

**DOVER ZONING BOARD OF ADJUSTMENT
MINUTES OF PUBLIC HEARING
DECEMBER 19, 2002**

MEMBERS PRESENT: Dean Trefethen, Chairperson; Bill Colbath Co-Chairperson; Richard Callaghan, David Ruoff, Art Corte, Alternate; Frank Landford, Alternate

MEMBERS ABSENT: Douglas Cummings, Tom Dolbec, Alternate

STAFF PRESENT: Tom Clark, Building Official; Christopher Parker, City Planner; Kate Pelletier, Recording Secretary

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

ITEM #1: NEW BUSINESS

A. Approval of minutes for regular meeting of November 21, 2002

MOTION:

David Ruoff made the motion to approve the minutes.

Bill Colbath seconded the motion.

Vote U/A

ITEM #2: OLD BUSINESS

The Board decided to discuss the DeDe case following the regular meeting.

ITEM #3:

Z02-36 James Gaynor & Hillary Weymer, 398A Sixth St., A/K/A Assessor's Map E, Lot 27A, zoned ETP (Executive Technology Park) requests a variance from the terms of Article V, Section 170-16 to construct a detached garage that would be an accessory structure to the residential use within twenty-eight (28) feet from a side property line where a minimum of fifty (50) feet is required.

James Gaynor, applicant, stated that he and Hillary Weymer purchased the home in March, 2002, with the intention of moving the house back on the property and rotating it. He stated that it did not conform to the setbacks at the time. He stated that they wanted to situate the house so that they could also accommodate a garage on the property. He explained that a survey had been done by Bruce Pohopek, which included the house relocation, but not the garage. He stated that a revised plan had been done, including the garage, which he gave to the Board. He stated that the garage would improve the property and asked the Board for their consideration.

Dean Trefethen asked Tom Clark if the garage would still need a 50' side setback if it were attached.

Tom Clark stated that it would.

Dean Trefethen asked the applicant if he would still need a variance if the garage were attached.

James Gaynor stated that the only potential location of the garage was as it was depicted on the plan. Otherwise, they would be dealing with wetlands issues. He stated that their neighbors were aware of and supportive of the proposal.

Hillary Weymer, applicant, stated that when they purchased the house, the plot plan they were given was incorrect and when they had the land surveyed they lost land on both sides of the house and gained land in the back.

Frank Landford asked if the house had already been moved.

James Gaynor stated that it had and that it met current setback requirements.

Art Corte asked why the applicant had not come before the Board prior to moving the house.

James Gaynor stated that they had no other option in moving the house, regardless of where the garage would be located.

Dean Trefethen stated that he, Bill Colbath, David Ruoff, Rick Callaghan and Art Corte would sit on the case.

MOTION:

Bill Colbath made the motion to accept the case.
Rick Callaghan seconded the motion.

Public hearing opened.

None.

Public hearing closed.

Dean Trefethen asked for staff recommendations.

Christopher Parker, City Planner, stated that the Planning Department did not support the variance request as the applicants have a self-inflicted hardship. He stated that if the applicant had known they were going to construct a garage at the time they relocated the

house, they could have located them differently. For instance, they could have attached the garage so that it might encroach in the setbacks, but not as much as their proposal.

David Ruoff stated that the lot was very oddly shaped and that most of the front of the lot, almost 150', was essentially unbuildable without a variance. He stated that moving the proposed garage in front of the property could affect its property value. He stated that he believed there was a hardship and could see the benefits of granting the variance request.

Dean Trefethen stated that the purpose of the setbacks in the ETP zone is to create the impression that structures are spaced out. He stated that if the house stayed in its original location and a conforming garage was constructed, it would appear denser than what their proposal was. He asked Christopher Parker if the Planning Department did not support the variance request because they wanted it to become available for ETP purposes.

Christopher Parker stated that the reason they did not support the request was based on the fact that the applicants have a self created hardship. He stated the Planning Department agreed with Art Corte's previous statement that the applicant should have come before the Board before the house was moved. He stated that the Planning Department was pleased that the primary structure is now conforming, however, there were other alternatives to address the garage.

Rick Callaghan asked if the back portion of the lot was truly wetlands and unbuildable.

Christopher Parker stated that the poorly drained soil area was truly unbuildable and the applicant would have to be at least 50' away from that area. He stated that the Planning Department was not suggesting that they build the garage there.

Art Corte stated again that the applicants should have come before the Board prior to moving the house.

Dean Trefethen stated the applicants seemed to have good intentions.

The Board discussed the alternative locations for the garage.

FIVE CRITERIA:

1. It is the Board's conclusion that, if the applicant complies with the strict letter of the ordinance he does (Rick Callaghan and Art Corte voted does not) face an unnecessary hardship. Due to the unique shape of the lot there are many limitations to making all the structures conform to setbacks constituting a hardship. The overall benefits of the plan outweigh any negatives of the setback relief.
2. It is the Board's conclusion that, if granted, the variance will (Rick Callaghan and Art Corte voted will not) deliver substantial justice. The proposal will allow continued use as a residential property and also a reasonable use.

3. It is the Board's conclusion that, if granted, the variance will (Rick Callaghan and Art Corte voted will not) be in harmony with the spirit and intent of the zoning ordinance. The spirit and intent were for greater setbacks to lessen density and this proposal accomplishes that goal.
4. It is the Board's conclusion that, if granted, the variance will not result in a diminution in value of surrounding properties. The proposal will probably enhance property values.
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 public is served by moving the primary structure away from the road while preserving any private interests or rights.

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

ITEM #4:

Z02-37 Thomas & Donna Tetreault, 8 Horne St., A/K/A Assessor's Map 35, Lot 3, zoned R-12 requests a variance from the terms of Article IV, Section 170-12, Table I, Part A, Footnote 8, to convert a single family dwelling to a two family dwelling on a lot with 6,900 sf where a minimum of 8,000 sf is required.

Donna Tetreault, 83 Stackpole Rd., Somersworth, NH stated that she had recently purchased the home at 8 Horne St. with the intention of keeping her parents in their home and providing them with one-story living and converting the home into a two family. She stated that the necessary changes to the house would be completely to the interior and that no bedrooms would be added. She stated that the existing garage was in disrepair and would be demolished. She stated that it would be replaced with a paved driveway to accommodate the required number of parking spaces.

Rick Callaghan stated that he would step down from the case due to a conflict of interest.

Dean Trefethen asked if the part of the structure labeled "barn" on the plan would become living space.

Mrs. Tetreault stated that it would remain a barn.

Dean Trefethen asked how many bedrooms there would be.

Mrs. Tetreault stated there would be three bedrooms; one downstairs and two in the second unit.

Dean Trefethen asked Tom Clark if the owner would have to do any life safety upgrades.

Tom Clark stated that as part of the building permit process, the applicant would need to supply a floor plan of both units showing fire separation between the units, smoke detector placement, egress, etc.

MOTION:

Bill Colbath made the motion to accept the case.

Art Corte seconded the motion

Vote U/A

Public hearing opened.

None.

Public hearing closed.

Dean Trefethen asked for staff recommendations.

Christopher Parker, City Planner, stated that the Planning Department supports the variance request and that the proposal fits the neighborhood. He advised Mrs. Tetreault that the proposal would require two individual parking spaces per unit.

Art Corte asked Tom Clark if the rules for parking had been changed.

Tom Clark stated that the new rules are proposed and have yet to be voted on, however, any new proposals must proceed as if the amendments were passed.

FIVE CRITERIA:

1. It is the Board's conclusion that, if the applicant complies with the strict letter of the ordinance, she does face an unnecessary hardship. The proposal is a reasonable use of the property given the nature of surrounding properties. Strict adherence to the ordinance in this case would be a needless and unnecessary restriction.
2. It is the Board's conclusion that, if granted, the variance will deliver substantial justice. There is no change in square footage of the building footprint and no additional demand on City facilities creating substantial justice in the proposal.
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 spirit and intent is to have reasonable open space on the property and this proposal meets that goal.
4. It is the Board's conclusion that, if granted, the variance will not result in a diminution in value of surrounding properties. The proposal does not change the appearance of the external structure, thereby not constituting any impact on abutter's values.

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 proposal is a reasonable use of the property and is similar to others in the neighborhood.

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

MOTION:

Dean Trefethen made the motion to grant the variance with the following condition:

- There must be four independently accessed parking spaces on the property.

Art Corte seconded the motion.

Vote U/A

ITEM #5

Z02-38 Richard T. Shaffer III, 25 Ham St., A/K/A Assessor's Map 27, Lot 29, zoned RM-8, requests a variance from the terms of Article IV, Section 170-12, Table I, Part A, Footnote 22, to convert a single family dwelling to a two family dwelling on a lot with 5,055 sf where a minimum of 8,000 sf is required.

Richard Shaffer, applicant, stated that his home is in a neighborhood of apartments already and that he would not be altering the exterior of his home at all. He explained that there are currently five bedrooms in the house and the interior renovations would eliminate two bedrooms, which would become the kitchen and living area of the second unit. He stated that he could also configure the parking to accommodate four independent parking spaces. He stated that there is commercial property on two sides of his house.

Dean Trefethen stated that he, Bill Colbath, Rick Callaghan, David Ruoff and Frank Landford would sit on the case.

MOTION:

Frank Landford made the motion to accept the case.

David Ruoff seconded the motion.

Vote U/A

Bill Colbath asked Tom Clark if any of the building in the vicinity of the applicant's would support the required square footage.

Tom Clark stated that he did not think so.

Public hearing opened.

None.

Public hearing closed.

Dean Trefethen asked for staff recommendations.

Christopher Parker, City Planner, stated that the Planning Department supported the variance request. He stated that the proposal fits the context of the neighborhood and that a site visit confirmed that four independently accessible parking spaces were possible on the lot.

David Ruoff stated that he believed the applicant's proposal was a good idea for that area of Dover.

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. The proposal is similar to almost all neighborhood properties making it a reasonable use. To deny would be a needless and unnecessary restriction.
2. It is the Board's conclusion that, if granted, the variance will deliver substantial justice. The proposal is similar to 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 proposal does not require any outside structural changes while decreasing the total number of bedrooms, thereby being in agreement with the intent of the ordinance.
4. It is the Board's conclusion that, if granted, the variance will not result in a diminution in value of surrounding properties. The proposal is similar to neighboring properties.
5. It is the Board's conclusion that, if granted, the variance will not be contrary to public or private interests or rights. The proposal, by decreasing the number of bedrooms in the structure, will be a benefit to the public interest.

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

MOTION:

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

- There must be four independently accessed parking spaces available for the property.

Rick Callaghan seconded the motion.

Vote U/A

The Board continued to discuss the DeDe case. They decided to meet prior to the next regular meeting with City Attorney, George Wattendorf to answer any questions to the Board had regarding this case.

MOTION:

Dean Trefethen made the motion to grant the variance under direct order of the Strafford County Superior Court.

Rick Callaghan seconded the motion.

Vote 4-1 (Bill Colbath abstained)

MOTION:

Rick Callaghan made the motion to grant the variance with the following condition:

- The gable end be pointed towards the rear lot.

Bill Colbath seconded the motion.

Vote U/A

MOTION:

Bill Colbath made the motion to adjourn.

David Ruoff seconded the motion.

Vote U/A