

**DOVER ZONING BOARD OF ADJUSTMENT
MINUTES OF PUBLIC HEARING
JULY 18, 2002**

MEMBERS PRESENT: Dean Trefethen, Chairperson; Bill Colbath, Co-Chairperson; Richard Callaghan, Doug Cummings, Art Corte (alternate), Frank Landford (alternate)

MEMBERS ABSENT: David Ruoff, Tom Dolbec (alternate)

STAFF PRESENT: Steve Bird, City Planner; Tom Clark, Building Official; Kate Pelletier, Recording Secretary

ITEM #1: NEW BUSINESS

A. Approval of minutes for regular meeting of June 20, 2002

MOTION:

Bill Colbath made the motion to accept the minutes with a correction on page three. Doug Cummings seconded the motion.

Vote U/A

ITEM #2: OLD BUSINESS

ITEM #3:

Tri-City Builders, Inc., 10 Atlantic Ave., A/K/A Assessor's Map 25, Lots 45A-1 & 45A-2, zoned RM-10, requests a special exception under the provisions of Article VI, Sections 170-25-1 and Article XII, Section 170-52.C(3) to construct a four (4) family dwelling on each lot.

Attorney James Schulte, 660 Central Ave., represented the applicant. He stated that the application was withdrawn at the last meeting due to a question as to the percentage of lot coverage of the surrounding properties. He explained that the applicant was presenting a revised plan that showed the two lots as being larger than what was originally presented. He stated that the Lot Line Adjustment needed to make the lots larger was pending Planning Board Approval and could be a condition of approval from the Zoning Board in order to make the lots conform to the plan being presented. He stated that there was a shortage of rental housing in the area and that the proposal would provide eight rental units. He explained that there would not be a significant impact on traffic or pedestrian safety and that there would be a common driveway to service both lots. He stated that project would use City water and sewer and that drainage would most likely be collected by storm drains at the intersection of the driveway and Atlantic Avenue, and piped underground to another lot owned by the applicant. He explained the average percentage of lot coverage in the surrounding areas in comparison to the average percentage of lot

coverage of the two lots. He explained that each unit would have two parking spaces, one in the garage and one in the driveway. Attorney Schulte assured the Board that the percentage of lot coverage would at no time, exceed the average percentage of lot coverage of the surrounding properties.

Dean Trefethen asked how the Lot Line Adjustment would affect Map 25, lot 45.

Attorney Schulte stated there would be a slight reduction in size to lot 45 and as the lot got smaller, the number of units that could be built would be reduced.

Dean Trefethen asked if there would be any provisions or restrictions as to the number of cars a tenant could have.

Attorney Schulte stated it was not their intent to do so, but they could.

MOTION:

Bill Colbath made the motion to accept the case.

Frank Landford seconded the motion.

Vote U/A

Dean Trefethen asked Tom Clark asked if the two extra spaces proposed for guest parking was acceptable.

Tom Clark stated the proposal went beyond what was required of the applicant.

Rick Callaghan asked how many bedrooms would be in each unit.

Attorney Schulte stated there would be two bedrooms in each unit.

Rick Callaghan asked if there were any age restrictions.

Attorney Schulte stated that the applicant could not discriminate against age, except when providing for elderly housing.

Art Corte asked if the proposed parking was allowed, where one car parks in front of the other.

Tom Clark stated that the ordinance was not clear and that the definition was not specific enough, however, the ordinance would soon be modified to define parking more clearly.

Public hearing opened.

None.

Public hearing closed.

Dean Trefethen asked for staff recommendations.

Steve Bird stated that the project went before the Technical Review Committee and that with the recommendations that had been made regarding the addition of two more parking spaces, changes to the driveway alignment and the approval of the Lot Line Adjustment, the applicant would meet the criteria for a special exception.

Dean Trefethen stated that Art Corte would sit on the case.

The Board discussed parking and safety concerns and what has been allowed in past cases.

MOTION:

Rick Callaghan made the motion to deny the special exception.
No second.

MOTION:

Bill Colbath made the motion to accept
Art Corte seconded the motion with the following conditions:

1. Each unit have an automatic garage door opener
2. Approval of the Lot Line Adjustment by the Planning Board
3. The percentage of lot coverage shall not exceed the average percentage of lot coverage of the surrounding properties

Vote 3-2 (Rick Callaghan and Doug Cumming opposed)

ITEM #4

Z02-20 Edward & Joan Wainwright, 51 Constitution Way, A/K/A Assessor's Map K, Lot 21-85 zoned R-40, requests a variance from the terms of Chapter 126, Section 126-5.F to construct a side carport addition onto a mobile home within five (5) feet from a side property line where a minimum of twelve (12) feet is required.

Edward Wainwright represented himself. He explained that he was proposing to build a 15'x24' carport. He stated that a carport would improve the value of his property along with the surrounding properties and would protect he and his wife from injury in the winter and their cars from damage. He stated that the nearest abutter was a pond.

Frank Landford asked how close the carport would be to the pond.

Mr. Wainwright stated that it was 15' to the stones surrounding the pond.

Bill Colbath asked if the land on which the mobile home sat was commonly held land.

Tom Clark stated that it was a mobile home park and that each lot was a building site, the land being owned by Mr. Kaufman and the homes being owned individually. He stated that Mr. Kaufman submitted a letter with Mr. Wainwright's application giving him permission to construct a garage.

MOTION:

Rick Callaghan made the motion to accept the case.

Art Corte seconded the motion.

Vote U/A

Dean Trefethen stated that his concern was that the carport would eventually become completely enclosed and reminded the applicant that the carport would need to remain a carport.

Mr. Wainwright asked if lattice would be acceptable around the sides of the carport.

Steve Bird stated that most of the carports in the park had lattice either on the side or rear walls.

Public hearing opened.

None.

Public hearing closed.

Dean Trefethen asked for staff recommendations.

Steve Bird stated that the Planning Department supported the variance request as there would be no impact on any direct abutters and that carports are a common structure in the neighborhood.

Dean Trefethen stated that Frank Landford would sit on the case.

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. It would be a needless and unnecessary restriction to make the applicant adhere to the ordinance because the adjacent property would not be impacted in any way.
2. It is the Board's conclusion that, if granted, the variance will deliver substantial justice. The proposal allows for similar use to 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. The intent is to maintain a reasonable distance from other structures and this property accomplishes that.
4. It is the Board's conclusion that, if granted, the variance will not result in a diminution of value of surrounding properties. The proposal will not impact the drainage pond and the use is similar to most other properties adjacent to this one.
5. It is the Board's conclusion that, if granted, the variance will not be contrary to the public or private interests or rights. There is no public or private impact from this proposal.

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

Bill Colbath made the motion grant the variance with the following condition:

1. The carport is not to be enclosed.

Doug Cumming seconded the motion.

Vote U/A

ITEM #5

Z02-21 Kathleen L. White, 134 Court St., A/K/A Assessor's Map 21, Lot 7, zoned R-12 requests a variance from the terms of Article V, Section 170-16 to subdivide a parcel into three (3) lots, two (2) of which without frontage along a public right of way.

Paul Connelly, of Civilworks, 181 Watson Road represented the applicant. He explained that there is no public road for the proposed lots to front on, with the exception of one lot, however, there was in excess of 600' of frontage on the existing private right of way, which currently served five lots of record. He stated that the applicant's parcel was over five acres and has potential to support at least eight house lots with the creation of a way into her land. However, it was not the applicant's intention to subdivide the parcel into eight lots. She preferred to subdivide the parcel into three lots, including the existing house, one lot of which would be for her sister. He gave examples of subdivisions that were successfully serviced by private roads including Harmony Lane, McCarthy Road, and Cullen Bay Road. He then gave examples of Alternative Design Subdivision including Washington Commons, Meadowood, and Cornerstone Commons. He explained that the five acres owned by the applicant was primarily open space and the creation of two house lots would be more in keeping with the open space that presently existed as opposed to a larger development that could be placed on it. He stated that the applicant was willing to accept, as a condition of approval, a covenant stating that no further subdivision occur on the property. He stated that maintaining the open space as opposed to developing it would be more desirable for the applicant and abutters and would not cause a diminution of value. He explained that the character of the neighborhood would remain unchanged with the granting of the variance.

Tom Clark stated that it was discovered that a similar variance was requested in 1987. There was a different owner, but the same applicant, and stated that it was the Board's decision as to whether or not the subsequent application had significant and sufficient difference to warrant acceptance.

Steve Bird stated that the original application proposed dividing the back land evenly and that the new proposal had one small lot and one large lot. He stated that the variance request from 1987 was denied 5-0.

Paul Connelly stated that he had just become aware of the other variance request himself, but stated that the lot configuration was different and that no conditions of approval were offered in 1987.

Bill Colbath asked who owned the right of way.

Paul Connelly stated that the ownership of the right of way had not yet been determined, according to Attorney Steven White, the applicant's husband.

Bill Colbath asked how the applicant would access lots without having any vested right to do so.

Paul Connelly stated that Kathleen White would assign her rights to the owners of the proposed lots.

Bill Colbath asked where it is determined that the applicant has use of the right of way.

Paul Connelly stated that it was in her deed, which was included in the application.

Doug Cummings asked who maintained the right of way.

Paul Connelly stated that the abutting landowners maintained it to the best of his knowledge. He then explained the deed and lot lines to the Board.

Steve Bird reminded the Board to question whether or not the application presented was significantly different than the application presented in 1987.

Rick Callaghan asked if there had been any restrictions made on further subdivision in 1987 and asked what it was denied for

Steve Bird read the five criteria from the 1987 findings of facts and stated that reason for denial was because the variance would not be of benefit to the public interest and that the minutes reflected opposition from abutters.

Dean Trefethen asked the Board if the application was different enough to proceed. He stated that he thought it was different enough.

Patty Kemen, 500 Sixth St, Sales Manager at DeWolfe, stated that she was familiar with changes in Dover, but that changes could increase property values and that change was inevitable.

Bill Creighton, abutter at 1 Mount Pleasant Rd., stated that he was also concerned about traffic and safety.

Dennis Dean, abutter at 5 Mount Pleasant Rd. stated that a development may enhance the property value, but a few houses would not. If the City or developers were willing to upgrade the road, he agreed it probably would increase property values.

Attorney Steven White, husband of the applicant, stated that he was unsure as to the status of the right of way. He explained that he had done a title search back to 1867 but the search was, as of yet, inconclusive. He stated that it had never been his or his wife's intention to fully develop the land, and that he is seeking the variance so that several of his family members could occupy the lots. He acknowledged the concerns of the abutters and stated that all traffic and safety concerns could be addressed and that he was willing to do his fair share of maintenance on the right of way. He stated that he would share any and all information he obtains regarding the right of way.

Kathleen Thorner, abutter on Mount Pleasant Rd., asked why the White's could not construct another driveway to access the lots rather than using Mount Pleasant Rd.

Steven White stated that the width requirements for roads would prohibit them unless they tore down their house.

Public hearing closed.

Dean Trefethen asked for staff recommendations.

Steve Bird stated that the Planning Department did not support the variance request. He stated that there were already four houses that had access off of the private road and there were still questions as to the ownership of the private road. He stated that the possibility of the other landowners also seeking the same relief as the applicant was a very real possibility. He explained that there were concerns as to whether or not the road could handle any additional traffic. He stated that there were some other options for a private road or right of way, and that there were some provisions in the subdivision regulations for private roads that do permit a 30' right of way for a private road for up to four house lots.

Dean Trefethen stated that Art Corte would sit on the case.

The Board discussed access issues and ownership of the right of way.

MOTION:

Dean Trefethen made the motion to table the case until a conclusive title search was done.

Art Corte seconded the motion.

Vote U/A

ITEM #6

Corriveau-Routhier Inc. (Applicant: Frank Phennicie & Great Bay Body Works, Inc.), 71 Broadway, A/K/A Assessor's Map 24, Lot 2J, zoned B-3 and I-1, requests a special exception as provided by the terms of Article VI, Section 170-23 and Article XII, Section 170-52 C(3) to establish an auto service facility.

Frank Phennicie, President of Great Bay Body Works, stated that the company would be doing business as Maaco Auto Painting and Body Works. He explained that they would be leasing the property from Corriveau-Routhier and that the front lot would be used solely as an office and the back lot would be used as the shop. He explained that there is 15, 645 sf, which would meet the requirements for the special exception.

Bill Colbath asked Mr. Phennicie if he had plans for the rest of the lot.

Mr. Phennicie stated that it was a huge lot, but that he did not have any plans for the rest of the lot. He acknowledged concerns about the unsightliness of wrecked cars being left out in the parking lot and stated that all cars would be kept inside the shop, out of sight. He stated that he would be paving the parking lot and adding a shrubbery buffer along the roadway along with a new fence.

Dean Trefethen asked what would happen to cars that were abandoned due to non-payment.

Mr. Phennicie explained that other Maaco facilities put up fences shielding the cars from sight, but that he had enough space in the building to keep the cars inside.

Art Corte asked Tom Clark if the applicant had addressed the spray paint booth.

Tom Clark stated that there would be a freestanding spray paint booth brought into the rear building as opposed to one being built within it. It would be a self-contained, vented booth and that the Building Department and Fire Department would be involved

Mr. Phennicie stated that he was required to maintain all paints in an explosion proof room, which would be constructed and approved by the Fire Department, EPA and OSHA.

MOTION:

Rick Callaghan made the motion to accept the case.

Bill Colbath seconded the motion.

Vote U/A

Public hearing opened.

None.

Public hearing closed.

Dean Trefethen asked for staff recommendations.

Steve Bird stated that the Planning Department would like to see additional landscaping along the front of building and suggested that the Board make that a condition of approval. He recommended that the special exception be granted with the condition that the applicant prepare a detailed landscaping plan to be approved by the Planning Department. He stated that the landscaping requirements were in the site plan regulations and that the applicant could refer to that.

Frank Landford asked Tom Clark why the applicant needed a special exception.

Tom Clark stated that the proposed use was determined to be auto service and according to the table of use regulations, an auto service is an allowed use in the I-1 zoning district by special exception.

Dean Trefethen stated that Frank Landford would sit on this case.

MOTION:

Frank Landford made the motion to approve with the condition that the applicant must provide a detailed landscaping plan to the Planning Department.

Bill Colbath seconded the motion.

Vote U/A

ITEM #7

Z02-23 Seacoast Hospice, 642 Central Ave., A/K/A Assessor's Map 30, Lot 133, zoned Office, requests a variance from the terms of 1.) Article IX, Section 170-32 I(3)(a) to permit a free standing sign where the principal building is approximately seventeen (17) feet from the front property line where a minimum of twenty (20) feet is required and 2.) Article IX, Section 170-32 I(3)(b) to erect a freestanding sign within an area of twelve (12) square feet where a maximum of four (4) square is required.

Susan Cole, Executive Director of Seacoast Hospice, stated that they had recently purchased the building located at 642 Central Avenue, and had brought with them their

sign which was approximately four square feet. However, the sign was no longer adequate to get the attention of people looking for the office, especially at night.

Dean Trefethen asked for clarification of the total square footage of the proposed sign.

Tom Clark explained.

MOTION:

Rick Callaghan made the motion to accept the case.

Doug Cummings seconded the motion

Vote U/A

Steve Bird asked if Seacoast Hospice occupied the entire building and if there was the potential of other businesses subleasing space in the future that would require additional signage.

Susan Cole stated that the Hospice was currently trying to lease out space.

Tom Clark stated that any additional tenants in the building would only be allowed a four square foot wall sign and no additional signage would be allowed on the free standing sign. He explained that the sign ordinance was currently being revised and under the new sign ordinance, the applicant would not need a variance.

Public hearing opened.

None.

Public hearing closed.

Dean Trefethen asked for staff recommendations.

Steve Bird stated that the Planning Department supported the variance requests. He stated that the proposed sign is comparable to other signs on the street and given the proposed changes to the sign ordinance, it would make sense to grant the variance.

The Board discussed the location of the sign.

FIVE CRITERIA:

1. It is the Board's conclusion that, if the applicant complies with the strict letter of the zoning ordinance, she does face an unnecessary hardship. The allowable sized sign would be inadequate due to the amount of traffic and the distance from the traveled way constituting a hardship.
2. It is the Board's conclusion that, if granted, the variance will deliver substantial justice. The proposal is similar to other signs now in that zone and area.

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. The intent is to limit the size of signs and this proposal accomplishes that goal.
4. It is the Board's conclusion that, if granted, the variance will not result in the diminution in value of surrounding properties. The proposal is consistent with other signs in the immediate area.
5. It is the Board's conclusion that, if granted, the variance will not be contrary to the public or private interests or rights. The proposed sign will enhance visibility thus help safety issues while increasing building recognition.

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

Tom Clark advised Susan Cole that she would need to obtain a sign permit before erecting the sign.

ITEM #8

Z02-24 Audry DeMichelle & Suzann Beals, 187 Central Ave., A/K/A Assessor's Map 20, Lot 62, 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.

Attorney FX Bruton, of McNeill, Taylor & Gallo, represented the applicants. He explained that the structure was currently a carriage barn that the applicants wished to put two units in. He stated that the existing home already had two units in it. He stated that the additional units would provide additional housing and would serve to protect the architectural aspects of the structure. He stated that the proposal would not affect traffic and that there was already an existing driveway on the property, and that the proposal would not overload any public utilities with the addition of only two units. He referred to an open space study done by Kevin McEneaney, included with the application, which calculated the open space of every property within a 200' radius and came up with an average of 64% of open space in the area. He stated that the applicants' property was calculated at 75% open space. He explained that there would be adequate parking in the rear of the building and that there were currently six spaces in the front of the building and buffering would be put in place if required.

Bill Colbath asked who owned Map 20, Lot 63.

Attorney Bruton stated that the applicants owned that lot as well.

Bill Colbath asked if the proposed parking on lot 63 would service lot 62 and if the open space calculations included the paved parking area.

Attorney Bruton stated that the parking was proposed, but that it would probably not be utilized.

Tom Clark explained that the property line bisected the house on lot 62, and that other half of the house was on lot 63, so each half had two units, for a total of six units including the proposed carriage house. He explained that the proposed paving on lot 63 was included in the open space calculations.

Attorney Bruton stated that there would be a deeded right to the parking spaces on lot 63 for the additional units on lot 62.

The Board discussed access to the parking spaces.

MOTION:

Rick Callaghan made the motion to accept the case.

Art Corte seconded the motion.

Vote 4-1 (Bill Colbath opposed)

Bill Colbath stated that the plan presented to the Board was not accurate and that he wanted to see a plan showing exactly what was being proposed.

Steve Bird stated that the plan referenced several right of ways and asked if they were defined anywhere and whether they would preclude parking spaces from being placed on the lot at any point.

Attorney Bruton stated that he thought they were utility easements.

Public hearing opened.

Arthur Burke, 2 Union St., abutter, asked if the parking area would be paved and stated his concerns about the views from his home.

Attorney Bruton stated that the parking area would be paved.

Public hearing closed.

Dean Trefethen asked for staff recommendations.

Steve Bird stated that the Planning Department recommended approval of the special exception. He stated that screening from the parking area from streets and abutting lots was one of the requirements for the special exception and recommended making that a condition of approval. He suggested that the parking be behind the carriage house.

Tom Clark stated that the carriage house would have to be connected to the existing two-unit building. He stated that the proposal should go to the Technical Review Committee.

Bill Colbath asked if the parking on lot 63 would also have to be screened.

Tom Clark stated that it would not unless it accommodated parking from lot 62.

Frank Landford stated that the case should be tabled until the applicant presents a plan that represents what they were proposing correctly.

Steve Bird stated that the proposal could be sent to the Technical Review Committee and the issues could be resolved there so that the Board could decide whether or not the proposal met the criteria for a special exception prior to that occurring.

The Board discussed the parking areas and screening.

Dean Trefethen suggested tabling the case until the applicant presents a final plan indicating where parking and screening would be.

Attorney Bruton stated that the applicant would do whatever the Board wanted for screening and parking to address the concerns of the abutter.

Dean Trefethen instructed the applicant to speak with the abutter to determine what he wanted, and to come in with an accurate plan showing and defining the cross easement, parking, pavement, existing vegetation, and proposed screening. -

MOTION:

Dean Trefethen made the motion to table the case.

Doug Cummings seconded the motion.

Vote U/A

MOTION:

Doug Cummings made the motion to adjourn.

Rick Callaghan seconded the motion.

Vote U/A