



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers - 288 Central Avenue, Dover, NH 03820
Meeting Date: **Thursday, August 19, 2010**
Meeting Time: **7:00 pm**

1. **Attendance: Members Present:** Sam Reid (Chair), William Colbath (Vice Chair), James Kelley, Otis Perry, Frank Landford, Chris Prior (Alternate Member)
Staff Present: Bruce Woodruff (Zoning Administrator), Lisa Ertle (Recording Secretary).

Vice Chair called the meeting to order at 7:05.

2. Election of Officers

O.Perry nominated Sam Reid for Chair position. J.Kelley nominated O.Perry for Chair position. O.Perry declined the nomination of Chair.

Motion: A motion and second to elect S.Reid to Chair for Zoning Board of Adjustment. Vote: Unanimous Approval.

3. Approval of Prior Minutes of May 20, 2010 and June 17, 2010

S.Reid noted an error on the adjournment for May 20, 2010 Minutes. He noted correction of J.Kelley to be changed as a second on the motion.

Motion: O.Perry made the motion to approve the May 20, 2010 Minutes. J.Kelley seconded. Vote: Unanimous Approval

The June 17, 2010 minutes were discussed. S.Reid noted C.Prior voted in his absence. O.Perry noted an error in spelling for the representative of applicant, last name is spelled Gsottschneider. He also noted an error on page 3: error in language, need to change to wording as "cut-off fixture".

Motion: O.Perry motioned to approve the June 17, 2010 Minutes with the changes noted. F.Landford seconded. Vote: Unanimous Approval

4. Old Business

There was no Old Business.

5. New Business

- A. Z 10-09 Rob & Ann Marie Wilkins, 2 Browning Dr., Tax Map 21, Lot 79, zoned R-12, requests a Variance from the terms of Article IV, Section 170-12.B, to construct an addition within 12.5 feet from a front property line where a minimum of twenty-five (25) feet is required.

Ann Marie Wilkins and Rob Wilkins noted they have been living on Browning Drive since 1982. They are hoping to add a small addition to the house. Bob Wheeler, Architect working with the applicants, noted the unique location of the lot and lack of space to build an addition on other areas of the house. They are asking for a variance to build off the side of the building next to the driveway. A. Wilkins stated that she has a letter in favor of the request from the abutters with their signatures. (Copy in file.)



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Public Hearing Opened

B.Woodruff noted the Planning Department has asked the applicant to show why they cannot construct the addition on the back of the house. He stated that the answer may be with the unique shape and location of the lot. The detached garage is currently outside the building envelope, and the proposed addition does not go out any further than the garage. B.Woodruff stated the Planning Department is making a conditional recommendation based on whether or not the applicants can provide proof that the interior design could be practical to the addition being built in rear, and not on the side. He noted the Planning Department has not investigated any potential drainage issues that may result from constructing the addition at the rear, and recommends exploring the issues of lack of adequate drainage that would preclude the construction of the addition at the rear which would meet the zoning requirements.

J.Kelley asked for clarification on what makes this lot unique. B.Woodruff noted when the subdivision was originally built the streets were built wide with large curb radii which affected the building envelope of this lot which is located on a corner.

B.Wheeler presented the plan that he rendered, including the intended areas for run off. He noted in the design is in keeping with the other houses in the neighborhood.

B.Woodruff noted because of the recent changes in the zoning setback requirement for frontage in this district the computed neighborhood average is about 25 ft. Therefore this variance request is not as substantial given the frontage setback average.

O.Perry asked if the house is in the buildable space within the 25 ft. setback, B.Woodruff confirmed that it is, but the garage is outside of the buildable space.

W.Colbath asked why the addition can not be added to the other side of the house to avoid any impacts of run off. B.Wheeler noted there is not enough space on the side because of the issue of impacts. W.Colbath asked how they will enter and exit garage. B.Wheeler noted there is plenty of space for a turn around. J.Kelley asked if you can enter onto Henry Law Avenue. B.Wheeler noted this would be possible, and discussed the building design in effect to Henry Law Avenue. They are trying to use the least amount of space possible. W.Colbath asked B.Woodruff if the garage was built by variance. B.Woodruff stated he did not have the answer but could get it. A.Wilkins noted the garage already existed when they bought the house in 1992. Chair asked the age of the house. A.Wilkins noted the house may have been built in 1979. B.Woodruff noted that the setbacks were different in the year 1979, and the zoning was different prior to 1979. A.Wilkins noted the other houses in neighborhood do not have that much frontage from the road. B.Woodruff noted this may have been an R1 zone in the past before it was changed to the current zoning district.

C.Prior asked permission of Chair to speak on the nature of houses. Chair accepted.

C.Prior noted the applicant's driveway is placed on Henry Law Avenue. He noted his house is located on Henry Law Avenue, where many homes are closer to the street because of when they



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were constructed. The applicant's house sits 12ft to 15 ft from the street, and his abutters on Browning Avenue have about 20 ft. Browning Avenue was a development that was constructed later in time when the frontage requirement was larger.

Public Hearing Closed

Chair asked what water drainage issues there may be. B.Wheeler noted the location of the current runoff areas around the house, and indicated he wants to avoid those areas by looking for a favorable area. J.Kelley asked how it is taken care of now. A.Wilkins noted they are currently having issues in the basement which is the reason the addition should not be built there. J.Kelley asked if landscaping can be added to help with drainage, B.Wheeler noted French drains and rocks but he is trying to orient to be conducive to the neighborhood, reduce drainage issues, and to help keep the basement dry.

Findings of Fact:

1. Did the Applicant provide proof that demonstrates the variance will not be contrary to the public interest? Yes. No Public opposition.
2. Did the Applicant provide proof that demonstrates how a variance observes the spirit of the ordinance? Yes. The proposed addition does not encroach any more than other properties on Henry Law Avenue.
3. Did the Applicant provide proof that demonstrates how a variance will result in substantial justice? Yes.
4. Did the Applicant provide proof that demonstrates the variance will not diminish the values of surrounding properties? Yes. Property is consistent with abutting properties.
5. **5A.** The Applicant was to provide proof that literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. **(i)** Did the Applicant demonstrate that special conditions of the property exist that distinguish it from other properties in the area? Yes. Corner lot and hill behind the house **(ii)** did the Applicant demonstrate that no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property? Yes. Corner lot. **(iii)** Did the applicant demonstrate that the proposed use is a reasonable one? Yes. The addition does not encroach any more than the existing Henry Law neighborhood average nor protrude any more than the existing garage.

W.Colbath suggested adding a condition for provision of a turnaround in the driveway. Discussion ensued on driveway condition, determined that there will only be one condition for approval, as recommended by The Planning Department. (Copy on file)

Motion: O.Perry made the motion to grant the Variance with the condition that there be no additional dimensional variances granted for this property. J.Kelley seconded. Vote: 4-1, (W.Colbath opposed)

- B. Z 10-10 Tom & Deborah Child, 9-11 Hamilton St., Tax Map 12, Lot 92, zoned RM-U, requests a Variance from the terms of Article IV, Section 170.41.C, to move an existing non-conforming



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structure and not have its final location meet the current required ten (10) foot rear dimensional setback.

Tom Child noted they have owned this house since 1993, and have operated this house as a multi family building for a long time. The house was built in 1889, including the stable behind the building, and originally was a duplex. It became an apartment building in the 1960's, and currently has six 1 bedroom units with limited parking. The request for moving the garage will allow better access and will increase on site parking. T.Child noted he has contacted neighbors and abutters, and they have no objections. He has submitted a letter, for the file, to the Zoning Board of abutter's signatures for approval of the project. (Copy in file)

Public Hearing Opened

B.Woodruff stated the Planning Department recommends this application be approved. He noted that if the garage is not moved there will be less parking available and will go against zoning regulation for two parking spaces for each tenant. The structure pre-dates any zoning therefore was constructed when there were no dimension regulations and the whole neighborhood shows that character. B.Woodruff presented a plan that shows 16 structures in the neighborhood that have non-conforming setbacks.

Public Hearing Closed

J.Kelley confirmed with T.Child that the garage is for storage, and that moving the garage would give more access for vehicles and backyard space for the tenants. T.Child noted it will be restored to the existing structure.

Discussion took place regarding the structure and potential concerns with infringement on abutter's property during maintenance of the garage in the future. T.Child noted he will work in a way to cause little infringement on neighbors. Discussion ensued on how the rear of the structure will be painted without encroaching on abutter's properties.

W.Colbath confirmed with T.Child that the proposed side setback is 19 ft. on the West side, 38 ft. on the East side. W.Colbath asked why not move it further to the side to create parking. T.Child noted he used the width of a parking spot for a calculation, and would take more space if it were available. W.Colbath noted he feels that he already knows that a lot of people need permission, and asked if he spoke to the neighbors. T.Child discussed his conversations with one of his neighbors who is in favor of the proposal.

Findings of Fact:

1. Did the Applicant provide proof that demonstrates the variance will not be contrary to the public interest? Yes. Replacing an aged structured with a more code compliant structure.
2. Did the Applicant provide proof that demonstrates how a variance observes the spirit of the ordinance? Yes. The neighborhood has many similar encroachments and the non-compliance remains the same.
3. Did the Applicant provide proof that demonstrates how a variance will result in substantial



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justice? Yes. Increased parking and storage

4. Did the Applicant provide proof that demonstrates the variance will not diminish the values of surrounding properties? Yes. The neighbors are supportive and there is no greater infringement.
- 5A. The Applicant was to provide proof that literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. (i) Did the Applicant demonstrate that special conditions of the property exist that distinguish it from other properties in the area? Yes. Property is consistent with others in the zone. (ii) Did the Applicant demonstrate that no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property? Yes. The encroachment is no greater. (iii) Did the applicant demonstrate that the proposed use is a reasonable one? Yes. Applicants will be renovating the old structure.

Motion: O.Perry made the motion to grant the Variance. W.Colbath seconded. Vote: Unanimous Approval

- C. Z 10-11 Chad Weathers & Olga Mollin, 24 Westwood Cr., Tax Map F, Lot 17-N, zoned R-40, requests a Variance from the terms of Article IV, Section 170-12.B, to construct an addition (garage) within 11 feet from a side property line where a minimum of twenty-five (25) feet is required.

W.Colbath stepped down on this case. Chair noted C.Prior will be sitting in.

Chad Weathers and Olga Mollin stated they moved into the home in 2000. When they bought the house they had a house inspection, and were notified that the roof was bowing. He noted they want to replace the existing garage with a two bay garage. The exact frontage is not completely determined. They would like this surveyed to establish the property line before they go forward with the variance case before the ZBA. He noted they are hoping to do two 9 ft. garage doors, making this a 25 ft. width. He discussed the need of a surveyed property line for the garage and asked the Board for advice.

B.Woodruff noted the applicant may be asking to have this tabled until they can get the land surveyed. The applicant agreed and described their intentions to consult with the direct abutter once the land is surveyed. The Chair noted he would prefer this done right the first time. F.Landford suggested applicant let the Planning Department know when they will be available to make the meeting. The Chair asked if a surveyor is available, C.Weathers noted he has a surveyor available next week.

Motion: O.Perry moved to table the application. F.Landford seconded. Vote: Unanimous Approval

B.Woodruff and Chair noted that Planning Department will not be sending certified letters for the next hearing; abutters will be notified by regular postal mail service.

6. Other Board Business



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C.Prior noted his concern with the finding of facts that is required for the determination of a case. He wanted to know the preferred method for a motion. O.Perry noted we have to make a motion to deny, with firm guidelines. Discussion ensued on the "Finding of the Fact" state criteria required to make a motion. B.Woodruff suggested finding out what is required by law and whether we can adapt or adopt this. The Board was in agreement with this. The Chair noted he would like to know the best practice, and determined that further research will be done.

7. Adjourn

O.Perry made the motion to adjourn at 8:15pm. J.Kelley seconded. Vote: Unanimous