

**DOVER ZONING BOARD OF ADJUSTMENT
MINUTES OF PUBLIC HEARING
APRIL 19, 2001**

MEMBERS PRESENT: Dean Trefethen, Chairperson, William Colbath, Co-Chairperson, John Murphy, Tom Dolbec, Doug Cummings, and David Ruoff

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

ITEM #1. WORKSHOP

The Board met at 6:30 p.m. to review the forms and make the necessary changes to reflect the hardship definition per the Supreme Court decision.

The Board met at 7:00 p.m. for the regularly scheduled Public Hearing.

Dean Trefethen announced that case #Z 01-4, Kevin Kelley, has been withdrawn and that if there were any abutters present they may leave.

ITEM #2 NEW BUSINESS

A. Approval of minutes for regular meeting of March 15, 2001

MOTION:

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

ITEM #3 OLD BUSINESS

None

ITEM #4

Z 01-4, Kevin Kelley D/B/A The Strafford Trust, Co. The Board received and accepted a request to withdraw his application for a variance.

ITEM #5

Z 01-5 Johnny and Kitty Lam, 914 Central Ave. A/K/A Assessor's Map 38, Lot 20, Zoned B-3, requests a variance from the terms of Article IV Section 170-12, Table I, Part A to establish a residential use (one apartment above existing restaurant).

Atty. Carl Potvin, representing Johnny Lam, stated that the apartment has been above the restaurant at 914 Central Ave. for many years and they wish to continue the use. He stated that the former owner resided there for many years. He reviewed the 5 criteria on the application and used the Simplex case that appeared before the Supreme Court recently in

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regards to the hardship. He stated that this would not create a change in the building, however, the apartment will need to be upgraded to comply. He believes that the requested use is a reasonable request.

Tom Dolbec asked if there are plans to change the whole property to residential use?

Carl Potvin answered that there is not. They intend to keep the restaurant business. It is in the process of being renovated now.

Dean Trefethen asked if (1) the apartment is for income or use of the owner? (2) Dean asked if the apartment has its own entrance or do they have to go through the restaurant?

Carl Potvin answered that (1) it is for both. He may allow some of the employees to reside there. (2) The apartment has its own entrance and they do not go through the restaurant.

Dean Trefethen asked Tom Clark how the apartment came to be above the restaurant?

Tom Clark answered that it may have been used by the former owner as an apartment however, it is not an official apartment. There is no record of a Building Permit issued and according to the tax records it is not being assessed as an apartment. There is a suite of rooms above the restaurant and on occasion the Fire Department did advise the former owner that it is not a legal apartment and he had to vacate, which he did. But he also moved back in. It was used by the former owner as an apartment but it was not a legal apartment.

Doug Cummings asked if the City took steps to prevent the use of the apartment?

Tom Clark answered he believes that the Fire Department did cite the owner. A zoning violation letter did not go out because the Fire Department was handling it as an existing structure.

Dean Trefethen asked how many people are anticipated to occupy the apartment? and (2) is there a standard for the size of the rooms?

Carl Potvin answered that it is suitable for three (3) small bedrooms, with a living and kitchen area.

Tom Clark added that, if the variance is granted, a permit would be issued to legitimize the apartment, and the occupancy standard would come under the provisions of the BOCA building code which stipulates 200 square feet per person. So that would allow four (4) people as a maximum. He also stated that each room would have to have at least one dimension of seven (7) feet and at least one room in the unit would have to have at least one hundred twenty (120) square feet. He believes that these rooms would satisfy those conditions. They would also have to address egress from each bedroom, smoke detectors and fire separation.

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Bill Colbath asked Atty. Potvin how he justified residential use in the B-3 zone?

Atty. Potvin answered that anyone living there would be living there voluntarily with the knowledge that they would be residing in a business zone. It is also an efficient use of this property. It has been used as an apartment whether legitimately or not, and there are other residential uses in this business zone.

Bill Colbath asked Tom Clark if this is feasible to turn this into a livable and legal apartment?

Tom Clark answered that in his opinion it is.

MOTION:

Bill Colbath made the motion to accept the case.

John Murphy seconded the motion.

U/A

PUBLIC HEARING OPENED

No comments

PUBLIC HEARING CLOSED

Dean Trefethen asked for staff recommendations

Bruce Woodruff stated that, if the variance were granted, nothing on the outside would be changed. The greatest concern the department has is that if the variance is denied, there will be someone living in the apartment anyway, as seen by the previous owner. The advantage in granting the variance is it will legitimize the apartment and bring it up to code. Based on that the Planning Department leans towards recommending granting the variance.

Tom Dolbec and David Ruoff will sit on this case with the regular members.

John Murphy has no issues with this request.

Tom Dolbec stated that his concern is that other restaurants would also request to have an apartment above their restaurant.

Tom Clark added that he knows of another restaurant owner that has had a desire to have an apartment above his restaurant.

David Ruoff stated that he is undecided.

Bill Colbath stated that he is not sure that one can justify having an apartment in a business zone.

Dean Trefethen stated that he also is not sure but can agree with staff recommendation that by legitimizing the apartment, it offers an opportunity to make it safer and controlling the number of people to occupy it.

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does face an unnecessary hardship (Tom Dolbec voted does not). Since residential use in this district is allowed by Special Exception anyway, this proposal is a reasonable use to be added to the property that would be an unnecessary hardship if not allowed.
2. It is the Board's conclusion that the variance will deliver substantial justice. Because the criteria of a Special Exception could probably be met for this case, it would be justifiable to grant this proposal.
3. It is the Board's conclusion that the variance will be in harmony with the spirit and intent of the zoning ordinance. Residential use is allowed in this zone by Special Exception and already exists nearby.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. Since the space for the apartment already exists, there will be no changes to the appearance of the building. Also, the use is less intensive than traditional B-3 uses.
5. It is the Board's conclusion that the variance will not be contrary to the public interest (Tom Dolbec voted will). By having this apartment upgraded to current safety standards and the City being able to control how many people reside in the unit is a benefit to the public.

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

MOTION:

Bill Colbath made the motion that a condition be added that the apartment must be brought up to all current building codes.

John Murphy seconded the motion.

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ITEM # 6

Z 01-6 Herman & Catherine Gitschier (Applicant: Robert Fisher), 9-11 Cataract Ave., A/K/A Assessor's Map 15, Lot 15, Zoned R-12, requests a variance from the terms of (1) Article V, Section 170-16 to subdivide a parcel creating two (2) lots with non-conforming frontage (seventy-four (74) feet and sixty (60) feet respectively where one hundred (100) feet is required); (2) Article V, Section 170-16 to establish a side lot line within five (5) feet of an existing building where a minimum of six (6) feet is required; and (3) Article V, Section 170-17 to establish a side lot line within two (2) feet of an existing accessory structure (detached garage) where a minimum of ten (10) feet is required.

Atty. Robert Fisher represented Herman & Catherine Gitschier. Also present were their sons Steve and Herman Gitschier. The applicants would like to pass the two houses on to their children and establish it so that each would own a house on their own respective lots. Mr. Gitschier decided to have the garage go with the larger of the houses. This is not definite, however he felt that it was the way to go. These houses have existed for about 100 years and the garage was moved onto the property. They believe the hardship is due to the zoning itself.

Dean Trefethen asked whether or not the garage functional by today's standards, size of garage doors etc.?

Robert Fisher answered that he believed so.

Dean Trefethen stated that he has a problem with causing the new property line to circle around the garage, which will also cause a setback problem for one of the houses. He does not have a problem with the way the properties will be divided. He feels that it would be much cleaner to have the property line go straight.

Robert Fisher responded that the owner would not have a problem giving the garage to house #7. However, he feels that it makes more sense to give the garage to house #9 because it is the larger piece of property.

Dean Trefethen asked if it would be possible to move the garage since it was moved once?

Robert Fisher answered that they had not explored that avenue. He assumes that it would be possible but the driveway has already been established.

Bill Colbath is concerned with the fact that the owner of house #7 will have to allow the owner of house #9 to cross onto their driveway to leave their property. He feels that he cannot support this request because there will not be enough setback.

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MOTION:

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

Dean Trefethen asked Robert Fisher if the owners would be flexible in regards to moving the garage to get the subdivision?

Robert Fisher answered that he believes that there is no flexibility in moving the garage. He has not discussed this with Mr. & Mrs. Gitschier.

Steve Gitschier, son to Herman Gitschier stated that he lives at #9 Cataract and it does not matter which house the garage goes with. He said that if it is easier to have the garage go to #7 it is all right with him.

Dean Trefethen informed Steve Gitschier that it doesn't matter who gets the garage. At this point, it is the concern of two Board members that the new property line be allowed to go straight rather than circle around the garage.

Bill Colbath asked if it would be acceptable to have the property line go up through garage?

Bruce Woodruff answered that it would not. There are jogging property lines throughout the City and the ten (10) foot setback to the garage can be met by placing the line to the left of the garage.

PUBLIC HEARING OPENED

No comments

PUBLIC HEARING CLOSED

Dean Trefethen asked for staff recommendations.

Bruce Woodruff stated that the Planning Department strongly favors granting the variance. This is based on the fact that the nonconformity of having both of the buildings on one lot is far greater than the nonconformity of two lots with less than the required frontage. The percentage of nonconformity will be greatly diminished. It also helps in that they will be able to sell the lots with one house on each lot. The ten-foot setback will also be taken care of if the property line is moved to the left side of the garage. They recommend that the deeds for the two properties include cross access easements. The Planning Department recommends approval with that condition.

Dean Trefethen stated that Doug Cummings and David Ruoff sit on this case with the regular members.

John Murphy has no difficulty with jogging the property line. He sees nothing can be gained by having a straight line but maintaining setbacks is important. He added that it would appear that they would not be granting the variance based on the plan presented but a modified plan.

Tom Clark brought to the Board's attention that there are three parts to the request. The most important part is the first item which is the frontage. So the applicant can either withdraw the second and third part or the Board act on the three parts separately and choose to grant the first and deny the second and third. It forces them to come up with the plan so that they can do the subdivision with minimal frontage, and to also come up with an alternate plan similar to what Bruce Woodruff suggested to go around the garage.

Robert Fisher, after reviewing Bruce Woodruff's plan, felt that it would be appropriate to withdraw the second and third items and come up with a plan in accordance with Bruce's sketch and the requirement for the cross access easements.

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. Having two houses on one lot is an unnecessary hardship. It would be reasonable to allow each house to be on its own lot.
2. It is the Board's conclusion that the variance will deliver substantial justice. It will allow the nonconformity to be decreased by having each house on its own lot instead of both on one.
3. It is the Board's conclusion that the variance will be in harmony with the spirit and intent of the zoning ordinance. The intent is to have a separate lot for each dwelling structure.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. The subdividing of the lot does not change the appearance of the structures and how they sit on the land. Most people would not discern any change.
5. It is the Board's conclusion that the variance will not be contrary to the public interest. It is in the public's interest to bring the property closer to conformity and this proposal accomplishes that goal.

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 add the following conditions: (1) the cross access easements be recorded on the deeds of both lots, and (2) minimum frontage for either lot must be 60 feet. John Murphy seconded the motion.

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MOTION

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

List of members:

Term Expires

Thomas Dolbec – alternate member	12/15/2001
John Murphy – regular member	12/31/2001
Robert Mullan – 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