



**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, April 21, 2011**  
Meeting Time: **7:00 pm**

### 1. ATTENDANCE

**Members Present:** Sam Reid (Chair), William Colbath (Vice Chair), Chris Prior, Jennifer Stone (Alternate), Jim Kelley, Frank Landford, Joshua Cote (Alternate)

**Members Not Present:** Otis Perry

**Staff Present:** Bruce Woodruff (Zoning Administrator), and Michele Alexander (Recording Secretary)

Chair called the meeting to order at 7:02 p.m.

### 2. APPROVAL OF PRIOR MINUTES OF MARCH 17, 2011.

J.Kelley noted typographical correction on page 2 "lease".

**Motion:** J.Kelley made the motion to approve the minutes as amended. W.Colbath seconded. Vote: U/A

### 3. OLD BUSINESS

None

### 4. NEW BUSINESS

- A. \* Z 11-07 June Dysinger, 345-B Washington Street, Tax Map 32, Lot 15-B, zoned R-12, requests a use Variance from the terms of Article IV, Section 170-12.A and the R-12 Table of Uses, and NH RSA 674:33 V, to construct a two-family dwelling in a single family district.

J.Dysinger, applicant, spoke. She indicated she purchased the land one year ago to build a house for her and her son who has Downs Syndrome. She would like to build house, a cottage style home, with a small caretaker unit. The unit would be rented for 10 years, but thereafter would be for her son's caretaker.

*Public hearing opened*

D.Huppe of 5 Kennedy Circle is an abutter. Asked question: If this unit is approved can other property owners build multi-family homes or duplexes? Chair noted they would have to come before the Board for special exception. B.Woodruff noted that pre-1964 homes can convert to a duplex by right.

D.Huppe asked if a special condition could be that the property move back to a single family after she sells the property. The Chair answered yes that could be a condition.

*There were no other comments from the public.*

B.Woodruff noted that pertinent to this case is the length of the time before the son would use the unit.

B.Woodruff explained RSA 674:33 V, which states that the Board may find favorably for a variance without a hardship arising from the condition of a premises subject to the ordinance, when reasonable accommodations are necessary to allow a person with a recognized physical disability to reside in or regularly use the premises, provided that the variance shall be in harmony with the general purpose and



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intent of the ordinance. Further, the Board may find that the variance shall survive only so long as the particular person has a continuing need to use the premises.

B.Woodruff provided Planning Department recommendations, suggesting the Zoning Board approve the variance and suggests the following conditions.

1. That the applicant submits a stipulation to the Planning Office to be recorded in the Strafford County Registry of Deeds that states that the second unit will be discontinued and physically altered if the need for reasonable accommodations for the person with the physical disability no longer exists.
2. Owner certify to Planning Department every two years.

*Public hearing closed.*

Chair noted that the N.H. RSA discussed is similar in intent to the request of the abutter. W.Colbath noted that the wording of the stipulation agrees with the state statute. Chair agreed. B.Wooduff noted that the condition could indicate the Planning office monitor status. Chair noted that this was preferable to just falling to the deed as the check as the owner could potentially move and rent the home.

J.Stone asked about length of time the unit would be rented. B.Woodruff answered that the applicant had indicated for approximately ten years and noted that the approval of the variance would be allowing a duplex.

J.Kelley asked what reverting the space to a single unit would entail. B.Woodruff said that it would have to satisfy the Zoning Administrator's opinion that it would no longer be a completely private unit with all required amenities. B.Woodruff noted the language of the condition addressed this issue. B.Woodruff noted that this would restrict the property from being sold until the second unit ceased to exist. J.Kelley asked what would happen if the next owner had a child that wanted to live there, not paying rent. B.Colbath noted language regarding removing a kitchen could be added. J.Kelley noted that it would be unfortunate to have to remove the kitchen, etc. if a family moved in that could use the space. B.Colbath noted this would be difficult for the Zoning Administrator to regulate.

J.Stone asked what would happen if the applicant's current child chose not to live there. B.Colbath noted that the stipulation must rest on the fact that the son is a resident. J.Kelley noted that the property would be rented to a non-family entity for the first 10 years. F.Landford noted he has an issue with the rental of the house, but would approve with the stipulation the applicant and son are living there.

Chair clarified the conditions of approval if it would be approved:

1. Kitchen to be removed if property is sold, or son no longer lives in the home.
2. Zoning administrator must certify every two years that son still resides in the home.
3. That the applicant submits a stipulation to the Planning Office to be recorded in the Strafford County Registry of Deeds that states that the second unit will be discontinued and physically altered if the need for reasonable accommodations for the person with the physical disability no longer exists.

Chair asked for clarification if this complies with RSA 674:33,V. B.Woodruff stated that if the Board feels it complies, then they do not have to give reason for hardship.

**Motion:** J.Kelley made the motion to approve with conditions. F. Landford seconded. Vote: U/A



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- B. \* Z 11-08 Jean L. Reid, Trustee/Jean L.Reid Revocable Trust, 300 Dover Point Road, Tax Map L, Lot 49-C, zoned R-20, requests a frontage Variance from the terms of Article IV, Section 170-12.B, to allow 50' ft. frontage on a new subdivision lot and 50' ft. on the remainder lot, where 125 ft. for each is required.

*Chair noted that the following item will be heard if the previous item is granted. The Board has the option of hearing both cases simultaneously.*

Attorney F.X. Bruton spoke on behalf of applicant. Lot is comprised currently of one lot and the intent is to subdivide into two lots. F.X.Bruton noted unique features of the lot with its odd shape. He noted the applicant would like to subdivide the lot according to the plan shown. The neck of the lot is non-conforming for frontage. Splitting the neck of the lot would create two 50 feet sections of frontage for each lot. Applicant intends to provide a shared driveway for the lots. The curb cut of the driveway would not change.

F.X.Bruton noted the odd shape of the lot presents a unique situation which creates hardship to the applicant in attempting to build on the lot.

J.Stone asked what is the intent of 125 feet required of frontage. B.Woodruff noted the intent is the safety of citizens and reasonable access for emergency and safety vehicles to access homes. J.Stone asked about clarification in this case. B.Woodruff noted this lot was subdivided during a time when 100 feet was the frontage required. B.Woodruff noted there are other lots in the area with similar configuration and the intent was to give access to the lots.

*Public Hearing opened.*

Roy Josselyn, 298 Dover Point Road spoke. He noted he agrees with the plan.

There was no additional public comment.

*Public Hearing closed.*

**Motion:** C.Prior made the motion to grant the variance with the condition that the newly created lots only contain a single family home, no further subdivision, must have shared driveway. J.Kelley seconded. Vote U/A

- C. \* Z 11-09 Jean L. Reid, Trustee/Jean L.Reid Revocable Trust, 300 Dover Point Road, Tax map L, Lot 49-C, zoned R-20, requests a Variance from the terms of Article IV, Section 170-12.B, for relief from the requirement to adhere to an approximately 132' front build-to line for construction of a dwelling



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unit, allowing the new unit to be constructed farther back, near the river on the new lot as per the submitted plan.

F.X.Bruton noted new City codes require a build to line and traditionally there is a front set-back, and this is challenging for the new lot. The calculated build-to line is 132 feet, which would fall within the neck of the lot. It would be impossible to build a house on this location on the lot. F.X.Bruton noted he consulted with the Planning Department, and the Planning Department agreed with applicant's desire to place the home 132 feet from the rear and side lot lines to meet the context sensitive requirements.

F.X.Bruton asked for relief from the build-to-line, due to the unique nature of the lot. F.X.Bruton went through five prong test: reasonable use has been met with the large size of the lot and would not alter the essential character of the current properties; he noted abutters support; granting the variance would not violate the spirit of the ordinance, particularly because a shared driveway would be maintained; he noted an extra area of frontage provides for no traffic impact; benefit to applicant would far outweigh any public concern as there is no reason for public concern; he noted both variances would not reduce the value of current abutting property; the new lot would be six times greater that lot size required for a single family home; and that generally the purpose of the ordinance is to protect the public and he noted this is achieved with the intent of the shared driveway; he noted lot size is six times bigger so use is reasonable;

With regards to build-to line, F.X.Bruton noted the unique neck of the lot makes a variance for the build-to-line reasonable; the variance meets the purpose of creating a uniform neighborhood as the request attempts to meet the context of the waterfront homes in creating another waterfront home in line with the other homes on the river and is consistent with surrounding properties; criteria under 5B of build-to is not possible to with this lot.

F.Landford confirmed that a single family home is on the current approved lot, and asked applicant if they would confirm a condition be that only a single family home be on each lot.

J.Kelley asked about build-to line. B.Woodruff noted it was to preserve the form and character of the neighborhood for those that travel and live there. J.Kelley asked about Shore and Protection Act. F.X.Bruton pointed out shore and hash lines on plan. B.Woodruff explained that upon request any office can receive complaints, but the state does the enforcement action. J.Kelley noted the Planning Board does not promote shared driveways because of future potential for conflict.

B.Colbath asked about 250 foot buffer. B.Woodruff noted there are varying degrees of what can occur in the 250 foot area, and building can occur from 50 feet from the reference line. B.Colbath asked why building is located in the footprint indicated. F.X.Bruton noted that footprint was indicated to satisfy the build-to requirements. C.Prior noted that variance is being considered to simply grant a variance from the 132 feet build-to line. B.Colbath said that he does not agree with approving the plan with the home indicated in this footprint. B.Woodruff noted the Planning Board would need to approve the site of the home given other factors such as wetland and streams. C.Prior noted that request is simply asking for relief from built-to-line. B.Woodruff noted clarification from applicant could be requested by Board regarding the shown home footprint. B.Woodruff also noted that this is a good example of a unique property that does not appear to fit with the built-to-line concept.



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B.Woodruff clarified question of Board regarding that footprint shown could be indicated as not part of the approval of the application.

B.Colbath requested limit on any further subdivision of the land, similar to other stimulations that have been made on that road. Chair noted stipulation that only single-family homes be on both lots.

**Motion:** C.Prior made the motion to grant the variance as requested with the condition that the limits of the principal structure on the approved plan not be mandatory. J. Kelley seconded Vote: U/A

### 5. OTHER BOARD BUSINESS

A. Discussion on proposed Operating Rules Revisions

B.Woodruff said that the operating rules hard copy was an earlier version and apologized. The Board needs the correct version before it can be considered. Chair asked about rules regarding public hearing. J.Kelley noted it was fair to allow applicant to speak again and Chair noted public hearing could be re-opened if applicant raised hand to speak according to Roberts Rules.

B.Colbath and F.Landford requested their City emails be removed from City website and those emails will be eliminated.

### 6. ADJOURN

**Motion:** J. Kelley made the motion to adjourn at 8:22 pm. C.Prior seconded. Vote: U/A