

**TOWN OF DOVER ZONING BOARD OF APPEALS REGULAR MEETING HELD ON WEDNESDAY, August 19, 2009, AT 7:00 PM AT THE DOVER TOWN HALL:**

**PRESENT:** Chair Marilyn Van Millon  
Member George Wittman  
Member Anthony Fusco  
Member Henry Williams

Also in attendance was Secretary to the Board, Maria O’Leary, and Attorney Michael Liguori of Hogan and Rossi.

Chair Van Millon called the meeting to order at 7:05 pm and began with the Pledge of Allegiance. She then stated that the first item on the Agenda is the DBL GAS STATION (Singh), but they’re not here, so we’ll move on to Keller.

Attorney Liguori gave an update on DBL. He received a confirmation from the ARB regarding the lighting and drafted a cover letter to submit the minutes from the June ARB meeting to indicate to the Board that this matter was discussed and they found it to be acceptable.

Chair Van Millon read the next item on the Agenda as follows:

**PUBLIC HEARING – Keller 2 Subdivision – Z 2009-05 -** The applicant seeks to appeal Section 145-11 of the Town of Dover Zoning Law. The 109.75' area variance would, if granted, allow the applicant to subdivide a piece of land without meeting the required 250' of road frontage. The property is located at Clover Lane & Benson Hill Road in the RC District on tax map #7063-00-768737.

In attendance was the engineer, Rich Rennia, Jr. of Rennia Engineering Design.

**MOTION:** Member Wittman motioned to open the public hearing; seconded by Member Williams.

VOTE: Chair Van Millon – Aye	Member Fusco – Aye
Member Wittman – Aye	Member Williams - Aye

Mr. Rennia described the project and stated that there is an existing farm parcel that’s about 148 acres with an existing house on it. There’s actual multiple structures on the farm parcel, but this is one particular house that is from a late 1960’s vintage construction, so it’s been there since the late 1960’s; they’re looking to cut off that house and put it on it’s own parcel. The zoning will be met as far as the two acres, but they just cannot meet the zoning along Benson Hill Road due to the geometry of the existing parcel, so therefore, they’re looking to ask this Board for a variance of the 250’ to allow the 140.25’ that they do have.

Attorney Liguori asked for confirmation for the Board that the carving off of that piece is not going to render some structure on the remaining parcel non-conforming.

Mr. Rennia stated that it will not be non-confirming because where the parcel comes around the back, there's a lot of road frontage on Benson Hill Road and what also is left is there an existing 50' ROW. This 50' ROW will continue to stay with Lot 2, so lot 2 will actually have 50' of road frontage along Benson Hill Road on one side and then hundreds of feet on Benson Hill Road on the other side; it will not render any other problems.

The ZBA members went up to see the actual site and it's exactly how it is represented by the engineer.

Mr. Rennia stated that the SEQRA process is not complete yet; they were referred directly to the ZBA. The Planning Board might have determined that this was an unlisted action; it's definitely not a Type I Action so we don't have to do a coordinated review.

Attorney Liguori spoke of implementing a policy for the Planning Board, ARB and the Zoning Board of Appeals to have the boards adopt or make a recommendation at their public hearing, the applicant can go back to the Planning Board with the recommendation, and then get the final vote after the Planning Board adopt its negative declaration so the applicant would not have to go back to the ARB or ZBA.

Chair Van Millon asked if there were any public comments. There were none.

**MOTION:** Member Wittman motioned to close the public hearing; seconded by Member Fusco.

VOTE: Chair Van Millon – Aye  
Member Wittman – Aye

Member Fusco – Aye  
Member Williams - Aye

The Board reviewed the criteria for a decision.

Code of the Town of Dover – Section 145-59 D. (2)

- a. Will an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties be created by the granting of the area variance? No.
- b. Can the benefit sought by the applicant be achieved by some method, feasible for the applicant to pursue, other than an area variance? No.
- c. Is the requested area variance substantial? Yes.
- d. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? No.

- e. Was the alleged difficulty self-created, which shall be relevant to the decision of the Board, but which shall not necessarily preclude the granting of the area variance? Yes.

**MOTION:** Member Wittman motioned to adopt a recommendation to indicate that the ZBA will grant the area variance after SEQRA is complete; seconded by Member Fusco.

VOTE: Chair Van Millon – Aye	Member Fusco – Aye
Member Wittman – Aye	Member Williams – Aye

Chair Van Millon went back to the first item on the Agenda.

CONTINUED PUBLIC HEARING – **DBL GAS STATION (Singh)** – Z 2009-04 – The applicant seeks to appeal Section 145-40 L. of the Zoning Law. The requested area variance would, if granted, allow the applicant to exceed the maximum permitted foot candle level at the property line by 0.7 foot candles. This property is located at 1827 Route 22 on tax map #7160-00-001179.

The ZBA has not received a neg dec from the Planning Board. The Planning Board is doing a coordinated environmental review. The application to the Zoning Board is very limited; it's only to deal with the candle watt issue. The Planning Board has circulated its notice of its intention to be the Lead Agent for SEQRA purposes.

Jordan Valdina knows what to do once SEQRA is discharged; he will let us know when it's complete and then we can put it back on the Agenda to take formal action.

**MOTION:** Member Wittman motioned to close the public hearing; seconded by Member Williams.

VOTE: Chair Van Millon – Aye	Member Fusco – Aye
Member Wittman – Aye	Member Williams – Aye

**MOTION:** Member Fusco motioned to adopt a recommendation to indicate that the ZBA will grant the area variance after SEQRA is complete; seconded by Member Wittman.

VOTE: Chair Van Millon – Aye	Member Fusco – Aye
Member Wittman – Aye	Member Williams – Aye

Chair Van Millon read the Lead Circulation request letter from the Planning Board.

**MOTION:** Member Wittman motioned to grant Lead Agency to the Planning Board; seconded by Member Fusco.

VOTE: Chair Van Millon – Aye  
Member Wittman – Aye

Member Fusco – Aye  
Member Williams – Aye

**APPROVAL OF MINUTES** - Approve June 17, 2009 and July 15, 2009 minutes.

**MOTION:** Member Wittman motioned to approve the June 17, 2009 minutes; seconded by Member Fusco.

VOTE: Chair Van Millon – Aye  
Member Wittman – Aye

Member Fusco – Aye  
Member Williams - Aye

**MOTION:** Member Williams motioned to approve the July 15, 2009 minutes; seconded by Member Wittman.

VOTE: Chair Van Millon – Aye  
Member Wittman – Aye

Member Fusco – Aye  
Member Williams - Aye

**OTHER MATTERS - Discussion of application procedures**

Attorney Liguori prepared a resolution amending the ZBA procedures. Member Van Millon and Attorney Liguori read the prepared Resolution Amending the Application Process for the Zoning Board of Appeals dated August 19, 2009. The ZBA cannot change the requirement of the Code, only the procedures.

**MOTION:** Member Wittman motioned to adopt the Resolution Amending the Application Process for the Zoning Board of Appeals dated August 19, 2009; seconded by Member Williams.

VOTE: Chair Van Millon – Aye  
Member Wittman – Aye

Member Fusco – Aye  
Member Williams – Aye

**OTHER BUSINESS:** The ZBA members discussed Ten Mile River LLC. Chair Van Millon read a letter that was submitted by Jon Holden Adams dated July 30, 2009.

Attorney Liguori called the Attorney General's office and spoke with the attorney representing the DEC and they sent a copy of the complaint against Ten Mile River LLC. They have brought an action on behalf of the DEC for the enforcement of the State's regulations; the Town has a litigation pending against the applicant in Supreme Court for contempt action for violation provisions of the previously agreed upon stipulation of settlement. While the litigation is going on, George Hearn, Town of Dover Building Inspector, had gone out to the property and noticed that there was, in his opinion, a violation. The procedure for our Town is to issue a Notice of Violation/Order to Remedy and what the applicant has done is appealed that Notice of Violation/Order to Remedy to the Zoning Board of Appeals. The Zoning Board of Appeals is the first level of review of an action of the Building Inspector. The affect of filing an appeal is to

stay the enforcement proceeding. The Town Board goes back to Court on the contempt action and they've been making efforts to have Cascino (of Ten Mile River LLC) held in contempt and to enforce the stipulation of settlement.

While this is all going on, there has been a pattern that is very evident to all the members of the Board that they are delaying coming in front of the ZBA, probably for the purpose of holding off on the local enforcement proceeding for as long as possible.

The DEC has complained to the Attorney General to ask them to step in on their behalf and bring an action to have their laws enforced. The Attorney general brought an action on behalf of the DEC against this particular applicant. Member Wittman raised an extremely relevant issue asking if the Zoning Board is going to do anything by going forward on this application, whether it's approved or denied, that is going to either undermine the Town's contempt action or undermine what the Attorney General is trying to do for the DEC. The short answer for the DEC is nothing we do will undermine what they're doing because our laws and their laws are different laws. They're coterminous because they get applied to the same fact patterns; one activity triggers both laws, but nothing we do is going to change the DEC regulations, so they're free to do whatever they want; we're free to do whatever we want.

There is a possibility that there is something that we can do that can undermine the contempt, but the contempt action was brought for failing to comply with the stipulation of settlement. If we do something that gives a variance to a law that was claimed to be violated in the underlying proceeding, there is a possibility for them to go to the judge and say they changed the law. However, I've spoken with our Town's council, Jason Shaw, who's handling the litigation, and Jason has said even if the ZBA grants the variance, it was a law that was in effect at the time and it was broken at the time. And because it was broken at the time, that culminated into the stipulation and nonetheless, they still violated the stipulation, so even if you did it, the only thing it would do is maybe give them an additional argument to make to the judge, but it would not undermine.

The ZBA wanted to take a look at this property and suggested it may be really appropriate if the Code Enforcement Officer could go to point out exactly what he felt are the violations and as well as having a representative from TMR to make sure that what they see is exactly what everybody agrees is a problem to make sure they're looking at the right wall. The most important thing for the Board to do is to ensure every opportunity for due process to be held.

Attorney Liguori recommended for the Board to determine that we notify the attorney for TMR that September will be the last meeting; TMR is determining that it's too wet for the ZBA members to go to the site. The ZBA made an honest attempt to go out there and see the sight with this person and he's always said it's too wet or something else and this application has been going on since October 2008.

Because of the nature of what's going on between the Board and the applicant and the amount of time that's gone on and the amount of times they've requested to come off

the Agenda for whatever reason, it is appropriate for us to give their attorney notice to say we're going to make one more attempt to get out to the property before the next meeting and regardless of the circumstances, if we can get out, then great, but if we can't get out there, we're going to make a determination at the next meeting.

Once we make a determination, if we find that the Notice of Violation/Order to Remedy was not defective, we make a motion to either approve or deny it. There was only one case where we had to cancel the meeting in that period of time.

Attorney Liguori will draft a correspondence to their attorney to indicate that even if the ground is too wet, we would still like to get out there; we'll deal with that appropriately. They should contact us before the next meeting because we'd like to do it before the next meeting.

**MOTION:** Member Wittman motioned to adjourn the meeting at 8:00 p.m.; seconded by Member Fusco.

VOTE: Chair Van Millon – Aye  
Member Wittman – Aye

Member Fusco – Aye  
Member Williams – Aye

Meeting adjourned at 8:00 p.m.

Respectfully submitted by:

Maria O'Leary  
Secretary to the Zoning Board of Appeals