



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

### 1. ATTENDANCE

**Members Present:** Sam Reid (Chair), William Colbath (Vice Chair), Chris Prior, Otis Perry, Jim Kelley, Jennifer Stone (Alternate). Frank Landford arrived at 7:10 pm.

**Members Not Present:** Joshua Cote (Alternate)

**Staff Present:** Bruce Woodruff (Zoning Administrator)

Chair called the meeting to order at 7:05 p.m.

### 2. APPROVAL OF PRIOR MINUTES OF JUNE 16, 2011.

Mr. Perry moved to adopt the minutes; seconded by Mr. Kelley.

Mr. Prior asked for one change on Page 4 of 5, "B.Schulte" should be changed to J.Schulte.

Mr. Kelley asked for a change on Page 4 of 5, "Jim Kelley withdrew his ..." should be changed to "Jim Kelley withdrew his second to the motion."

Mr. Colbath said B.Stowell should be changed to R.Stowell throughout the minutes.

Mr. Kelley spoke about Mr. Schulte citing a specific case.

Mr. Kelley asked that his name be spelled consistently throughout the minutes.

Mr. Perry moved to hold the minutes open until the next meeting; and seconded by Mr. Kelley.

Vote: U/A.

### 3. OLD BUSINESS

Mr. Colbath spoke about 70 Silver Street, and an old barn that was converted to a residential unit.

Mr. Woodruff said there has been an ongoing enforcement action, which is now closed. He was hesitant to prejudice the board, since the 30 day appeal time period hasn't passed.

Mr. Colbath said he would be filing an appeal.

### 4. NEW BUSINESS

- A. \* **Z 11-14 Richard Callaghan, 26 Horne Street, Tax Map 35, Lot 18, zoned R-12, owner Richard Callaghan, 32 Horne Street, appeals an administrative decision by the Zoning Administrator in a Notice of Zoning Violation letter to the applicant dated May 2, 2011 that the use on the property is a rooming house which is not allowed by right in the R-12 zone.**

Mr. Colbath recused himself from this issue.

Mr. Landford noted for the record that Mr. Callaghan did serve on the ZBA, and he did serve with him at the same time.

Mr. Reid and Mr. Kelley noted for the record that they also served with Mr. Callaghan.

Mr. Perry said most of the board members were here during Mr. Callaghan's time on the ZBA. He said Mr. Woodruff was not the Zoning Administrator.

Mr. Reid asked Mr. Prior to sit in on this case for Mr. Colbath.



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Mr. Callaghan discussed the Public Notice for this hearing, and said it should have said that the Zoning Administrator has determined that the property is a rooming house if the owners fail to change the way they lease the property. He said they are not asking for a change, but are asking for everything to stay the same as it has been for over 35 years. He said the argument is whether or not the Zoning Official has the authority to tell a landlord that they must change the way they lease their property. He went over his leasing agreement process with his tenants for his duplex. He said the lease each tenant signs incorporates them as a group, but each pays an amount that is proportionate to the room that they leased. He said if a tenant vacates the property the other people don't have to pay the vacated person's rent.

Mr. Callaghan went over the basic issues included in the appeal. He said it was never addressed what needed to be done in order to change the directive. He asked the Zoning Administrator for something that he could bring to his tenants, who have a legally binding lease. He referred to the Staff Memo and said there was no substantive evidence to support the directive, and therefore cannot be enforced. He went over his presentation with the board.

Mr. Reid interrupted Mr. Callaghan regarding a dwelling structure being defined as a mobile home. He said he felt dwelling structure was just being used as common language rather than the legal definition. He said the Board agrees that the property in question is not a mobile home.

Mr. Reid interrupted Mr. Callaghan regarding the City's definition of a rooming house, and said it was very clear.

Mr. Prior referred to Mr. Callaghan's motivation. He asked if a tenant moved out if the other tenants have a say on the vacant room.

Mr. Callaghan said they do. He spoke about a tenant that broke her lease and the mother's interference. He said this was how the Zoning Administrator found out about his leasing practice.

Mrs. Callaghan said they make sure the new tenant can afford the rent.

Mr. Callaghan said they advertise it as sharing a property, and he has been doing it this way since 1983. He explained the process for advertising on Craig's List, Rooms and Shares.

Mr. Reid asked if the tenants bring in their own furniture or if it was provided.

Mr. Callaghan said he doesn't provide it, but they sometimes offer to buy it from the previous tenant. He continued with his presentation. He read a letter from Deanna Rounds into the record.

Mr. Woodruff addressed the ZBA with his findings and said Mr. Callaghan was appealing that decision. He said changing the leasing process would bring this property back into compliance with R-12 zoning, keep the integrity of the neighborhood, and the spirit of the Zoning Ordinance. He referred to the Staff Memo and went over the definitions of a rooming house. He said the ZBA has to determine if he was correct in saying this was a rooming house, which is not allowed in a R-12 zoning district. He mentioned that the zoning was instituted in 1948, which doesn't allow for grandfathering in this case. He said Mr. Callaghan has cooperated 100% with safety and health personnel, and fixed everything. He



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said Mr. Callaghan did ask for additional information, and he felt they provided it. He said his decision was based on what the owner told him and what it says in the Zoning Ordinance. The decision was for Mr. Callaghan to replace the individual leases with one collective lease for each dwelling unit in the structure. The decision was based on the fact that singular leases fit the definition of a rooming house and not allowed in the R-12 Zone. He posed a question to the board: How would an enforcement officer determine that a house or dwelling unit is a rooming house or not unless there is some rational test. One test is to see how many leases there are for the dwelling.

Mr. Reid said it was form over substance. He said a lease or leases were pieces of paper, but it's still the same.

Mr. Woodruff said the ZBA has to decide if he erred.

Mr. Reid said one of the definitions of a rooming house is providing furniture and Mr. Callaghan doesn't provide furniture.

Mr. Prior asked if one lease for each dwelling unit would satisfy the City.

Mr. Woodruff said it would satisfy the City, because unrelated people can live together.

Mr. Callaghan asked what happened if he had no leases. He felt the City shouldn't be managing leases. He asked if the Zoning Administrator can make him do this.

Mrs. Callaghan asked about the other people in Dover renting property in the same manner as them.

*Mr. Reid opened the Public Hearing.*

*Mr. Reid closed the Public Hearing.*

Mr. Perry said his opinion is the way the Callaghan's solicited and dealt with the tenants as individuals instead of as a whole makes it a rooming house.

Mr. Kelley said he feels this is a rooming house and is in conflict with the zoning district.

Mr. Prior said he saw it as a rooming house.

Mr. Landford said there are a lot of houses that are rented in this manner. He said it's not a problem for the ZBA to worry about. He doesn't think it's a rooming house.

*Mr. Reid reopened the public hearing.*

Mr. Callaghan said they are definitely two separate units.

*Mr. Reid closed the public hearing again.*

Motion: Mr. Perry moved to sustain the Zoning Administrator's decision and deny the appeal; seconded by Mr. Prior. Vote: 3/2; Passed. Mr. Reid and Mr. Landford were opposed.



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Mr. Callaghan's presentation has been included in the Agenda Materials.  
A copy of Deanna Rounds letter, dated July 16, 2011, was accepted into the record.

*Mr. Reid moved to take a five minute break.*  
*Mr. Reid reopened the meeting.*

- B. \* Z 11-15 Janice L. Greene, 90 Glenwood Avenue, Tax Map E, Lot 19E, zoned R-12, owner, Janice L. Greene, 90 Glenwood Avenue, requests a variance from the terms of Article IV, Section 170-12 B & the R-12 district Table of Uses and Dimensional Regulations, Side Setback for principal buildings, to construct an attached garage and porch with a side setback of ten (10) feet, where fifteen (15) feet is required.**

Janice Greene, 90 Glenwood Avenue: She addressed the Board with her request for a variance to build a standard garage.

*Mr. Reid opened the public hearing. Nobody Spoke. Mr. Reid closed the public hearing.*

Mr. Woodruff read the Staff Memo for the record.

Motion: Mr. Perry moved to grant the variance; seconded by Mr. Landford.  
Vote: 5/0; Passed. Variance granted.

### 5. OTHER BOARD BUSINESS

#### A. Vote on revised Operating Rules.

Mr. Perry said he was not convinced that they had to change the Operating Rules.  
Mr. Woodruff discussed the changes to the Operating Rules. He said rules have been updated for all Boards and Commissions.  
Mr. Colbath referred to "shall arrange for video recording," and asked about changing the wording. The Board discussed the wording.  
Mr. Perry made a motion to amend the Operating Rules, Article B, Paragraph H, by removing "shall" and inserting "may;" seconded by Mr. Landford.  
Vote: 5/0; Passed.

### 6. ADJOURN

Motion: Mr. Perry moved to adjourn at 9:05; seconded by Mr. Landford. Vote: 5/0.