

**DOVER ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
OCTOBER 16, 1997**

MEMBERS PRESENT: Dean Trefethen, Chairperson, Bill Colbath, Vice Chairperson, Rick Callaghan, Robert Mullan, Parks Christenbury, and John Murphy

STAFF PRESENT: Thomas Clark, Building Official, and Bruce Woodruff, Planning Dept.

Dean Trefethen, Chairman, called the meeting to order.

ITEM #1: NEW BUSINESS

Approval of minutes for Regular Meeting of September 18, 1997

MOTION:

John Murphy made the motion to accept the minutes of September 18, 1997

Rick Callaghan seconded the motion.

Dean Trefethen requested the following change:

Pg. 4 first line, change from "Tom Clark - The definition of motor vehicle..." to read "Tom Clark - The definition of abandoned motor vehicle..."

U/A

Dean Trefethen - A request has been made by George Wattendorf, City Attorney, for the Board to have an Executive Session to discuss the legal action being brought against the Board by Federal Savings Bank.

MOTION:

Dean Trefethen made the motion to hold an Executive Session on Tuesday, October 21, 1997 at 6:00 p.m.

John Murphy seconded the motion.

U/A

ITEM #2: OLD BUSINESS

ITEM #3:

Z 97-23 Strafford Guidance, Inc., (Applicant: Our House), 576 Central Ave., a/k/a Assessor's Map 30, Lot 117, Zoned Office requests a Special Exception as provided for by the provisions of Article VI, Section 170-25.6 and Article XII, Section 170-52.C(3) to establish and operate a Group Home for Minors.

The five regular members heard this case.

ZBA
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PG. 2

Philip Reid - Chairman of the Board of Directors for Our House introduced Mary Rizzuto, Executive Director, to give a report of the services of Our House.

Mary Rizzuto - One of their goals is to relocate the home to a larger location. They are currently located above the Senior Citizen's place on Third Street. They service girls that are from abusive homes or are neglected. They are licensed for 9 girls. Mary is a licensed clinical social worker and works to reunite the girls with their families or prepare them for independent living.

Philip Reid - The house at 576 Central Ave. is in an area zoned for offices and group homes are a permitted use in this area if they obtain a Special Exception. The girls are referred to them from the State. He reviewed the responses on the application.

Parks Christenbury - In regards to the parking, asked what number of staff would be on site at one time.

Philip Reid - Typically two, 4 at the maximum. There are two spaces in a double car garage and a place for 5 cars off to the side and also in the driveway at the end.

MOTION:

Parks Christenbury made the motion to accept the case.

Bill Colbath seconded the motion.

U/A

PUBLIC HEARING OPENED

Jim McConnell - Abutter - Believes that a group home on Central Ave will not be to the best interest of the neighborhood. Girls will be hanging out on the street a lot and on the porch. His tenants will be affected by the music and noise from the home. Asked how the noise would be controlled. Who can his tenants call if there is a problem. Does not feel that this location would be suitable for this use.

Julie Reese - Program Director for Our House - Her position is to create therapeutic programs. The girls go to the high school and have structured programs in the evening. There is staff present 24 hours a day. The problem with the current location is that it is too small for 9 girls and 12 staff members.

Ava Spinnet - One of the members of Our House - It is a place that cares for girls that are in trouble. They help the girls to become a part of the community. The Central Ave. location will have the space that is needed for this service.

Bruce Woodruff - The Planning Dept. supports this request for a Special Exception if the five conditions are met. A similar house in a similar type of neighborhood in Sanford, ME seems to work out quite well.

ZBA
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PG. 3

PUBLIC HEARING CLOSED

Rick Callaghan - Would like more information on the control of the activity and noise.

^{Rizzuot}
Mary Rousodo - The girls have a schedule of activities in which when they get home from school at 2:30, they have free time from 2:30 to 3:30, then gym activities. They cook. Study hour at 6:00 then group therapy on some evenings and others community meetings. Lights are out by 10:00 for the younger girls and 11:00 for the older girls. The girls are mostly under supervision and if there are any violations of the rules then they lose privileges.

Parks Christenbury - The Third Street area is not conducive to group home because of the drugs and bar in this neighborhood. He approves of this request.

John Murphy - Asked how often the police have been called in the last year.

Mary Rizzuot - There have been 2 calls to the police for the girls from the home. Once because of differences between two girls, and another time when a girl had to be hospitalized. There were no calls from neighbors.

MOTION:

Parks Christenbury made the motion to grant the Special Exception.

Rick Callaghan seconded the motion.

4 in favor and 1 opposed (Bill Colbath opposed).

Bob Mullan, Alternate, was excused because the 5 regular members would be able to sit on the remaining cases.

ITEM #4

Z 97-24-A, Ronald Pfeiffer and Elizabeth Pettiford, 10 Summer St., a/k/a Assessor's Map 12, Lot 22, Zoned RM-10, requests a Variance from the provisions of Article VI, Section 170-25.3.A to establish an Elderly Assisted Care Home with nine (9) bedrooms on a lot with approximately 9,250 square feet where a minimum of 22,500 square feet is required.

Ron Pfeiffer - Unable to provide the private rooms needed for some elderly because they do not have the space. The intention is to keep no more than 12 people. They would like to use the existing carriage house for this need. He reviewed his application.

ZBA
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PG. 4

Dean Trefethen - Asked if the porch will be 3-season.

Ron Pfeiffer - It will be a heated 4-season porch for the residents use.

Dean Trefethen - For his clarification, if they just wanted to add the porch, this could be done without a variance.

Tom Clark - That is correct.

Dean Trefethen - So we are not talking about a variance for structure but a variance for use. And the use is already there, we are talking about an expansion of the use in terms of number of bedrooms. And the way the zoning is worded now it is talking about the amount of square feet of land per bedroom but does not define how many people live in that bedroom.

Tom Clark - That is correct.

Bruce Woodruff - There's the weakness.

MOTION:

Parks Christenbury made the motion to accept the case.

Bill Colbath seconded the motion.

U/A

Dean Trefethen - In the application you are asking for nine bedrooms and stated that you would be looking at a maximum of 12 residents.

Ron Pfeiffer - That is correct. They may not even go as far as 12 residents.

PUBLIC HEARING OPENED

Odiesa Rahn - Abutter - Praises their work.

Joanne Dodge - Abutter - Is in favor of the use and expansion and supports the request.

Bruce Woodruff - The Planning Dept. is in favor of granting the variance with a condition to make the maximum number of residents 12. The hardship is imposed by the wording of the ordinance itself. There will not necessarily be a change in the number of residents by granting the variance.

PUBLIC HEARING CLOSED

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The Board discussed the number of bedrooms and number of people.

FIVE CRITERIA

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. Holding the applicant to the strict letter of the ordinance would be a needless or unnecessary restriction. The applicant is not looking to increase the number of residents, or encroach into the established setbacks, but rather simply to provide more private rooms to the same number of residents currently at the property.
2. It is the Board's conclusion that the variance will deliver substantial justice. It allows a better utilization of an existing use which is already permitted.
3. It is the Board's conclusion that the variance will be in harmony with the spirit and intent of the zoning ordinance. The spirit and intent was to control density of residences and that will be accomplished.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. No evidence to the contrary and utilization of the building has resulted in better maintenance and appearance.
5. It is the Board's conclusion that the variance will be of benefit to the public interest. It allows continuation of a needed public service.

MOTION:

Parks Christenbury made the motion to grant the variance with the condition that the limit of residents be 12.
Rick Callaghan seconded the motion.
U/A

ITEM #5:

Z 97-24-B, Ronald Pfeiffer and Elizabeth Pettiford, 10 Summer St., a/k/a Assessor's Map 12, Lot 22, Zoned RM-10, requests a Special Exception as provided for by the provisions of Article VI, Section 170-25.3 and Article XII, Section 170-52.C(3) to establish an Elderly Assisted Care Home with nine (9) bedrooms.

Ron Pfeiffer - Reviewed his application for Special Exception.

MOTION:

Parks Christenbury made the motion to accept the case.
John Murphy seconded the motion.
U/A

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PUBLIC HEARING OPENED

Bruce Woodruff - agrees with the applicant that he will fulfill the 3 requirements of the Special Exception. However he is not certain that the applicant has addressed part B yet which is screening in the parking area.

Tom Clark - The parking that he currently has is screened because of the original permit for the change of use from single family to elderly assisted care, and, as already stated, there would be no increase in residents, parking requirements are geared on number of beds, not bedrooms, so since there will be no increase, he has adequate parking and it already is screened.

PUBLIC HEARING CLOSED

MOTION

Rick Callaghan made the motion to grant the Special Exception.

Parks Christenbury seconded the motion.

U/A

Dean Trefethen - Advised the Board that the parcel in the next application received a variance in 1988 that is still applicable.

ITEM #6:

Z 97-25 Bank of New Hampshire (Applicant: Civilworks, Inc.), Watson Rd., a/k/a Assessor's Map E, Lot 32-1, Zoned ETP, requests a Variance from the provisions of Article V, Section 170-16 to establish twenty-five (25) foot side yard setbacks where a minimum of one hundred (100) feet is required.

Dana Lynch - President of Civilworks - He reviewed his application. The Variance granted in 1988 was for the construction of a two-story office building, it was granted to allow a fifty-foot setback from the northerly lot line and a seventy-five foot setback from the southerly lot line. In 1989, in the process of site work, this site was substantially altered by the removal of loam. The applicant would like to amend the application to change the setback to forty feet on the northerly boundry and seventy feet setback on the southerly boundry. Because of the material that has been removed from the site, the water table is very close to the surface.

Dean Trefethen - Because of the history of this lot, is this now considered wetlands?

Dana Lynch - It appears that way. When the subdivision was created, fill was ~~brought in~~ ^{removed} and it appears that it has ~~been widened and~~ increased the wetlands.

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MOTION:

Bill Colbath made the motion to accept the case
John Murphy seconded the motion
U/A

PUBLIC HEARING OPENED

Dan Wensley - Attorney representing Advanced Systems Inc. - They are in opposition to granting this variance. Advanced Systems hired Civil Works last year to assist Advanced Systems in purchasing this property but in the process, Civilworks cut a deal to purchase it for themselves. The Bank of N.H. is the owner of the lot. Mr. Wensley's understanding of the law of hardship is a hardship is to the land and also to the owner. In this case it is someone who wants to purchase the land. The owner is not saying that there is a hardship. The value of the lot is the same with or without the variance. There is no hardship on the owner in this case because Advanced Systems would also purchase this land for the same price from the Bank of N.H.

Dick Rizzo - Financial Officer at Advanced Systems - Briefly gave a report of the number of employees and participation in community activities. Dick has spoken with the abutters and Mr Kelly of Portsmouth Paper Co. sent a letter stating that he was not in support of this request, Advanced Systems is not in support of the request and Dick has spoken with the Liberty Mutual people and they are in support of the ETP zoning. For purposes of the hardship, Dick sees no hardship to the property or the owner. They are interested in this property because they are interested in expanding. Feels that the owner does not have a hardship.

Mr. Rizzo presented a copy of the letter from Kevin Kelley to the Board and Dean Trefethen read the letter to the Board.

Dana Lynch - Will leave the determination of the hardship up to the Board. This is an existing lot and is not grandfathered for residential use. They would be building a taxable, usable building and Advanced Systems would be putting just a driveway through this property therefore they feel that a building would be more in the interest of the public. Would like the application to be weighed on its merits.

Bruce Woodruff - In 1986 this lot was created as a lot of record and will remain so until it is sold and consolidated. Bank of New Hampshire is the owner. In regards to the hardship, because it can have a hardship until it is no longer a lot, according to the handbook, the size of a lot, and dimension, will be considered to create a hardship when no reasonable permitted use in a zone can be made of the parcel without a variance. In addition, the modifications to the setback requests only increases the existing variance by fifteen (15) feet. The Planning Office supports granting the variance request.

Dan Wensley - The Bank of N. H. wishes only to sell the property, not determine its use. Civilworks wants to use this property for office when they can use a number of other locations in Dover. ETP is for maintaining large lot zoning.

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PG. 8

Parks Christenbury - Is concerned with the hardship definition.

The Board discussed the hardship as stipulated in the Board of Adjustment in New Hampshire 1997 handbook, and the New Hampshire Planning and Land Use Regulation handbook.

PUBLIC HEARING CLOSED

MOTION:

John Murphy made the motion to table the case. He feels that there is a need to consult the City Attorney's opinion on (1) whether the hardship lies with the land or the owner, and (2) the diminution of the property. Parks Christianbury seconded the motion. He agrees with John to table for more research. He is not sure on the hardship issue.

The Board continued to discuss the hardship issue and it's being on the owner or the land.

VOTE

3 opposed and 2 in favor of tabeling the case. (John Murphy and Parks Christenbury voted in favor).

The Board continued to discuss the hardship.

MOTION:

Dean Trefethen made the motion to table the case.
Parks Christenbury seconded the motion.
4 in favor and 1 opposed (Bill Colbath opposed)

The Board agreed to have a Special Meeting for clarification on Tuesday, October 21, 1997 at 6:30.

MOTION:

John Murphy made the motion to adjourn.
Rick Callaghan seconded the motion.
U/A

ZBA
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List of members and expiration dates:

	<u>Term Starts</u>	<u>Term Exp.</u>
William Colbath	10/23/94	10/23/97
Dean Trefethen	12/31/94	12/31/97
Robert Mullan (Alternate)	12/31/94	12/31/97
Parks Christenbury	02/20/97	12/31/97
John Murphy Jr.	12/31/95	12/31/98
Richard Callaghan	04/13/97	04/13/2000