



CITY OF DOVER

DOVER ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers - 288 Central Avenue, Dover, NH 03820
Meeting Date: **Thursday, September 20, 2007**
Meeting Time: **7:00 pm**

1. ATTENDANCE

- Members Present: Richard Callaghan, Sam Reid, Masi Denison, Bill Colbath, Otis Perry
- Members Absent: Jim Kelley, Frank Landford
- Staff Present: Tom Clark; Building Official, Steve Bird; City Planner, Jean Glidden; Recording Secretary

2. APPROVAL OF MINUTES OF THE MEETING OF AUGUST 16, 2007

Perry mentioned a correction to the minutes.

Motion: Reid made the motion to accept. Denison seconded. Vote: 4 to 1 (Perry abstained)

Callaghan confirmed with Clark that case Z 05-35, Neale Anthony Hubbard case, would be heard at the next meeting. He explained to the general public how the cases should be presented to the Board.

3. OLD BUSINESS

4. NEW BUSINESS

- A. Z 07-12 Robert & Yun Gonyou, (Applicant: Herbert Electric LLC), 10 Littleworth Rd., a/k/a Tax Map H, Lot 32 A-2, zoned B-4, requests a variance from the terms of 1) Article IX, Section 170-32.K (1)(b), to erect a freestanding sign with a height of twenty (20) feet, where a maximum height of sixteen (16) feet is allowed; and 2) Article IX, Section 170-32.K (1)(c), to erect a freestanding sign with an area of approximately sixty-five (65) square feet, where a maximum of sixty (30) square feet is allowed.

Scott Herbert representing Herbert Electric, LLC stated that they would like to replace the existing pylon sign with a new sign, which would be approximately 65 sq. ft. They would be removing the existing wall sign, which is 29.6 sq. ft. The applicant has decided not to ask for the height variance of 20 ft. It will be the 16 ft. height requirement.

Clark stated that they wrote the agenda prior to receiving confirmation that the owner would approve removing the 30 sq. ft. wall sign. If the wall sign is coming down the freestanding sign is still larger than the maximum required. They would still need a 5 ft. variance.

Callaghan confirmed with the applicant that the application is being amended to remove the wall sign, and would leave the pylon sign at the 16 ft. height where 20 ft. was originally requested.

Motion: Perry made the motion to accept. Denison seconded. Vote: U/A

Public Hearing Open

Chris Schoonmaker stated that he is the store manager at Shaw's Ridge Equipment in Dover. The bigger sign is a benefit; this would be a professional looking sign and would dress up the building.



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Bird stated that the Planning Department does not support this request. The applicant has not established any justification for the variance request. They already amended the application to comply with the height requirement, so the obvious question is why they could not amend it to comply with the size requirement.

Herbert said they could not lessen the square footage of the sign because these signs are manufactured in a plant. They are stamped out on an assembly line. The sign company has authorized us to have a certified welder cut the height of the sign down from 20 ft. to 16 ft. They cannot change the fabrication of the sign it would be a huge financial undertaking.

Perry asked if they made a smaller sign that would meet the requirements.

Herbert said no, although they do have a monolithic sign that is a bit smaller but the dealer is not interested in that sign as it is not as attractive of a sign as the one requested.

Callaghan asked what will happen if this variance is not granted for a 60 sq. ft sign.

Herbert said he would recommend to the dealer to use the monolithic sign.

Discussion ensued regarding the size of the sign allowed in this district. Clark explained to the members that the sign size varies in different business districts as listed in the sign review and regulation table.

Bird added that adherence to the sign ordinance is important. 60 square ft. in this location is more than adequate for the purpose of this sign.

Public Hearing Closed

Reid said it is an attractive sign but the law constrains the board from giving a variance for a sign in where there is no hardship of the land. The ordinance says 60 ft. and the applicant wants 64 ft. In his opinion, there is no justification for a variance in this case.

Colbath confirmed with Clark that he does not count support structure in total square footage allowed. It is the sign displayed between the pylons.

Callaghan said that that there is no hardship.

Perry agrees that there is no hardship inherited in the land or the use.

FINDINGS OF FACT: AREA VARIANCE

1. The applicant was to provide proof that special conditions exist and that literal enforcement of the ordinance would result in an unnecessary hardship.

a) AREA: i. Did the Applicant demonstrate that an area variance is needed to enable the proposed use of the property given the special conditions of the property? No, Vote U/A. This conclusion is based on the following findings of fact: Alternative signs are available that meet the ordinance.



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- ii. Did the Applicant demonstrate that the benefit sought cannot be achieved by some other method reasonably feasible to pursue, without the area variance? No, Vote U/A. This conclusion is based on the following findings of fact: An alternative was provided that may meet the ordinance.
2. Did the Applicant provide proof that demonstrates how granting the variance will result in substantial justice? No, Vote: U/A. This conclusion is based on the following findings of fact: There is no injustice to correct; there are other options to comply with the ordinance.
3. Did the Applicant provide proof that demonstrates how a variance would be consistent with the spirit and intent of the ordinance? No, Vote U/A. This conclusion is based on the following findings of fact: There is possibly a new sign that complies with the ordinance. Existing signage provides adequate notification to the public.
4. Did the Applicant provide proof that demonstrates the variance will not result in a diminution in value of surrounding properties? No, Vote: U/A. This conclusion is based on the following findings of fact: Proof presented does not outweigh the effect of potential violation of the ordinance.
5. Did the Applicant provide proof that demonstrates the variance would not be contrary to the public interest? No, Vote: U/A. This conclusion is based on the following findings of fact: There is no reason to make a decision today that could eventually set a precedence.

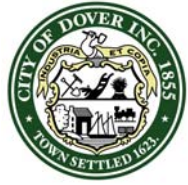
Therefore, based upon the foregoing, it is ordered that the application for the variance be denied.

- B. Z 07-13 Strafford Trust (Applicant: Seacoast Geriatrics), County Farm Rd., and Watson Rd., a/k/a Tax Map E, Lot 32-4 zoned ETP, requests a Variance from the terms of Article IV, Section 170-12, Table I, Part E, to construct a congregate care facility.

Reid announced that he has a past business relationship with Mr. Hopkins, Mr. Gabriel and Mr. Connelly's business. He stated that it would not interfere with his ability to objectively analyze the facts of the case and make a decision.

Callaghan asked if anybody had a concern with Reid voting on the case. Nobody voiced an opinion.

Kevin McEneaney with McEneaney Survey Associates proceeded and represented the applicant. He handed out some pictures of Bellamy Fields on Garrison Road for the members to review while going through the presentation. This use is not allowed in this zone but is allowed almost exclusively in the residential zones. Bellamy Fields is located on Garrison Road, which is 25,000 sq. ft. and has approximately 25 to 30 parking spaces. Wendy Switzer is present and Dr. John Hopkins will be giving a brief summary. The plan shows potentially two phases. Phase 1 facility will contain more than 25,000 sq. ft., would consist of 30 bedrooms, which would house approximately 50 residents. This is a facility, which is mostly geared towards dementia and alzheimer patients. The density that they would use for this presentation would be the one that is allowed in the R-40 zone as this property was zoned R-40 prior to being rezoned ETP in 1987. In this particular area, the total allowable number of units would be 60. This particular site has good access off Watson Road and is a better location because of site distance and traffic generations. Sewer, water, and gas are available to the site and the driveway would require a minor wetland disturbance that would be several hundred feet. He explained the plan shown; he described the site of 13.9 acres, and stated that the wetlands delineated are current actual wetlands. The hardship of the land is the fact that the location of the wetlands limit the location and size of the buildings



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and parking areas. He described the residential lots and businesses in the surrounding area and submitted additional papers and pictures to the members to view while Dr. Hopkins explained the facility.

Dr. John Hopkins stated that he lives in Portsmouth and said that he spends most days and nights at the facility on Garrison Road. He said he received a special exception for the Bellamy Fields property, which was a terrific project. They opened in November 2005; they were filled in June 2006 and home to fifty people. The people at Bellamy Fields primarily have alzheimers disease and related disorders and range in age from 65 to 107 years old. Because of state regulations for fire and safety codes, rules are changing for the state level that affect being licensed. They are asking for a higher level of health care for people that currently live at Bellamy Fields. The second facility would provide care through the end of life rather than have people leave town or move to a nursing home to get that care.

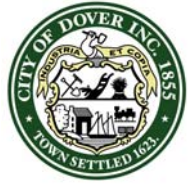
McEneaney read what uses were allowed in the ETP zone. A maximum height allowed in this zone is 55 ft., which could be five stories. This facility will be a one-story building. He read some calculations that were done based on uses permitted in the zone, which would require more parking spaces than what this facility would require. This facility would have 25 parking spaces, which includes staff. In the application, RSA 674:33 V was mentioned that may or may not fit with this application and expects staff to comment on that. The master plan is currently being worked on and with the help with Dr. Hopkins they are going through a refining the definition of congregate care, elderly care, nursing home, etc.. They also are going through and revisiting where congregate care facility will be allowed and will possibly allow it in all zones with different criteria. He stated that an invitation was made to the abutters to visit the Bellamy Fields facility and one of the abutters did attend and is here to speak. A conceptual plan was shown. The plan shows 38 parking spaces and this plan is conceptual only, the actual dimensions will be consistent with what was talked about this evening.. He proceeded to read through the criteria as submitted with the application.

Motion: Perry made the motion to accept. Colbath seconded. Vote: U/A

Public Hearing Open

Jim Galliota stated that he lives in Rollinsford and his mother who was a vibrant 90-year-old woman broke her hip and has been at Bellamy Fields for 2 years. Dr. John Hopkins has a high commitment for quality and quality of life. They provide exceptional care for her. When the regulations changed and they had to make some resident changes, it broke up the family of the people who were at Bellamy Fields and the other residents who were there and are still there, were very sad to see some of the people leave. He asked that they grant the variance.

Rick Sirois 397 Dover Point Road stated that his dad was the twelfth patient at Bellamy Fields. He moved in December 2005, he has alzheimers and dementia. He stated that he could not say enough of the quality of care that his father has received here. Three weeks ago, he had to move out of Bellamy Fields. The hardship on him to have to go to an unfamiliar place with unfamiliar people and move when he was so beautifully well adjusted was a hardship. Because of the new regulations and changes, fourteen other people have to leave this facility. This is a hardship for people that have to move. He urged the Board to look favorably upon this request.



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Constance Dudley 193 Watson Road stated that she is in favor of the request. She and her husband took the tour that was offered to them. We are concerned with the exterior lighting and a barrier between them but if it similar to Bellamy Fields they are in favor of the request.

Paul Connelly stated that he is an Engineer and a Land Surveyor. He is also a principal of the firm of Civil Works as they occupy the premises at 181 Watson Road. Our firm was also the site design engineer for the Bellamy Fields project on Garrison Road. On a personal level, John Hopkins was very helpful in counseling him in speaking to his family needs with regard to care for a family member that is affected by mental and dementia issues. As an abutter, they do not have any objections or reservations concerning the approval of the use variance request. We would prefer that this use be constructed on this parcel as opposed to the other uses that are allowed in this zone.

Bird stated that the Planning Department supports this variance request. There is a strong community need for this proposed use and it is a better alternative than other uses previously proposed for this property. There have been three other separate variance applications since 2001 for this piece of land, which was a bingo hall function center, a subdivision for four single-family house lots and a subdivision for three single-family house lots. This proposal before the Board is superior to any of those other variance requests that the Board has considered previously. The commercial use is compatible to other uses in the area. The buildable portions of the lot are broken up by the existence of the wetland areas as described. As you know, the Planning Board is in the process of updating the master plan and one is the land use chapter. There have been discussions at the committee level, with potential changes to the zoning ordinance in regards to increasing the opportunity of elderly housing, congregate care, and assisted living facilities in the community. The department supports this variance request.

Public Hearing Closed

Perry asked if we have some way of assessing the capacity, or density that relates to the 60 units.

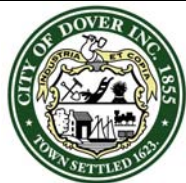
Bird said that McEneaney used the strictest number, which is 10,000 sq. ft. per unit.

Clark stated that the board has the right to impose any reasonable conditions it chooses. McEneaney has showed a concept but if they want to increase capacity, they would have to come back before the Board.

Perry stated that he is struggling with the idea that if they give a use variance they should attach a density requirement or calculation. In the question of hardship, the use of the special exemption in RSA 674:33 V that allows this, almost guarantees a variance for a caregiver in this situation. I do not think it applies here but if the applicant brought it up, we should deal with it. Does it apply?

Bird said the department's opinion is that the RSA is silent on the issue. Does it apply to only single-family house or a larger facility like this? Not knowing the legislative intent, the RSA is unclear. It is open to interpretation.

Colbath said that the statute is defined for people with physical disabilities.



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Callaghan stated that they do not need to address it unless they intend to use it. He believes they should remain silent on it as the applicant did offer another alternative.

Reid confirmed with Bird where congregate care facilities were allowed.

Callaghan stated that as Perry mentioned we do need to set guidelines as far as density and to limit the structure. We will have to discuss this before we vote on the criteria in order to know what is being voted on. He asked if the advisors had any recommendations of what to use. This is a conceptual presentation at this point so that number could increase or decrease.

Bird said that the special exception criteria for congregate care regulates density based on the number of units and that would be a reasonable maximum that the Board could use. You could say that the criteria from a certain district would apply.

Discussion of setting the density continued and which district should apply.

McEneaney stated that as mentioned before the applicant picked the most stringent R-40 zone concerning density and they came up with 60 units. They agree with adopting that criteria and adding the maximum of 60 units. If you want to put a maximum height, you may.

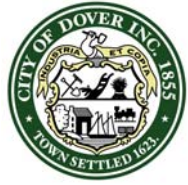
Discussion continued with regards to a project that was approved before and how much the structure was changed from the plan submitted for approval.

Bird respectively reminded the Board that this is a use variance. You are considering the use. Certain criteria regarding the use makes sense, height, number of units, impact on the neighborhood but the applicant is trying to avoid coming in with a specific design as that it may change during the TRC process or the Planning Board process. He did not want to run in to the same problem as the previous project that you have alluded to did. In order to address this, they made it clear that this is a concept design only. They took the footprint from Bellamy Fields and placed it on this plan. They still have to do an analysis as part of their site plan design. I would think there has got to be a way where the Board can consider this where it wouldn't require the applicant to come back six months down the road for a re-approval from this Board after they go to TRC and the Planning Board.

Reid added that he knows that Dr. Hopkins will build a first class building and does not have a problem with this.

Colbath said that this application is based on who owns the land at this point and time and the variance goes with the property. There is no guarantee that Mr. Hopkins is going to build this. He said we need some idea of what is going to happen.

Reid said if the variance were granted it would make sense that the condition would say that it would need to be consistent with the quality and building materials similar to Bellamy Fields.



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Callaghan said it sounds like the applicant has agreed to and we could apply the conditions of 170-25.4 and a, not to exceed amount of 60 units, and the R-40 zone will be referenced. He wants TRC and the Planning Board to know what we want.

Discussions continued in regards to if the variance was granted what conditions should be placed on it.

McEaney said they would not have a problem with some wording that it is substantially like the Bellamy Fields facility because that is what it is going to be.

Bird reminded the Board that this would go through the review process at TRC and the Planning Board.

Perry said we are assuming how the vote will come out. He said he still has a question regarding hardship and the vote should take place before deciding the conditions. The precise wording of the condition should wait until we vote.

Denison stated that discussing the conditions is helpful and we might vote differently knowing what the condition will be. It is difficult to vote with the vague promise that there might be some condition.

Callaghan said he agrees, as this is one of the changes discussed at the administrative workshops. He said sometimes the nature of the condition, might change the findings and the vote.

Discussions continued concerning the conditions.

FINDINGS OF FACT: USE VARIANCE

1. The applicant was to provide proof that special conditions exist and that literal enforcement of the ordinance would result in an unnecessary hardship.

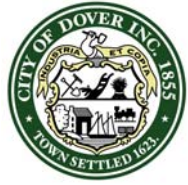
b) USE: i. Did the Applicant demonstrate that the ordinance interferes with the reasonable use of the property, considering their unique setting of the property in its' environment? Yes, Vote U/A. This conclusion is based on the following findings of fact: Past history of attempted uses and the wetland configuration.

ii. Did the Applicant demonstrate that no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction of the property? Yes, 4 to 1 (Perry voted no). This conclusion is based on the following findings of fact: This use is allowed in other ETP zones by special exception and also allowed in the neighboring R-40 zone.

iii. Did the Applicant demonstrate that the variance would not injure the public or private rights of others? Yes, Vote U/A. This conclusion is based on the following findings of fact: Testimony of several abutters in support of and lower intensity than other allowed uses.

2. Did the Applicant provide proof that demonstrates how granting the variance will result in substantial justice? Yes, Vote: U/A. This conclusion is based on the following findings of fact: Allows land to be developed that has been difficult to develop for other uses and keeps intensity use low.

3. Did the Applicant provide proof that demonstrates how a variance would be consistent with the spirit and intent of the ordinance? Yes, Vote 4 to 1 (Perry voted no). This conclusion is based on the following findings of fact: It is consistent with the spirit and intent. This use is less of a negative effect than other uses.



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4. Did the Applicant provide proof that demonstrates the variance will not result in a diminution in value of surrounding properties? Yes, Vote: U/A. This conclusion is based on the following findings of fact: Testimony of applicant, as well as abutters.

5. Did the Applicant provide proof that demonstrates the variance would not be contrary to the public interest? Yes, Vote: U/A. This conclusion is based on the following findings of fact: Demonstrated that needed service will be provided.

Therefore, based upon the foregoing, it is ordered that the application for the variance be granted with the following conditions.

1. Zoning ordinance 170-25.4 in R-40 applies with total units of phase 1 and 2 not to exceed 60.
2. The building will be substantially equivalent in design and esthetics appearance as the Bellamy Fields.
3. Any material deviation or changes to the exterior style or design shall be brought back to the ZBA for approval.
4. Must go to TRC for approval.

Motion: Colbath made the motion to accept with the conditions. Reid seconded. Vote: U/A

Recess at 9:37 resumed 9:46

- C. Z 07-14 John & Gloria Anastas, 419-A Dover Point Rd., a/k/a Tax Map 8, Lot 8-B, zoned R-20, requests a Variance from the terms of Article V, Section 170-16, to construct an attached garage twenty-one (21) feet from a front property line as it abuts a street, where a minimum of thirty-five (35) feet is required.

Gloria Anastas stated that they are on a nonconforming lot and have 125 ft. of frontage. The garage is positioned where it is already nonconforming and they are looking to move it forward 5 ft. in order to construct a breezeway and attach a garage to the house. The garage sits 21 ft. from Dover Point Road. She read through the application as submitted for the file.

Colbath confirmed with the applicant that she is not moving it closer to Dover Point Road; they are asking to move it closer to the shared driveway.

Motion: Colbath made the motion to accept. Perry seconded. Vote: U/A

Clark explained to the members that he has been out to this property for a site visit and the detached garage is not protected from frost. The intent of the applicant is to create a breezeway to attach to the garage. This will mean extensive construction to the existing slab to protect it from frost. It would be a problem just to add an addition to the existing garage.

Public Hearing Open



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Bird stated that the Planning Department supports this variance request. The fact that the proposed garage will be no closer to Dover Point Road is the primary factor and the map submitted with the application shows that it is full with nonconforming front setbacks and is certainly in the context with the neighborhood.

Public Hearing Closed

Reid asked the applicant if it was fair to say that the neighbors agree that there is no diminution in value to their properties.

Anastas said absolutely, as a letter was submitted with the application from the abutter's signatures in favor of the request.

FINDINGS OF FACT: AREA VARIANCE

1. The applicant was to provide proof that special conditions exist and that literal enforcement of the ordinance would result in an unnecessary hardship.

a) AREA: i. Did the Applicant demonstrate that an area variance is needed to enable the proposed use of the property given the special conditions of the property? Yes, Vote U/A. This conclusion is based on the following findings of fact: Cannot move garage without extensive repairs and getting a variance.
ii. Did the Applicant demonstrate that the benefit sought cannot be achieved by some other method reasonably feasible to pursue, without the area variance? Yes, Vote U/A. This conclusion is based on the following findings of fact: There is no other reasonable method to pursue given the size and shape of lot and location of the house.

2. Did the Applicant provide proof that demonstrates how granting the variance will result in substantial justice? Yes, Vote: U/A. This conclusion is based on the following findings of fact: Allows applicant to relocate the garage to a reasonable location.

3. Did the Applicant provide proof that demonstrates how a variance would be consistent with the spirit and intent of the ordinance? Yes, Vote U/A. This conclusion is based on the following findings of fact: Allow property owner to make improvement without increasing nonconformity.

4. Did the Applicant provide proof that demonstrates the variance will not result in a diminution in value of surrounding properties? Yes, Vote: U/A. This conclusion is based on the following findings of fact: Applicants testimony and abutters agreement to the variance.

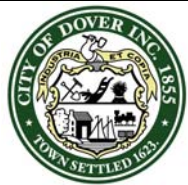
5. Did the Applicant provide proof that demonstrates the variance would not be contrary to the public interest? Yes, Vote: U/A. This conclusion is based on the following findings of fact: Consistent with nonconformity of surrounding properties. Letter of support from abutters.

Therefore, based upon the foregoing, it is ordered that the application for the variance be granted.

5. OTHER BOARD BUSINESS

A. Administrative Workshop

Callaghan stated that he had a conversation with Attorney Krans in regards to the Planning Department participating in the public hearing and he asked for input from the members. Reid suggested that in terms



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of order you could hear from people in favor, those against, and hear from the Planning Department and then hear from people who want to rebut. Colbath said we call on them constantly and keeping them in the public session is important. Bird added that whatever order the Board feels is necessary; he would not want the result to stifle the Planning Departments ability to contribute at any point during the hearing. Callaghan suggested that it could be the public for, the public against, then the Planning Department for or against and then asks for rebuttals. Colbath said it was important to have the public having a chance to speak after the Planning Department gives their professional opinion. Discussions continued.

Callaghan also mentioned the tour of the facility by Seacoast Geriatrics and his opinion was that he did not feel that the Board members should attend the site visit without all interested parties being invited. Bird said you could follow the same procedure and if the Board wants a site walk or visit, you would have to do it as part of the public hearing so all could be invited if interested. All members agreed.

Callaghan explained what his changes to the forms and rules of procedure were. The findings of fact and how the voting process should take place was discussed. Colbath suggested that the findings of fact could be moved ahead of the vote, any conditions could go second, and then the vote would follow. Perry said he is not sure if that would work because the courts look at the findings of fact and the Board's response to the questions. Discussions continued. Callaghan asked Colbath and Perry to write up how they think the voting process should go.

6. ADJOURN

Motion: Colbath made the motion to adjourn at 10:50 p.m. Reid seconded. Vote: U/A

List of Members

Term Expires

Richard Callaghan-regular member	04-13-09
William Colbath-regular member	10-23-09
Frank Landford-regular member	04-10-08
Masi Denison-regular member	01-24-10
Sam Reid-regular member	11-12-09
Otis Perry-alternate member	02-08-09
Jim Kelley-alternate member	05-23-10