

**DOVER ZONING BOARD OF ADJUSTMENT
MINUTES OF PUBLIC HEARING
JUNE 21, 2001**

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

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

NOTE: The sound system was not operational at this meeting, therefore these minutes are taken from the Secretary's notes.

ITEM #1 NEW BUSINESS:

A. Approval of minutes for regular meeting of May 17, 2001

MOTION:

Rick Callaghan made the motion to accept the minutes of May 17, 2001.
David Ruoff seconded the motion.
U/A

Dean Trefethen read a letter of resignation submitted from John Murphy to the Board.

ITEM #2 NEW BUSINESS

None

ITEM #3

Z 01-12 Albert W. & Priscilla Johnston, 410 Middle Rd., A/K/A Assessor's Map M, Lot 60, zoned R-40, requests a variance from the terms of Article V, Section 170-16 to construct an accessory structure (detached garage) within thirty (30) feet from a front property line as it abuts a street where a minimum of fifty (50) feet is required.

Tom Dolbec did not sit on this case.

Albert Johnston stated that the house was built in early 1930 and is nonconforming. By placing the garage fifty (50) feet from the property line, it would be in the middle of the back yard and will result in a misalignment to the property. The water run off from the house would also bring water into the garage.

MOTION:

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

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PUBLIC HEARING OPENED

No comments

PUBLIC HEARING CLOSED

Dean Trefethen asked for staff recommendations.

Bruce Woodruff presented photos to the Board of his visit to the site for their review. He stated that the Planning Department is in favor of this variance. The hardship is the zoning ordinance itself. When an amendment was added allowing certain expansions to non-conforming structures, it did not take into consideration a detached garage. He believes that the spirit and intent of the ordinance will be upheld by granting the variance.

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. It would be a needless and unnecessary restriction to apply the ordinance because recent zoning updates were intended to relieve situations like this, but mistakenly didn't cover detached garages.
2. It is the Board's conclusion that the variance will deliver substantial justice. The proposal allows improvement of the property by 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 spirit and intent is to allow expansion of non-conforming structures, providing no additional encroachment occurs, 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. It is likely that improvement of the property will enhance values of surrounding properties.
5. It is the Board's conclusion that the variance will not be contrary to the public or private interests or rights. The proposal allows the property owner reasonable use of his land without adverse affects to abutters.

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

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Z 01-13 BHD Realty (Applicant: Brad Dudley) D/B/A Complete Graphix, 802 Central Ave., A/K/A Assessor's Map 37, Lot 30, zoned Office, requests an Equitable Waiver of Dimensional Requirements from the terms of Article V, Section 170-16 to maintain a rear addition on an office building within approximately fourteen (14) feet from a rear property line where a minimum of fifteen (15) feet is required.

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

Brad Dudley stated that the setback was not checked when the foundation was poured. After the foundation was poured and inspected, it was measured and found to be too close. This was not done intentionally.

Tom Clark added that it is possible that the contractor moved the foundation to clear a window that was in the middle of the garage. He added that the existing garage is nonconforming. The Board and Tom discussed how the detached garage will not become conforming as an attached garage.

MOTION:

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

PUBLIC HEARING OPENED

Jim Veinot, abutter, stated that he does not oppose the variance but he is not happy with the greater difference in measurement. He would also like to have a seven (7) foot fence.

Brad Dudley stated that he would be glad to take care of the fence. He added that the existing garage is more obtrusive than the addition will be. It would also be an additional cost to remove and reconstruct the foundation.

PUBLIC HEARING CLOSED

Dean Trefethen asked for staff recommendations.

Bruce Woodruff presented a couple of pictures that he had taken of the site to the Board. This is the office zone and has larger old homes. It went through a transition for multi-use. The expansion of commercial use should have gone to the Technical Review Committee. The existing garage is more into the setback than the proposed addition would be. The cost of replacing the foundation does outweigh any benefit to the public. The Planning Department recommends granting the Equitable Waiver.

Tom Dolbec asked what the cost would be to change the foundation?

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Brad Dudley answered that it would cost between \$4,000 to \$6,000.

Dean Trefethen advised the Board that what they need to consider is whether it involves a dimensional requirement, whether the nonconformity was discovered after the structure was substantially complete, and whether the violation was or was not an outcome of ignorance of the law or a legitimate mistake. They also have to decide whether this causes a problem in the neighborhood and diminishes the values of the properties, and whether a correction will outweigh any benefit.

Rick Callaghan asked Tom Clark whether there are requirements that provide the pouring of footings to be certified?

Tom Clark answered that there are not.

Tom Clark and the Board discussed the implementation of requirements for having footings measured and certified.

Bill Colbath questions whether or not the nonconformity was discovered after the structure was substantially completed because he does not feel that the foundation constitutes substantial completion. He also questions as to how missing by two (2) feet can be considered a legitimate mistake?

Dean Trefethen stated that an experienced contractor has accountability whereas a non-experienced contractor relies on the foundation contractor, which constitutes a legitimate mistake.

The Board and Tom Clark discussed what constitutes a "legitimate mistake."

Tom Dolbec stated that he feels that the applicant did make an effort to do the right thing.

Rick Callaghan stated that he is in favor of the waiver but feels that someone should have been responsible for checking the measurement before pouring.

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 (Bill Colbath and Tom Dolbec voted was not) AND the violation was an outcome of ignorance of the law or bad faith but resulted from the legitimate mistake (Bill Colbath voted was not).
3. It is the Board's conclusion that the nonconformity does not constitute a nuisance nor diminishes the value or interfere with future uses of other property in the area.

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4. It is the Board's conclusion that the cost of correction does outweigh any public benefit to be gained (Bill Colbath voted does not).

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

MOTION:

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

Dean Trefethen advised the Board that he would write a letter to the City Clerk to fill the two vacant regular member slots with two alternates and to obtain new alternates.

List of members:

Term Expires

Thomas Dolbec – alternate member	12/15/2001
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