

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, May 15, 2014**
Meeting Time: **7:00 pm**

1. ATTENDANCE

Members Present: Sam Reid (Chair), Frank Landford, Chris Prior, Jennifer Stone, Bob Hall (Alternate), Joshua Cote (Alternate)

Members Not Present: Otis Perry (Vice Chair), George Reagan (Alternate)

Staff Present: Timothy Corwin (Assistant City Planner), Diane Britt (Recording Secretary)

The Chair called the meeting to order at 7:00 p.m. He opened the meeting, introduced the Board and staff members to the audience, and described the process used to hear cases.

2. APPROVAL OF REGULAR MEETING MINUTES OF APRIL 17, 2014

Motion: J.Stone made the motion to accept the April 17, 2014 meeting minutes. Seconded by B.Hall.

S.Reid stated that all appearances of "Public Hearing Opened" should be moved to the space immediately below the legal notice.

Vote: U/A as amended

3. RE-HEARING REQUEST – Z 14-07(R) CHANGING PLACES, LLC, 104 COURT STREET (TAX MAP 20, LOT 113)

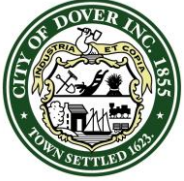
S.Reid announced that T.Corwin received an email from the re-hearing applicant, Lisa O'Grady, withdrawing the request.

4. HEARINGS

- A. A. *Z 14-10 Changing Places, LLC (Property Owner: Maloney Family Revocable Trust of 2012)**, 104 Court Street (Tax Map 20, Lot 113), located in the Medium Density Residential (R-12) District, received a variance on March 20, 2014 from the R-12 District minimum frontage requirements in order to subdivide the property into three lots. Applicant requests a second variance from **Section 170-12.A** of the Zoning Ordinance and the R-12 District Table of Use and Dimensional Requirements to permit the proposed dwellings on the new lots to be located between 25 ft. and 48 ft. from the front lot line where the dwellings are required to be located 48 ft. from the front lot line, which is the build to line equal to the average setback for all properties within the R-12 District within 500 ft. of the property to be subdivided.

Public Hearing Opened

Attorney James Schulte represented the applicants and explained that the variance granted in March was to allow two new homes to be built on this property. The existing home is centered on the lot and the new homes would be to the left and to the right of this. There had been discussions with the abutter to the left, Lisa O'Grady, to do a boundary line adjustment to deed to her a triangle of land to square off her lot. Since then, when the land was surveyed, it was found that there were two additional feet of frontage, and it was agreed that the enlarged triangle of land which went from 2,900 sq. ft. to approximately 4,400 sq. ft. would be deeded to L.O'Grady. He further explained that, due to the configuration of the land and the slope, L.O'Grady is unable to drive a vehicle to the rear



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of her property and it has been agreed to deed to her an easement that is 11 feet wide and about 100 feet deep for access. He explained how the 48 foot average setback affected the location of the proposed house next to L.O'Grady's house and how it reduced her privacy and reduced the usable land for the proposed houses.

By using the 27 foot average build to line for the proposed homes, this places them more consistently with the other houses nearby and improves land use. Atty. Schulte stated there is a written agreement with L.O'Grady.

J.Stone confirmed with Atty. Schulte that the existing house at 104 Court Street is set back about 50 feet. She also confirmed with Atty. Schulte that the area of the triangle of land being deeded to L.O'Grady is approximately 4,400 sq. ft. and the area of the easement is 1,100 sq. ft. Atty. Schulte passed out a new plan for the Board to look at.

There was discussion regarding the rear lengths of the new lots. Atty. Schulte explained that all the three lots are larger than the required 12,000 sq. ft. and will have 67 foot frontage.

J.Stone asked Atty. Schulte to explain the reason for the easement.

Atty. Schulte said the easement is to allow for pedestrian and vehicular access to the back of L.O'Grady's property.

S.Reid confirmed with Atty. Schulte that the easement area will be grass and that L.O'Grady will continue to park her vehicle in front of her house.

B.Hall asked about privacy for the rear yards on the new lots.

Atty. Schulte explained that the new owners would buy the properties with full knowledge of rights of privacy, stating that the existing house in the middle will be sitting sort of in the back yards of the new houses.

B.Hall explained that he has an issue with the proposed houses being placed in front of the existing house.

Atty.Schulte stated a range for the setback of the proposed houses would be acceptable such as 27 to 30 feet.

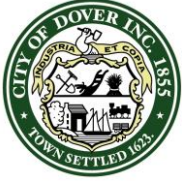
The Chair appointed B.Hall to vote on this case.

Robert Woodbury, L.O'Grady's fiance, stated L.O'Grady is out of town and he brought an email from her which he gave to S.Reid, and it was passed around to the Board members. The email is in support of the 27 foot setback. He explained that her house is about 22 feet back from the road and, with the 27 foot setback, the proposed house will be 5 feet behind the front of her house. He stated the closer the proposed house is built to the road the happier she will be. He stated L.O'Grady supports the proposed 27 foot setback.

B.Hall asked for clarification as to why this case is back for a variance.

R.Woodbury stated this was because L.O'Grady found out where the proposed house was going to be placed relative to her property, and it would have been in her back yard.

S.Reid stated he remembered that when the original variance request came before the Zoning Board there was a range for the setback from 25 to 48 feet.



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T.Corwin explained that L.O'Grady was not attuned to zoning concepts and did not understand the scope of the project and how it would affect her. He stated the build to line request is not driven by the applicant; it is driven to accommodate the abutter in this case.

STAFF RECOMMENDATION

T.Corwin stated staff supports the requested variance for the reasons stated in the staff memo with the condition that the proposed houses be 27 feet from the front lot line.

J.Stone asked T.Corwin how far the right of way extends beyond the pavement edge.

T.Corwin stated that the right of way extends beyond the edge of the pavement usually 5-6 feet and the abutting properties would follow suit.

Public Hearing Closed

Motion: C.Prior made a motion to grant the variance with the condition that the proposed new houses be located 27 feet from the front lot line. Seconded by F.Landford. Vote: 4/1 (B.Hall was opposed)

S.Reid asked the Board to review the Rules of Procedure, which was brought up at the last meeting. He stated that he spoke to T.Corwin earlier in the day and suggested that any changes could be discussed tonight, then a vote could be taken at the next meeting.

T.Corwin explained that tonight he has given members of the Board a composite of the Rules of Procedure document with comments from O.Perry which are bolded. He stated he added his own comments for discussion purposes, and he sent the Rules of Procedure to the City's paralegal, who added a couple of suggested changes that he noted at the beginning of the document. He stated it is up to the Chair on how to proceed.

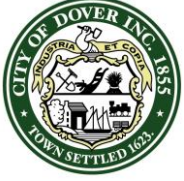
B.Hall added that his input is that counsel should go through the entire document to make sure it is compliant with the state statute because he knows there were many changes in 2013.

S.Reid stated this document should reflect what the Zoning Board does and should reflect current law.

B.Hall stated that the Board can require an independent appraisal and evaluation at the expense of the applicant of the property being impacted. He does not know the RSA clause but he wants to have this option included in the document.

S.Reid stated he has seen Rules of Procedure that the New Hampshire Municipal Association suggests and he is not sure if they are consistent with what the Zoning Board does. Discussion ensued regarding the Zoning Board's authority under state law and the question of if it should be put in the Rules of Procedure which should be addressed by counsel.

S.Reid said that O.Perry suggested that the email account language be liberalized a little bit. The previous City Attorney was fairly insistent that he did not want Board members to use their private email accounts based on the concern that if there is ever litigation, the attorney for the party bringing the litigation would have to the right to look at their private emails. O.Perry suggests that private email accounts can be used as long as it is clear that it is only for communication and not for discussion.



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S.Reid suggested changing the language regarding election of the Chair to read that this would be done at the first scheduled meeting of each calendar year.

Discussion ensued regarding the “clerk” in the Rules of Procedure.

T.Corwin explained that the “clerk” is the staff person designated by the Director of Planning and Community Development.

S.Reid stated Board members could email their comments and feedback to T.Corwin, and the City Attorney should review the document.

5. ADJOURN

Motion: C.Prior made the motion to adjourn at 7:46 p.m. Seconded by F.Landford. Vote: U/A