

**DOVER ZONING BOARD OF ADJUSTMENT
MINUTES OF PUBLIC HEARING
DECEMBER 20, 2001**

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

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

Dean Trefethen advised the applicants that, since some Board members would have to step-down due to conflicts and there were only 5 Board members present (with David Ruoff late) they have the option to be heard tonight or wait for the next month's meeting for all Board members to be present. All agreed to continue.

ITEM #1 NEW BUSINESS:

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

MOTION:

Richard Callaghan made the motion to accept the minutes of November 15, 2001.
Doug Cummings seconded the motion.
U/A

ITEM #2 OLD BUSINESS:

None

Prior to reading of 1st case, Tom Clark advised the Board that the case for the Doug Dede application is still tabled.

ITEM #3:

Dean Trefethen stepped down due to a conflict of interest; Bill Colbath assumed the Chair.

Z 01-26 Robert & Kathy Kleiman, 36 Mathes Hill Dr. A/K/A Assessor's Map I, Lot 49-14 zoned R-12 requests a variance from the terms of Article IX, Section 170-33.B(1) to maintain a fence with the finished side facing inward on the property being fenced.

Robert Kleiman stated that the neighbors had no problems with the position of the fence and that there were plenty of trees to act as a buffer and to hide the unfinished side. He stated he did not know of the City ordinance about the direction of a fence even though it abutted City property. Because the fence was installed by a private company, it would be too costly to have them move the fence. Mr. Kleiman asked if the Board had received the pictures of the fence as it is placed and Dean said yes.

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MOTION:

Rick Callaghan made the motion to accept the case.
David Ruoff seconded the motion.
4 in favor and one opposed (Doug Cummings opposed)

PUBLIC HEARING OPENED

Mrs. Kathy Kleiman stated that she believed their only error was in taking the word of the fence company about the direction of the fence. She apologized for not knowing about the City ordinance and said that their intentions were good. They want to rectify the problem but it is too costly to do so.

Doug Cummings asked if the Kleimans had anything in writing from the fence company.

Mr. Kleiman stated they had received nothing other than the original agreement.

PUBLIC HEARING CLOSED:

Bill Colbath asked for Staff recommendations.

Steve Bird stated that he had gone to the site. He believes that the City should uphold the terms of the ordinance in that the good side of the fence should face out. If the Kleimans believe that the blame is on the fence company then they should go after that company to rectify the problem.

Tom Dolbec agreed with Steve Bird in that there are other avenues to pursue to rectify this matter, not with the Zoning Board.

Doug Cummings also agreed and stated that he could not see any supportable hardship.

Rick Callaghan stated that he saw no problem with the fence and its position and the fact that the neighbors were not too close to be bothered.

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does not (Richard Callaghan voted does) face an unnecessary hardship. The applicants did not show supportable hardship.
2. It is the Board's conclusion that the variance will not (Richard Callaghan voted will) deliver substantial justice. If this variance is allowed, it will continue in other properties.
3. It is the Board's conclusion that the variance will not (Richard Callaghan voted will) be in harmony with the spirit and intent of the zoning ordinance. The intent of the ordinance was to create a standard that all fences face finish side out.

4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. At this time there is no direct abutter to be affected.
5. It is the Board's conclusion that the variance will not (Bill Colbath voted will) be contrary to the public or private interests or rights. There is no one close enough to be affected by this fence.

Therefore, based upon the foregoing, it is ordered that the application for the variance be denied. The applicant was advised to discuss with Tom Clark how to proceed from here. Mr. Kleiman asked if he would receive this decision in writing so that he could pursue litigation with the fence company and was assured he would.

Dean Trefethen assumed the chair.

ITEM #4:

Z 01-27 Dennis Munson, 20 Harmony Ln, A/K/A Assessor's Map F, Lot 30-A zoned R-40 requests a variance from the terms of Article IV, Section 170-12, Table I, Part B, Footnote (1), to construct a shelter for livestock within seventy-five (75) feet of a property line where a minimum of one hundred (100) feet is required.

Dennis Munson is requesting a variance to build a 10' x 12' shelter for his cows that is located about 20 feet short of the setback requirements. He stated that the spot he desires to build on is the best available for drainage and would look good with the building already there. He has talked to 3 of his neighbors and none are opposed to this building or the area.

Dean Trefethen asked if this was an additional structure?

Mr. Munson stated that it was.

Tom Dolbec asked what street this property is on because the plan called it Peacham Way.

Tom Clark informed the Board that this street had formerly been known as Peacham Way. It had been renamed Harmony Rd.

Rick Callaghan asked if this property had been surveyed.

Dennis Munson said yes it had by Civilworks.

Rick Callaghan asked if it was Civilworks that had discovered he was within the 75 feet of the property line.

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Dennis Munson said yes it was. He believed this property to be in a natural drainage area.

Bill Colbath made the motion to accept this case.

Doug Cummings seconded the motion.
U/A

Steve Bird asked the applicant if he had explored any other options or alternative locations for the building? Was there any other place to build this building other than the chosen site so that he would not require a variance?

Dennis Munson answered that he will be clearing more pastureland in the future but as of now he is limited as to where he can put this shelter.

PUBLIC HEARING OPENED

Tom Fairchild, an abutter from 77 Littleworth Road, stated that he had no problem with the position or location of the proposed building. He felt it was attractive and practical.

PUBLIC HEARING CLOSED:

Dean Trefethen asked for Staff recommendations.

Steve Bird asked where Mr. Fairchild was located as to Mr. Munson's property.

Mr. Fairchild stated that he lived on the corner of Harmony Lane and Littleworth Road.

Steve Bird said that he had performed a site visit and he had a problem with the location of the proposed building. He believed that some other place could be found to put this structure. The 100-foot setback is required to protect the abutters – 75 feet is too close. He could not see the hardship and could not support the request.

Dean asked for comments from the Board.

Bill Colbath stated that he could foresee a problem with the location as to drainage issues.

Tom Dolbec asked what was the use of the older building?

Dennis Munson stated that it was used as a storage garage. He added that the 100-foot setback is in the middle of the road and the water drains in that direction.

Rick Callaghan asked how the older building originally got located in its current position?

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Tom Clark answered that it was an accessory building and that it was not used to house animals so did not fall under the setback conditions being appealed tonight.

Dean Trefethen asked if Harmony Lane was private or City owned.

Tom Clark informed the Board that Harmony Lane is the correct name of the street and it is private.

Rick Callaghan asked if the house had been located yet?

Dennis Munson said no there was no plan for any residential use any time soon.

Dean Trefethen stated that it seemed to be a large lot, but landscaping and drainage cuts back the amount of useable land.

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does (Tom Dolbec voted does not) face an unnecessary hardship. The contour of the land and the resulting drainage restricts the placement of the shelter in a buildable location.
2. It is the Board's conclusion that the variance will deliver substantial justice. The proposed location will maintain an adequate separation of the shelter and the abutters' homes.
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 maintain an adequate setback from residential structures and this proposal accomplishes that intent.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. The reduction of 25 feet of the shelter to the property line will not affect the abutters' property in any way.
5. It is the Board's conclusion that the variance will not be contrary to the public or private interests or rights. The public is not affected and the nearest abutter is protected by the natural geographic features.

MOTION:

Rick Callaghan made the motion that as part of the condition the location is to be staked prior to construction.

Dean Trefethen seconded the motion.

U/A

Dennis Munson assured it would be done.

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Therefore, based upon the foregoing, it is ordered that the application for the variance be granted with the condition that the location of the shelter must be surveyed prior to construction.

ITEM #5:

Z 01-28 Raymond Martineau, Littleworth Rd. A/K/A Assessor's Map H, Lot 32-A-2 zoned B-4 requests a variance from the terms of Article V, Section 170-16, Footnote 23 to construct a building within fifty (50) feet from a residential structure where a minimum of one hundred fifty (150) feet is required.

Note: Bill Colbath stepped down due to a conflict and Tom Dolbec sat on this case.

Attorney James Schulte represented the applicant. Attorney Schulte explained that this was a pre-existing lot and that a variance was originally granted in May 2000 to allow a building to be located within 40 feet of the side property line. However, since that time, a residential structure previously not known about was discovered within the 150-foot setback requirement. Attorney Schulte stated that due to the size and configuration of the lot, wetlands area, commercial zoning and poor soil conditions that the proposed area makes it difficult for the building location.

Tom Clark was asked how this residence came about. He explained that this occurred during the mid-60s when this extra structure was legal. The tax maps show 2 residential structures on one lot.

Rick Callaghan asked what this building would be housing.

Attorney Schulte explained that it would be used to sell John Deere equipment.

David Ruoff asked if this building could comply with side setbacks.

Tom Clark explained that the entrance to the property would be off of Littleworth Rd. He pointed out that the plan incorrectly depicted a 75-foot side setback when the previous variance granted a 40-foot side setback.

MOTION:

Rick Callaghan made the motion to accept the case.

Doug Cummings seconded the motion.

It was a vote of 3 to 1 to accept.

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PUBLIC HEARING OPENED

Darlene Tripp, daughter of Gloria Michaud, 45 Knox Marsh Road, read a statement from Mrs. Michaud in which she stated that she was strongly opposed to a building less than 150 feet from her residence. She has always had a problem with the noise from Bob Sherwood's business that is 150 feet away. Requests the Board not to grant the variance.

Nancy Quinlan, 89 Knox Marsh Road, stated that this area was rezoned in 1988 although 8 homeowners protested this rezoning. She discussed the restrictions that are in force to protect homeowners such as herself and believes this application does not meet these requirements. She asks the Board not to grant the variance.

PUBLIC HEARING CLOSED:

Doug Trefethen asked for Staff recommendations.

Steve Bird stated that the Planning Department supported a variance to permit a viable commercial use on the lot but that more information may be needed to determine the proper setback.

Dean Trefethen asked Tom Clark about how close parking or storage is allowed from the property lines?

Tom Clark stated that it is 5 feet from a side property line and 10 feet in the front.

Steve Bird stated that another ordinance is in effect that calls for 25 feet from the property line to the edge of pavement for parking.

Discussion of noise impacts created from delivery trucks, parking and start up of vehicles.

MOTION:

Rick Callaghan made the motion to go to Criteria.

Tom Dolbec seconded the motion.

U/A

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does (Tom Dolbec and Doug Trefethen voted does not) face an unnecessary hardship. The size and the shape of the property severely restricts the size and placement of a structure on it.

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2. It is the Board's conclusion that the variance will not deliver substantial justice. The proposed building does not adequately protect the abutting residence while at the same time, there is useable area on the property for its zoned use.
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 intent is to protect abutting residential structures and as proposed this is not accomplished.
4. It is the Board's conclusion that the variance will (Dean Trefethen voted will not) result in a diminution in value of surrounding properties. The proposed proximity of the structure would cause diminution of value to the abutting residence.
5. It is the Board's conclusion that the variance will be contrary to the public or private interests or rights. The proposal does not present a way of protecting the abutting residence from the natural negative effects of living next to a commercial operation.

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

This meeting was recessed at 9:15 pm for a 15-minute break. Meeting resumed at 9:30 pm.

ITEM #6:

Z 01-29 Joel Shrut, 8 Hanson St. A/K/A Assessor's Map 20, Lot 38, Zoned B-2/RM-10 request a variance from the terms of Article IV, Section 170-12, Table I, Part A to establish a four-family dwelling.

Attorney Malcolm McNeil representing the applicant stated that this parcel was formerly a chiropractic office that had been destroyed due to a fire. There are existing apartments in the upstairs. This creates a parcel that is partially in a commercial zone and partially in a residential zone. The zoning ordinance allows 5 units in a building that fronts Central Avenue. However, the applicant wished to only have 4 and the building actually faces Hanson St. Also this building is blocked from view by the Century 21 building located in front of it.

Doug Cummings made the motion to accept the case.

Rick Callaghan seconded the motion.

U/A

PUBLIC HEARING OPENED

None

PUBLIC HEARING CLOSED

STAFF RECOMMENDATIONS:

Steve Bird stated that the Master Plan is supportive of housing in the downtown urban core and this is already a multi-family neighborhood, so the Planning Department supports the variance request.

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. Because the ordinance offers contradictory ways of converting structures in the B-2 zone to 4 units it does not apply to this property and creates a hardship for the applicant.
2. It is the Board's conclusion that the variance will deliver substantial justice. The property is surrounded by primarily residential structures and this structure readily lends itself to being only residential. Plus the location of the structure away from Central Avenue does not lend itself to commercial use.
3. It is the Board's conclusion that the variance will be in harmony with the spirit and intent of the zoning ordinance. Four unit buildings are allowed with special exceptions in the B-2 zone, so the intent of the ordinance is met with this proposal.
4. It is the Board's conclusion that the variance will not result in diminution in value of surrounding properties. The proposed use is consistent with most of its abutters and the neighborhood in general.
5. It is the Board's conclusion that the variance will not be contrary to the public or private interests or rights. The public is served by decreasing traffic by eliminating the business use and by increasing the number of residential units in the core part of the City. No private interests or rights are affected.

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

MOTION:

Bill Colbath made the motion to adjourn.

Rick Callaghan seconded the motion.

Zoning Board of Adjustment adjourned at 10:00 pm.

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List of members:

Term Expires

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|--------------------------------------|------------|
| 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 |