

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

**MEMBERS PRESENT:** Bill Colbath, Co-Chairperson, David Ruoff, Rick Callaghan, Douglas Cummings, and Tom Dolbec

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

**NOTE:** This meeting had to be held in the City Hall auditorium where there was no recording system available. These minutes come from the Secretary's notes and the tape recorder.

**ITEM #1 NEW BUSINESS:**

A. Approval of minutes for regular meeting of October 18, 2001

**MOTION:**

Tom Dolbec made the motion to accept the minutes as presented.

Rick Callaghan seconded the motion.

U/A

Bill Colbath advised the Board that a letter was received from Douglas DeDe of 143 Locust St., Dover (case Z 01-19 tabled in September 2001) informing the Board that McEneaney Survey Associates will not be able to do the survey of their property until December and that he will submit a copy as soon as he possibly can.

**ITEM #2:**

A. Approval of Conditional letter in connection with ZBA case Z 01-20

Bill Colbath informed the Board that Carl Aimesbury (case Z 01-20) submitted a copy of the letter with the Zoning Board's conditions as specified at the meeting of September 2001. The Board reviewed this letter that had been signed by George Wattendorf, City Attorney on November 2, 2001. Mr. Aimesbury will now deliver this to the Registry of Deeds to be added to his deed.

**MOTION:**

Rick Callaghan made the motion to accept the change to Mr. Aimesbury's deed.

Doug Cummings seconded the motion.

U/A

ZBA  
11/15/01  
PG. 2

**ITEM #3:**

**Z 01-24 Donald & Gail Fortin, 10 Spur Rd. Ext. A/K/A Assessor's Map M, Lot 15, Zoned R-20 requests a variance from the terms of Article V. Section 170-17 to construct an accessory structure (detached garage) within fifteen (15) feet from a front property line as it abuts a street where a minimum of thirty-five (35) feet is required.**

Donald Fortin stated that he would like to build a garage fifteen feet from his property line. He stated that due to the drop-off on his land and due to the buffer zone for the wetlands, this is best location. The buffer zone is 75 feet from the mean high tide. Also, his septic system is located in front of the house. This will be used for storing of his four-wheelers and dirt bike. There will be no driveway to it.

Steve Bird asked Donald Fortin how he was going to access the shed since his septic system is located between the driveway and the shed and did he look at other places on the site?

Donald Fortin answered that it will be just for storage and not for his vehicles. He did look at other sites but there is a forty (40) foot drop between the road and the river.

Rick Callaghan asked if the building on the plan was to scale and how many feet are there between the building and the waters' edge?

Donald Fortin answered that the plan was not to scale and he showed Rick on the plan where the shed and water high tide is.

**MOTION:**

David Ruoff made the motion to accept the case.

Rick Callaghan seconded the motion.

U/A

**PUBLIC HEARING OPENED**

Verna Marchisio stated that she is opposed to the request because the shed would be too large. (Also see her letter in the file.)

~~Susan Knowles stated that she also is opposed to the request because of the size of the shed. (Also see her letter in the file.)~~

Bill Colbath read the letters into the record.

**PUBLIC HEARING CLOSED**

Bill Colbath asked for staff recommendations.

**ZBA**  
**11/15/01**  
**PG. 3**

Steve Bird stated that the applicants went before the Planning Board to obtain a Conditional Use Permit, and a Wetlands Permit was also obtained. There is already a three-car garage on the property that allows for adequate storage. They can also go for another Conditional Use Permit to allow the placement of the garage and still comply with the front setback. There is also the size of the shed to consider. They could go for a smaller one and not require a variance. Based on these reasons the Planning Department is not in favor of the request. Because there is already adequate storage on the lot it would be above and beyond what a normal residential lot would contain.

Tom Dolbec feels that there is already a maximum use of the lot.

David Ruoff feels that the topography of the land is the hardship and that the shed cannot be placed anywhere else without some dredge and fill.

The Board and applicant discussed the plot plan that was used for the Conditional Use Permit.

Rick Callaghan feels that fifteen feet to the road is too close and that it could be placed somewhere else. He sees no hardship.

Doug Cummings also has a hard time with the hardship. Feels that the lot is already well developed.

**FIVE CRITERIA:**

1. It is the Board's conclusion that the applicant does not face an unnecessary hardship (David Ruoff voted does). The owner has use that could have been reasonably expected given lot configuration and possible uses at the time of purchase.
2. It is the Board's conclusion that the variance will not deliver substantial justice (David Ruoff voted will). The lot is being utilized at it's greatest potential at this time given regulations of zoning and conservation districts (both State and municipal).
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). It will allow a use greater than shared by neighbors.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties (David Ruoff and Bill Colbath voted will). No evidence to prove a change in neighbor's valuation.
5. It is the Board's conclusion that the variance will be contrary to the public or private interests or rights (David Ruoff and Doug Cummings voted will not). Encroachment on front setback and street and will interfere with views of abutters on opposite side of the street.

ZBA  
11/15/01  
PG. 4

Therefore, based on the foregoing, it is ordered that the application for the variance be denied. The applicant was notified of a twenty-day appeal process.

**ITEM #4:**

**Z 01-25 Gus & Fred Yunggebauer, 14 Cote Dr., A/K/A Assessor's Map L, Lot 58-U Zoned R-20, requests an Equitable Waiver from Dimensional Regulations in connection with article V, Section 170-16 to maintain/construct a Single Family Dwelling within approximately twenty-seven (27) feet from a front property line as it abuts a street where a minimum of thirty-five (35) feet is required.**

Larry Dukes, a contractor and friend of the applicants, spoke on behalf of the applicants. The applicant acknowledged that he had made a mistake. He stated that the surveyor did stake out the property but did not notify the applicant of the mistake and allowed the applicant to go ahead and put the foundation in. The applicant has been up front with this mistake once it was discovered and tried to work with the City to resolve it. The applicant stated that he attempted to contact the surveyor and the surveyor told him that he was too busy to go back out to do another survey.

Bill Colbath asked where the mistake was other than hiring the wrong surveyor?

Larry Dukes answered that the mistake was in placing the foundation in the area that was surveyed.

The Board and applicant discussed and reviewed the plot plan and the road that was partially placed on his property by the City that also played a part in the miscalculations of the survey.

**MOTION:**

David Ruoff made the motion to accept the case.

Doug Cummings seconded the motion.

U/A

Bill Colbath continued to determine where the mistake was made.

Larry Dukes stated that the surveyor determined the area for the foundation on the applicant's lot by using a pin that was placed across the street. This created the error.

**PUBLIC HEARING OPENED**

No comments

**PUBLIC HEARING CLOSED**

Bill Colbath asked for staff recommendations.

ZBA  
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PG. 5

Steve Bird stated that the Planning Department agrees that it is a dimensional issue and that a legitimate mistake was made. The applicant relied on the survey that he believed to be accurate and in terms of the negative impact on the neighbors, because of its location and its conformance with the neighborhood, he feels that it would not have a negative impact on the neighbors. He feels that the Planning Department would be in favor of this request.

**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 not 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 or 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.

**MOTION:**

Rick Callaghan made the motion to adjourn.

Doug Cummings seconded the motion.

U/A

**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
<del>William Colbath – regular member</del>	<del>10/23/2003</del>
Dean Trefethen – regular member	10/23/2003
David Ruoff – regular member	7/18/2004