storing equipment that a contracting business uses, such as snow removal equipment, backhoes, and tractors. Currently these things are stored outside and it creates a noise issue for the people when they have to warm up the diesel engines on a cold morning and this would allow the expensive equipment to be stored inside the building. He is asking for a variance of forty feet from the front line and the side line because it is the best place on the property consistent with the soil conditions and consistent with the other improvements. He stated that there would be minimal impact on the abutter's and submitted letters from Shaw's Ridge Equipment and from Kevin Cooper both stating that they are in favor of this variance and he proceeded to read through the five criteria to the Board.

Chris Parker stated that on the application the setback is needed because of the land that the applicant gave to Shaw's Ridge Equipment and asked the applicant if this was a self-created hardship.

James Schulte stated that the applicant would still need a variance because of the size of the building that he wants and the amount of space that they need to allow for the turning radiance of the tractor-trailer trucks.

Frank Landford asked Bob Sherwood if the trucks would be turning around the back of the new structure and confirmed with him that it would be in the front and the new structure would be in the back corner and asked what the property is behind him.

Bob Sherwood stated that it is a vacant five-acre lot with frontage on Littleworth Road.

Ruth Gorton confirmed with Bob Sherwood the location of the equipment being stored on the property at this time.

John Levasseur asked the applicant the status of the pole barn and asked if the proposed building would be heated and how much time would he save with the diesel equipment being inside and protected.

Bob Sherwood stated that the pole barn is used to keep the top soil and compost dry and when starting the diesel engines they need to run twenty minutes to half an hour depending on the temperature and are plugged in most of the time. He stated that the building will be heated and would have a security system and he could have numerous pieces inside so he would not have to plug them in. He stated that the winter business consists of commercial maintenance contracts and they take care of the properties in the Seacoast area and are on call when needed. This would be a time saver and the diesel engines are more economical and productive for his business.

Richard Callaghan confirmed with the applicant the location of the wetlands on the plan submitted and asked if it was official or manmade wetland.

James Schulte stated that he did not think it was manmade because he was involved with an earlier transfer with the property. He stated that it did not sell for a while because of the difficulty with developing on that piece of property and it was foreclosed because it could not be sold.

John Levasseur asked what the percentage of the land is suitable for building and asked if he could place a sound barrier for diesel trucks.

Bob Sherwood stated that he has approximately six acres of land and feels that it could possibly be two acres of wetlands and stated that it is wooded at this time and would not have a problem with placing more screening on the property.

Ruth Gorton asked why he could not expand the existing building.

Bob Sherwood stated that the pump station for the leach field is in the way and he did not have enough room to put the building next to the existing building and at the time, it was the designated parking area.

Richard Callaghan stated that he is concerned with the information being presented was not on the map submitted with the application and it could affect their decision. He stated that they are lacking information such as the buildings, pole barn, and the stalls. He stated that the drainage area is not clearly identified as wetlands.

Bob Sherwood stated that on the map that they have with them clearly identifies the wetlands and it was presented to the Board.

Motion: Frank Landford made the motion to accept. John Levasseur seconded the motion.

VOTE: U/A

Public Hearing Open

None

Public Hearing Closed

Chris Parker stated that the recommendations are based on not knowing about the wetlands and the Planning Department felt they could move the temporary storage bins and could build elsewhere. He stated that it would have been helpful to submit copies of the map showing the other structures and the wetlands and stated that the department is not in favor of this variance.

Richard Callaghan confirmed the wetland symbol with Tom Clark.

Chris Parker stated that it does show that three acres of the plot is not build-able when you take out the setbacks and the wetlands.

Ruth Gorton asked if the proposed building was in the buffer zone around the wetlands.

Chris Parker stated that the building was about one-hundred and twenty feet away from the wetlands.

Frank Landford confirmed with the applicant the location of the proposed building being on the highest spot for the building and stated that he does not have a problem with the building being only thirty-five feet from the sideline since he has a business on one side and an empty lot behind it that is of good size.

Bob Sherwood stated that the number one factor regarding the location of the concrete blocks is an ease of operation for the employees as well as customers coming in to the property, he stated that he does a good business and tries to appease the customer's needs. He stated that when people come in and need their own personal truck or trailer loaded he wants it as simple as possible for them. He stated he had numerous other configurations on the property and this is the best plan, it keeps traffic flowing and as you drive in you can see what is lined up that is available for the customers.

John Levasseur stated that he likes the idea of the machines being inside because of the diesel noise.

Ruth Gorton stated that the setting of the property and the quality of the abutting properties is conducive to this variance.

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: Change in zoning regulations and wetland space in building envelope creates an undue hardship.
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: Maintain aesthetic view of business and provide good buffering for neighbors.
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: Will allow business growth without harm to the neighbors or the wetlands.
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: Allows equipment and storage building in the back of property thus maintaining aesthetics.

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: Location of building allows for safe entering, exit, and delivery of equipment and supplies.

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

1. A row of trees will be put in behind the building, three feet from property line.

Motion: John Levasseur made the motion to grant the variance with the following condition. Frank Landford seconded the motion. **VOTE: U/A**

ITEM # 4:

Z03-32 Kenmore Real Estate, (Applicant: Ken McDavitt), 49 Arch St., a/k/a Assessor's Map 10, Lot 15, zoned RM-10, requests a special exception as provided by the terms of Article VI, Section 170-25.1 and Article XII, Section 170-52.C (3), to establish a four-family dwelling.

Applicant Ken McDavitt stated that he has a purchase and sales agreement on the property and his intention is to convert the current single family dwelling into a four-family dwelling, while keeping the architectural look and feel of a 1700 structure. He stated that the conversion would provide affordable housing near the downtown area and the lot is large enough that it could have been subdivided if the structure was not built in the location on the property and stated that each lot could have had a duplex built on both lots. He stated that the parking and the driveway would be constructed to primarily be off from Washington Street, where it would have better visibility and less traffic than off from Arch Street. He stated that he spoke with William Boulanger and he stated that there would be no appreciable impact to water or sewer systems. He stated that on the plot plan provided he is required to have parking spaces for eight cars and is showing a new parking area that would be screened from the road and abutting lots with new vegetation and any additions to the building would meet the setback requirements. The existing Arch Street setback is forty-one feet and the proposed structure would be twenty-five feet and on the Washington Street side the existing setback is seventy-seven feet and the proposed structure would be sixty-five feet.

Frank Landford asked if the section of driveway is on the next lot.

Ken McDavitt stated that the abutters have been sharing a parking area for the next lot to exit.

Richard Callaghan asked if it was a right of way.

Ken McDavitt stated that it is not a right of way and is not planning on it, although the abutters would like to do a lot line adjustment.

Bill Colbath asked if he was acquiring property.

Ken McDavitt stated that they would potentially be swapping property, adjusting the lot line. It would make more sense the way the structures are currently built.

Richard Callaghan asked if they were swapping property, what would the new property look like.

Ken McDavitt stated that he has not seen the plans and the abutter George Sherwood asked if he could respond to the question.

George Sherwood, abutter stated that he had his property surveyed and to make it more feasible for the new neighbors, they set an imaginary line that goes to a granite block located in the driveway. He stated that this line is going from the south end of the driveway and going in to the abutter's property and this would give them adequate space to go by without crossing their property.

Ruth Gorton asked why he was not expanding more in the direction of Washington Street, since he has more property and setback space rather than expanding so close to Arch Street.

Ken McDavitt stated that it is primarily for the architectural look and feel of the building. He stated that on Washington Street is the main two-story structure and on the left hand side is a smaller story that may be the original house. He stated that he was going to add a second story on the Arch Street side so that it would like it was there from the beginning when the house was constructed.

Frank Landford asked if it was going to be a one or two-story addition on the Washington Street side.

Ken McDavitt stated that he is going to have a two-story addition on that side.

Bill Colbath asked if the existing driveway that runs down the abutter on Washington Street, where you are going to have parking now, how you intend to screen the parking area from that property on the other side. He stated that it appears to be a six-inch setback from the driveway.

Ken McDavitt stated that they have an existing fence, which provides partial screening on the abutter's side, and he would integrate it on his side to compliment that screening and stated that he would adjust the driveway closer if he were encroaching upon that property.

John Levasseur asked if there was a reason why the existing driveway on Arch Street does not connect to the new parking lot between the house and the garage.

Ken McDavitt stated that he did not want to put it between the house for aesthetic reasons. He stated he ignored the existing driveway for parking because if he included it in, there was not adequate room for turning around and did not want to force people to back out on to Arch Street. He stated he thought that if he showed parking along the Washington Street side then they would have room enough to pull in, back out, and drive out on to Washington Street.

Ruth Gorton asked with the new lot line adjustment would he expect to have one driveway as an entrance and one as an exit.

Ken McDavitt stated that he did expect to do that and did not want to complicate things by proposing it at this time, because they have not made any formal agreements as far as the lot line adjustment with the abutter.

Frank Landford asked the applicant if these were rental or condominium units and confirmed the size of the units being approximately one-thousand square feet and the units being two bedrooms.

Ken McDavitt stated that they will be rental units, but would like to maintain the flexibility of converting them to condominiums. He stated at this time he and his wife will live in one of the units and rent out the other units.

Motion: Frank Landford made the motion to accept. John Levasseur seconded the motion.

VOTE: U/A

Public Hearing Open

Jane Anne Sherwood and George Sherwood, abutter at 43 Arch Street stated that they had no objections to the proposed addition.

Public Hearing Closed

Chris Parker stated that the Planning Department is in favor of the request. He stated that they reviewed the criteria and it has been met, he did check with Mr. Boulanger, and the City Engineer and they do not have any capacity issues in that area.

Motion: Bill Colbath made the motion to grant the Special Exception. Ruth Gorton seconded the motion. **VOTE:** U/A

ITEM # 5:

Z03-33 Richard & Sharon Tara, 2 Partridge Lane, a/k/a Assessor's Map I, Lot 36-T, zoned R-12, requests an equitable waiver of dimensional requirements from the terms of Article V, Section 170-16, to maintain an addition with garage within approximately twenty-two (22) feet from a side property line as it abuts a street where a minimum of thirty (30) feet is required; and to maintain a deck and pool within fifteen (15) feet and twelve (12) feet respectively from a side property line as it abuts a street, both where a minimum of twenty-seven (27) feet is required.

Applicant Richard Tara stated that he purchased the property in 1978, and in the year 1987 they constructed an addition with a garage and stated that they applied for the building permit themselves and apparently measured incorrectly from the pavement. He stated that they built a house in Portsmouth, and when they sold their property the bank for the new owners had the property surveyed and the numbers were different from what they had for measurements.

Richard Callaghan asked if they received permits for all of the structures.

Richard Tara stated that they did receive building permits for the garage, deck and pool and they were done at different times, the garage and room above was in 1987 and the pool and deck in 1993.

John Levasseur asked if the right of way has changed recently.

Tom Clark stated that they did do some repaving a number of years ago, but the right of way did not change, just the edge of pavement.

Frank Landford stated that he is in a tough section, an intersection of two angled corners.

Richard Tara stated that he is in triangle shaped lot and the power lines run over part of his property.

Tom Clark stated that they did have all of the permits and all of the inspections were completed, but back at that time, they did not require foundation certifications for additions and it has been over ten years.

Motion: Frank Landford made the motion to accept. Bill Colbath seconded the motion.

VOTE: U/A

Public Hearing Open

James Schulte stated that he is speaking in favor of the applicant's request. He stated that it was his office that was handling the work for the refinance and that the bank that he works for required a surveyor do a plot plan and it was at that time that it revealed the setbacks and realized it was measured incorrectly. He stated that he felt it was not an obvious mistake.

Public Hearing Closed

Chris Parker stated that the Planning Department is in favor of the request. He stated that it is a unique lot, it has been over ten years and they also view it as Spruce Lane being the rear of the lot, and if the rear lot line setbacks applied, they would be compliant. The lot is odd shaped and the original subdivision plan did not show setback lines, so we cannot tell the original intent if Spruce Lane should be rear of right of way setbacks.

FOUR CRITERIA:

1. It is the Board's conclusion that the request does involve a dimensional requirement.
2. It is the Board's conclusion that the violation has existed for ten years or more with no enforcement action, including written notice, being commenced by the City.
3. It is the Board's conclusion that the nonconformity does not constitute a nuisance nor diminish the value or interfere with future uses of other property in the area.
4. It is the Board's conclusion that the cost of correction does outweigh any public benefit to be gained.

Therefore, based upon the foregoing, it is ordered that the application for Equitable Waiver of Dimensional Requirements be granted.

Richard Callaghan asked if the Board had any other concerns to address.

Tom Clark stated that Ruth Gorton and John Levasseur were appointed regular members by the City Council, and they only need five regular members and up to three alternate members on the ZBA. This brings the count to six regular members and it would need to be addressed at the next meeting to decide who would be a regular member and who would be the alternate member.

Richard Callaghan stated that they would make a decision at the next meeting when they receive more information.

Richard Callaghan confirmed with Tom Clark the reformatting of the fifth criteria that was discussed at the meeting in August.

Tom Clark stated that David Ruoff agreed to work on the reformatting of the fifth criteria and would check with him on the status of the changes.

MOTION TO ADJOURN

Frank Landford made the motion to adjourn at 8:30 and was seconded by Ruth Gorton.

VOTE: U/A

List of Members

Richard Callaghan-regular member
David Ruoff-regular member
William Colbath-regular member
Frank Landford-regular member
Ruth Gorton-regular member
John Levasseur-regular member

Term Expires

04-13-06
07-18-04
10-23-06
04-10-05
11-12-06
11-12-06