

**DOVER ZONING BOARD OF ADJUSTMENT  
MINUTES OF MEETING  
MARCH 18, 1999**

**MEMBERS PRESENT:** Dean Trefethen, Chairperson, Bill Colbath, Co-Chairperson, Douglas Cummings, Robert Mullan, David Ruoff

**STAFF PRESENT:** Thomas Clark, Building Official and Steve Bird, City Planner

Dean Trefethen called the meeting to order.

**ITEM #1: NEW BUSINESS**

Approval of minutes for the regular meeting of February 18, 1999.

**MOTION:**

Bill Colbath made a motion to accept the minutes of February 18, 1999.

Doug Cummings seconded the motion.

U/A

**ITEM #2: OLD BUSINESS**

- A. Z 99-1 William Hale and Robert Day, 56 Old Rochester Rd., A/K/A Assessor's Map 40, Lot 23, Zoned B-3, requests a variance from the provisions of Article IV, Section 170.12, Table I, Part D to establish a non-conforming use (light industry) in a B-3 Zoning District.**

**NOTE: This item is being heard as a result of a Motion for Rehearing granted on February 18, 1999.**

Atty. Douglas Gray addressed the Spirit and Intent Criteria. He feels that the facts were not completely addressed previously. This will not be a 24-hour operation and there will not be excessive use of trucking. He presented the Board with pictures of the building, both inside and outside. He also presented samples to the Board of the material and explained the process, and presented a written report on its process and what gasses it would produce. This use is not dissimilar to other businesses in the B-3 zone. He also supplied pictures of the area surrounding the building in question.

**MOTION:**

David Ruoff made the motion to accept the case

Bob Mullan seconded the motion.

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ZBA  
3/18/99  
PG. 2

## **PUBLIC HEARING OPENED**

Steve Bird stated that the Planning Department supports the Board's previous decision, however if the board does grant the variance the Planning Department suggests the following conditions: (1) a designated truck route, (2) limitation of hours of operation, and (3) that this proposal will go through the Technical Review Committee process, and whatever other conditions that the Board wishes.

## **PUBLIC HEARING CLOSED**

David Ruoff stated that he feels that there is enough evidence presented in this meeting and the previous meeting to indicate the Technical Review Committee review is a good condition to add. He does not feel that limiting the number of hours of operation is necessary, and that a designated truck route is something that the Board can impose as a condition, however there is an enforcement issue with it. The only one that he can see as necessary is requiring the Technical Review process.

Bob Mullan stated that he would agree with that. The only thing that concerns him is that if for some reason this did not pass the EPA but goes toward the industrial theme and fails the guidelines then scrubbers, waste disposal and other mechanical devices such as stacks will be required that will go beyond what is presented now.

Bill Colbath has the same concern as previously which is storage of material that does not belong in a residential neighborhood.

Doug Cummings asked if these materials were being stored now at their present location on Home Street.

Bill Colbath responded that the materials as he understands it are stored in an I-1 zone on Home Street which is a permitted use.

Dean Trefethen asked if the applicant is adding new materials or just a new process.

Atty. Gray responded just a new process no new materials.

Doug Cummings feels that the number of hours should be limited.

Dean Trefethen agrees that the number of hours should be limited, and to include the condition for the traffic route.

## **FIVE CRITERIA**

1. It is the Board's conclusion that the applicant does face an unnecessary hardship (Bill Colbath voted does not). This property is unique and unusual in configuration and siting for a B-3 zone. The proposed use is similar to activities normal to a B-3 zone.

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3/18/99  
PG. 3

2. It is the Board's conclusion that the variance will deliver substantial justice (Bill Colbath voted will not). The proposed use is similar to and may be less intensive than normal B-3 uses.
3. It is the Board's conclusion that the variance will be in harmony with the spirit and intent of the zoning ordinance (Bill Colbath voted will not). The proposed use is similar or less intrusive to other B-3 uses.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. The proposed use is similar or less intrusive than other possible B-3 allowed uses.
5. It is the Board's conclusion that the variance will not be contrary to the public interest (Bill Colbath voted will). It allows use of the property that will improve the conditions of the property. Also, it is sited far enough away from residential uses to not be a concern.

Therefore, based upon the foregoing it is ordered that the variance be granted subject to conditions.

MOTION:

David Ruoff made the motion to attach the following conditions:

- (1) Truck traffic will be limited to Old Rochester Rd. to Long Hill Rd., to Rt. 108.
- (2) The owner shall not routinely operate the business after midnight or before 6:00 a.m.
- (3) The applicant must complete the Technical Review Committee process.

Doug Cummings seconded the motion.

Four in favor and one opposed (Bill Colbath opposed)

**ITEM #2. OLD BUSINESS**

- B. **Z 99-4, Addison-Dover Ltd. Partnership, Addison Place, Whittier St., A/K/A Assessor's Map E, Lot 64-C, Zoned RM-8, requests a variance from the provisions of Article V, Section 170-15.B to maintain sixteen (16) accessory structures (storage sheds) located contiguous to or closer than seven (7) feet of a principal structure where a minimum of seven (7) feet is required.**

Atty. Malcolm McNeill represented Addison Place. Also with him are Drew Fitch from Addison Place and Jack Buckley from Dover Housing Authority. The units are managed by Dover Housing Authority. Mr. McNeill submitted copies of the leases and pictures of the structures to the Board. Addison Place is located in Maine and Maine does not require the distance between accessory structures and the main structure so they assumed that is also true in New Hampshire. The units do not have garages and have ground floor walkouts thus supply no storage areas for the tenants. The reason they are before the Board is the sheds are not connected to the buildings and do not have the required distance between the sheds and the

main buildings, which is seven feet in this case. If relief is not granted the option is to cut each building in half and make them smaller which would not require a variance and then they would have 32 buildings. One of the concerns was storage of hazardous materials. The leases prohibit storage of hazardous and flammable materials such as mowers, blowers etc. Mr. McNeill made reference to the letter from the Dover Fire Department and he reviewed the five criteria. The hardship is because of the slopes on the property and needless unnecessary restriction.

### **MOTION**

David Ruoff made the motion to accept the case.  
Bill Colbath seconded the motion.  
U/A

Dean Trefethen asked Mr. McNeill to explain what he feels the hardship is.

Malcolm McNeill stated that there are two hardships. One is the character of the land because of the slopes. Second is the regulation that creates an unreasonable result can itself create a hardship. He feels that the compliance in this case is worse than the non-compliance.

### **PUBLIC HEARING OPENED**

Steve Bird stated that, based on the reasons stated on the application, and the information presented tonight, the Planning Department supports the request for a variance.

### **PUBLIC HEARING CLOSED**

David Ruoff asked Tom Clark for his opinion.

Tom Clark responded that there is a violation but he personally does not have a problem with the sheds. However, he wants to make it very clear that, should the Board decide to grant the variance, prohibition of flammable liquids or fuels should be a condition, and although it is in the lease, it would be more enforceable from our perspective. It is a necessary process because where there is a known violation and no action is taken, if something happens there may be some form of liability.

Doug Cummings stated that he feels that the storage and use of gas grills should be spelled out more clearly in the lease because it could present a problem.

### **FIVE CRITERIA**

1. It is the Board's conclusion that the applicant does face an unnecessary hardship (David Ruoff voted does not). The topography behind most of the units makes compliance a hardship. Also, it would be a needless or unnecessary restriction to make them comply considering the allowed alternatives.

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3/18/99  
PG. 5

2. It is the Board's conclusion that the variance will deliver substantial justice. The proposal will have no effect on surrounding property while allowing benefits to the tenants of storage and privacy.
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 is for safety and provisions in the lease will enforce safety regulations.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. The proposed structures are an integral part of the development.
5. It is the Board's conclusion that the variance will not be contrary to the public interest. For the most part the structures would not be visible to the general public but will allow safe storage of tenants belongs.

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

#### **MOTION**

Doug Cummings made the motion to add wording to the lease section P(2) ... premises "and storage sheds, including gas grill propane tanks."

Bill Colbath seconded the motion.

U/A

#### **ITEM #3.**

**Z 99-5-A, Alan Arkwell, 1 Webb Place, A/K/A Assessor's Map 38, Lot 15-A, Zoned B-3 requests an Appeal From An Administrative Decision in connection with Article IX, Section 170.32.D.(5): Flashing vs. Non-Flashing Signage.**

Wm. Smillie of Barlo Signs represented the applicant. The use of flashing signs are being used more today than ever. This unit is not a flashing unit because the sign's display changes every ten (10) minutes. This unit cannot flash because it is not a light bulb but a disk that changes the message every ten minutes.

#### **MOTION**

David Ruoff made the motion to accept the case.

Bill Colbath seconded the motion.

U/A

ZBA  
3/18/99  
PG. 6

Tom Clark stated that he discussed this with Mr. Smillie and the Planning Department because what the applicant is proposing is different from a flash. The ordinance does not state specifically what a flash is and it appears that the intent of the language of the ordinance is to prevent distractions for drivers. Ten minutes is certainly better than 5 seconds.

Alan Arkwell stated that they had a manual sign that was blown down and they now would like to replace it with this electronic sign that would change the message every ten minutes. He intends to have his messages and messages from non-profit organizations on this sign. It will not have any more adverse effect on drivers than the Broken Pushcart's sign that is changed manually.

#### **PUBLIC HEARING OPENED**

Steve Bird stated that given the fact that Tom Clark consulted with the Planning Department, the Planning Department supports the Administrative Decision.

#### **PUBLIC HEARING CLOSED**

The Board discussed the need of rewriting the sign ordinance to be more specific on what constitutes a flashing sign and the Board's position in establishing a time that constitutes a flashing sign.

#### **MOTION**

Bill Colbath made the motion to grant the appeal to overturn the Administrative Decision as long as the entire sign changes its complete message at once, at intervals of ten minutes or longer, it does not constitute a flashing sign.

David Ruoff seconded the motion.

U/A

#### **ITEM #5.**

**Z 99-6, Michael Clark (Applicant: Brian Stern), 201 Tolend Rd., A/K/A Assessor's Map E, Lot 47, Zoned R-40, requests a variance from the terms of Article V, Section 170-16 to subdivide a parcel into five (5) lots, two (2) having no frontage on a public right-of-way and one (1) having insufficient frontage ninety-two (92) feet on a public right-of-way, all where a minimum of one hundred fifty (150) feet is required.**

Brian Stern has tried many different layouts and this is the best that he could come up with. Mr. Stern presented other possible layouts to the Board. The hardship is created by the layout of the land that is a hill and some slopes. The alternatives would be to build a public road and then there is the potential of 15 houses.

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3/18/99  
PG. 7

## **MOTION**

David Ruoff made the motion to accept the case.  
Bob Mullan seconded the motion.  
U/A

## **PUBLIC HEARING OPENED**

Lauren Jacoby, abutter, stated that she does not like the development that is taking place on Tolend Rd., and because the applicant's land wraps around her land, it appears like a house could be built in her back yard.

Steve Bird, City Planner, stated that one of the concerns is the number of lots being proposed in terms of the available frontage. If 4 or 5 houses were built and at some point down the road the owner wanted to develop the back lot and build a public road, the development of that land could increase the number of lots and houses built. Two lots have no frontage at all and there is no guarantee that there will not be any future development. The Planning Department couldn't support this request as presented.

## **PUBLIC HEARING CLOSED**

Bill Colbath stated that turning a lot with 500 feet of frontage into less than 100 feet of frontage with still 30 acres behind it does not sound like a very good plan. He sees no hardship and there is nothing that tells him that something else cannot be done.

Dean Trefethen agrees, and also the current procedures and policies are that lots have frontage and to look at the future potential. He does not see a hardship.

The Board discussed the plan as presented and other alternatives. They also discussed a private drive versus a public road and future development

## **FIVE CRITERIA**

1. It is the Board's conclusion that the applicant does not face an unnecessary hardship. There are other alternatives to provide access to a proposed subdivision.
2. It is the Board's conclusion that the variance will not deliver substantial justice. The proposal's point was to reduce access points onto Tolend Rd. and there are ways to reduce the access points to one by following proper subdivision guidelines.
3. It is the Board's conclusion that the variance will not be in harmony with the spirit and intent of the zoning ordinance. The spirit and intent was to regulate density based on road frontage.

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3/18/99  
PG. 8

4. It is the Board's conclusion that the variance will not (Dean Trefethen voted will) result in a diminution in value of surrounding properties. There probably would not be any detriment to value of surrounding property caused by any type of subdivision.
5. It is the Board's conclusion that the variance will (Doug Cummings voted will not) be contrary to the public interest. For safety purposes it is in the public's interest to have frontage on recognized public ways.

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

### MOTION

Bill Colbath made the motion to adjourn.  
Bob Mullan seconded the motion.  
U/A

### List of members and expiration dates:

|                                        | <u>Term Expires</u> |
|----------------------------------------|---------------------|
| John Murphy – regular member           | 12/31/98            |
| David Ruoff – alternate member         | 4/13/99             |
| Robert Mullan – regular member         | 12/31/99            |
| Richard Callaghan – regular member     | 4/13/2000           |
| William Colbath – regular member       | 10/23/2000          |
| Dean Trefethen – regular member        | 12/31/2000          |
| Douglas Cummings II – alternate member | 1/22/2002           |