

Dover Zoning Board of Adjustment  
Thursday, November 20, 2003

MINUTES

**Members Present:** Richard Callaghan, Chairperson, Bill Colbath, Vice Chair, David Ruoff, Frank Landford, Ruth Gorton, John Levasseur

**Staff Present:** Thomas Clark; Building Official, Steve Bird, City Planner; Jean Glidden, Recording Secretary

Bill Colbath announced to the general public that two new members have joined the Zoning Board of Adjustment, Ruth Gorton and John Lavasseur.

**ITEM # 1: NEW BUSINESS**

**A. Special Election of Officers**

David Ruoff made the motion that Richard Callaghan be the Chairperson. Ruth Gorton seconded the motion. **VOTE: U/A**

Richard Callaghan made the motion that Bill Colbath continue to be the Vice Chairperson. Frank Landford seconded the motion. **VOTE: U/A**

**B. Approval of the minutes for the regular meeting of October 16, 2003**

**Motion:** Richard Callaghan made the motion to accept the minutes. David Ruoff seconded the motion. **VOTE: U/A**

**ITEM # 2: OLD BUSINESS – NONE**

**ITEM # 3:**

**Z03-23 192 Washington Square, LLC, 201-205 Washington St., a/k/a Assessor's Map 10, Lots 41 & 42, zoned RM-6, requests a variance from the terms of Article V, Section 170-16, to construct a building within approximately six (6) feet from a front property line as it abuts a street where a minimum of fifteen (15) feet is required.**

Richard Callaghan announced that a letter was submitted requesting that the hearing on this matter be postponed.

**ITEM # 4:**

**A) Z03-25-A Corriveau Routhier, Inc., (Applicant: Frank Phennicie), 71 Broadway, a/k/a Assessor's Map 24, Lot 2-J, zoned B-3/I-1, requests an Appeal from an Administrative Decision regarding Article IV, Section 170-12, Table I, Part C-2, to allow a used car sales place as accessory to an auto body facility.**

Applicant Frank Phennicie stated that he opened the Maaco Auto Painting and Body Works at this location one year ago. He stated that on the map submitted to the Board, it shows a considerable

amount of paved area, approximately two acres. He stated that he would like to sell better quality used cars and this would allow them to better utilize the space that they have available and promote more business for Dover.

Richard Callaghan stated that it sounds like he is presenting his case as a variance not an appeal from an administrative decision.

Frank Phennicie stated that he is not familiar with the difference between the two.

Richard Callaghan stated that the appeal to an administrative decision is that you are not in agreement with the decision that was made by the Building Official.

Tom Clark stated that filing for the administrative decision was his suggestion prior to Mr. Phennicie looking for the variance. He stated that he thought he could make a case and the used car sale places are listed specifically as a use in the regulations only as an accessory to a new car sales place.

Frank Phennicie stated that Dover Auto Body, Colony and a few others in the area do sell vehicles for the business and would like to have the same ability and would be competitive in the market place.

Bill Colbath asked Tom Clark how the other facilities were able to sell cars.

Tom Clark stated that most of them are vehicles that people drop off to get fixed and do not come back for them, so usually the owner of the auto body place owns them and the number of vehicles on site are typically three or four. In this particular case, Mr. Phennicie will have a business partner who is going to bring the vehicles on site as consignment and they are proposing more than three or four at one time.

David Ruoff asked what the scope of the auto body shop, versus the used car sales shop would be. He asked the applicant if it would be 50/50.

Frank Phennicie stated that it would not be 50/50 and at any given time, they could have twenty-five to thirty cars in for repairs, which they did have over the summer. He stated that the used car sales would be small, relative to the overall body shop business. He stated that the property in the back is zoned commercial industrial and retail in the front of the property.

Frank Landford asked if he knew what the maximum will be for the used car business and asked if he was going to line them on the fence.

Frank Phennicie stated that he does not plan to fill the parking lot with used cars. He stated that he suspects no more than twelve to fifteen. He stated that he could line them on the fence, but probably will not and would have them parked in the back.

Richard Callaghan asked Tom Clark if the other facilities that are selling cars were in similar zones.

Tom Clark stated that Colony is in a B-3 zone and Dover Auto Body is in a RM-10 zone.

Richard Callaghan stated that John Lavasseur would be voting on this case.

**Motion:** Frank Landford made the motion to accept. Bill Colbath seconded the motion.  
**VOTE: U/A**

Public Hearing Open  
None  
Public Hearing Closed

Steve Bird stated that the Planning Department does support the Building Inspector's interpretation of the zoning in this case. The fact that a used car sales is specifically listed as a use, indicates that was the intent when the ordinance was written.

David Ruoff stated that he agrees with the statement and feels that they should proceed with the variance request.

**Motion:** David Ruoff made the motion to uphold the administrative decision. Bill Colbath seconded the motion. **VOTE: U/A**

**B) Z03-25-B Corriveau Routhier, Inc.,(Applicant: Frank Phennicie), 71 Broadway, a/k/a Assessor's Map 24, Lot 2-J, zoned B-3/I-1, requests a variance from the terms of Article IV, Section 170-12, Table I, Part C-2, to operate a used car sales place as accessory to an auto body facility.**

Applicant, Frank Phennicie stated that nothing has changed as far as the first request and stated that he has cars on the lot and would like to be allowed to have more and feels it would be a good fit for what they are doing now and would like to be granted the variance request.

**Motion:** David Ruoff made the motion to accept. Frank Landford seconded the motion.  
**VOTE: U/A**

Public Hearing Open

Rick Hebbard, 97 Spruce Lane, stated that being a business person himself, he tries to find different ways of bringing in income. He stated that the applicant is trying to do something that is in line with what he is doing, staying in the same reasonable line of work. He stated that he feels that he is doing something that is reasonable and responsible for the area and is in favor of the variance.

Public Hearing Closed

Steve Bird stated that the Planning Department is not in favor of this variance for a couple of reasons. Primarily they do not feel that the proposed use is accessory to the principle use, which is the auto body place. Mr. Phennice is not selling the automobiles, it would be his business partner that will have an office in that building and they look at that as another principle use operating out of this property. He stated that he does have numerous permitted uses that are allowed in that district and he has a couple of them in the works right now. One of the proposals is an Aroma Joe's

coffee shop and feels that the proposed used car sales is coming from a different business owner and is not accessory to his principle use and is not in favor of the variance.

Bill Colbath asked how the City allows numerous locations to sell used cars, if it has to be tied to a new car only facility.

Steve Bird stated that there is a difference between an auto body shop selling a car because the person did not pick it up, versus the applicant, having a business arrangement with another party selling used cars on his lot. They are looking at it, as the used car business is a second principle use on this property, one that is not allowed by zoning.

David Ruoff confirmed that the zoning does not prohibit two principle uses.

Steve Bird stated that the applicant does have other business uses that are allowed in the district that could locate on his property and the only place a used car dealership or businesses are permitted under the code is in association with a new car dealership.

David Ruoff stated that he does not understand how it makes any difference in the analysis, why they are selling a car or how they got there in the first place.

Tom Clark stated that if Mr. Phennicie decides to close Maaco, you would have a used car sales use not associated with an auto body shop. There could be any number of permitted uses in the B-3 zoning district, plus a used car sales place.

David Ruoff stated that they could make conditions regarding the used cars sales place.

Tom Clark stated that if they are considering conditions, one of the issues that was discussed with Mr. Stancel, Mr. Phennicie and the business partner, Mr. Olivia was the number of vehicles and the hours of operation. He stated that the applicant is considering not only Aroma Joe's, but also wants to rent a portion of the I-1 area to a roofing contractor for open storage, which also is an allowed use. If you have all the permitted uses allowed, where is the hardship?

Richard Callaghan confirmed with Tom Clark what the ownership or partnership would be at this used car sales place.

Tom Clark stated that Mr. Phennicie owns and operates Maaco and Mr. Olivia would own and operate the used car portion, he will have a section of Mr. Phennicie's building for office space per State requirements.

Bill Colbath stated that the property is still owned by Corriveau Routhier and if anything takes place, it would have to be agreed to by the owner.

Tom Clark stated that if someone other than the owner asks for a building permit they would need authorization from the owner. He stated that what was a large vacant lot becomes crowded and potentially busy with the used car place, potential coffee place and storage for a roofing contractor. They would require that they go to TRC. They do have multiple uses planned for this location.

John Lavessuer asked if they are more concerned with the safety because of extra traffic or because of the multiple uses in that one lot.

Tom Clark stated that they are concerned with all of the issues and whenever they look at a variance or an allowed use, they do have requirements in the site review regulations that have to be adhered to because of the traffic on site and off site. The primary concern of the ZBA would be that the five criteria are the applicant's responsibility to prove.

Bill Colbath stated that the hardship that the applicant has was unutilized space and now they are getting information that perhaps this is not the case any longer.

Frank Phennice stated that they would still have a considerable amount of space unutilized and the lot is almost two acres paved. He stated that Aroma Joe's would take up about 15,000 square feet and would be used as a drive thru. He stated that the used car sales would be a separate business and that the State does mandate that it be a separate business. He stated that if it were approved he would actually have to subdivide part of the inside of the building and have a separate entrance. He stated that he is going to sell cars that he repairs and some of those cars may be his and may not be.

Frank Landford confirmed the 15,000 square feet includes area for vehicle stacking lanes.

Bill Colbath stated that the hardship part of it will be the biggest hurdle that he needs to clear and may already have two other possibilities that may fill up the two-thirds of empty space.

Frank Phennicic stated that they do not have any of those possibilities approved at this time and is trying to cover his bases. The storage for the roofing is already done and it is a very small amount of money, relative to the overall cost of operating and taking care of the premises. The other two businesses, if either one is approved, would be a great help to him as far as reducing the amount of overhead and being able to become more profitable and making better utilization of that space.

Frank Landford asked if all the businesses would use the same front entrance.

Frank Phennicic stated that they would be and his plan would be if everything were approved, to open up the entrance to be twice as wide.

Frank Landford asked Tom Clark what is required to have the other two businesses. He asked if the two businesses required building permits.

Tom Clark stated that Aroma Joe's would be the only one that would require a building permit and the roofing business, in combination with Aroma Joe's would be a sufficient impact to have to go to TRC.

David Ruoff stated that the nature of the character in that area is a reasonable use and it would be a needless and unnecessary restriction.

Frank Landford stated that he also feels the same way, but would like to see some conditions.

John Lavasseur asked if the used car dealership would continue if the auto body shop closed and would like to see a condition regarding the business.

Discussion ensued regarding the conditions for the used car sales place.

**FIVE CRITERIA:**

1. It is the Board's conclusion that if the applicant complies with the strict letter of the ordinance he/she does (Richard Callaghan voted does not) face an unnecessary hardship. This conclusion is based on the following findings of fact: Strict application of the ordinance in this case creates a needless and unnecessary hardship.
2. It is the Board's conclusion that, if granted, the variance will (Richard Callaghan voted will not) deliver substantial justice. This conclusion is based on the following findings of fact: Allows a reasonable use of this property that is consistent with other ones in this commercial area.
3. It is the Board's conclusion that, if granted, the variance will (Richard Callaghan voted will not) be in harmony with the spirit and intent of the zoning ordinance. This conclusion is based on the following findings of fact: The spirit and intent was to proliferate the used car business but not to eliminate it.
4. It is the Board's conclusion that, if granted, the variance will not result in diminution in value of surrounding properties. This conclusion is based on the following findings of fact: This fits in to the wide variety of uses in the immediate area.
5. It is the Board's conclusion that, if granted, the variance will not (Richard Callaghan voted will) be contrary to the public or private interests or rights. This conclusion is based on the following findings of fact: No greater impact on the current uses or previous uses and allows for additional business use in the downtown area.

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

1. The number of vehicles on the lot for sale shall be limited to fifteen.
2. Hours of operation will be Monday thru Saturday, 8:00 am to 8:00 pm.
3. Variance is viable only for as long as the body shop remains on the lot.
4. No vehicles "For Sale" shall be parked in the City right of way.
5. This plan must go to the TRC.

**Motion:** David Ruoff made the motion to grant the variance with the following conditions. Frank Landford seconded the motion. **VOTE: U/A**

Bill Colbath announced that he would be stepping down on the next case.

Tom Clark announced that the applicant submitted the application stating that the lot was in an R-40 zoning district and according to the zoning map, the lot is in the RM-12 zoning district. While he was doing the agenda, he called Mr. Colbath and stated that they had discrepancies and he would still put it on the agenda, because it would still be the same as far as the setbacks are concerned. In the RM-12 zoning district you could have a building with horses with the same setbacks as you can if it is in an R-40 zoning district, so the request does not change, it is just a zoning designation. RM-12 is only allowed by a special exception and they would still have to get the variance for the setbacks and then a special exception. He stated that Mrs. Colbath came in with a stack of

supporting documentation to show that the zoning map was incorrect. He stated that it would be changed to read, zoned R-40 and eliminate Article VI, Section 170-21, but the dimensions are still the same and it would eliminate the requirement for Item 5 B, which is the special exception.

Richard Callaghan announced that Ruth Gorton and John Lavasseur would be voting on this case.

**ITEM # 5:**

**Z03-30-A Marcia J. Colbath, 114 Garrison Rd., a/k/a Assessor's Map J, Lot 1-E, zoned R-40, requests a variance from the terms of Article IV, Section 170-12, Table I, Part B, to house livestock in a building located approximately twenty-eight (28) feet from the left side property line and approximately sixty (60) feet from the right side property line where in both cases a minimum of one-hundred (100) feet is required.**

Applicant, Marcia Colbath stated that they are asking for the variance to allow them to keep the livestock on the property, which the requirement of one-hundred feet prevents them from doing. The building that they intend to use for the livestock exists and the outside appearance will not change with the exception of two east side windows that will become doors. She also presented a letter to the Board from the abutter on the east side at 116 Garrison Road. She stated that they have more than sufficient land area, nearly 75,000 square feet or 1 ¾ acres for paddock space and riding area, it also abuts thirty-five acres of family owned land. She stated that they cannot satisfy the letter of the ordinance due to the shape of the lot, but can certainly satisfy the intent with 160' distance to the nearest structure. No one could build anything close to them since they are surrounded on two sides by a 150' PSNH power line easement. She stated that she spends a considerable time away from home with the horses that are boarded out at various facilities and the barn is being used for storage and realized that she could put large stalls in it for the horses that they own. The proposed paddock area to the right and back of the barn would provide more turnout than the horses receive now and would have access to adjacent family owned land. The current structure is possibly 2,000 square feet and would have install six foot whiteboard fencing and run electric inside the fencing. The existing four-foot high chain link fence will remain on the property, separating them from the abutters on the left side of the property. She stated that it will be a well-kept stable and stated that it will add to the value of the surrounding area.

Steve Bird asked the applicant how many horses she would be boarding at this location and asked if she had plans that show the paddock area.

Marcia Colbath stated that they own four horses, but only two would be boarded at this location at this time. She stated that her daughter is in college and has a horse and does not know where she will be in the next year. The fourth is a small pony that her daughter outgrew many years ago and is part of a therapeutic program. She stated that she did not have a drawing to submit, but explained that she plans on coming out fifty feet from the east side of the barn and going straight back and from the east corner of the barn would be another fence to keep two paddocks in case they have two horses that do not get along. She stated that on the west property line, where she has the chain link fence, they would keep enough room to put a large lawnmower through and that it is the side of the power line easement.

Frank Landford asked if they put up a fence, would she have to have access for PSNH.

Marcia Colbath stated that they still have access on the side and never had any complaints in the past twenty years.

John Lavasseur confirmed with the applicant the location of the horses being mainly confined to the back of the barn and asked what special facilities she will have to remove the waste and if she would be storing hay in the barn.

Marcia Colbath stated that they own a farm tractor and will move the waste to adjacent family property. She stated she would store some hay, but not a large amount.

**Motion:** David Ruoff made the motion to accept. Frank Landford seconded the motion.

**VOTE:** U/A

#### Public Hearing Open

Applicant's father stated that he owns all of the land and gave Marcia and his son Paul the land. They had to divide it to build a house on it and did want to keep it one lot, but had to divide it to build. He stated that the land is in his trust and would like to see that the variance be granted.

Rick Hebbard, 97 Spruce Lane, read a paragraph out of an RSA that stated that agricultural makes vital and significant contributions to the food supply, the economy, the environment and the aesthetic features in the State of NH. Tradition of using the land resource to agricultural production is an essential factor. He stated that a number of barns in agricultural operations have been on the edges of the property. It does not make any sense to have to put a barn one-hundred feet from your property line, the applicant just happens to have the barn where it is at this time. He continued to read the rest of the paragraph, Chapter 672. He stated that this is what the Board has to go by and that he felt the ordinance for the one-hundred foot setback is unlawful and unconstitutional. He stated that he is in favor of the variance.

Richard Callaghan read a letter that was submitted by Paul Gasses, abutter at 116 Garrison Road stating that he is in favor of this variance.

#### Public Hearing Closed

Steve Bird stated that the Planning Department is in favor of this variance request. He stated that the lot is uniquely situated because of the power easement on two sides and the fact that relatives that are obviously in favor of it own most of the neighboring properties and the number of horses they propose can be adequately housed in this size property and are in favor of this variance.

David Ruoff stated that the easement itself sets up a barrier. He stated that they can have horses on the lot in the R-40 zone and to say you cannot put a barn on it does not make sense. Giving the size of the lot, location of the easement and the fact they can have horses, he is in favor of the variance.

John Lavasseur stated that he is familiar with raising livestock. He stated he does not see any problems with the paddock out back and the only problem he would have is if it was transferred to a different owner and they decide to raise pigs.

Tom Clark stated that the definition of livestock, poultry, swine and this specific application is livestock, so they could not do a pig farm, but could possibly have dairy animals. If you were considering a variance for just livestock, it would be transferable to subsequent owners, but they would also only be able to have livestock.

John Lavasseur stated that his only concerns are the waste and the attraction of flies, but the applicant stated that she would move the waste to a different location.

Ruth Gorton stated that she has lived in the neighborhood for many years and it is immaculate and wonderful and has no problem with this variance.

**FIVE CRITERIA:**

1. It is the Board's conclusion that if the applicant complies with the strict letter of the ordinance he/she does face an unnecessary hardship. This conclusion is based on the following findings of fact: Unique shape of lot and existence of the utility easement severely limit the location they can put livestock and their shelter.
2. It is the Board's conclusion that, if granted, the variance will deliver substantial justice. This conclusion is based on the following findings of fact: Allow to keep the animals on the property and provide shelter.
3. It is the Board's conclusion that, if granted, the variance will be in harmony with the spirit and intent of the zoning ordinance. This conclusion is based on the following findings of fact: The spirit and intent is to provide reasonable setbacks from adjacent living areas and is similar to other farms.
4. It is the Board's conclusion that, if granted, the variance will not result in diminution in value of surrounding properties. This conclusion is based on the following findings of fact: The Boards opinion is that there will be no impact.
5. It is the Board's conclusion that, if granted, the variance will not be contrary to the public or private interests or rights. This conclusion is based on the following findings of fact: Allows for reasonable use that is permitted in this zone for this particular property owner.

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

**MOTION TO ADJOURN**

Bill Colbath made the motion to adjourn at 9:20 and was seconded by Frank Landford.

**VOTE: U/A**

**List of Members**

Richard Callaghan-regular member  
David Ruoff-regular member  
William Colbath-regular member  
Frank Landford-regular member  
Ruth Gorton-regular member  
John Lavesseur-regular member

**Term Expires**

04-13-06  
07-18-04  
10-23-06  
04-10-05  
11-12-06  
11-12-06