

**DOVER ZONING BOARD OF ADJUSTMENT
MINUTES OF PUBLIC HEARING
MAY 17, 2001**

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

STAFF PRESENT: Thomas Clark, Building Official, and Steve Bird, City Planner

ITEM #1 NEW BUSINESS:

A. Approval of minutes for regular meeting of April 19, 2001

MOTION:

Bill Colbath made the motion to accept the minutes.

David Ruoff seconded the motion.

U/A

Dean Trefethen read a resignation letter from Bob Mullan informing them of his need to resign as member of the Board due to personal problems. Dean will send a memo to the City Clerk informing them of the need for a replacement recommendation.

ITEM #2 NEW BUSINESS

None

ITEM #3

Z 01-7 Patrick & Joann Brady, Three Rivers Farm Rd., A/K/A Assessor's Map N, Lot 2-4, Zoned R-40 requests a variance from the terms of Article II, Section 170-6, definition of lot and Article IV Section 170-12 to construct two (2) single family dwellings on one lot.

Pat Brady is requesting a variance to construct two single-family dwellings on one lot. He believes it will be consistent with other properties in that area. The intent is to use the house for a guest /caretaker house. They intend to live there for a couple of years and then build a larger house. This house will be used in the future for family purposes.

Dean Trefethen asked how far apart the guesthouse will be from the main house?

Pat Brady answered approximately 175 feet.

David Ruoff and Doug Cummings sat on this case.

ZBA
5/17/01
PG. 2

MOTION:

Bill Colbath made the motion to accept this case.
Rick Callaghan seconded the motion
U/A

PUBLIC HEARING OPENED

Dan Philbrick, abutter, stated that he has been involved in the project since the beginning. He stated that the protective covenants that are in place for this property allows for guesthouses and feels that these protective covenants would be honored. He sold the Bradiys this property and feels that it is in keeping with the spirit and intent of what was intended to happen on this property. Dan is in favor of the request.

Mike Davis, 276 Knox Marsh Rd., an abutter, stated that he has no problem with the request.

Atty. Anthony Hartnett represented John Davis at 92 Three Rivers Farm Road. He gave a brief history of the property and its subdivision. He feels that there are two reasons why this request for a variance should not be approved. The first reason is the restrictive covenants refer to the fact the use is to be single family residential, agricultural, forestry and farming. It refers to one permit, single family residence and the intent is to include garages and a guesthouse that is not to be a full-scale, permanent residence. It is important to note that the deed states that there is to be no further subdivision of the property. The second reason is the applicant has also not really met the standard for the hardship in getting the variance. He cited the Supreme Court decision on the Simplex case. The existence of a second, occupied, permanent structure on the property is not necessarily a reasonable use of a single family residence buildable lot. There is nothing unique in the land that constitutes a hardship. Mr. Hartnett reviewed the criteria for a variance.

Pat Brady responded to Mr. Hartnett's comments. He disagrees with Mr. Hartnett. He is not requesting any further subdivision and he has taken down a house so he is not creating any more density. He believes that he does meet the standards for the variance. He is not infringing on any conservation district. They intend to live in a small house while they build a larger house.

Dan Philbrick added that the trustees established in the protective covenants a provision to permit a guesthouse. This will be an estate type setting and a guesthouse is not uncommon. He believes that this is the intent of the trustees.

Atty. Hartnett responded that the public interest, the spirit and intent, and substantial justice issues have a bearing on why the City of Dover has an ordinance that restricts one single family residence to one lot. He questions what will happen five or ten years down the road. Will there be subsequent applications to subdivide the property? Will there be a request to sell or rent this property as a separate piece of property?

PUBLIC HEARING CLOSED

Dean Trefethen asked for staff recommendation.

Steve Bird stated that the Planning Department cannot support this variance request. This subdivision, approved two years ago, went through a lengthy negotiation process with the lawyers representing the trustees at that time. It was discussed at length how to best subdivide this property as well as the conservation easements. In the end it was decided to include in the plan and the deeds the restriction that there would be no further subdivision. The intent from the Planning Board's perspective was that they would be limiting the number of houses to be built on this property and there was no discussion of having more than one house per lot. The other thing to consider is that there was a variance granted on the original parcel to allow the lot on the point to be created with no frontage on the City street. One of the reasons the number of lots was limited is because this is a very beautiful and environmentally sensitive area. There is a concern that if there were more than one house placed on this lot, future owners may be coming back asking for subdivisions separating those houses for one reason or another.

David Ruoff stated that he has a problem with the hardship.

Rick Callaghan also has a problem with the hardship and with some of the other criteria. The intent is to have one house per lot.

Doug Cummings and Bill Colbath also have a problem with the hardship.

The Board discussed the covenants.

Dean Trefethen also does not see a hardship.

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does not face an unnecessary hardship. There is ample use of the property allowed by the ordinance and most aspects of the proposal can be accomplished without a variance, hence no hardship.
2. It is the Board's conclusion that the variance will not deliver substantial justice. Granting of the variance would grant greater rights to this property than adjoining lots.
3. It is the Board's conclusion that the variance will not be in harmony with the spirit and intent of the zoning ordinance (David Ruoff voted will). The spirit and intent is to have one residence per lot.
4. It is the Board's conclusion that the variance will result in a diminution in value of surrounding properties (Doug Cummings and Dean Trefethen voted will not). Two

residential dwellings on one lot would create congestion and adversely affect surrounding properties.

5. It is the Board's conclusion that the variance will be contrary to the public or private interests or rights. Potential added congestion of a second dwelling would be contrary to the intent of the zoning used to create this subdivision.

Therefore, based upon the foregoing, it is ordered that the application for the variance be denied.

ITEM #4:

Z 01-8 Sotirios Papaionnov, 519 Central Ave. A/K/A Assessor's Map 4, Lot 19, Zoned B-2 requests a variance from the terms of Article IV, Section 170-12, Table I, Part A to establish a residential use (two apartments above existing restaurant).

Atty. James Schulte represented Mr. Papaionnov. Prior to the purchase of this property, a florist occupied the building and the upstairs was occupied by Kenmore Realty. The N. H. House of Pizza occupies the first floor now and the applicant proposes to put in two studio apartments upstairs. The B-2 zone allows multi-family use. The reason for the variance is that the B-2 zone does not specifically allow a two-residential unit on the property except for the conversion from an existing single family. The other permitted uses for the property would not be feasible because it would be on the second floor and it would be difficult to operate a business there. Residential use would be the most practical use of the building. Most of the surrounding properties have commercial use on the first floor and residential above.

David Ruoff asked the applicant what size the apartments would be.

Atty. Schulte answered that the first floor is 1700 square feet so each apartment would be approximately 700 to 800 square feet.

Tom Clark added that the minimum requirement in the ordinance is 600 square feet for each unit for this zone.

Dean Trefethen asked if there were room on this property for parking?

Atty. Schulte answered that there is and the applicant owns the abutting property that would give more parking spaces.

Rick Callaghan stepped down from this case and Tom Dolbec and Doug Cummings sat on this case.

ZBA
5/17/01
PG. 5

MOTION:

David Ruoff made the motion to accept the case.
Doug Cummings seconded the motion.
U/A

PUBLIC HEARING OPENED

No comments

PUBLIC HEARING CLOSED

Dean Trefethen asked for staff recommendations

Steve Bird stated that the Planning Department is in favor of this variance. The request for two units is appropriate for this zone and as long as they can provide the required number of parking spaces, it fits into the neighborhood very nicely.

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. Since residential use in this district is allowed under certain circumstances it is a reasonable use of the property for it to be allowed here as well.
2. It is the Board's conclusion that the variance will deliver substantial justice. Multi-family use surrounds this property, so granting the variance would allow similar rights to this property.
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 allow multi-family use in this zone and this proposal is in compliance with that zone.
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 similar to surrounding properties.
5. It is the Board's conclusion that the variance will not be contrary to the public or private interest or rights. The proposal will help alleviate a housing shortage in the City.

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

ZBA
5/17/01
PG. 6

MOTION:

Bill Colbath made the motion to place a condition that parking will be in compliance with the zoning regulations and will be provided on site.

Doug Cummings seconded the motion.

U/A

ITEM #5:

Z 01-9 Patrick Priester, 17 Gov. Sawyer Ln. A/KA Assessor's Map 17, Lot 167, Zoned R-12 requests a variance from the terms of Article V, Section 170-16 to construct an attached one-car garage onto a single family dwelling within eight (8) feet of a side property line where a minimum of fifteen (15) feet is required.

Tom Dolbec and Doug Cummings sat on this case and David Ruoff stepped down.

Patrick Priester stated that they have tried different locations but they have a wedged shape lot that limits them in area. What their neighbor thought was the property line was not actually the property line. They started out with a proposed two-car garage with a mudroom. They had their property surveyed and found that they were only twenty feet away from the line. The revised plans for a garage will bring their house up to the standards with the neighborhood because theirs is the only house without a garage. It will also increase the value of their property as well as the surrounding properties.

The Board and applicant discussed the setback issue. No certified plot plan is available from when the house was first built. The survey that was done in 1991 had a setback of 50 feet in the front that was an error by the surveyor's office. The actual setback is 31 feet in the front.

Bill Colbath had a problem with the plan as presented because of the inaccurate setback given.

MOTION:

Rick Callaghan made the motion to accept the case.

Doug Cummings seconded the motion.

Four (4) voted in favor and Bill Colbath opposed.

PUBLIC HEARING OPENED

John Hanson, an abutter, is in favor of the variance.

Karen Henderson, an abutter, has no objection to the garage.

PUBLIC HEARING CLOSED

Dean Trefethen asked for staff recommendations.

Steve Bird stated that the Planning Department recommends granting the variance. The hardship from their point of view is the lot's wedge shape. Most of the other lots in the neighborhood are more rectangular in shape. This is perhaps the smallest lot in this subdivision. They agree that a certification of the setback for the garage should be required since it is unclear as to where this house is sitting.

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. The wedge shape of this property is unique in this neighborhood, its size is also smaller than most in the neighborhood, and the proposal is a reasonable use of the property.
2. It is the Board's conclusion that the variance will deliver substantial justice. The proposal allows for the construction of a garage to make the property more similar to surrounding properties.
3. It is the Board's conclusion that the variance will be in harmony with the spirit and intent of the zoning ordinance (Tom Dolbec voted will not). The spirit and intent is to maintain reasonable setbacks and this proposal accomplishes that goal.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. Adding a garage to this property will make it more equitable to surrounding properties and could enhance values in the neighborhood.
5. It is the Board's conclusion that the variance will not be contrary to the public or private interests or rights. The Board believes there would be no negative impact on the public or private interests or rights.

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

MOTION:

Rick Callaghan made the motion that a certified foundation plan must be provided, and the distance should be not less than 8 feet plus or minus 3".
Tom Dolbec seconded the motion.
U/A

ZBA
5/17/01
PG. 8

ITEM #6:

Z 01-10 Thomas Loporcaro, 1 Page Ave., A/K/A Assessor's Map 37, Lot 56, Zoned R-12 requests a variance from the terms of Article V, Section 170-16 and Article II, Section 170-6 definition of building to construct a front uncovered stairway onto a single family dwelling within approximately twenty-five (25) feet from a front property line as it abuts a street where a minimum of twenty-seven (27) feet is required.

Tom Loporcaro stated that he is requesting a variance to replace front stairs that go down to the side by stairs that go straight to the house because it is very difficult to move things in and out of the house due to the angle of the stairs. Also due to the pitch of the roof, there is a lot of water run-off during the wintertime.

David Ruoff and Tom Dolbec sat on this case.

MOTION:

Rick Callaghan made the motion to accept the case.
David Ruoff seconded the motion.
U/A

PUBLIC HEARING OPENED

No comments

PUBLIC HEARING CLOSED

Dean Trefethen asked for staff recommendations.

Steve Bird stated that the Planning Department is in favor of the variance. This would be a needless and unnecessary restriction. The variance request is less than two feet. Most of the other houses on this part of Page Ave are all close to the road and almost all have stairways projecting straight towards the street and not to the side.

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. The unique configuration of the lot required the house to be placed where it is, so it would be a needless and unnecessary restriction to require them to conform to the ordinance for their stairway.
2. It is the Board's conclusion that the variance will deliver substantial justice. The proposal allows for a reasonable configuration for their front steps given the lot's configuration.

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 restrict density and this proposal does not conflict with that goal.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. The proposal would allow a front stairway that would be similar to their neighbors and would be more aesthetically pleasing.
5. It is the Board's conclusion that the variance will not be contrary to the public or private interests or rights. The need to have relief is driven partially to meet building codes, which is in the public's interest to comply with.

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

ITEM #7

Z 01-11-A Jason N. Theodore, 16 Leighton Rd., A/K/A Assessor's Map 8, Lot 16 Zoned R-20 requests an Appeal from Administrative Decision concerning Article V, Section 170-16, lot coverage and setbacks.

Doug Cummings and David Ruoff sat on this case.

Atty. James Schulte represented Jason Theodore. The property is a small, narrow lot. There are two lots with a thirty-foot (30') right-of-way that was proposed to be made into a City street but was never done and now has trees growing on it. He quoted from a New Hampshire law that stated when a lot is abutting a way, private or public, and unless the deed states to the contrary, the presumption is that the owner is actually deeded to the center line of the right-of-way even if the description does not state so. This becomes important to the lot coverage issue.

The Board and Atty. Schulte discussed at great length the right-of-way, setback, and driveway. Before the Board could come to a decision Atty. Schulte withdrew the Appeal from Administrative Decision and asked to proceed with the request for a variance.

ITEM #8:

Z 01-11-B Jason N. Theodore, 16 Leighton Rd., A/K/A assessor's Map 8, Lot 16 Zoned R-20 requests a variance from the terms of Article V. Section 170-16 to (1) construct a building within six (6) feet of a front property line where a minimum of thirty-five (35) feet is required and (2) to construct a building with approximately thirty-six percent (36%) lot coverage where a maximum of coverage of thirty percent (30%) is allowed.

ZBA
5/17/01
PG. 10

Atty. Schulte stated that the front setback will be at the top of the plan where the garage will be located which is six (6) feet. The purpose of a front setback is to protect the street and view and that purpose will be satisfied. He reviewed the criteria. It is his opinion that a variance is not required for the lot coverage because of the fifteen-foot strip in the right-of-way, even though it is not worded in the deed. If this is not included than this lot will have approximately thirty-six percent (36%) coverage where thirty percent (30%) is allowed. Lot coverage, he believes, is to preserve open space and to keep buildings from being placed too close together. He referred to the right-of-way because it is something that cannot be built on. Lot coverage is also small in the surrounding area.

Dean Trefethen asked what the square footage of this house would be?

Atty. Schulte answered that it is calculated at 2317 ft. about 2300 square feet.

Bill Colbath asked if the client intends to pursue obtaining the fifteen feet of the right-of-way?

Atty. Schulte answered that he does.

Bill Colbath stated that he only had a problem with the lot coverage.

Rick Callaghan stated that he does not have a problem with the lot coverage.

MOTION:

David Ruoff made the motion to accept the case.

Rick Callaghan seconded the motion.

U/A

Steve Bird stated that the applicant would need a Conditional Use Permit from the Planning Board with a recommendation from the Conservation Commission because they are located within 75 feet of water. They appeared before the Conservation Commission Feb 5th of this year and the Conservation Commission's reception was very negative to this proposal. The minutes of that meeting talk about the potential impact of this proposed construction and it's potential impact on the surrounding residences. The proposed house could be built on pilings thereby a potential of flooding since this is a flood zone area. They are also concerned with the setback from the bay area. The recommendation from the Conservation Commission to the Planning Board was that the Planning Board should take into consideration the high potential for damage to the proposed structure based on known coastal flooding. The Conservation Commission is also concerned with the future additional adverse environmental impact. Those are the recommendations given to the Planning Board. The Planning Board has not made a decision on the Conditional Use Permit yet. This is an area of mainly cottages and this house will be larger than any in that area. The Planning Department will be strongly against any variance in terms of lot coverage because of these reasons.

David Ruoff asked if this would change if the applicant acquired the additional fifteen feet?

Steve Bird answered that they would still have to come before the Planning Board for a Conditional Use Permit. The Planning Board looks at more than just the lot coverage. They look at the entire parcel and at the environmental impact.

The Board and Steve Bird discussed what the Planning Board and Conservation Commission have considered and will be looking at in regards to the Conditional Use Permit.

PUBLIC HEARING OPENED

No comment

PUBLIC HEARING CLOSED

David Ruoff stated that he does not have a problem with the request as is.

Bill Colbath stated that he does not have a problem with the dimensional but he does not want more than 30% coverage.

Rick Callaghan stated that he does not have a problem with the coverage, but it should be limited so that it does not have 36% coverage and acquire the other lot at the same time.

Dean Trefethen stated that it will be limited to 36% of current deeded lot, and if they acquire more land through court action then the owner cannot exceed 30% coverage.

David Cummings stated that he is all set as it is requested.

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does face an unnecessary hardship (Bill Colbath and Rick Callaghan voted does not). The lot is small and has no clearly defined frontage, plus the applicant actually has more land than the deed states, therefore a hardship exists in both the setback and coverage issues.
2. It is the Board's conclusion that the variance will deliver substantial justice (Bill Colbath and Rick Callaghan voted will not). It allows improvement to the property while at the same time moving it further from the river.
3. It is the Board's conclusion that the variance will be in harmony with the spirit and intent of the zoning ordinance (Rick Callaghan voted will not). The spirit and intent is to control density and keep structures away from public right-of-way and this proposal does both.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. Improvement to the property will most likely enhance values of surrounding properties.

ZBA
5/17/01
PG. 12

5. It is the Board's conclusion that the variance will not be contrary to the public or private interests or rights (Bill Colbath and Rick Callaghan voted will). By moving the proposed structure further from the water than the existing structure, the public's interest in conservation is served, and the private interests were acknowledged by the abutters consent.

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

MOTION:

David Ruoff made the motion to set the condition that the 36 percent lot coverage applies only to the current deeded lot.

Doug Cummings seconded the motion.

Three voted in favor and two opposed (Bill Colbath and Rick Callaghan opposed)

MOTION:

Tom Dolbec 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
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