

DOVER ZONING BOARD OF ADJUSTMENT**MINUTES OF PUBLIC HEARING****NOVEMBER 21, 2002**

MEMBERS PRESENT: Dean Trefethen, Chairperson; Doug Cummings, Frank Landford, Alternate; Tom Dolbec, Alternate; Art Corte, Alternate.

MEMBERS ABSENT: Bill Colbath, Co-Chairperson; Richard Callaghan, David Ruoff.

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

Dean Trefethen explained how the Zoning Board of Adjustment meeting is run.

ITEM #1: NEW BUSINESS**Approval of minutes for regular meeting of October 17, 2002.**

Dean Trefethen noted one correction to the minutes.

MOTION:

Frank Landford made the motion to accept the minutes with one correction.

Art Corte seconded the motion.

Vote U/A

ITEM #2: OLD BUSINESS

Tom Clark stated that in the matter of DeDe vs. City of Dover, Mr. DeDe had prevailed and was granted a variance for a garage. He stated that once he received a written decision he would pass it along to the Board members.

ITEM #3:

Z02-34 Kelly & Elizabeth Parker, 22 Maplewood Ave., A/K/A Assessor's

Map D, Lot 8L, zoned R-12 requests a variance from the terms of Article V,

Section 170-16 to construct an attached garage onto a single-family dwelling

within five (5) feet from a side property line where a minimum of fifteen (15)

feet is required.

Betsey Andrews Parker, applicant, stated that she and her husband sought a variance to construct a garage onto their home. She stated that there is a porch attached to the house where a garage would typically go in their neighborhood so the garage would be more appropriate on the other side of the house. She stated that they wanted to construct 24' x 26' dormered garage with a bedroom above. She stated that the abutting land is vacant and unbuildable and would not hinder the rights of the abutter, as they were fully supportive of the variance request. She stated that other homes in the neighborhood had garages that were non-conforming and that a garage would increase their property values as well as their neighbors.

Tom Dolbec asked where the driveway would be located.

Betsey Andrews Parker stated that they would remove their existing driveway and construct a new driveway over a City right of way to accommodate the garage on the other side of the house.

Dean Trefethen asked if the applicant had spoken with their abutters about a lot line adjustment to eliminate the need for a variance.

Betsey Andrews Parker stated that the abutter had already adjusted the lot lines four years ago so that they could maintain control over the land behind them. She stated that there was no need for a lot line adjustment when a simple variance could be granted.

Dean Trefethen asked Tom Clark if there would be a problem obtaining a driveway permit over the City right of way.

Tom Clark stated that he did not anticipate it being a problem so long as they removed their existing driveway.

Steve Bird stated that a lot line adjustment was an alternative to a variance and asked Mrs. Parker to elaborate on what she believed the hardship in this case to be.

Betsey Andrews Parker stated that the hardship was that other properties in the neighborhood had been allowed to build garages and other additions and that the odd shape of her lot limited her options. She stated that they also could not afford a lot line adjustment or to buy a piece of the abutters' land.

Steve Bird asked if she had considered a one-car garage as an alternative.

Betsey Andrews Parker stated that she and her husband both work on call and that snow and ice removal is time consuming in the case of an emergency. She explained that it was more cost effective to construct a two-car garage as opposed to a one-car garage.

Dean Trefethen asked if there was any way the larger lot could be subdivided without needing a variance.

Steve Bird stated that there was no way it could be subdivided without a variance due to lack of road frontage.

Tom Dolbec asked if the Parkers' had considered a different positioning of the garage such as the rear of the house.

Betsey Andrews Parker stated that there was an eroding hill behind the property that was about 25' to

30' away from the house. She stated that there was really no place to construct a garage behind the house.

MOTION:

Frank Landford made the motion to accept the case.

Art Corte seconded the motion.

Vote U/A

Public hearing opened.

Sally Carter, abutter stated that she and her husband had no objections to the variance request.

Public hearing closed.

Dean Trefethen asked for Staff recommendations.

Steve Bird stated that the Planning Department had looked at the number of two car garages in the neighborhood. He stated that most either had no garage or a one-car garage. He stated that the applicant had other options outside a variance including constructing a one car garage or purchasing land from the Carters. He stated that the lot line the applicant was seeking a variance from was just created in 1998 when a lot line adjustment was done. He stated that more consideration at that time should have been given to the needs of the applicants' lot. He stated that the Planning Department did not support the variance request, as they did not agree that the applicant had met the hardship requirements and stated that there were other ways to accomplish their goals without the need of a variance

The Board discussed the possible uses of the abutting lot with Tom Clark and Steve Bird.

Doug Cummings stated that he believed the Parkers' presented more of a hardship than was presented in the DeDe case, which the City had just lost in Court.

Art Corte agreed with Doug Cummings that the applicant had presented a legitimate hardship.

FIVE CRITERIA:

It is the Board's conclusion that, if the applicant complies with the strict letter of the zoning ordinance, she does (Frank Landford and Tom Dolbec voted does not) face an unnecessary hardship. Since the applicants do not control the ability to get a lot line adjustment and the other alternatives are not viable, constituting a hardship for this lot. Also, the parcel of land that would abut the garage is not buildable.

It is the Board's conclusion that, if granted, the variance will (Tom Dolbec voted will not) deliver substantial justice. Allows a reasonable use of the property and the proposal is similar to other properties in the neighborhood.

It is the Board's conclusion that, if granted, the variance will (Frank Landford and Tom Dolbec voted will not) be in harmony with the spirit and intent of the zoning ordinance. The proposal does not present any density issues as the land adjacent to the proposed garage is

not buildable and will remain open space.

It is the Board's conclusion that, if granted, the variance will not result in a diminution of surrounding property values. The proposal allows a structure similar to others in the neighborhood and will likely enhance values.

It is the Board's conclusion that, if granted, the variance will not be contrary to the public or private interests or rights. The proposal does not impact any rights of any individuals or the public.

MOTION:

Doug Cummings made the motion to approve with one condition.

Tom Dolbec seconded the motion.

Vote U/A

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

Driveway permit for the new driveway must be obtained before start of construction and the old driveway must be removed at the conclusion of construction.

ITEM #4:

Z02-35 George & Shanna Farrell, 10 Jackson Brook Terrace, A/K/A

Assessor's Map B, Lot 18-13, zoned R40, requests an Equitable Waiver of

Dimensional Requirements from the terms of Chapter 155, Article IX, Section 155-22F to maintain a side deck addition within approximately fifteen (15) feet from an abutting building where a minimum of forty (40) feet is required.

Shanna Farrell, applicant, stated that she and her husband were requesting an equitable waiver for their deck. She stated that when their subdivision was created it required that foundations in the subdivision remain forty feet apart. She stated that it was her understanding that a deck would not be considered part of the foundation and so she submitted a building permit, which was approved by Tom Clark, Building Inspector. She stated that she and her husband were approximately four hours away from completing the deck when they were informed that construction had to be stopped. She stated that she could understand why Tom Clark approved the building permit originally as it appeared that the distance between the deck and the abutting building was 40', when in actuality, that measurement was between foundations of the two homes. She stated that she and her husband had already spent \$2,500 on the project and that the cost of correction would be very expensive. She stated that the deck, if allowed, would increase theirs and their neighbors' property values and that if allowed, there would still be plenty of space between the two homes.

Tom Clark, Building Inspector, apologized to the Farrells and the abutters for his oversight. He stated that the subdivision notes state that a minimum building separation of 40' shall be maintained and that a certification of foundation location shall be submitted for purposes of maintaining the 40' foundation

separation. He stated that he believed it was the buildings that should be 40' apart. He stated that he misinterpreted the sketch that the contractor supplied to him with the building permit application and therefore did not see the need for a site inspection prior to the issuance of the building permit. He stated that, unfortunately, a building permit issued in error is considered invalid.

Dean Trefethen asked if the subdivision was an Alternative Design Subdivision.

Tom Clark stated that it was an ADS, one of the first in Dover, and it was originally created with no lot lines at all. He stated that in subsequent ADS's it was determined that financial institutions had a difficult time lending money on detached single family dwellings without land to go with each house. He stated that the subdivision then came back to the Planning Board with lot lines, irregular as they may be, for the purpose of conveyance. He stated that the note concerning the 40' foundation separation remained.

Dean Trefethen asked if there were any other structures in the neighborhood that were less than 40' away from each other.

Tom Clark stated there were none to his knowledge.

Tom Dolbec asked for a definition of footings versus foundations.

Tom Clark stated that footings are the tubes that go 4' into the ground and that is the foundation that supports the deck.

Dean Trefethen asked Tom Clark to reread the notes from the subdivision plans.

Tom Clark reread them and explained that because of that subdivision there are now specific regulations pertaining to Alternative Design Subdivisions.

MOTION:

Frank Landford made the motion to accept the case.

Doug Cummings seconded the motion.

Vote U/A

Public hearing opened.

Doug Settele, 4 Jackson Brook Tr., stated that he and his wife wanted to protect the little space they had around their house and that he could not help how the lots were created. He stated that no one knew for sure if the deck would be considered a detriment if they ever wanted to sell their house. He stated that everyone else in the neighborhood had maintained the 40' foundation separation and asked to the Board to consider he and his wife in their decision.

Amy Settele, 4 Jackson Brook Tr., stated that zoning regulations were in place to protect people living in small houses on small lots like them. She stated that granting the equitable waiver would diversely affect their property value and that it would set a precedent in the neighborhood.

Public hearing closed.

Dean Trefethen asked for Staff recommendations.

Steve Bird stated that the criteria for an equitable waiver are different than it is for a variance. He explained that he had compared the Farrell's property to other properties in the neighborhood and had considered the testimony of the abutters and believed that the deck would not fit in with the rest of the neighborhood. He agreed that the deck would most likely diminish property values and questioned if the applicants had met the burden of proof.

Art Corte agreed with Steve Bird's comments.

Doug Cummings stated that the deck could be built somewhere else on the lot.

Frank Landford stated that he sympathized with both the applicant and the abutter, but felt that the deck was indeed too close to the Setteles' home.

The Board discussed the equitable waiver requirements.

Frank Landford stated that he would like to see the two parties come to an agreement on their own.

FOUR CRITERIA:

It is the Board's conclusion that the request does involve a dimensional requirement.

It is the Board's conclusion that the nonconformity was discovered after the structure was substantially completed and the violation was an outcome of ignorance of the law or bad faith resulted from a legitimate mistake.

It is the Board's conclusion that the nonconformity does constitute a nuisance and does diminish the value or interfere with future uses of other property in the area.

It is the Board's conclusion that the cost of correction does not (Doug Cummings voted 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 denied.

Dean Trefethen stated that there might be other alternatives for the applicant.

George Farrell stated that he had legal representation and felt that the Boards' decision was ridiculous. He asked what his options were in the meantime.

Dean Trefethen stated that they could finish the rear porch and that the deck could remain so long as they are pursuing other alternatives.

MOTION:

Frank Landford made the motion to adjourn.

Doug Cummings seconded the motion.

Vote U/A

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