

**DOVER ZONING BOARD OF ADJUSTMENT
MINUTES OF PUBLIC HEARING
JULY 19, 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

ITEM #1 NEW BUSINESS:

A. Approval of minutes for regular meeting of June 21, 2001

MOTION:

Bill Colbath made the motion to accept the minutes as presented.
Rick Callaghan seconded the motion.

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ITEM #2 NEW BUSINESS

None

Dean Trefethen advised the Board and the general public that the two applicants had discussed and agreed to allow the second applicant to go first.

ITEM #4

Z 01-15, Priscilla Duffy, 39 Old Rochester Rd., A/K/A Assessor's Map 40, Lot 40, Zoned R-12 requests an Equitable Waiver of Dimensional Requirement from the provisions of Article V Section 170-16 and Article X, Section 170-39 to reduce a non-conforming lot (to maintain an established public right-of-way) from 10,103 square feet to 9,715 square feet where a minimum of 12,000 square feet is required.

David Ruoff stepped down from this case.

Bruce Woodruff, City Planner, represented Priscilla Duffy because the City is the co-applicant in this case. The applicant is asking to be allowed to have her lot made smaller and more non-conforming mainly because her lot lines are currently in the street by an error that occurred fifty years ago. When the property was developed, the road was placed on her property in error. The house was built in the 1940s prior to the City accepting the street as a City street and prior to zoning. The cost of moving the road far outweighs the benefit to the general public.

MOTION:

Rick Callaghan made the motion to accept the case.
Doug Cummings seconded the motion.

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David Ruoff stepped down from this case.

PUBLIC HEARING OPENED

Tom Clark stated the he contacted the Municipal Association and it was agreed that this was the appropriate action to take.

PUBLIC HEARING CLOSED

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 violation has existed for 10 years or more with no enforcement action, including written notice, being commenced by the City, OR 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.
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.

ITEM #3:

Z 01-14, KAB Realty Management, LLC, Folsom St., A/K/A Assessor's Map 10, Lot 89, Zoned RM-10, requests a variance from the terms of Article IV, Section 170-12, Table I, Part A to construct sixteen (16) dwelling units (in four four-unit buildings) where a maximum of four (4) units is allowed by Special Exception.

John Berry of Berry Engineering represented KAB Realty Management. He reviewed the number of multi-family buildings in the neighborhood and the amount of footage of each lot. He reported that there would be a total of 41 off-street parking spaces. They are also proposing additional parking spaces. They propose to use trees and shrubs for screening. He also spoke with the Engineering Department and it was determined that there would be no problem with getting sewer and water however that there may be some drainage issue which will be addressed at the time of the site review process. He feels that this proposal would benefit the City in that it will provide additional parking that will get cars off the street. There is

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also a proposed easement for Dover that can be used as a part of a trail system that would go through the City.

John Berry addressed the 5 Criteria.

Rick Callaghan stated that he has concerns with the open space that will be available to the tenants. He is also concerned with the quality of life in having so many units in a small area.

MOTION:

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

Doug Cummings stepped down from the case.

PUBLIC HEARING OPENED

The following is a list of abutters that expressed their concerns:

Donald Trent, James Moss, Walter Matthews, John Calarco, Mary Jane Moran, Martin Paul, Wm. Caron, Norman Menard, Roger Lasante and Jonathan Kenyon.

The following is a list of their concerns and reasons for their opposition of the proposal.

- Children use the abandoned track area for smoking and club houses
- The proposed trail path is not usable because of the slopes
- Kids play in the parking lot
- There is not enough room for the proposed buildings
- The 9 extra parking space will not relieve the parking problem on Folsom St.
- The applicants want more buildings than is allowed by code.
- The trail path will be unsafe for the children
- The trail path is not visible to the abutters and children have been known to light fires there and hang out there.
- There was a recreation area for the children and they destroyed it.
- There would be a decrease in property value.
- There are concerns with snow removal and water drainage.
- There is a great deal of noise now and the language is also bad.
- Great concerns with the undue stress on such a small area and the quality of life for everyone.

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A report from the Police Department was submitted to the Board by an abutter of the number of calls that were made in the last year to that area (132 police calls – theft, criminal mischief, burglary, assault, violation of restraining orders, repossession, disturbing the peace, and drugs).

A petition signed by the 21 abutters opposing the proposed request was also submitted to the Board.

PUBLIC HEARING CLOSED

Dean Trefethen asked for staff recommendations.

Bruce Woodruff submitted a copy of a table of the multifamily uses in the various RM zones to each Board member. He addressed the zoning issues first. He stated that this is a unique lot that has an odd shape and large size, and it is a viable lot of record that was previously used by the Diamond Match Co and the Railroad Co. It is the largest lot in the neighborhood and the largest lot in this zone. It is one of the largest lots in all of the City's RM-10 zones. Bruce reviewed the table that he submitted to the Board. It is a developable lot that will be developed some day. Four units are allowed by Special Exception. The hardship has to do with the unique shape and size of the lot. The Planning Department is not recommending granting the sixteen units because it would be too much for this area. They will need usable, open recreational space and they will need to eliminate at least one of the buildings to get this. The positive aspects are that the drainage problem will be taken care of and the neighborhood will be cleaned up. There will also be a badly needed playground area for the kids. The trail will be funded with both City funds and already secured Federal funds. The trail will clean up the area, open it up, and make it easier to be monitored. Also developing the trail area will stabilize the slopes by the use of grass or shrubs. The negative aspects are that this proposal goes against the Planning Department's goal of trying to limit the residential development in the City because it does not pay for itself tax wise. It presents a change to the neighborhood as noted by the issues brought out in the Public Hearing. Changes are scary for those residents. The Planning Department feels that holding the applicant to four is not fair, but sixteen may be too much.

Doug Cummings asked how many single family dwellings can be placed on this lot and if it could be subdivided?

Tom Clark answered only one single family is allowed per lot. Tom did not think that this lot has adequate frontage to be subdivided.

Rick Callaghan stated that he sees this as an opportunity to improve the area. To not do anything will allow these conditions to continue.

Dean Trefethen stated that the question before the Board is how many units will be allowed and how long will the improvements last? The testimonies of the abutters shows that owners have not been concerned with the quality of life in this area.

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Bill Colbath stated that he questions the merits of the proposal for sixteen units. The testimonies have shown that the owners are not addressing the current problems. He feels that there is not enough usable space.

David Ruoff feels that there would be a diminution of property value and is concerned with the fire hazard and public safety. He feels that the trail will take place.

Tom Dolbec is concerned with the usable area, and the traffic in an already congested area.

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does not face an unnecessary hardship. The applicant has use of the land under the ordinance, so no relief is necessary, thereby no hardship in the land exists.
2. It is the Board's conclusion that the variance will not deliver substantial justice. The danger of injustice to the neighborhood by this proposal outweighs any potential injustice to the applicant.
3. It is the Board's conclusion that the variance will not be in harmony with the spirit and intent of the zoning ordinance. The proposal would produce excessive density in an already dense neighborhood, and this zone is particularly trying to prevent that from happening.
4. It is the Board's conclusion that the variance will result in a diminution in value of surrounding properties. The additional density will create more noise, traffic, police activity creating an undue burden on the abutters.
5. It is the Board's conclusion that the variance will be contrary to the public or private interests or rights. The proposal will not provide an improvement to the quality of life for area residents and community.

Therefore, based upon the foregoing, it is ordered that the application for the variance be denied. The applicant was advised that he has twenty days to appeal.

MOTION:

Tom Dolbec made the motion to adjourn.
Rick Callaghan seconded the motion.
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List of members:

Term Expires

Thomas Dolbec – alternate member	12/15/2001
Richard Callaghan – regular member	4/13/2003
Douglas Cummings II – regular member	7/18/2003
William Colbath – regular member	10/23/2003
Dean Trefethen – regular member	10/23/2003
David Ruoff – regular member	7/18/2004