

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

MEMBERS PRESENT: Dean Trefethen, Chairperson; William Colbath, Co-Chairperson; Rick Callaghan, Douglas Cummings, David Ruoff, Tom Dolbec (alternate)

STAFF PRESENT: Steve Bird, City Planner; Tom Clark, Building Official

ITEM #1 NEW BUSINESS:

A. Approval of Minutes for regular meeting of February 21, 2002

Rick Callaghan stated that there was a correction on page 6 of the minutes.

MOTION:

Rick Callaghan made the motion to accept the minutes of February 21, 2002.
Bill Colbath seconded the motion.
U/A

ITEM #2 OLD BUSINESS:

ITEM #3

***Z02-6 Pamela Smith and Philip H. Joe III, 43 Long Hill Rd. Ext., A/K/A Assessor's Map A, Lot 52C, zoned R-40, requests a variance from the terms of Article V, Section 170-17 to construct an accessory structure (detached garage) within twenty-five (25) feet from a front property line as it abuts a street where a minimum of fifty (50) feet is required.**

Philip Joe stated that he was seeking a variance to construct a garage within 25 feet from the property line as it abuts a street.

David Ruoff asked what size the proposed garage would be.

Mr. Joe stated it would be 24'x24'.

Dean Trefethen asked Mr. Joe to explain why the garage could not be moved back to the 50' setback.

Mr. Joe stated that the garage was accessible at a 25' setback to his existing driveway which was newly paved, and that moving the garage back further would mean clearing out more of the woods behind his house and disturbing the privacy of his neighbors.

Dean Trefethen asked which way the doors to the garage would be facing.

Mr. Joe stated they would be facing the road.

Dean Trefethen asked how far away the neighbor's house is from Mr. Joe's property line.

Mr. Joe stated that the house was approximately 78'.

Dean Trefethen asked what, aside from the trees, was preventing him from building a garage within the setbacks.

Mr. Joe stated that it would be easier to add to the driveway if granted a 25' setback.

David Ruoff asked where the septic system was.

Mr. Joe stated it was to the left of the house.

Dean Trefethen stated that the 5 regular members would be sitting on this case.

MOTION:

Bill Colbath made the motion to accept the case.

Rick Callaghan seconded the motion.

U/A

PUBLIC HEARING OPENED

None.

PUBLIC HEARING CLOSED

Dean Trefethen asked for staff recommendations.

Steve Bird stated that the Planning Department did not feel the applicant had met the hardship. The house was built to meet the setback standards so the garage could also be built to meet the 50' setback. He stated that the neighbor's property is situated so that their garage provides screening from the applicant's property and acts as a buffer.

Rick Callaghan that he did not see the hardship either.

Bill Colbath stated that he saw several other places to construct the garage on the property.

David Ruoff asked if the area of the road in which the property was situated was flat or if it contained wetlands or if it was rolling and/or hilly.

Mr. Joe stated the land was flat and that there were no wetlands.

FIVE CRITERIA:

1. It is the Board's conclusion that, if the applicant complies with the strict letter of the ordinance, he does not face an unnecessary hardship. The property allows other options to build a garage without setback relief, therefore, there is no hardship.

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2. It is the Board's conclusion that, if granted, the variance will not deliver substantial justice. If approved, this property would have more rights than abutters.
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 proposal would require significant relief from the ordinance that is not warranted due to other optional siting being available.
4. It is the Board's conclusion that, if granted, the variance will not (Rick Callaghan voted will) result in a diminution of value of surrounding properties. The proximity to the turnpike and industrial area means this proposal would have little or no effect on other property values.
5. It is the Board's conclusion that, if granted, the variance will be contrary to the public or private interests or rights. To maintain the setbacks in this zone is in the public's interest while the garage could be placed elsewhere on the applicants' property.

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 with an appeal.

ITEM #4

***Z02-7 Covered Bridge Affordable Housing Corporation, County Farm Rd., A/K/A Assessor's Map C, Lot 4, zoned R-40, 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 construct a Congregate Care Facility.**

David Joy of Joy & Hamilton Architects stated that this is a HUD 202 project in which funding has been secured. Strafford County Community Action, Dover Housing Authority, and County Commissioners have all endorsed this plan. Riverside Rest Home would be providing some services to the facility. Covered Bridge Affordable Housing Corporation is a non-profit organization made up of representatives of the three sponsoring groups. Mr. Joy stated that there would be 28 parking spaces. He stated that there would be 26, one-bedroom units, each with a small kitchen, with 13 units on each floor of the wood frame structure. He stated that the project is essential and desirable to the public welfare given the need for affordable elderly housing. He also stated that this would not create undue traffic and pedestrian safety would not be an issue. Lastly, he stated that the project would not overload public utilities.

David Ruoff asked how big the lot was.

Mr. Joy stated the lot was 4.5 acres.

Dean Trefethen asked Mr. Joy how many visitors the facility would have on a regular basis.

Mr. Joy stated that he didn't have an exact number, but that were regular staff members and the occasional visitors.

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Tom Dolbec asked Mr. Joy about handicapped parking spaces.

Mr. Joy stated that there would be 2 handicapped parking spaces, as required by code, but that very few residents at the facility would have their own vehicles.

MOTION:

Rick Callaghan made the motion to accept the case.

David Ruoff seconded the motion.

U/A

Bill Colbath abstained.

PUBLIC HEARING OPENED

None.

PUBLIC HEARING CLOSED

Dean Trefethen asked for staff recommendations.

Steve Bird stated that the plan had been through the TRC process and is on the agenda for the Planning Board pending the ZBA decision. The department has reviewed the criteria for a special exception and feels the applicant has adequately demonstrated all of those criteria, so the department supports the request for a special exception.

The board discussed handicapped parking and sewer capacity.

MOTION:

Rick Callaghan made the motion to grant the special exception.

David Ruoff seconded the motion.

U/A

ITEM #5

***Z02-8 Paul Karoutas (Applicant: Kim Hoa T. Doan, D/B/A C&K Nails), 595 Central Ave., A/K/A Assessor's Map 27, Lot 1, zoned Office, requests an Appeal from an Administrative Decision concerning the classification of a Nail Salon as a Personal Service Establishment.**

James Schulte, Attorney for the applicant, stated that the applicant had applied for a variance which the Board denied at the previous meeting. Attorney Schulte stated that there was not a need to request a variance because the determination made by the Code Enforcement Officer was not the correct interpretation of the ordinance and so, the applicant is now requesting an appeal from an Administrative Decision. He stated that a nail salon should be classified as an office use given the nature of the service, just as a dentist's office, chiropractor's office, or doctor's office would be. He suggested that anyone coming before the Board who is licensed by the State and who's trade is a State regulated industry, such as the applicant, should be treated like an office use, just as a dentist's, chiropractor, or doctor's office would be. He stated that there is no clear definition in the ordinance for office.

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Tom Dolbec asked several questions about the details of the salon's operation which Attorney Schulte answered.

Bill Colbath asked to see copies of the applicant's licenses.

Doug Cummings asked Attorney Schulte what he would consider a tattoo/piercing parlor in which the operator is also licensed by the State.

Attorney Schulte stated he would also consider that an office use.

Bill Colbath stated that because the license lists several items the applicant is qualified for, including barbering, manicures, and cosmetology, the nail salon would be more fitting as a Beauty Salon.

Doug Cummings agreed.

Attorney Schulte stated that at the last meeting, the Board accepted that a nail salon was neither a barbershop nor a beauty salon because those are identified separately in the ordinance, just a nail salon could be.

Bill Colbath stated that he assumed when the ordinance was written; manicuring was done within a beauty salon and was not done separately as a specialty.

Attorney Schulte stated that by using the licensing criteria, it would allow the official to make an objective decision using a standard that is easy to apply, rather than an ambiguous distinction between office and personal service establishment.

Dean Trefethen asked Tom Clark for a background on his decision.

Tom Clark stated that there are licensed facilities that are clearly not offices. He stated that it is true that not everything is defined in the City's ordinance, however he did not think everything should be or could be defined. With uses that are not clearly defined such as tattoo parlors, nail salons, and drycleaners, he has to look at the list of uses and fit it as best he can, as opposed to amending the ordinance each time a new use comes up. He stated that it is the applicant's responsibility to show the Board that a particular use fits into a definition and in this particular case; this was not an issue with the applicant's original application. If it had, he still would have come to the same conclusion.

Attorney Schulte asked Tom Clark if he would characterize a nail salon as a beauty salon.

Tom Clark stated he would not and that beauty salons are not allowed in the office zone either.

MOTION:

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

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PUBLIC HEARING OPENED

None.

PUBLIC HEARING CLOSED

The Board discussed Attorney Schulte's idea about licensing.

MOTION:

Doug Cummings made the motion to deny the appeal because the proposed use is not an office use.

David Ruoff seconded the motion.

U/A

(Tom Dolbec abstained)

Dean Trefethen called for a recess at 8:53pm

Dean Trefethen called the meeting to order at 9:07 pm

ITEM #6

***Z02-9 Peter H. Russell (Applicants: LaFrance Hospitality/Opechee Construction Corporation) New Rochester Rd. & Indian Brook Dr. A/K/A Assessor's Map 39, Lots 78, 83 & 89-94, zoned B-5, requests a variance from the terms of Article V, Section 170-16 to construct a hotel with a height of fifty-five (55) feet, four (4) inches, where the maximum building height is forty (40) feet.**

Steve Long of Opechee Construction stated that he and his co-applicants sought a variance for height to construct a 4 story, 99 room hotel, with a traditional, pitched roof which would be more aesthetically pleasing than a flat roof. He stated that the hotel would result in substantial justice given the New England style architecture, which would fit in with the surrounding residential properties. He stated that granting the variance would be consistent with the spirit and intent of the ordinance in that the building would be appropriately sized in relation to the surrounding properties in each zone. The addition of the pitched roof would not increase the number of floors in the hotel; it would only improve the architectural style. It will not result in diminution of surrounding property values and it would not be contrary to public or private interests.

Dean Trefethen asked if the picture provided with the plans was exactly what was to be built.

Steve Long stated that it was.

David asked if the pitched roof area would be used as attic space.

Steve Long stated that he was unsure exactly what that area would be used for.

Bill Colbath explained his concerns about clearance and light to the properties behind the proposed hotel at a height of 55 feet.

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Rick Callaghan asked if the extra 15' above the 40' maximum was solely for the peaked roof.

Steve Long stated that it was.

Steve Bird asked if any consideration had been given to alternative location for the hotel, namely, closer to the intersection and further away from the rear lot line. He stated that the Planning Department has been encouraging developers to break up parking lot layouts so that 50% of their parking is to the side or rear of the building. He asked if there had been designs done with the building in a different location.

Steve Long stated that other designs had been attempted, but, given shape of the lot and the setback requirements, it wasn't possible to move the building.

Steve Bird stated that the Planning Department would prefer to see several rows of parking behind the proposed hotel to lessen the impact of the proposed height. The Planning Board is promoting a better designed building which the applicant has done and the Planning Board supports the design of the building.

Dean Trefethen asked if the .3-acre State of New Hampshire owned piece of land located near the intersection was going to be acquired by the hotel.

Steve Long stated that it was.

Dean Trefethen asked if the proposed lots in the merger and re-subdivision plans had been drawn specifically around the proposed hotel.

Steve Long stated that they were, however the proposed plans were the best overall for the hotel.

Dean Trefethen asked if there was any proposed or planned use for lot #2 on the plans.

Peter Russell, current owner of the land, stated that he hoped to develop lot #2 eventually, however no one had yet stepped forward showing interest in the parcel.

Bill Colbath asked if there had been any consideration given to making the hotel a 3-story structure as opposed to a 4-story structure so that it would not require a variance.

Richard LaFrance stated that because of land costs, setting the hotel on a 2-acre parcel was the only economically feasible option for a 90-100 room hotel. The proposed footprint was the most viable option financially. He stated that building a 4-story hotel with a flat roof is possible, however, the peaked roof was more aesthetically pleasing.

Tom Dolbec asked if there would be signage on the southerly side of the building that would be visible from the highway.

Steve Long stated that he did not know.

Steve Bird asked what percent of the time would a hotel of this nature be at capacity, and what capacity would be needed to keep it running.

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Richard LaFrance stated that 65% occupancy year round would keep it running.

Tom Dolbec asked how many units there would be on each floor.

Richard LaFrance stated there would be approximately 25 rooms on the top three floors and approximately 20 rooms on the first floor.

Steve Bird asked if there would be a restaurant in the hotel.

Richard LaFrance stated there would not be.

MOTION:

Bill Colbath made the motion to accept the case.

David Ruoff seconded the motion.

U/A

PUBLIC HEARING OPENED

Larry Gould of Newton Street (not a direct abutter) stated that the applicants had not yet addressed noise pollution and that a hotel would disturb the neighborhood.

Peter Russell, owner, stated that moving the hotel forward on the lot would cause the driveway to be shorter posing possible safety issues.

Rick Brown, abutter, asked if the project would still have to go before the Planning Board.

Dean Trefethen stated that it would.

Richard LaFrance stated that noise, signage and neighborhood concerns would be addressed with the Planning Board.

Larry Gould stated his concerns about pedestrian safety and increased traffic volume.

Steve Long stated a traffic study would be done as part of the planning process.

PUBLIC HEARING CLOSED

Dean Trefethen asked for staff recommendations.

Steve Bird stated that the Planning Director, Steve Stancel, did not like the proposed location of the building on the lot and had asked the applicant to consider moving the building closer to the front and off of the rear lot line. The applicant had not done so yet. He stated that the department supports the pitched roof design and does not want to see a flat roof on the hotel, and that the proposed location is a prime commercial location for a much needed hotel in Dover. He concluded that the Planning Department would support the request for a variance for height conditional on a better location of the building.

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David Ruoff stated that he had difficulty identifying the hardship in this case.

Dean Trefethen stated that he too had difficulty identifying the hardship in this case, however the spirit and intent of the zoning ordinance is for this location to developed commercially.

FIVE CRITERIA:

1. It is the Board's conclusion that, if the applicant complies with the strict letter of the ordinance, he does not (Rick Callaghan voted does) face an unnecessary hardship. A structure could be built on this land that does not require relief from the height restriction.
2. It is the Board's conclusion that, if granted, the variance will not (Rick Callaghan and Tom Dolbec voted will) deliver substantial justice. The proposed height would have a detrimental effect on adjacent properties by blocking natural light and its sheer bulk would be imposing.
3. It is the Board's conclusion that, if granted, the variance will not (Rick Callaghan and Tom Dolbec voted will) be in harmony with the spirit and intent of the zoning ordinance. The intent is not to exceed forty feet in height.
4. It is the Board's conclusion that, if granted, the variance will (Tom Dolbec and Dean Trefethen voted will not) result in a diminution in value of the surrounding properties. It could potentially affect the cost of building on adjacent lots because of fire code regulation.
5. It is the Board's conclusion that, if granted, the variance will (David Ruoff voted will not) be contrary to the public or private interests or rights. Adjacent property owners' rights are affected by the proposed height location of the building.

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 with an appeal.

MOTION:

Bill Colbath made the motion to adjourn.
Doug Cummings seconded the motion.
U/A

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

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