

**DOVER ZONING BOARD OF ADJUSTMENT
MINUTES OF NON-PUBLIC SESSION
AUGUST 15, 2002**

MEMBERS PRESENT: Dean Trefethen, Chairperson; Richard Callaghan, Doug Cummings, David Ruoff, Tom Dolbec (alternate), Art Corte (alternate), Frank Landford (alternate)

MEMBERS ABSENT: Bill Colbath, Co-Chairperson

STAFF PRESENT: Chris Parker, City Planner; Tom Clark, Building Official; Jackie Freeman, Recording Secretary

Tom Clark stated that there would be another Non-Public Session scheduled for the following month because George Wattendorf did not receive notification of the meeting. He stated that the DeDe case would be going to court on October 8th and advised the Board to review the minutes of the meetings regarding the case and to prepare a confidential memo to George Wattendorf, elaborating on the reasons why the Board decided that granting the variance would cause a diminution in surrounding property values when there was no evidence of it, and to elaborate on the Board's decision that granting the variance would interfere with rights of the abutters, when no abutters attended any of the meetings. He also advised the Board to include in their memos, any compromises that could have been made.

Rick Callaghan asked if any of the tapes from the meetings were transcribed.

Tom Clark stated that the tapes were used to transcribe the minutes.

Dean Trefethen stated that he could not recall the diminution in property value issue, but regarding the abutters, he stated that with the garage that far back, the owners of the lot behind the DeDes' could not build up to their allowed set back due to safety concerns and maintenance issues. He stated that he believed there was room for compromise.

David Ruoff agreed and stated that he and Dean Trefethen were the only Board members who voted to grant the variance.

Rick Callaghan stated that Mr. DeDe could not tell the Board the height of the garage.

David Ruoff stated that it was the applicants' burden to prove that by granting the variance, there would not be a diminution of surrounding property values, and the applicant did not satisfy that burden.

Dean Trefethen stated that the Board had an obligation to protect the abutters even though they were not present at the meeting.

**DOVER ZONING BOARD OF ADJUSTMENT
MINUTES OF PUBLIC HEARING
AUGUST 15, 2002**

MEMBERS PRESENT: Dean Trefethen, Chairperson; Richard Callaghan, Doug Cummings, David Ruoff, Tom Dolbec (alternate), Art Corte (alternate), Frank Landford (alternate)

MEMBERS ABSENT: Bill Colbath, Co-Chairperson

STAFF PRESENT: Chris Parker, City Planner; Tom Clark, Building Official; Jackie Freeman, Recording Secretary

ITEM #1: NEW BUSINESS

A. Approval of minutes for regular meeting of July 18, 2002

Art Corte and Chris Parker noted corrections.

MOTION:

Rick Callaghan made the motion to approve the minutes with corrections.
Doug Cummings seconded the motion.

Vote U/A

ITEM #2: OLD BUSINESS

A. Z02-21 Kathleen L. White, 134 Court St., A/K/A Assessor's Map 21, Lot 7, zoned R-12 requests a variance from the terms of Article V, Section 170-16 to subdivide a parcel into three (3) lots, two (2) of which without frontage along a public right of way.

Dean Trefethen stated that this case had been tabled at the last meeting.

MOTION:

David Ruoff made the motion to take the case off the table.
Frank Landford seconded the motion.

Vote U/A

Paul Connelly, of Civilworks, located at 181 Watson Rd., represented the applicant. He stated that at the last meeting, the Board voted to table the case until the applicant could determine the ownership of the right of way known as Mt. Pleasant St. He stated that the applicant hired Attorney James Schulte to conduct a complete title search and that the Board members had been provided with a copy of the correspondence from him. He

stated that Attorney Schulte was unable to determine who owned the right of way, however, he identified that Mrs. White had the rights to pass and re-pass and run utilities through the right of way, as well as the right to assign her rights to others.

Dean Trefethen asked if Attorney Schulte's findings had been shared with the abutters.

Paul Connelly stated that he was not aware of the abutters being notified of the findings.

Dean Trefethen stated that Frank Landford would sit on the case and David Ruoff would sit out due to his absence from the last meeting.

Dean Trefethen stated that the Board had already accepted the case and that public hearing had already been held but that he would reopen the public hearing for anyone to respond to the new information that had been provided.

Public hearing opened.

Attorney Daniel Harkinson of 40 Wakefield St., Rochester, stated that he would be representing the abutters. He referred to the Abutters' Hearing Memorandum he handed out and stated that it was his finding that the ownership of the right of way was uncertain, though he had not yet seen Attorney Schulte's correspondence. He explained that the abutters and their families had maintained the right of way all along. He suggested that it was not for the Zoning Board of Adjustment to determine what Mrs. White's rights were, but only to decide if a variance was in order if the applicant had proven a hardship. He stated that the applicant had not proven any hardship and that the property in question had been used for many years as a single family dwelling, therefore proving that the applicant would not need a variance to use the property in conformance with the zoning ordinance. He stated that there was nothing preventing Mrs. White from putting in a street to serve as many lots as she wished to propose. He stated that the City has required new lots to have frontage on a public right of way since 1948 and Mrs. White knew this when she purchased the property. He stated that the applicant had not proven a hardship and as a matter of equity, the Board should not grant the variance as the abutters had developed, maintained, and paid for the right of way all along.

Steven White, 134 Court St., husband of the applicant, stated that the abutters are not the only people who maintain the right of way. He explained that his neighbor, Mr. Davis, plowed Mt. Pleasant St. during the winter and that he and Mr. Davis cut the grass along the right of way. He referred to some discussion that took place at the previous meeting regarding accidents that had occurred on the right of way and explained that he had obtained a letter from the Dover Police Department stating that there had been absolutely no accidents there. He stated that his hardship was that the zoning regulations prevent him from putting two lots off of the right of way and that he wants to minimize the use of his property to two lots rather than eight lots.

Charlene Creighton, abutter at 3 Mt. Pleasant St., stated that Mr. Davis does live on Mt. Pleasant St., but on Court St. She stated that there was no grass on either side of the right

of way but only trees, and to her knowledge, she had never seen Mr. White or Mr. Davis maintaining the right of way. She stated that she was still opposed to granting the variance.

Colleen Dean, 5 Mt. Pleasant St., stated she felt she was being threatened by the Board and that she felt the proposal was a safety concern.

Seth Creighton, 3 Mt. Pleasant St., stated that the Mulligans allowed Mr. Davis to use the right of way as a means of getting rid of the snow he plows. He stated that allowing houses to be built would destroy the habitat and wildlife in the field. He stated that the environmental concerns of the proposal had not been addressed.

Kathleen Thorner, abutter at 7 Mt. Pleasant St., stated that she disagreed with Mr. White's comment about the Mulligans not having a deeded right to use the road and that all of the family's deeds state that they have access to it just the same as he does. She also stated that the Mulligans bring their garbage to Court Street on garbage day and do not leave it on Mr. White's land.

Lillian Davis, 136 Court St., stated that during the thirty years she's lived there she has parked on Mt. Pleasant St. because she has no parking on Court Street.

Steven White clarified that if eight houses were to be built, they would not use Mt. Pleasant but would most likely put in another road through his lot even though he had the right use the right of way if he wanted to.

Paul Connelly stated that it was suggested by Attorney Harkinson that the applicant represented that they could not do anything with the property. He clarified that they did not state that in their application. He stated that the proposal was innocuous and a natural expansion of the five acres of land in the R-12 zone. He stated that the applicant would accept the condition that no future subdivision be allowed and that if the applicant wished to upgrade the right of way, they had the right to do that.

Public hearing closed.

Dean Trefethen asked for Staff recommendations.

Chris Parker stated that the Planning Department could not support the variance request. He stated the precedent was set in 1982 when Edward Mulligan came before the Board requesting that a lot be subdivided and was told that there was no frontage on a public way so he was denied the variance request. He stated that if the applicant wanted to subdivide, they would have to put in their own road.

Dean Trefethen asked if the right of way would be considered City property as no one seemed to own it.

Tom Clark stated that Mt. Pleasant was not a City street.

Doug Cummings asked if anyone was being taxed for the right of way.

Tom Clark stated that it was not a separate tax lot on the Assessor's maps.

Tom Dolbec asked if the Mulligans' lots were subdivided off of another lot at one point and they were all conveyed the right to use the right of way without having frontage on Court St.

Chris Parker stated that there were no new lots created there since 1978 and in 1979 the Zoning ordinance was completely revamped, so the lots that were created prior to 1979 were not required to have frontage on a public street.

Rick Callaghan stated that the Board had requested proof of ownership of the right of way and that he was not convinced that had been determined. He stated that he was also concerned that Attorney Schulte's memorandum hadn't been presented to the abutters and they weren't given the opportunity to respond to it. He asked if the Board was willing to grant the variance while still unsure who actually owns it.

Dean Trefethen stated that issue of ownership may never be resolved and he did not feel it was necessary to pursue it. He stated that he felt the central question was whether or not the request constituted the best interest of everyone involved, including the White's, the Mulligan family and the City of Dover. He also stated that he felt it was clear that the White's had the right to use the right of way, but asked if the Board would grant the variance knowing that it would increase the use of the right of way.

Rick Callaghan stated that he was concerned that the abutters had not seen the correspondence from Attorney Schulte.

Doug Cummings stated that Mr. White had not seen the correspondence from Attorney Harkinson, just as the abutters had not seen the correspondence from Attorney Schulte. He stated that the abutters are concerned with safety and environmental issues. He asked if the Board could place a condition that the road be upgraded upon granting the variance.

Tom Clark stated that any reasonable condition could be attached to the variance, however the issue of who would have to upgrade the road would be a civil matter.

Chris Parker stated that granting the variance would set a precedent and any landowner on that road could come before the Board requesting the same thing.

Doug Cummings stated that some sort of association should be established since they all share the right of way.

Frank Landford asked if any private road with more than five house lots had to have certain standards.

Tom Clark stated that was true, however the lots existed prior to that regulation being enacted.

Art Corte stated that he was concerned that the Board was going to deny the variance even though Mrs. White had offered to put a conservation easement on the remaining land. He stated that if the variance were granted, there would eventually be eight houses there.

Rick Callaghan stated that voting in favor of the applicant could be cause for appeal due to the fact that they had not seen Attorney Schulte's letter.

Dean Trefethen asked if Attorney Harkinson had a copy of Attorney Schulte's letter.

Attorney Harkinson stated that he did, but that he would not be in a position to respond to Attorney Schulte's correspondence that night.

Rick Callaghan stated again that voting in favor of the applicant without presenting the abutter with the new evidence would be cause for appeal.

Dean Trefethen suggested tabling the issue and allowing the attorneys to talk with each other.

MOTION:

Dean Trefethen made the motion to table the case and instructed both parties to share anything filed with the Board with each other prior to the next meeting.

Art Corte seconded the motion.

Vote 4-1 (Doug Cummings opposed)

B. Z02-24 Audry DeMichelle & Suzann Beals, 187 Central Ave., A/K/A Assessor's map 20, lot 62, zoned RM-10 requests a special exception as provided by the terms of Article VI, Section 170-25.1 and Article XII, Section 170-52.C(3) to establish a four family dwelling.

Dean Trefethen noted that the case had been tabled at the last meeting.

MOTION:

Dean Trefethen made the motion to take the case off the table.

Frank Landford seconded the motion.

Vote U/A

Attorney FX Bruton of McNeill, Taylor, & Gallo in Dover represented the applicant. He stated that the Board had requested that the applicant show a final parking plan. He stated that all of the parking would be on lot 62 and that cross easement deeds were drafted for lots 62 and 63. He explained the easement that Steve Bird questioned at the

last meeting stating that it had been merged out of existence and had been terminated by deed. He explained that the proposed screening was depicted on the revised plans and that the open space calculations had been revised. He stated that he felt he had met the Board's requests.

Dean Trefethen stated that Art Corte and Frank Landford would sit on the case. David Ruoff abstained due to his absence from the last meeting.

Dean Trefethen stated that he was concerned about the proposed fence right on Central Ave., on lot 62. He stated that he was concerned at how close it was to the sidewalk and that he would like the fence moved back several feet. He also stated that he was concerned that over time, snowplowing would deteriorate the fence and so he would like to see the fence moved further away from the pavement to allow more room.

Attorney Bruton stated that the applicant would agree to the suggestions.

Frank Landford stated that he was concerned that he would like to see the trees, bamboo and other vegetation undisturbed when the driveway is put in.

Attorney Bruton stated that the applicant did not intend on disturbing any of the vegetation.

Public hearing opened.

None.

Public hearing closed.

Dean Trefethen asked for Staff recommendations.

Chris Parker stated that the Planning Department supports the Special Exception request and that the applicant had addressed the parking concerns, however the application may have to go to Technical Review Committee as there was some concern about the parking spaces numbered 6 and 7 and 9 through 12.

MOTION:

Rick Callaghan made the motion to grant the Special Exception with the condition that the Technical Review Committee reviews it and that all issues are resolved.

Frank Landford seconded the motion.

Vote U/A

ITEM #3

Z02-25 The Wentworth Home, 795 Central Ave., A/K/A Assessor's map 37, lot 37-1-A, zoned Office, requests a variance from the terms of Article IX,

Section 170-32.I(3)(b) to erect a freestanding sign of twelve (12) square feet where a maximum of four (4) square feet is allowed.

Andy Galt, Trustee on the Board of Trustees at the Wentworth Home, stated that the Wentworth home wished to replace the existing freestanding sign measured at 24"x 41" with a sign that would be 36"x 48". He stated that the size restriction of four square feet caused a hardship on the Wentworth Home as it is a single business entity and not an office complex and is also directly adjacent to Wentworth Douglas Hospital whose building and signage has increased greatly over the last decade and currently dominated the Office zone along the Central Avenue corridor. He also explained that the traffic was very heavy and drivers' attention is directed at the road, so most people are unable to look for signage on the wall of the building, especially when the building is set so far back from Central Ave. He stated that the size limit severely restricts the Wentworth Home from being able to identify itself and that a larger sign would increase driver safety by identifying the building more clearly. He stated that a 3'x 4' sign would be large enough to be effective in identifying the property and that they are not seeking the attention of those who aren't looking for the Wentworth Home, but simply seeking the attention of those trying to find it. He stated that there would be no diminution of value of surrounding properties. He explained that sign would be in the same location as the existing sign, but increased by 12" in height and 7" in width and that there would be no change in vehicular sight distance as the sign would be no closer to the street.

David Ruoff asked Mr. Galt why he submitted a revised page of the variance application.

Mr. Galt stated that he had made an error in the section of the ordinance they were seeking a variance for.

David Ruoff asked Tom Clark if there was an issue with the revised page of the application being submitted on August 12th.

Tom Clark stated that the page was filed supplementary.

Dean Trefethen stated that Tom Dolbec would sit on the case.

MOTION:

David Ruoff made the motion to accept the case.

Doug Cummings seconded the motion.

Vote U/A

Public hearing opened.

None.

Public hearing closed.

Dean Trefethen asked for Staff recommendations.

Chris Parker stated that the Planning Department recommended approval and that the request pertains to one of the updates to the sign ordinance, and that if that change were in affect, the applicant would not need a variance.

Rick Callaghan asked if the sign would be lit.
Mr. Galt stated that the sign would not be lit.

FIVE CRITERIA:

1. It is the Board's conclusion that, if the applicant complies with the strict letter of the ordinance he does (Tom Dolbec voted does not) face an unnecessary hardship. It is a needless and unnecessary restriction to enforce the sign ordinance because current zoning does not take into account the changes that have occurred in this zone recently.
2. It is the Board's conclusion that, if granted, the variance will deliver substantial justice. The proposal allows a reasonable replacement of an already non-conforming sign and allows for better safety of motorists due to the increased visibility.
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 proposal is in accordance with the size of the lot and building and is consistent with the changes proposed to the ordinance.
4. It is the Board's conclusion that, if granted, the variance will not result in a diminution in value of surrounding properties. The proposed sign will be at the same location and will not be substantially larger than the current one, and will not affect any neighboring property.
5. It is the Board's conclusion that, if granted, the variance will not be contrary to the public or private interests or rights. The proposal allows for greater visibility on a very busy main thoroughfare.

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

ITEM #4

Z02-26 William Scotti (Applicant: William Smillie/Nasar Dover, LLC, 863 Central Ave., A/K/A Assessor's Map 38, Lot 5, zoned B-3 requests a variance from the terms of Article IX, Section 170-32.G(3)(c) to erect a freestanding sign with approximately sixty-four (64) square feet in area where a maximum of thirty-eight (38) square feet is allowed.

William Smillie, Nasar Jeweler, 7B Raymond Ave., Salem, NH stated that he is opening a retail store in a building that had been vacant for two years and that the owner, Bill Scotti, had been very particular in selecting a tenant. He explained that Service

Merchandise, who did a large quantity of jewelry business, had recently closed, and that Nasar had been seeking a new location, so the building at 863 Central Ave. was a very appealing property to them. He explained that there would be extensive renovations done to the building, including a wrapped awning around the front and sides of the building and that approximately \$1,000,000 would be spent on the renovations. He stated that the proposed sign was 64 square feet and was 8' in width, which would not extend any further than the existing sign. He stated that the sign would be internally illuminated and would have an aluminum face. He explained that it would be placed on the existing pole with aluminum cladding over it. He stated that every surrounding property on Central Ave. had a minimum of 78 square feet of signage and that they are competing for business in a very busy commercial area. He explained that Nasar would be the only tenant occupying that building and that they had signed a lease agreement. He explained that no public or private rights would be affected by granting the variance.

David Ruoff asked how far the sign would be from the front of the building.

William Smillie stated that it was approximately 19 or 20 feet.

David Ruoff asked if the sign was changeable and if would be flashing.

Tom Clark stated that it was not a flashing sign, and that there would not be a change more than once every ten minutes.

Chris Parker asked if they had considered a sign without a changeable area and if they would have conformed to the 38 square foot maximum area allowed without the changeable area.

William Smillie stated that in order to compete in that area, visibility is needed.

Chris Parker asked if the awning had text on it.

William Smillie stated that it did have text and would be considered an accessory wall sign.

Rick Callaghan stated that a sign on the street and on the awning was a lot of signage for one building.

William Smillie stated that they had discussed reducing the size of the copy on the awning and that he'd be willing to compromise. He explained that the only area on the awning that was lit was the copy.

MOTION:

David Ruoff made the motion to accept the case.

Rick Callaghan seconded the motion.

Vote U/A

Dean Trefethen stated that Tom Dolbec would sit on the case.

Public hearing opened.

Dean Trefethen read a letter from William Scotti, owner of the property, asking the Board to grant the variance.

Public hearing closed.

Dean Trefethen asked for Staff recommendations.

Chris Parker stated that the Planning Department did not support the variance request and that the visibility heading northbound was not an issue.

Rick Callaghan asked if the bottom of the sign would still be considered part of the sign if it just showed time and temperature.

Tom Clark stated that there was a provision in the ordinance that excluded time and temperature from sign regulations.

The Board discussed the changeable area of the sign.

David Ruoff stated that he did not have a problem with the proposal and that the awning sign complies with the ordinance and was in his rights to have one.

FIVE CRITERIA:

1. It is the Board's conclusion that, if the applicant complies with the strict letter of the ordinance he does (Rick Callaghan & Tom Dolbec voted does not) face an unnecessary hardship. The hardship is in that the building was oriented to the street in such a way that reduces the amount of signage allowed, constituting a hardship.
2. It is the Board's conclusion that, if granted, the variance will (Rick Callaghan & Tom Dolbec voted will not) deliver substantial justice. The proposal will allow signage that is consistent with the signs of abutters.
3. It is the Board's conclusion that, if granted, the variance will (Rick Callaghan & Tom Dolbec voted will not) be in harmony with the spirit and intent of the zoning ordinance. The intent is for reasonable sign size in relation to the size of the building and this proposal is reasonable based on the overall size of the building.
4. It is the Board's conclusion that, if granted, the variance will not (Rick Callaghan voted will) result in a diminution in value of surrounding properties. The proposal will actually be an improvement to the property and might indirectly benefit abutters because of the improvement.

5. It is the Board's conclusion that, if granted, the variance will not (Rick Callaghan voted will) be contrary to the public or private interests or rights. Granting the proposal will allow similar rights as adjoining properties.

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

ITEM #5

Z02-27 Tam & Nancy Doan, 16 Dover Point Rd., A/K/A Assessor's Map K, Lot 18-2, zoned R-12 requests an equitable waiver of dimensional regulations to maintain a foundation/single family dwelling within approximately fourteen and one half (14 ½) feet where a minimum of fifteen (15) feet is required.

David Vincent, surveyor, represented the applicant. He stated that the existing foundation is just under one half of a foot in violation where the garage would be. He stated that Mr. Doan was shown the iron pipes at the two front corners of the property when he purchased the home and prepared the plans for the home, which later proved to be incorrectly placed. He stated that there were abutters who submitted letters stating that they had no objections to the location of the home. He explained that there was a sewer line passing through the property, which was the reason why Mr. Doan located the foundation so far to the left of the property. He concluded by stating that this was an honest mistake by Mr. Doan.

David Ruoff stated that he was unsure where the pipe was that the mis-measurements were taken from.

David Vincent explained.

Art Corte asked what alerted the applicant to the error.

David Vincent stated that it was discovered when Mr. Doan needed to submit a foundation certification drawn by a licensed surveyor.

Dean Trefethen asked how far away the closest structure was from Mr. Doan's left lot line.

David Vincent estimated he was approximately 25'.

Dean Trefethen stated that Art Corte would sit on the case.

MOTION:

David Ruoff made the motion to accept the case.
Art Corte seconded the motion.

Vote U/A

Public hearing opened.

None.

Public hearing closed.

Dean Trefethen asked for Staff recommendations.

Chris Parker stated that the Planning Department was in favor of the equitable waiver request.

FOUR CRITERIA:

1. It is the Board's conclusion that the request does involve a dimensional requirement.
2. It is the Board's conclusion that the nonconformity was discovered after the structure was substantially completed or after a vacant lot in violation had been transferred to a bona fide purchaser, and the violation was not an outcome of ignorance of the law or bad faith but resulted from a legitimate mistake. (Rick Callaghan was opposed)
3. It is the Board's conclusion that the nonconformity does not constitute a nuisance nor diminish the value or interfere with future uses of other property in the area.
4. It is the Board's conclusion that the cost of correction does outweigh any public benefit to be gained.

Therefore, based upon the foregoing, it is ordered that the application for Equitable Waiver of Dimensional Requirements be granted.

MOTION:

Doug Cummings made the motion to adjourn.

Rick Callaghan seconded the motion.

Vote U/A