

**DOVER ZONING BOARD OF ADJUSTMENT
MINUTES OF PUBLIC HEARING
FEBRUARY 21, 2002**

MEMBERS PRESENT: Dean Trefethen, Chairperson; William Colbath, Co-Chairperson; Rick Callaghan, Douglas Cummings and Art Corte (alternate)

STAFF PRESENT: Steve Bird, City Planner

Dean Trefethen introduced Art Corte as a new alternate board member. He also advised the applicants that one board member, Bill Colbath, will need to step down on one case (Z 02-3).

ITEM #1 NEW BUSINESS:

A. Approval of minutes for regular meeting of January 17, 2002

MOTION:

Bill Colbath made the motion to accept the minutes of January 17, 2002. Doug Cummings Seconded the motion.

U/A

ITEM #2 OLD BUSINESS:

- A. Z 01-19 Douglas & Lucia DeDe, 143 Locust St., A/K/A Assessor's Map 12, Lot 37, zoned RM-10 requests a variance from the terms of 1) Article V, Section 170-16 to construct an attached garage onto a three family dwelling within three (3) feet from a side property line where a minimum of six (6) feet is required and within approximately four (4) feet from a rear property line where a minimum fifteen (15) feet is required; and to construct a roofed front porch within approximately eight (8) feet from a front property line as it abuts a street where a minimum of twenty (20) feet is required; and 2) Article X, Section 170-41A to increase a non conforming structure.**

Dean Trefethen stated that this item had been tabled since the meeting on September 20, 2001 pending information in which the board had now received.

Douglas DeDe referred to the last time the board met and that there had been questions as to the accuracy of the drawings that had been provided. The board had requested that he secure a certified surveyor's plan. The surveyor's plan was now complete and showed the property lines as being further out than originally indicated, though they are still quite close to original plan. He reminded the board that in discussing the various setback issues at hand, there was concern about the setbacks on the back lot and the side for the new garage. He proposed to move the garage 6' from the side property line, which would mean moving it 3' further in. He also asked that he be allowed to set the garage at 4' from the back line. He stated that the area behind his property is landlocked and that there is no potential for another structure being erected close to his.

MOTION:

Bill Colbath made the motion to take this item off the table.
Rick Callaghan seconded the motion.
U/A

Dean Trefethen confirmed with Mr. DeDe that his plans for the interior of the building had not changed.

Mr. DeDe confirmed.

Dean Trefethen confirmed with Mr. DeDe that most of the exterior lot line dimensions were slightly more than originally believed.

Mr. DeDe confirmed and added that he had approached abutting property owners about selling some of their land, but was unsuccessful.

Bill Colbath reminded Mr. DeDe that the board had asked him to consider keeping the rear property line somewhere near the setback requirements.

Mr. DeDe explained that keeping the 15' rear setback would make it difficult to construct the two-car garage he desired.

Bill Colbath asked if the entire addition would be within the 6' setback.

Mr. DeDe explained that the back of the garage would no longer be flush with the rest of the house. There will now be 3' bump out where the proposed deck will go.

Bill Colbath asked Mr. DeDe if he would consider changing the garage to a one-car garage as opposed to a two-car garage.

Mr. DeDe stated he did not want to, but would if that was his only option.

Steve Bird added that the Planning Department had looked at the front setbacks of the properties on either side of 143 Locust Street, stating that they matched the setback of this property. However, the Planning Department did have some concerns about the rear setbacks, which they discussed with Mr. DeDe, and suggested that he move the garage over 3' thus eliminating the need for a variance on that part. He was pleased to see that Mr. DeDe had amended his application by moving the garage over and agreed that the potential for another building in the rear is unlikely. He concluded that the Planning Department supported Mr. DeDe's request.

Rick Callaghan stated that by accepting the extra 3' alcove across the rear of the house creates an area for people to hide in and it does not create any benefit to anyone.

Dean Trefethen stated that a 3' step in is visually less dramatic and that the garage will almost disappear from the street view.

Mr. DeDe added that when he completes his English garden, the garage would disappear altogether. However, he agreed that he too worried about kids walking by at night.

Dean Trefethen stated that the 4 regular board members would be voting on this case.

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does not (Dean Trefethen and Richard Callaghan voted does) face an unnecessary hardship. The building can be improved without further violation of the setbacks; therefore, there is no unnecessary hardship.
2. It is the Board's conclusion that, if granted, the variance will not (Dean Trefethen and Richard Callaghan voted will) deliver substantial justice. There is no need to be that close to property lines as other means of improvement are available.
3. It is the Board's conclusion that, if granted, the variance will (Bill Colbath voted will not) be in harmony with the spirit and intent of the zoning ordinance. The proposal would allow expansion with reasonable setbacks in most cases.
4. It is the Board's conclusion that, if granted, the variance will not result in a diminution in value of surrounding properties. The proposal is typical of existing structures in the neighborhood and improvements typically enhance property values.
5. It is the Board's conclusion that, if granted, the variance will (Richard Callaghan and Dean Trefethen voted will not) be contrary to public or private interests or rights.

Therefore, based upon the foregoing, it is ordered that the application for the variance be denied. The applicant was advised to discuss with Tom Clark how to proceed from here. Mr. DeDe asked if he would receive this decision in writing and he was told he would.

B. Consideration of a motion for rehearing request submitted by Patricia and Robert Demers concerning Zoning Board of Adjustment Case # Z 02-1 regarding property owned by Cochecho Country Club, 145 Gulf Rd., A/K/A Assessor's Map N, Lot 15

Jennifer Lemire, Attorney for Robert & Patricia Demers gave a brief history of this case, stating that Cochecho Country Club sought a variance to build a large structure to house 70 electric golf carts on a portion of its land, approximately 400 yards from the existing club house. She stated that her clients, the Demers, had concerns about the acidic odors emitted from the battery chargers causing a potential health hazard, noise associated with the chargers, fans, run off water containing battery acid, and diminution of property value. She stated none of these issues were adequately addressed at the public hearing on January 17, 2002, therefore, her clients should be allowed a new hearing.

Dean Trefethen stated that in order to be granted a rehearing, the applicant must prove that the Board was in error and/or the applicant is presenting new information not previously submitted. He asked Ms. Lemire to emphasize one of those two things.

Ms. Lemire stated that she believed the Board was in error, and that the decision to grant the variance was unreasonable and/or unlawful.

Stephen White, President of the Cochecho Country Club stated that he objected to the request for rehearing and that abutters had not presented any new evidence unavailable at the time of the last meeting, nor had they presented anything that was not discussed at length at the last meeting. He requested that the Board not grant the request for rehearing.

Dean Trefethen stated that he wanted to be sure that this case was being argued on the merits of the law and not because of any internal disputes of the Cochecho Country Club.

Attorney Lemire stated that she had no knowledge of any internal disputes at the Cochecho Country Club.

Bill Colbath asked what specific point the Cochecho Country Club had not met the burden on.

Attorney Lemire stated that the Cochecho Country Club would still have reasonable use of their property without the granting of this variance.

Rick Callaghan stated that he did not see an error in the judgment of Board, nor did he see any new evidence introduced by the applicant.

MOTION:

Rick Callaghan made the motion to deny the request for rehearing.

Bill Colbath seconded the motion.

Three voted in favor to deny to request for rehearing and one opposed (Dean Trefethen)

ITEM #3

Z 02-3 Raymond Martineau, Littleworth Rd., A/K/A Assessor's Map H, Lot 32A-2 zoned B-4 requests a variance from the terms of Article V, Section 170-16, Footnote 23 to construct a building within seventy-five (75) feet from a residential structure where a minimum of one hundred fifty (150) feet is required.

Dean Trefethen stated that new member, Art Corte would be voting on this item because Bill Colbath stepped down due to a conflict of interest.

James Schulte, Attorney for Raymond Martineau, stated that in May 2000 the Board had granted a variance from all of the setback requirements. However, the applicant

was unaware at the time that there was an occupied residence closer than the 150' requirement and the proposed commercial building would only be 50' away from the residence. He stated that the applicant had revised his original plan to show that there is an existing 30' vegetation buffer in place as well as a proposed 6' fence, shielding the residence from all activity on this property, thus addressing the prior concerns of the abutter. The abutter does not have objections to the proposed configuration. He stated that it is his opinion that his client meets the requirement for spirit intent, substantial justice, and for hardship because the 150' setback was adopted in the context of a minimum 5-acre lot size. However, this lot is non-conforming, and these requirements were imposed upon an existing lot being only 1.88 acres. He stated that this lot could not be used any longer as a residential lot, and the proposed low-impact use would create little noise and pollution.

Rick Callaghan asked where the demonstration area would be for the equipment being sold.

Kevin McEneaney explained that it would be at the front of the building.

Doug Cummings asked how late they would have deliveries.

Chris Schoonmaker, store manager, stated that the store is open from 8:00a.m. to 5:00p.m and deliveries would cease at that time, though there are some instances that would warrant a later delivery.

Bill Colbath asked what type of vegetation existed as a buffer.

Attorney Schulte stated it was natural and well established vegetation.

MOTION:

Rick Callaghan made the motion to accept the case.

Douglas Cumming seconded the motion.

U/A

PUBLIC HEARING OPENED:

Nancy Quinlan, 89 Knox Marsh Rd., gave a brief history and summary of B-4 and B-3 zoning. It is her opinion that this ordinance was meant to protect the residences in the B-4 zone, and that granting this variance would be contrary to the spirit and intent of the ordinance.

PUBLIC HEARING CLOSED

Dean Trefethen called a 5-minute recess.

Dean Trefethen called the meeting to order.

Rick Callaghan stated that the abutting residence couldn't prohibit the use of the neighboring property because of a non-conforming structure being in place there.

Dean Trefethen stated that the subject lot was an existing lot when the zoning was laid over it. The footnotes were put in place to protect, however, applying the footnotes to the full extent, results in a lot you can do virtually nothing with. He also stated that the applicant had responded to the Board's denial of the last case in an appropriate fashion and had come up with a proposal that satisfies most of the concerns previously expressed.

Steve Bird stated that the Planning Department had reviewed the application and supports the variance request.

FIVE CRITERIA:

1. It is the Board's conclusion that, if the applicant complies with the strict letter of the ordinance, he does face an unnecessary hardship. The shape and size of this lot leaves little useable space and meets all requirements to the fullest, constituting a hardship.
2. It is the Board's conclusion that, if granted, the variance will deliver substantial justice. Allowing the use of the property in such a manner consistent with the zoning without impacting abutting property.
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. The intent is for commercial use, and the proposal is a reasonable one for this property and abutters.
4. It is the Board's conclusion that, if granted, the variance will not result in a diminution in value of surrounding properties. Abutting property is also zoned Commercial and other existing commercial uses are in existence already, therefore, there is no impact on property values.
5. It is the Board's conclusion that, if granted, the variance will not be contrary to public or private interests or rights. The proposal protects abutting residential use as much as possible without rendering this property useless.

Therefore, based on the foregoing, it is ordered that the application for the variance be granted with a condition.

MOTION:

Rick Callaghan made the motion that the demonstration areas (the dumpster area and the proposed fence) will essentially be as presented before this Board.

Doug Cummings seconded the motion.

3 in favor, 1 opposed

ITEM #4

Z02-4 Paul Karoutas (Applicant: Kim Hoa T. Doan), 595 Central Ave., A/K/A Assessor's Map 27, Lot 1, zoned Office, requests a variance from the terms of Article IV, Section 170-12, Table I, Part C-2, to establish a Personal Service Establishment (C&K

Nails).

Gregory Koutralakis, representative for the applicant, stated that the property located at 595 Central Ave., currently housed an insurance company, an attorney, three apartments, and one vacant unit in which the applicant requests a variance for a nail salon. He stated that the proposed use poses no safety, health or environmental hazards, no diminution of property value and will not create an additional burden on the City.

Art Corte asked if the unit was an apartment or a storefront.

Mr. Koutralakis stated that the unit had previously been an apartment, a lawyer's office and a dentist's office, but is not a storefront.

Steve Bird stated that the unit is located at the rear of the building.

Rick Callaghan asked about the configuration of the signs that would be used for this business.

Mr. Koutralakis explained how the signs were currently mounted.

Dean Trefethen asked Steve Bird about the total signage allowed in this zone

Steve Bird read the sign ordinance and also asked how long the unit had been vacant.

Paul Karoutas stated it had been vacant for 15 months.

MOTION:

Bill Colbath made the motion to accept the case.

Rick Callaghan seconded the motion.

U/A

PUBLIC HEARING OPENED:

No comments.

PUBLIC HEARING CLOSED

Dean Trefethen asked for staff recommendations.

Steve Bird stated the Office zone was a transitional zone between residential and commercial uses. When it was adopted, it was specifically decided not to allow retail and personal services establishments. He stated that there is difficulty in identifying the hardship in this case because there are other uses allowed in the Office district for this space, therefore, the Planning Department does not support the variance request.

The board discussed Office zoning and the differences between retail and personal service establishments.

FIVE CRITERIA:

1. It is the Board's conclusion that, if the applicant complies with the strict letter of the ordinance, he/she does not face an unnecessary hardship. There are other permitted uses that could use this space as zoned and there are ample other locations to operate the proposed business, therefore, no hardship exists.
2. It is the Board's conclusion that, if granted, the variance will not deliver substantial justice. The proposal, if approved, would grant additional rights to the property not enjoyed by others in the Office zone.
3. It is the Board's conclusion that, if granted, the variance will not be in harmony with the spirit and intent of the zoning ordinance. The intent is not to have this type of use in this zone.
4. It is the Board's conclusion that, if granted, the variance will not result in an diminution in value of surrounding properties. The proposed use is not intensive enough to affect any property values.
5. It is the Board's conclusion that, if granted, the variance will not be contrary to public or private interests or rights. The use would not cause a detriment to any other property in this zone or adjacent.

Therefore, based on the foregoing, it is ordered that the application for the variance be denied. The applicant was advised to discuss with Tom Clark how to proceed from here if an appeal is desired.

ITEM #5

Z 02-5 STF Development Corp. (Applicant: David Paolini), Granite St., A/K/A Assessor's Map 25, Lot 45, zoned RM-10/R-12, requests a Special Exception as provided by the terms of Article VI, Section 170-25-4 and Article XII, Section 170-52.C(3) to establish a Congregate Care Facility.

James Schulte, Attorney for STF Construction Corp., stated that the property is a 2-acre parcel located at the end of Granite Street and is, in part, located in the RM-10 zone. Congregate Care Facilities are permitted in this zone with certain density requirements. The applicant had originally requested approval for 15 units, however due to Tom Clark's interpretation of the ordinance, the applicant was now requesting approval for 12 units. He stated the building would be 2 stories, Colonial style, with 2 parking spaces per unit. He stated that each unit would be equipped with kitchens and a common multi-purpose room for residents to use for gatherings. He stated that each unit would only generate 6-8 vehicle trips per day coming and going, and that there would be no impact on the school system and no issues with pedestrian safety. He concluded that the project would pose no adverse effects on upon health, safety or general welfare of the neighborhood.

Dean Trefethen asked if the facility would have a staff.

Attorney Schulte stated that it is not a requirement, but that the applicant is exploring that option nonetheless.

Dean Trefethen asked if the units would be one or two bedroom

Attorney Schulte stated that the units were mostly 1-bedroom units; however there would be several 2-bedroom units as well as 1-bedroom units with an office or den.

Dean Trefethen asked if there was a prohibition that strictly disallowed children.

Attorney Schulte stated that at least one resident must be 55 or older and that the applicant is permitted by state statute to discriminate against families with children.

Dean Trefethen asked if going from 15 to 12 units would affect the size of the building.

Attorney Schulte stated that the applicant seeks approval based on the proposed size.

MOTION:

Bill Colbath made the motion to accept this case.

Art Corte seconded the motion.

U/A

PUBLIC HEARING OPENED:

George Snell, abutter on Atlantic Avenue. Asked if there was a possibility of the congregate care facility eventually becoming open to families.

Steve Bird stated that the zoning ordinance does not permit multi family structures in this zone. The applicant must meet the definition of congregate care and provide elderly services.

Mr. Snell stated that he was not opposed to the Congregate Care Facility.

Stacie Gregg, 2 Atlantic Avenue, abutter, stated that she was not opposed to the project, but asked what would be done about the condition of Granite Street with an increase in traffic of residents and construction vehicles. She stated that she uses the parking lot behind 2 Atlantic Avenue located on Granite Street for tenant parking.

Dean Trefethen stated that there should be no reason for the residents or their visitors to park on Granite Street.

Mrs. Gregg asked for a definition of "Congregate Care Facility."

Dean Trefethen defined it.

PUBLIC HEARING CLOSED

Dean Trefethen asked for staff recommendations.

Steve Bird stated that the applicant had addressed the density requirements, however, screening from neighboring properties had not yet been addressed. He recommended the Board ensure that the screening criteria had been met by the applicant before approving the special exception.

MOTION:

Rick Callaghan made the motion to grant the special exception with a footnote to indicate that the special exception be granted with full compliance of the zoning regulations with particular attention to screening from residential property.

Bill Colbath seconded the motion.

U/A

MOTION:

Bill Colbath made the motion to adjourn

Rick Callaghan seconded the motion

U/A

Zoning Board of Adjustment adjourned at 10:30pm

List of Members:

Term Expires:

Dean Trefethen-regular member

10/23/2003

Richard Callaghan-regular member

04/13/2003

Thomas Dolbec-alternate member

12/15/2004

David Ruoff-regular member

07/18/2004

Douglas Cummings-regular member

07/18/2003

William Colbath-regular member

10/23/2003

Arthur Corte-alternate member

02/13/2005