

**DOVER ZONING BOARD OF ADJUSTMENT  
MINUTES OF MEETING  
JANUARY 20, 2000**

**MEMBERS PRESENT:** Dean Trefethen, Chairperson, Bill Colbath, Co-Chairperson, Bob Mullan, Rick Callaghan, Doug Cummings, and Tom Dolbec

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

**ITEM #1: NEW BUSINESS**

A. The annual nominations for and elections of Zoning Board Officers will be held.

**MOTION:**

Dean Trefethen made the motion to hold the nominations and elections at the end of the meeting.

Bob Mullan seconded the motion.

U/A

B. Approval of minutes for regular meeting of December 16, 1999.

**MOTION:**

Bill Colbath made the motion to accept the minutes as presented.

Doug Cummings seconded the motion.

U/A

**ITEM #2: OLD BUSINESS:**

A. Z 99-23, Karen & Stephen Root, 15 Digby Ln., A/K/A Assessor's Map I, Lot 48-B-9.  
Review amendment to deed as condition of approval.

Karen Root was not present. She will be placed on the February agenda.

**ITEM #3:**

**Z 00-1, Michael Blackman, 812 Central Ave., A/K/A Assessor's Map 37, Lot 32-A requests a variance from the terms of Article IX, Section 170-32.1(3)(b) to have a free-standing sign with an area of ten and one-half (10.5) square feet where a maximum of four (4) square feet is allowed.**

Bill Colbath stepped down due to a conflict of interest. Dean Trefethen gave Mr. Blackman the option of waiting for a full Board or being heard at this time. Mr. Blackman chose to go ahead and present his case.

Mr. Blackman feels that his sign is too small for his location and cannot be seen soon enough for people to make the turn onto his property. There have been some accidents in the past by

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Patients entering his property and he feels that a larger sign would make it safer. Dr. Blackman proposes to have a 3 X 3-1/2 foot sign and he presented pictures to the Board of the existing sign, the proposed sign, and pictures of other signs on the avenue.

Dean Trefethen asked Tom Clark if the proposed bottom sign for the upstairs business is permitted?

Tom Clark responded that in the Office zoning district there is a provision that allows for each tenant to have a sign but a freestanding sign cannot exceed twelve square feet.

Tom Clark also stated that a twelve square foot wall sign would be allowed for a building this size. Dr. Blackman stated in his application that he would not be installing the wall sign so this is kind of a trade-off.

**MOTION:**

Bob Mullan made the motion to accept the case.  
Doug Cummings seconded the motion  
U/A

Dean Trefethen asked for the Planning staff recommendations.

Steve Bird responded that in inspecting the area it is obvious that the applicant's sign is considerably smaller than the others in that area. If a condition were placed that a larger free-standing sign would be permitted in lieu of the permitted wall sign, the Planning Department would not oppose this variance.

**PUBLIC HEARING OPENED**

No comments

**PUBLIC HEARING CLOSED**

**FIVE CRITERIA:**

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. Due to bordering a more permissive zone and the increase of traffic in the area creates a hardship of not having a larger sign.
2. It is the Board's conclusion that the variance will deliver substantial justice. The proposal calls for a sign of similar size and construction of signs of abutters and other nearby businesses in the same zone.

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 regulate sign size so as not to create an eyesore while at the same time provide the necessary information. This proposal accomplishes that.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. The proposed sign is of similar size and construction of other signs nearby.
5. It is the Board's conclusion that the variance will not be contrary to the public interest. The proposal will enhance visibility of the business while improving traffic safety.

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

**MOTION:**

Bob Mullan made the motion to place the following conditions:

1. The total square footage of signage for the entire property not to exceed twelve (12) square feet.
2. No other additional signage is permitted.

Doug Cummings seconded the motion.

U/A

**ITEM #4:**

**Z 00-2, Albert and Christine Estes, Long Hill Rd., Ext., A/K/A Assessor's Map A, Lot 52, Zoned I-4 requests a variance from the terms of (1) Article V, Section 170-16 to subdivide a parcel creating two (2) lots, each with one hundred (100) feet of frontage along a public right-of-way where a minimum of four hundred (400) feet is required; and (2) Article IV, Section 170-12 Table 1, Part A to allow the construction of single family dwellings on two (2) lots in an industrial zoning district.**

Bill Colbath sat on this case.

Al Estes informed the Board that Bob Stowell of Tri Tech Engineering is also present to answer any questions. Originally, the property was to be part of Enterprise Park and Venture Drive was to eventually go to this property and make it part of Enterprise Park. However, since Venture Drive will not be going to this property, the only access to this property is through residential areas. So his intent is to create two residential lots that he feels will have a positive effect on the neighborhood value wise and quality. If industries were to go in there, he feels that it would have a negative effect on the neighborhood. He is also concerned with the safety factor from delivery trucks etc. He feels that this would be the best intent for that property.

Dean Trefethen asked the applicant, if this were approved, (1) would he have any objections to a condition of no further subdivision of either lot allowed? (2) Would there be a shared driveway or individual driveways?

Al Estes answered that (1) he would have no objection at all to the restrictions of no further subdivisions, and (2) the plan right now is to do individual driveways. It is possible to do a lot line so that the driveways would be split by the lot line so that it would be one driveway that would break off eventually so that there would be only one driveway at the road.

**MOTION:**

Bob Mullan made the motion to accept the case.  
Bill Colbath seconded the motion.  
U/A

Dean Trefethen asked the Planning Staff for their recommendations.

Steve Bird stated that with the development of the Foster's property, the future extension of the road is no longer an option so the likelihood of this property being used for industrial is reduced. The only access for industrial use would be down Long Hill Rd. Ext. which is a residential road. This would present a problem for the Planning Board to review any industrial proposal that would access Long Hill Rd. Ext. Since the access to this lot is no longer available, and since there has been considerable residential development along Long Hill Rd., the Planning Department supports this variance request with the condition that no further subdivision be allowed on these lots. The abutting residential district is an R-40 district that permits lot sizes in the 40,000 square foot range. The reason for the condition is because each of the potential lot owners of each of these lots with the 100 feet of frontage along the road could propose a future City street in there and produce a considerably larger number of residential lots. There are also a number of wetlands on this property. If the condition were in place, the Planning Department would be in favor of this variance.

Dean Trefethen asked the applicant if he had a proposed location of the house for lot #52?

Al Estes answered that he did not have one yet but that he would stay away from the wetlands.

Dean Trefethen asked how far from the rear property lines of the existing lots could he place the house and stay away from the wetlands.

Al Estes answered that there is enough land for him to get all the way down to the back of Reyners Brook subdivision and stay away from the front lots.

Bob Stowell, Tri Tech Engineering pointed out that the building setbacks shown are the I-4 setbacks which are substantial, which are 75 feet from the back of the lots on Long Hill Rd. Ext.

Dean Trefethen stated that he was concerned for the loss of privacy for the existing houses and asked Al Estes for his intentions and to comment on the feasibility of increasing the setback, possibly one hundred feet.

Al Estes responded that his intention is to construct houses so that there will be privacy. He would definitely not consider putting the new houses directly behind the existing house. Considering one hundred feet is easy to do. They would have to also consider the wetlands. His intent is to get the houses back.

Steve Bird added that if that parcel were zoned R-40 the setback would be twenty-five feet but because this is I-4 the setback is seventy-five feet. So keeping it in the I-4 is kind of a protection then if it were rezoned R-40.

#### **PUBLIC HEARING OPENED**

Lou Clement, abutter at 35 Reyners Brook stated that he was representing some of the people in the neighborhood and submitted to the Board a petition signed by ten people who do not wish to see any changes made to this parcel. He does not feel that changes to the lot should be made because of the changes made in the development of Foster's lot which changes the access to this lot. In regards to the wetlands, there are considerable wildlife in the area and this development will change the character of the whole place. A lot of timber has been taken off this lot in the last year which changes the entire view in the area. Before they could not see the Foster's building in Industrial Park and the noise from the turnpike was minimal. Now the noise has increased significantly and they can see the Foster's building lights. They feel that it will lessen the property value and for that reason oppose this request. He added that he feels the applicant should be required to submit some plans of his intentions before the Board considers this request.

Steve Brown, abutter at 30 Reyners Brook, added to what Mr. Clement said that when he purchased his property there were a lot of wildlife and opposes the development of this property.

Holly Brown also opposes the request for a variance because when they purchased their house they had so much joy from the wildlife because they are directly across from the marsh. The woods are beautiful just as they are but with the logging there is less wildlife.

Mike Garland, 216 Long Hill Rd. He heard tonight that privacy was going to be used to market these two lots. He moved to this area himself for privacy. Since he moved here, more and more houses have been built. This area is the last area that would give him the privacy he wants. He opposes the request for this variance.

Al Estes commented that he feels that if this parcel were used for industrial, the people would wish they had two houses instead of factories.

Steve Brown added that distances from property lines was mentioned but nothing was said about the rear of the property, which abuts his property. He asked that consideration be given to that also.

### **PUBLIC HEARING CLOSED**

Dean Trefethen reminded everyone that this is an Industrial zone, and there could be industries. Regardless of whether or not it is used for industry, Mr. Estes has been paying taxes on this property and he can use the property, even if it is just timbering, which is 100% an allowed use, without any approval from anyone. Also timbering is not something that the Board will be considering. Dean was not concerned with the back of the property because there is a conservation easement there that will force whatever is built away from the line.

Bob Mullan stated that it comes down to the lessor of the two options, a factory or residential. He is leaning towards the houses because the impact of industries would be much greater. If the chances of industrial use going in there were good, he would probably lean the other way.

The Board discussed the options of (1) industrial use and providing accessibility, (2) rezoning to residential, which would allow the possible construction of twenty houses, (3) or allowing two houses in an industrial zone. Also if the owner were not able to develop the land, and it remained vacant for a period of time, it may result in the City having to take it over.

Doug Cumming's concern is the problems that could arise with having two driveways.

Dean Trefethen added that it would be better to have one driveway than two. He also agreed with Bob Mullan that we have to look at the lessor impact of the two and the City has to be careful that it does not end up in confiscating this land. It was zoned a certain way and then ended up in not providing proper access to it. The problem that he is having is that he is not sure that the lack of proper access for industrial zone constitutes a hardship. He feels that access could be made from Long Hill Rd. Ext. even though it would not be desirable.

Bill Colbath commented that the Planning Board and the residents that live on Long Hill Rd. Ext. would not allow access to this property. The residents would strongly oppose it because of the tractor-trailer traffic etc. The only way that it could be used for industrial is if George Foster's Company would buy it and expand on it.

Dean Trefethen stated that he would like to see the property zoned appropriately as opposed to granting a variance. He can see how then it could develop into 15 to 20 houses.

Bill Colbath added that given the choice between 15 and 2 houses, he feels that 2 would be better.

**FIVE CRITERIA:**

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. (Dean Trefethen voted does not). The current zoning of the property renders it practically useless due to lack of adequate access.
2. It is the Board's conclusion that the variance will deliver substantial justice. (Dean Trefethen voted will not) It allows a use 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. (Dean Trefethen voted will not) The current configuration and inadequate access does not allow use of the property as zoned, but the proposal will.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. (Dean Trefethen and Tom Dolbec voted will) The proposal is of similar use of surrounding residential homes therefore would not impact their values.
5. It is the Board's conclusion that the variance will not be contrary to the public interest. The public's interest is better served by residential development of the property than industrial development.

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

**MOTION:**

Doug Cummings made the motion to apply the following conditions:

1. All setbacks on both lots to be one hundred feet minimum.
2. Both lots to share a common driveway from Long Hill Rd. Ext.
3. No further subdivision of either lot is permitted.

Bill Colbath seconded the motion.

4 in favor, 1 opposed (Dean Trefethen opposed)

Dean Trefethen advised the abutters that they have twenty days to appeal if they choose to.

Rick Callaghan sat on the next case and Tom Dolbec stepped down.

**ITEM #5:**

**Z 00-3, Steven Peters, 49 Applevale Dr., A/K/A Assessor's Map K, Lot 17-V Zoned R-12, requests a variance from the terms of Article V, Section 170-17 to maintain an accessory structure (detached garage) within approximately six (6) feet from a side property line where a minimum of ten (10) feet is required.**

Steven Peters stated that because he lives on a curve, it is very hard to place a garage on this property. Also the rear is wider but because the land drops he could not go any further back for the garage. He had a shed in his back yard but because it is very wet the shed just fell apart. He kept with the style of the neighborhood and it should not diminish the value of the houses.

Dean Trefethen asked Tom Clark how this case reached this point.

Tom Clark answered that there apparently was a communication problem. He dropped off the permit application and proceeded to build immediately and it was around 8 or 10 days when Tom had reviewed the plans and saw that the proposed structure did not meet the setback. Tom immediately called Mr. Peters and informed him of this and he told Tom that it was already built. Tom stated that Mr. Peters did have good intentions but it was built before the permit was issued.

Tom Clark asked the applicant if the setback of six feet two ins. indicated on the plot plan was to the property line or to the fence because Tom had measured five feet one ins. to the fence.

Mr. Peters answered that it is less than six feet. The reason he built it this way was for fire safety. He wanted to make sure the building was far enough away from the house. So he shot for the distance between the house and the garage rather than to the lot line.

Tom Clark asked then if the fence is on the lot line?

Mr. Peters answered that it was.

Dean Trefethen asked what kind of foundation the garage was on?

Mr. Peters answered that it is a poured pad approximately 7 ins. thick, with 2-1/2 feet crushed 3/4 ins. gravel.

Rick Callaghan asked who put the garage up?

Mr. Peters answered that he did it himself.

**MOTION:**

Bob Mullan made the motion to accept the case.

Doug Cummings seconded the motion.

Four in favor and one opposed (Bill Colbath opposed)

Rick Callaghan asked for more clarification on how this came to be.

Mr. Peters answered that he had brought the plans in about two weeks before he had scheduled time off to do this. When he did not hear from Tom, through his ignorance he just went ahead and built the garage.

Dean Trefethen asked that if the garage were to be move closer to the house would there be an issue with the clearance between the house and garage?

Tom Clark answered that there would be because there wouldn't be the required distance between the house and garage.

Dean Trefethen asked for the Planning Staff recommendations.

Steve Bird stated that this is one of the non-conforming lots in terms of frontage and if this were an attached garage, because it is 75 feet or less of frontage, the 6 foot setback would apply. Also in examining this neighborhood it appears that it would not be out of the ordinary. The abutter to this lot has a garage with a similar situation as this one. Given those factors and that the lot has less than 75 feet frontage, the Planning Department supports this request.

The Board discussed the possibility of attaching the garage to the house and the requirement of a different foundation. Also some members had a difficulty with the hardship.

#### **PUBLIC HEARING OPENED**

No comments

#### **PUBLIC HEARING CLOSED**

#### **FIVE CRITERIA:**

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. (Dean Trefethen voted does not) Because this is a nonconforming lot and a six foot setback would be allowed if the garage was attached to the house, enforcing the ten foot setback would be a needless and unnecessary restriction.
2. It is the Board's conclusion that the variance will deliver substantial justice. Because this is a nonconforming sized lot and abutters have similar garages at similar setbacks.
3. It is the Board's conclusion that the variance will be in harmony with the spirit and intent of the zoning ordinance. (Dean Trefethen voted will not) The ordinance would allow a six foot setback if the garage was attached, this proposal accomplishes the same thing, in effect.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. The proposal is similar to others in the neighborhood, including the abutter's.

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5. It is the Board's conclusion that the variance will not be contrary to the public interest. The public's interest is to maintain reasonable setbacks and this proposal accomplishes that goal.

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

**ITEM #1. New Business**

- A. The annual nominations for and elections of Zoning Board Officers will be held.

**MOTION:**

Bob Mullan nominated Dean Trefethen to Chairperson and Bill Colbath to Vice-Chairperson. Rick Callaghan seconded the motion  
U/A

**MOTION:**

Rick Callaghan made the motion to adjourn.  
Bob Mullan seconded the motion.  
U/A

**List of members:**

**Term Expires**

Richard Callaghan – regular member	4/13/2000
William Colbath – regular member	10/23/2000
Robert Mullan – regular member	12/31/2000
Dean Trefethen – regular member	12/31/2000
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