



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, October 21, 2010**
Meeting Time: **7:00 pm**

1. ATTENDANCE:

Members Present: Sam Reid (Chair), William Colbath (Vice Chair), James Kelley, Otis Perry, Frank Landford

Members Not Present: Chris Prior (Alternate member)

Staff Present: Bruce Woodruff (Zoning Administrator), Lisa Ertle (Recording Secretary)

2. APPROVAL OF PRIOR MINUTES OF SEPTEMBER 16, 2010.

Motion: O.Perry motioned to approve the September 16, 2010 minutes. J.Kelley seconded. Vote: Unanimous approval.

3. OLD BUSINESS

- A. 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.

Note: This item was tabled from the meeting of August 19, 2010.

The Chair read a correspondence from an abutter who is in favor of this application. (Copy in file)

Motion: O.Perry motioned to remove application from table for consideration. F.Landford seconded. Vote: Unanimous approval.

Chad Weathers and Olga Mollin, of 24 Westwood Circle, stated they are looking to remove an existing garage and replace it with a two bay garage. C. Weathers discussed a letter of correspondence from an abutter who is in favor of the request. (Copy on file)

Public Hearing Opened

In favor of the request-No one spoke.

Not in favor of the request-No one spoke.

B.Woodruff discussed the mapping of the property and noted the change of the Zoning district from R-1 to R-40 after the houses had been constructed in 1979, which changed the side setback requirements. The Planning Department recommends the application be approved with the following condition: That the required building permits are acquired and a foundation plot plan is prepared by a surveyor prior to constructing the new garage.

The Chair and B.Woodruff confirmed the requirement for the foundation plot plan due to the fact that certification of foundation would not be required.

Public Hearing Closed

The Board discussed a surveyed map of property. (Copy on file)



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The Chair asked C. Weathers if there are any other garages this size in the neighborhood. C. Weathers noted possibly two other neighbors.

Public Hearing Closed

Motion: O.Perry motioned to grant the variance. F.Landford seconded. Vote: Unanimous approval.

Motion: O.Perry moved to amend motion to add the condition that the foundation is surveyed to confirm that the foundation is 11 feet from property lines. F.Landford seconded. Vote: Unanimous Approval.

Findings of Fact:

1. Did the Applicant provide proof that demonstrates the variance will not be contrary to the public interest? Yes. Per submission and presentation.
2. Did the Applicant provide proof that demonstrates how a variance observes the spirit of the ordinance? Yes. Per submission and presentation.
3. Did the Applicant provide proof that demonstrates how a variance will result in substantial justice? Yes. Per submission and presentation.
4. Did the Applicant provide proof that demonstrates the variance will not diminish the values of surrounding properties? Yes. Per submission and presentation.
- 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. Per submission and presentation. (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. Per submission and presentation. (iii) Did the applicant demonstrate that the proposed use is a reasonable one? Yes. Per submission and presentation.

4. NEW BUSINESS

- A. Z 10-14-A Suzanne French, Trustee, (Owner: Noel R. Goulet & Rachel R. Goulet Living Trust), 6 Hall St., Tax Map 37, Lot 17A, zoned B-3, requests a Use Variance from the terms of Article IV, Section 170-11.A, B & D, to develop the land for either single family residence or a duplex residence.

Note: The following item will be heard if the previous item is granted.

- B. Z 10-14-B Suzanne French, Trustee, (Owner: Noel R. Goulet & Rachel R. Goulet Living Trust), 6 Hall St., Tax Map 37, Lot 17A, zoned B-3, requests an Area Variance from the terms of Article IV, Section 170-12.A & B and Section 170-39, to construct a single-family residence or a duplex residence with a front setback requirement of twelve (12) feet, where fifty (50) feet is required.

Attorney James Schulte represented the applicant. He discussed the unique location of this property that is located on Hall Street and abuts Hannaford shopping plaza property. There is little



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use for commercial this lot and feels residential is the best use. The applicant is asking for allowance of a single or multi family unit. The setbacks would be consistent with the neighborhood. The structure built will be constructed further back to avoid an existing sewer line.

Public Hearing Opened

In favor of the request-No one Spoke.

Not in favor of the request- No one Spoke.

B.Woodruff discussed the B-3 district zone. He noted the street is residential in character, and can not handle commercial traffic. The Planning Department recommends approval of this application with the following condition: That the use on the property remains residential in keeping with the neighborhood, that any future owner that may wish to use the property or structure for a commercial use (usually allowed by right) shall come back to the ZBA to request a change in the terms of this variance.

The Chair and B.Woodruff discussed the city regulations for this site and the concern from abutters. The Chair read a letter of concern from an abutter. (Copy on file)

The Board discussed the following: the purview of the Zoning Board, the permitted uses for the homes in the B-3 zone, and amount of mixed-used dwellings.

W.Colbath asked why the applicant is asking for a 12 ft. front setback. As stated previously from Attorney J. Schulte, the setback is consistent with other structures in the neighborhood. It is the front setback directly across the street, which is in an Office zone.

The board discussed the boundary lines that connect Dover into Rollinsford; Hall Street extends approximately 200 ft., which connects the City of Dover into the town of Rollinsford.

Public Hearing Closed

O.Perry and Attorney J. Schulte discussed the necessity of the condition for “multi-family” use.

The Chair noted his concern with the size of the lot and the street. J.Schulte discussed the average size lots in the City. J.Kelley noted his concern with crowding on the small lot. Discussion ensued on the size of the lot. If a multi unit is built there will be crowding on the lot and in the neighborhood.

Motion: O.Perry motioned to grant the variance for residential, subject that it only be a single family use, without the Planning Department recommendation. He noted his concern with the Planning Department recommendation. J.Kelley seconded. Vote: 4-1 (opposed F.Landford)

Motion: O.Perry motioned to grant a variance to allow the front setback to be 12 ft. F.Landford seconded. Vote: Unanimous approval.

Findings of Fact:



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1. Did the Applicant provide proof that demonstrates the variance will not be contrary to the public interest? Yes. Per submission and presentation by applicant's attorney.
 2. Did the Applicant provide proof that demonstrates how a variance observes the spirit of the ordinance? Yes. Per submission and presentation by applicant's attorney.
 3. Did the Applicant provide proof that demonstrates how a variance will result in substantial Justice? Yes. Per submission and presentation by applicant's attorney.
 4. Did the Applicant provide proof that demonstrates the variance will not diminish the values of surrounding properties? Yes. Per submission and presentation by applicant's attorney.
 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. Per submission and presentation by applicant's attorney. (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. Per submission and presentation by applicant's attorney. (iii) Did the applicant demonstrate that the proposed use is a reasonable one? Yes. Per submission and presentation by applicant's attorney.
- C. Z10-15 Michael & Maureen Ryan, 15 Arch St., Tax Map 10, Lot 162, zoned RM-U, requests an Area Variance from the terms of Article IV, Section 170.11 and Section 170-12, to subdivide a parcel into 2 lots, creating one with frontage of sixty (60) feet, where a minimum of eighty (80) feet is required.

Attorney James Schulte represented the applicants. The Arch Street zone is currently designated RM-U, but there is a petition currently being brought before the Planning Board to vote on rezoning this to the R-12 zone. The street is residential with a mix of residential uses, and is used as a through street. The applicant will keep the existing house on one lot with a division line, and would prefer not to have a shared driveway. They plan to live on the new lot and sell the old lot. The purpose of frontage is to allow spacing for the buildings and to meet the setback requirements. He discussed the abutting properties, which are mainly backyards facing this property. He cited a letter from a RE Max realtor that addresses the issue of diminution of value to the abutting properties. (Copy on file)

Public Hearing Opened
In favor of the request-No one Spoke
Not in favor of the request-

Carol Boc, of 8 Arch Street, noted her concern of this application in regards to the current petition to the City for rezoning Arch Street. She stated her concerns with the 60ft. frontage request, the congestion of traffic the paving will incur, and the up keep of characteristic for this neighborhood. She submitted a plan that detailed the square footage of frontage for each home on Arch Street. (Copy on file) C.Bok suggested the following conditions for approval: applicant create a shared driveway, limit the house to single family residence.



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Robert Doyle, 22 West Concord Street, noted his concern with the frontage of the lot, and the width of the driveway. The abutting backyard neighbors will have to look into a parking lot. He feels this will be best as a single family home.

Attorney J.Schulte stated having separate driveways is important to the clients. He discussed the concerns with having a shared driveway. The applicants would be willing to accept the condition of building a single unit residence with the 60 ft. frontage.

C.Boc stated she would stand by the approval of two lots with 70 ft. sq. frontage and two single units, with a shared driveway.

B.Woodruff noted the Planning Department recommends the ZBA ask the applicant whether this use is for a single or two family structure. The Planning Department recommends screening and a shared driveway to be considered as conditions. If the Board approves the variance, staff would suggest the following conditions: The plat shall go to the Planning Board for their review and approval; that the residential use be limited to a single family dwelling.

B.Woodruff discussed the rezoning of the district in 2009, and the replacement of frontage with build to lines to match the frontage in the neighborhood. Discussion ensued with the Board on this subject. W.Colbath suggested to make the two lots with 70 ft. sq. frontage, and to limit both lots to single family residence. Attorney Schulte noted the applicants are limited on the size of development and are willing to accommodate.

The Board and Attorney Schulte discussed the setbacks in regards to the neighborhood, and the position of the driveway in concern to abutters. Attorney Schulte suggested making both lots 70 ft. setback, and place the driveway on the right, and new house be centered on the lot.

J.Kelley and Attorney Schulte discussed the dimension of the lots and the dimensions of the existing garage. O.Perry noted the driveway access may be best placed on the southern side of the lot, and the residential use be a single family use. Discussion ensued on the garage located at the rear of the parcel.

Public Hearing Closed

C.Boc asked for clarification on the procedure in regards to changing the particulars in variance requests. B. Woodruff clarified that this was allowed.

Motion: O.Perry motioned to grant a variance subdividing the lot into 2 lots, one lot with 70 ft. of frontage and the new lot having 69.6 ft. of frontage (more or less); and on the new lot the driveway be on the southern side and no closer than 5 feet to the abutting lot. Finally, that the new lot be allowed only a single family residence use. J.Kelley seconded. Vote: Unanimous Approval.

Findings of Fact:

1. Did the Applicant provide proof that demonstrates the variance will not be contrary to the public interest? Yes.



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2. Did the Applicant provide proof that demonstrates how a variance observes the spirit of the ordinance? Yes.
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.
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. (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. (iii) Did the applicant demonstrate that the proposed use is a reasonable one? Yes.

5. OTHER BOARD BUSINESS

The Chair noted the receipt of a letter from Ann Wilkins, who had come before the ZBA Board for a variance to the side setback. B.Woodruff discussed the variance that was approved with a plan, which was submitted from the applicants, by the Zoning Board. The Wilkins are looking for clarification on the specifics of the variance. Discussion ensued on the variance that was granted, whether the variance was decided on the plans and documents submitted, and the concerns of the Wilkins. B.Woodruff noted he will not sign off on a building permit for the building official to grant a permit to build a foundation up to line the ZBA granted because the submitted plans indicated that the planned overhang of 2'-6" was at the approved setback. It has to be the plans that the ZBA approved. Any variances from this line will need to be brought before the ZBA Board.

B.Woodruff noted he has booklets of resource that may be helpful to Board Members. These are available for ordering to any of the Board members.

The Chair noted that B.Woodruff submitted a handout of policies and procedures for Findings of Fact that are used in other municipalities. B.Woodruff spoke about the handout. The Board discussed the terms necessary for the Finding of Facts. The facts have to come from the individual ZBA member and not as group, but all facts need to come together as a consensus from the group.

6. ADJOURN

O.Perry motioned to adjourn the meeting at 8:49 pm. W.Colbath seconded. Vote: Unanimous.