

CITY OF DOVER

DOVER ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers - 288 Central Avenue, Dover, NH 03820
Meeting Date: **Thursday, May 21, 2009**
Meeting Time: **7:00 pm**

1. ATTENDANCE

- Regular Members Present: Chair Masi Denison, Vice Chair Bill Colbath, Sam Reid, Frank Landford, Jim Kelley
- Alternate Members Present: Chris Prior, Otis Perry
- Staff Present: Jennifer Bretz, Recording Secretary

Meeting called to order at 7:05 pm.

2. APPROVAL OF PRIOR MINUTES OF APRIL 16,2009

Motion: Reid made the motion to approve, Kelley seconded. Vote: U/A

3. NEW BUSINESS

- A. * Z 09-05 Mason Ham, 282 Dover Point Rd, a/k/a Tax Map L, Lot 105-A, zoned R-20, requests a Variance from the terms of Article V, Section 170-16, to construct an addition within approximately twenty-four (24) feet from a front property line as it abuts a street, where a minimum of thirty-five (35) feet is required.

Denison recused herself as owner of the property.

Colbath sits in as Chair.

Perry sits in.

Mason Ham, 282 Dover Point Rd, stated that he would like to build a farmers porch onto the front of the house. Passed out drawings. (In file)

They would like to build an entrance way to the home to protect from the weather. It is a small house with one closet on the first floor. They are proposing a 10X10 mud room with a farmer's porch on the entire front of the house. The home faces Dover Point Rd direct on which exposes it to a lot heat from the sun. They would like to get away from using the air conditioner so much. The porch would allow for a lot more shading then they currently have. Applicant proceeds to go over the application.

Motion: Perry made the motion to accept the application, Reid seconded. Vote: U/A

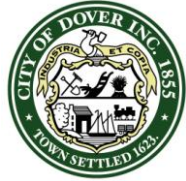
Public Hearing Open

Eveline Elkerton, 278 Dover Point Rd, stated she is opposed to the application. Granting the variance will result in a diminution of the appearance of the neighborhood. The applicant notes that his structure already encroaches on the 35 ft setback by a foot. She went over Section 170-39 of the Dover Zoning Code, non-conforming lots. The applicant's proposal is for convenience and home improvement but is not necessary for the use of the home as an inhabitable home. Therefore the applicant can not claim hardship. She believes the encroachment of the front setback will detract in appearance of neighborhood.

Public Hearing Closed

Colbath read Zoning Administrator Bruce Woodruffs comments into the record. (In file)

Colbath stated most of the neighboring properties are currently at or equal to what the applicant is requesting.



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Reid stated that the abutter said it detracts from the appearance of the neighborhood, although there is written support, in favor of the applicant, from several other neighbors.

Elkertson stated her property is back from the road, the rest of the properties are close to the road. When she purchased house, she knew what house had, the dimensions and she knew about the heat. She also had to put in air conditioners. She asked if the porch would be a buffer.

Reid stated he doesn't find Elkerton's opinion as credible as opposed to the Zoning Administrators opinion.

Perry stated that based on the map, the lot size doesn't have any relationship to the houses setbacks. It is an encroachment of the zoning ordinance. He is sensitive to energy issues and the impact of running an air conditioner. Anything to reduce the use of an air conditioner is important.

Kelley stated that it is interesting to see how the lot sizes differ so much. This wouldn't be horribly inconsistent with other lots on property.

Landford stated does not think it will encroach any more than the other parcels.

Colbath stated from size of lots and way houses are sitting on them, believes setbacks used to be 20 ft.

FINDINGS OF FACT: AREA VARIANCE

1. The applicant was to provide proof that special conditions exist and that literal enforcement of the ordinance would result in an unnecessary hardship.

a) **AREA: i.** Did the Applicant demonstrate that an area variance is needed to enable the proposed use of the property given the special conditions of the property? Yes, Vote: U/A. This conclusion is based on the following findings of fact: The home is currently one foot into the setback.

ii. Did the Applicant demonstrate that the benefit sought cannot be achieved by some other method reasonably feasible to pursue, without the area variance? Yes, Vote: U/A. This conclusion is based on the following findings of fact: The solar benefits require that the porch be attached to the front. Further, the layout of the home would not lend itself to the mudroom being placed in any other location.

2. Did the Applicant provide proof that demonstrates how granting the variance will result in substantial justice? Yes, Vote: U/A. This conclusion is based on the following findings of fact: Substantial justice is being done by allowing the applicant to create a home similar to other surrounding properties.

3. Did the Applicant provide proof that demonstrates how a variance would be consistent with the spirit and intent of the ordinance? Yes, Vote: U/A This conclusion is based on the following findings of fact: DOT has no plan to expand Dover Point Road at this time and the setback would be consistent with surrounding homes.

4. Did the Applicant provide proof that demonstrates the variance will not result in a diminution in value of surrounding properties? Yes, Vote: U/A. This conclusion is based on the following findings of fact: Addition will be consistent with surrounding properties and the abutters predominantly support the request. One is decedent.

5. Did the Applicant provide proof that demonstrates the variance would not be contrary to the public interest? Yes, Vote: U/A. This conclusion is based on the following findings of fact: See #4 for verbiage.

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

Motion: Perry made the motion to approve, Reid seconded. Vote: U/A.



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Recessed at 7:45

Resumed at 7:48

Denison sat back in as Chair.

- B. * Z 09-06 David Johnson (Applicant: David Turner), 9 Renaud St., a/k/a Tax Map 17, Lot 77-C, zoned R-12, requests a Variance from the terms of Article V, Section 170-16, to construct a side addition onto a garage within approximately fourteen (14) feet from a side property line, where a minimum of fifteen (15) feet is required.

David Turner, contractor for David Johnson, stated would like to add single car garage to existing home. Mr. Johnson's house is in very good shape. He, currently, has a one car garage. According to the plot plan, they would have to encroach the 15 ft setback by 1 foot. The roofline would be similar to what is in place currently. Many homes in that area have two car garages.

Colbath asked how close they would be to the abutting neighbor?

Turner stated about 28 ft with the addition. He's basing it on a granite post fence on the property.

Motion: Colbath made the motion to accept the application, Landford seconded. Vote: U/A

Public Hearing Open

Denison read Zoning Administrator, Bruce Woodruffs comments. (In file)

Kelley read an e-mail he received from the abutter at 7 Renaud Avenue. (In file)

Colbath stated most of the houses are into their setbacks.

Denison stated it is the character of the neighborhood.

There was discussion regarding the GIS coordinates/plot plan.

Colbath stated they would be granting a 1 ft encroachment. They can make it a condition that a survey needs to be done.

Public Hearing Closed

FINDINGS OF FACT: AREA VARIANCE

1. The applicant was to provide proof that special conditions exist and that literal enforcement of the ordinance would result in an unnecessary hardship.

a) **AREA: i.** Did the Applicant demonstrate that an area variance is needed to enable the proposed use of the property given the special conditions of the property? Yes, Vote: U/A. This conclusion is based on the following findings of fact: Require appropriate width to accommodate a standard garage door.



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- ii. Did the Applicant demonstrate that the benefit sought cannot be achieved by some other method reasonably feasible to pursue, without the area variance? Yes, Vote: U/A. This conclusion is based on the following findings of fact: Width of the garage needs to be 10 ft to accommodate car and standard door.
2. Did the Applicant provide proof that demonstrates how granting the variance will result in substantial justice? Yes, Vote: U/A. This conclusion is based on the following findings of fact: Other two car garages in neighborhood and a 1 ft encroachment is substantially less than many other neighbors have.
3. Did the Applicant provide proof that demonstrates how a variance would be consistent with the spirit and intent of the ordinance? Yes, Vote: U/A This conclusion is based on the following findings of fact: Reasonable setback of 14 feet remains for access for maintenance.
4. Did the Applicant provide proof that demonstrates the variance will not result in a diminution in value of surrounding properties? Yes, Vote: U/A. This conclusion is based on the following findings of fact: Other homes in the area have larger encroachments. This variance will be in keeping with the neighborhood.
5. Did the Applicant provide proof that demonstrates the variance would not be contrary to the public interest? Yes, Vote: U/A. This conclusion is based on the following findings of fact: Small encroachment of 1 foot is not impactful of public interest. Still allows adequate emergency access.

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

1. The encroachment shall not exceed 1 foot and the foundation shall be certified in relation to the lot line prior to construction.

Motion: Colbath made the motion to approve with conditions, Kelley seconded. Vote: U/A

4. OLD BUSINESS

- A. Z 09-03 BHD REALTY, 802 CENTRAL AVE., A/K/A TAX MAP 37, LOT 30, ZONED OFFICE, requests a Variance from the terms of Article IX, Section 170-12, Table I, Part C-2, to establish a personal service establishment (dog grooming business).

Note: This item was tabled at the meeting of April 16, 2009.

Motion: Colbath made the motion to remove from the table, Reid seconded. Vote: U/A.

Denison read Bruce Woodruff's comments. (In file)

Colbath stated that the question was if the front business was considered a personal service establishment?

Denison stated that based on Woodruff's comments, it is not. It is an Office use. The concern is that there would be a lot of noise from the dogs.

Colbath stated the question came from the abutter to the rear of the property. If the dogs are there and there is a problem, what is the neighbor's option for relief? He stated he's not sure he wants to support a personal service establishment in the Office zone.



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Reid stated the noise issue is not an issue. His concern is that it is an Office zone. A dog grooming business is not a business allowed in the Office zone. The Planning Board formed a table of uses and this business is not consistent with the Office zone.

FINDINGS OF FACT: USE VARIANCE

1. The applicant was to provide proof that special conditions exist and that literal enforcement of the ordinance would result in an unnecessary hardship.

- a) USE: i.** Did the Applicant demonstrate that the ordinance interferes with the reasonable use of the property, considering their unique setting of the property in it's' environment? No, Vote: U/A. This conclusion is based on the following findings of fact: Uses can be made of this space in the existing zoning. Property is not unique.
- ii.** Did the Applicant demonstrate that no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction of the property? No, Vote: U/A. This conclusion is based on the following findings of fact: Different zones have different intensities of use.
- iii.** Did the Applicant demonstrate that the variance would not injure the public or private rights of others? No, Vote: U/A. This conclusion is based on the following findings of fact: Rear abutter expressed concerns that his rights would be violated.

2. Did the Applicant provide proof that demonstrates how granting the variance will result in substantial justice? No, Vote: U/A. This conclusion is based on the following findings of fact: Alternative uses for this property do exist.

3. Did the Applicant provide proof that demonstrates how a variance would be consistent with the spirit and intent of the ordinance? No, Vote: U/A. This conclusion is based on the following findings of fact: Insufficient evidence supplied. Personal service business is inconsistent with allowed Office use.

4. Did the Applicant provide proof that demonstrates the variance will not result in a diminution in value of surrounding properties? No, Vote: U/A. This conclusion is based on the following findings of fact: Abutter complaint indicates that there is a possibility for diminution of value.

5. Did the Applicant provide proof that demonstrates the variance would not be contrary to the public interest? No, Vote: U/A. This conclusion is based on the following findings of fact: Need to keep zoning consistent and intact when feasible.

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

Motion: Colbath made the motion to deny, Reid seconded. Vote: U/A.

5. OTHER BOARD BUSINESS

6. ADJOURN

Motion: Reid made the motion to adjourn at 8:33 pm, Colbath seconded. Vote: U/A.

List of Members

Masi Denison-regular member
 William Colbath-regular member
 Frank Landford-regular member
 Sam Reid-regular member
 Jim Kelley-regular member
 Otis Perry-alternate member
 Chris Prior-alternate member

Term Expires

01-24-10
 10-23-09
 04-12-11
 11-12-09
 05-23-10
 02-08-09
 02-01-11