

**DOVER ZONING BOARD OF ADJUSTMENT
MINUTES OF PUBLIC HEARING
FEBRUARY 15, 2001**

MEMBERS PRESENT: Dean Trefethen, Chairperson, William Colbath, Co-Chairperson, David Ruoff, Rick Callaghan, and Doug Cummings

STAFF PRESENT: Thomas Clark, Building Official, and Bruce Woodruff, City Planner

ITEM #1: NEW BUSINESS

A. Approval of minutes for regular meeting of December 21, 2000.

MOTION:

Rick Callaghan made the motion to accept the minutes with the correction on pg. 2 fourth paragraph from the bottom, first line. Change from "for a 36,000 two-story" to read "for a 36,000 sq. ft. two-story."

Bill Colbath seconded the motion.

U/A

Dean Trefethen asked Tom Clark if he had anything for the Board?

Tom Clark advised the Board that in regards to case Z 00-30, Stasia Panopoulos, Appeal From an Administrative Decision for the garage on St. Thomas St., he had been advised by Atty. Schulte Mrs. Panopoulos had purchased the property from Mr. Whitcomb. The foundation will be removed and her lots will be consolidated and it will become a parking lot.

Dean Trefethen made the motion to remove the case from the table and to withdraw the application at the request of the applicant.

David Ruoff seconded the motion.

U/A

Tom Clark also advised the Board of the Supreme Court's decision in regards to Simplex, and the different criteria to establish hardship. He contacted the New Hampshire Municipal Association and the Office of State Planning and there is, as of this date, no guidelines or opinions written. The Board will receive them as soon as they are written. They do not anticipate any before springtime.

Bruce Woodruff added in regards to the Simplex case that, although the Building Official does not agree with him, (1) this is very new and he thinks that the citizens of Dover would recognize that this Board is doing a great job and has measured the five criterion in a well-balanced manner. Bruce's suggestion is for the board to continue as they have been doing. (2) This Supreme Court case dealt with a use variance in the Town of Newington and although it is not clear to Bruce in this case that the hardship criteria is to apply to all the variance requests. Bruce feels that clarification is needed as to whether the Supreme Court meant just use variances.

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Tom Clark responded that it is a use variance that was decided by the Supreme Court but Tom feels that it is clear in their decision when they stated that henceforth all variances, it does not say only use variances. It states, "henceforth applicants for a variance," not just a use variance, "may establish unnecessary hardship by proof that..." He does not feel that it is unclear, but that they had relaxed their standards because they recognized their standards were overly strict. He feels that it applies to both use and dimensional regulations. Tom also discussed it with Atty. George Wattendorf and he agrees with him.

ITEM #2: OLD BUSINESS

A. Z 00-25 Rachhpal Singh, 110-112 Broadway, A/K/A Assessor's Map 27, Lot 185, zoned B-3, requests a variance from the terms of Article V, Section 170-17 to construct an accessory structure (detached garage) within two (2) feet of a side property line and within seven (7) feet of a rear property line, both where a minimum of ten (10) feet is required. (This case was tabled at the September 21, 2000 meeting pending receipt of a certified plot plan.)

Mr. Singh had submitted a certified plot plan to the Board as requested, and he had nothing to add to his application.

Dean Trefethen asked Mr. Singh, based on the plot plan, if the property line is where he thought it was?

Mr. Singh answered that it is.

Dean Trefethen asked for Staff recommendations.

Bruce Woodruff stated that upon inspecting the lot he found that there is no real foundation but rather cinder blocks. There was a garage structure there that was removed that went over the lot lines, and it was a shared garage. This lot is only 66-1/2 feet wide and deficient in area and if Mr. Singh were to propose an attached garage he could have it up to 6 feet to the property line. Although in September the Planning Department would not support a variance for 2 feet on one side and 6-1/2 feet to 8-1/2 feet on the back side, the Department would support a variance of 6 feet on two sides of the property line because of the width of the lot.

Rick Callaghan asked if there was a driveway.

Tom Clark answered that there was a driveway between the two buildings that was common to both lots. It appears that there would need to be a driveway extension to go to the proposed garage location.

PUBLIC HEARING OPENED

Atty. Don Whitham represented Ron Newell, an abutter. The abutter feels that the garage should be placed where it originally was. The construction of a garage in the proposed location would be too close to the abutter's property and would substantially interfere with their light. He doesn't feel that Mr. Singh's request meets the hardship requirements of the ordinance or meets the spirit and intent of the ordinance. He sees no reason why the garage cannot be placed where it originally was.

Dean Trefethen read the letter submitted by Thomas Moore. The proposed garage will be within seven feet of his property line at one Florence Street. He is concerned that the large tree on his property, which overhangs 110-112 Broadway, could fall and damage this proposed structure. He is hopeful that Mr. Singh will remove the tree or limbs before the variance is approved.

PUBLIC HEARING CLOSED

Dean Trefethen is concerned with having two feet on the side because of drainage onto the abutter's property. He sees no reason why there cannot be ten feet on the rear. He feels that there should be more than two feet on the side.

Rick Callaghan also agrees with the concern of two feet on the side because if the abutter wanted to have a garage two feet away from the line there would be only 4 feet between buildings. He agrees with having six feet recommended by the Planning Department and also with having ten feet from the rear. In regards to having the garage in the same place as originally, it is clear that a structure cannot be placed covering both properties.

Doug Cummings agrees with the six feet on the side.

David Ruoff also agrees with the six feet on the side.

Bill Colbath also agrees with the six feet on the side.

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does (Doug Cummings voted does not) face an unnecessary hardship. The width of the lot is nonconforming which allows for a six-foot setback on the side if the structure was attached. Using this inequity in the zoning ordinance, it would be needless and unnecessary to enforce the side setback of ten feet, constituting a hardship. There is no hardship in the rear setback.
2. It is the Board's conclusion that the variance will deliver substantial justice. The proposal allows for replacement of a deficient structure while maintaining reasonable setbacks.

3. It is the Board's conclusion that the variance will be in harmony with the spirit and intent of the zoning ordinance. The Board's proposed setbacks are within the intent of the ordinance's guidelines.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. The Board's proposed setbacks are ten feet for the rear, which is the ordinance, and six feet on the side which is better than the previous zero.
5. It is the Board's conclusion that the variance will not be contrary to the public interest. The proposed setbacks would not be as intrusive as previously and safety issues are addressed by having the six feet side setback.

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

MOTION:

Bill Colbath made the motion to place the following conditions: (1) The side setback is to be a minimum of six feet, and (2) the rear setback is to be a minimum (no relief granted) of ten feet. David Ruoff seconded the motion.

Four in favor and one against (Doug Cummings opposed)

ITEM # 3:

Z 01-1 Northeast Credit Union and Bardwell Realty Inc. (Applicant: Maxi-Drug Inc. D/B/A Brooks Pharmacy), 677 and 679 Central Ave., A/K/A Assessor's Map 27, lots 219, 220 and 220-A, zoned B-3 and R-12 requests a variance from the terms of Article V, Section 170-16 to construct a building within approximately seven (7) feet and approximately fifteen (15) feet from a front property line as it abuts a street where a minimum of fifty (50) feet is required.

Mr. McNeill represented the applicant and submitted pictures to the Board and a copy of the Table of Dimensional regulations along with a site plan of the property with surrounding properties.

Dean Trefethen advised the applicant that one of the board members was called away so there are only four board members left. Mr. McNeill asked for a few minutes to confer with his clients as to whether to be heard tonight or postpone until next month and the board consented

Mr. McNeill returned with an agreement from the clients to proceed.

Mr. McNeill was also accompanied by Peter Hedrich who will address the traffic issues, David Yetton from Brook's to address the operational issues, and Kerry Forbes will address the diminution of property value.

Mr. McNeill displayed a site plan and reviewed the properties in question and the means of access for the ATM machine, the drive-up window for prescriptions, and the drug store. The store hours will be 9 to 9 and will have approximately 5 to 6 employees at a period of time. He pointed out where the ATM machine will be located on the plan.

Mr. McNeill introduced Peter Hedrich, traffic and site engineer for Brook's Pharmacy.

Mr. Hedrich stated that they meet the minimum parking requirements of 42 spaces. There will be 12 spaces at the rear and 30 spaces at the front of the site, closest to Oak Street. They have done parking counts at several other similar facilities to determine what the peak usage would be for this type of use. They found a range of occupancy of 15 and 26 parking spaces of the sites that were inventoried. So he feels that they will have more than adequate parking. In regards to the proposed drive-thru, it can range between 15 and 30 customers in a day that would use it. There is adequate space for six cars to stay on the site. In regards to traffic generation, they are replacing 3 existing uses; a bank, convenience market, and insurance office. They found that the site previously probably experienced about 293 customers in the peak hour period. Having the pharmacy and ATM they would probably see about 83 customers on the lot, giving a reduction of over 200 customers during the peak hours. This reduction should be a great benefit to this section of Central Ave.

Kerry Forbes stated that the current buildings are closer to Central Ave. than the proposed building will be. He reviewed the surrounding buildings and how they are also closer to the right-of-way. He sees no reason for any diminution of surrounding properties.

Mr. McNeill addressed the remainder of the criteria.

Dean Trefethen expressed his concern with the proposed ATM sign and where it will be located. He asked if the proposed sign on the plan under the minimum size?

Mr. McNeill stated that they are not sure where the sign will be at this time. He stated that the proposed sign on the plan is under the minimum size and that it may be located on the corner of the property.

Dean Trefethen asked about the philosophy that led to the splitting up of the parking instead of locating the building where the parking would be all in one area.

Peter Yetton answered that the building will need a back entrance for trucks and the trucks will need to circulate all around the lot. So to make this functional they will need the back driveway as well as the driveway on Oak Street. They are also trying to keep in alignment with the opposite property on Ash St. The 30 space parking in the front is more than adequate for the customers. Employees would park in the rear.

Dean Trefethen also asked about the front entrance overhang and whether or not they could do without it?

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David Yetton answered that the overhang is part of their identity and it gives them nine feet to give the customers ability to come in with handicapped accessibility and to shelter them. The overhang would continue along the sidewalk and protect the pedestrians coming from either direction.

Dean Trefethen asked if there is enough existing pavement along Central Ave. to provide all of the proposed lanes while not taking away parking spaces?

David Yetton answered that there is.

Mr. McNeill informed the Board that the traffic study that was originally conducted did not include the Market store. They have since purchased this property. The reason for it was that a parking variance would have been required without this property. So to have all of the parking on-site, they considered obtaining this property.

MOTION:

Bill Colbath made the motion to accept the case.

Rick Callaghan seconded the motion.

U/A

Dean Trefethen expressed a concern for the ATM and drive-up window being so close to the abutters.

David Yetton answered that there will be the use of phones for prescription for privacy and the buzz sound goes off in the pharmacy and then the customer has to go. They can not stay there. It is only for drop off and pick up.

Bruce Woodruff stated that the Planning staff agrees with what Mr. McNeill said, particularly with the application of the fifty-foot setback, which on this property is unreasonable. However, if this application came before the Board prior to the Simplex case, he still feels comfortable that the Board would recognize that the fifty-foot setback, in this neighborhood, is the hardship itself which is in the handbook. Both Dover's master plan and in the site review regulations, Dover's Code Chapter 149, states and advocates strongly that in the downtown and along the Central Ave. corridor, new development should more closely match its neighborhood. The neighborhood on Central Ave. the buildings are close to the street and sidewalk with parking to the rear. Bruce read a couple of sections from chapter 149 to the Board (14K1 and section L). By not granting this variance the Board would be treating this property differently than most others in the neighborhood. And that is a signal that there is a hardship. Therefore they support the granting of the variance with a condition and a question. Minor changes could be made to the plan that is presented tonight. There are issues with the landscaping and driveway etc. that can change in the site review process before the Planning Board. They recommend a condition be placed that the applicant will be held to the architectural treatment shown on the elevation view as submitted to the Board including the Oak Street side of the building.

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Mr. McNeill stated that the applicant agrees to that condition.

Dean Trefethen asked Bruce Woodruff if he had been involved with the discussions on the traffic flow and the parking on this site?

Bruce Woodruff answered that he had and that this use will not generate as much traffic as the previous use.

PUBLIC HEARING OPENED

David Bamford, abutter, owner of two apartment buildings at 667 Central Ave. The amount of traffic in front of his buildings is intense because of the market place. The proposal will cut down the traffic and benefit his apartment buildings. He is in favor of the proposal.

Ronald Copp, abutter at 100 Park St. stated that his house is at the rear of the property. He is neutral to the proposal. He asked what type of compensation could be done about the noise factor because he works the third shift and sleeps days. He is concerned with the lighting in the nighttime. The bank had a light that shined right into his living room window. He used to go into his back yard and have to pick up the bank deposit slips. He asked how much trash would be produced by this business?

Anthony Martuscello, abutter at 7-11 Oak Street. He is not opposed to the variance the way the building is situated, although it effects some of the issues of the exiting strategy onto Oak Street. It seems that the traffic will be modified, however there seems to be more exiting on the Oak Street side. Also the lighting of the ATM and hours of operation is an issue. There is very little buffer for noise.

PUBLIC HEARING CLOSED

Dean Trefethen asked Bruce Woodruff about the lighting?

Bruce Woodruff answered that this is addressed in the site regulations.

Rick Callaghan stated that he has no objections so far. The traffic issue and the land changes and lighting will be addressed by the Planning Department and the Technical Review and Planning Board. He agrees that the market place does generate a lot of traffic and is hazardous.

Doug Cummings stated that the only problem he has is with the Oak Street exit. It has always been a problem. But in looking at the plan, there seems to be nothing that they can do with it.

Bill Colbath stated that he has two concerns. The request is for a seven-foot front setback and in regards to the twelve feet that is available, he feels that the Board is obliged to grant relief to the same that the neighbors have. He does not feel that he can support the seven-foot

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setback to the awning. Central Ave. will grow in width and they would be limiting themselves in that. That is the only concern that he has at this time.

Dean Trefethen stated that in regards to the overhang, they could still have the space they need for egress that the overhang provides, although it may take some space from the interior of the store to do that.

Bill Colbath stated that the store or width of the building would have to change. He thinks that the twelve-foot is reasonable but not the seven-foot.

Bruce Woodruff clarified that the City does not have any long range plans to widen Central Ave. The new transportation chapter of the master plan recommends leaving Central Ave. as it is and try to apply other treatments to make the traffic move more efficiently. There is a possibility that this corner may need to be widened a foot or two but it may not be necessary.

The Board discussed the traffic and the lack of room for a large vehicle to manipulate the corner at Oak Street and Central Ave.

The Board also discussed, at great length, the handicapped access, and the overhang protection for the pedestrians and handicapped. Confusion resulted between the Board and applicant in their discussion and understanding of the need for the proposed size of overhang, the setback, and what is perceived as the overhang or is the overhang actually the building being defined as an overhang. There were also some changes to the site plan that day showing the setback for the overhang differing from the site plan that was presented to the Board.

Mr. McNeill stated that they (applicant) met with the City on Tuesday of this week and they were concerned with the aesthetics and so the applicant worked on a plan that would be aesthetically pleasing to the City. They found out what was aesthetically pleasing at about 4:30 this afternoon. At no time did the applicant presume that they were dealing with anything other than a fifteen-foot legitimate setback from the street.

Mr. McNeill stated that, in the form of relief, the applicant has a couple of options. The applicant is asking the Board to approve what is on the table. They propose a uniform twelve-foot setback. If the setback across the street is twelve feet and the abutters could have twelve feet, the applicant will make adjustments in regards to the protrusion into the setback. But that would make the rest of the site work even with the overhang, in terms with their discussion with Mr. Clark. They are very concerned about getting the handicapped people into the building. They are not in the position to state that they would be able to set the building back two feet because the engineer is not certain that a truck would be able to get through there. The applicant does not feel that it is feasible to reduce the size of the building by two feet. They are trying to propose a compromise that is compatible with the neighborhood, responsive to Mr. Colbath's concerns, and get it back twelve feet. Some redesigning will be necessary. They would like to proceed tonight with the fifteen-foot setback, moving the protrusion back so that it is compatible with the neighborhood, if the Board is comfortable with it.

The Board and applicant discussed once again the setback and overhang for clarification.

Rick Callaghan asked Tom Clark why handicapped accessibility is required along Central Ave. when there is one at the front of the building?

Tom Clark answered that it is not required.

The applicant stated that this is being supplied for the handicapped that are coming up from the sidewalk. Some will not be in wheel chairs but may need this accessibility.

Rick Callaghan asked Tom Clark for clarification because he agrees that the canopy has to be this big on the Oak Street side but not on the Central Ave. Side.

Tom Clark answered that the book says that the handicapped parking space has to be close to the accessible entrance and that entrance is on Oak Street. If they are making additional accommodations for people that may use the bus then this may be for customer relations but it is not required.

Rick Callaghan asked Bruce Woodruff how altering the building would affect the Planning Department's requirements to have the building remain as much as it appears on the drawing as possible?

Bruce Woodruff answered that the Planning Department would withdraw its recommendation and support for the variance. It is very important for Planning Department to have that five-foot roof extension so that the sloped roof can be there. It is very important, and they are asking the Board to support that.

The Board and Applicant once again discussed the entryway structure and resizing the building.

Bill Colbath agreed to the twelve-foot setback.

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. The depth of the lot and the restrictive 50' front setback creates a hardship on this lot. The proposal of a 12' setback, to structural support, is equitable considering the neighborhood.
2. It is the Board's conclusion that the variance will deliver substantial justice. The proposal allows the development of the site consistent with the B-3 zone.
3. It is the Board's conclusion that the variance will be in harmony with the spirit and intent of the zoning ordinance. The spirit and intent is to provide reasonable setbacks, and given most of the nearby neighborhood has a 12' setback requirement, that would be a reasonable setback for this property.

4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. The proposed use is consistent with existing uses, but will likely be less intensive.
5. It is the Board's conclusion that the variance will not be contrary to the public interest. The proposed use is less intensive than previous uses of the site, alleviating some traffic problems. Also, the proposed structure will be more aesthetically appealing than the current structure.

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

MOTION:

Bill Colbath made the motion the place the following conditions:

1. A minimum of 12' setback to structure in the front.
2. The design to be similar to proposed and acceptable to the Planning Board and department.

Rick Callaghan seconded the motion.

U/A

Dean Trefethen reminded the Board that the election of officers should have taken place at this meeting, however, considering the hour it would be postponed until the next meeting.

MOTION:

Rick Callaghan made the motion to adjourn.

Bill Colbath seconded the motion.

U/A

List of members:

	<u>Term Expires</u>
Robert Mullan – regular member	12/31/2000
Thomas Dolbec – alternate member	12/15/2001
John Murphy – regular member	12/31/2001
Douglas Cummings II – alternate member	1/22/2002
David Ruoff – alternate member	4/13/2002
Richard Callaghan – regular member	4/13/2003
William Colbath – regular member	10/23/2003
Dean Trefethen – regular member	10/23/2003