

**DOVER ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
MARCH 16, 2000**

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

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

ITEM #1:

A. Approval of minutes for regular meeting of February 17, 2000

MOTION:

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

ITEM #2:

No old business

ITEM #3:

Z 00-4, Kevin Goodwin, 139 Back River Rd., A/K/A Assessor's Map I, Lot 40, zoned R-12 requests a variance from the terms of Article V, Section 170-16 to subdivide a parcel creating a lot with approximately ninety-six (96) feet of frontage along a public right-of-way where a minimum of one hundred feet (100) is required.

Bill Colbath stepped down due to a conflict of interest. Alternate David Ruoff sat on this case.

Kevin Goodwin stated that he has presented a revised site plan from the one submitted last month and he reviewed it with the Board.

Dean Trefethen asked the applicant if there is 96 feet of frontage on the proposed lot, and why the applicant couldn't make it 100 feet?

Kevin Goodwin answered that he does have 96 feet on the proposed lot and if he increased it to 100 feet he would be left with less than 100 feet on his lot on Back River Rd.

The Board discussed the lot, frontage on Back River Rd. and Tetreau Dr., and the location of the right-of-way.

Dean Trefethen stated that he could not see a hardship and asked the applicant what his hardship is?

Kevin Goodwin stated that he cannot develop the land because of the current ordinance

ZBA
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PG. 2

Dean Trefethen stated that according to the site plan, it appears that he has one lot that conforms, and it is large enough in square footage to create two lots. He still does not see a hardship.

Rick Callaghan asked for clarification. The triangle piece that extends the frontage on Back River Rd. is to allow adequate amount of frontage for the new piece of property. He asked how this would affect the frontage for the houses that are already on the dirt street?

Tom Clark stated that variances have already been granted for those lots on Tetreau Dr. Three lots were created from a large lot so the frontage for those lots are on Tetreau Dr. by a variance.

Rick Callaghan stated that those lots each have 100 feet of frontage on Tetreau Dr. and asked why this new lot should not be held to the same standard.

Tom Clark stated that the new lot would have to have frontage on a public-right-of way which Tetreau Dr. is not. If the applicant were to propose frontage on Tetreau Dr. he would have to ask for a variance for no frontage on a public-right-of way.

MOTION:

John Murphy made the motion to accept the case.
Bob Mullan seconded the motion.
U/A

Steve Bird asked the applicant if he had considered other means, such as abutters, to gain the frontage needed?

Kevin Goodwin answered that he had and was unsuccessful.

Dean asked for Staff recommendations.

Steve Bird stated that he was relying on the memo from Bruce Woodruff that was submitted at the last meeting. The Planning Department cannot support this request.

PUBLIC HEARING OPENED

Pete Rallis, abutter, asked if they would access the lot from Tetreau Dr. or Back River Rd. and how would they access to it.

Dean Trefethen responded that the entrance would be from Tetreau Dr. and they would have access to it because they would own that portion of the land. The houses in back of this lot had the right to travel over it but do not own the land.

PUBLIC HEARING CLOSED

Dean Trefethen stated that he sees no hardship.

Bob Mullan has a difficult time with it as presented.

John Murphy has no problem with the four feet. All other requirements have been met.

David Ruoff is undecided.

Rick Callaghan stated that he is having a hard time with the hardship. If this benefit had been given to another property in this area it may be considered but this is a singular case. He sees no hardship.

Bob Mullan agrees with John Murphy and the four feet.

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. (Rick Callaghan and Dean Trefethen voted does not) Because all other requirements have been met and the fact that lots behind this proposed lot have variances on frontage requirements, it would be a needless or unnecessary restriction to hold the applicant to 100 foot frontage.
2. It is the Board's conclusion that the variance will deliver substantial justice. (Rick Callaghan and Dean Trefethen voted will not) Granting the application would allow similar rights as those granted to the three lots behind this proposed lot.
3. It is the Board's conclusion that the variance will be in harmony with the spirit and intent of the zoning ordinance. (Rick Callaghan and Dean Trefethen voted will not) The applicable intent in this case is to control density 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. (Rick Callaghan voted will) The shortfall of approximately four feet of frontage is not the determining issue on impact to surrounding properties, but rather it is the total overall lot size and buildable location which does not effect neighbors.
5. It is the Board's conclusion that the variance will not be contrary to the public interest. (Rick Callaghan and Dean Trefethen voted will) The proposal does not impact adversely the public's interest; all of their interests are met with the proposal.

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

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Bill Colbath sat on the remaining cases.

ITEM #4:

Z 00-5, Brian and Elizabeth Bortz, 109 Back River Rd., A/K/A Assessor's Map I, Lot 48-D, Zoned R-12, requests a variance from the terms of Article V, Section 170-16 for a lot line adjustment that would create a non-conforming structure.

Brian Bortz stated that he is looking to purchase a small piece of land that was created after his house was build when the new Digby Ln. subdivision went in. They would like to purchase this corner piece to add to their property and maintain it. There is a drainage swale there and they will make certain it is always clear so that water would not back up to their house. Brian presented a letter to the Board from John and Susan Vaillancourt, owners of the property, stating that they agree to sell that portion of land to him.

Dean Trefethen stated that it appears Brian does not have the required thirty-foot setback from the new road that was created and asked how this happened?

Tom Clark responded that before issuing the permit for the applicant's house, he spoke with the contractor. He found out that the little sliver of land did not belong to the applicant. Therefore, his lot was not the corner lot so the setback only had to be fifteen feet.

The Board discussed the sizes of Vaillancourt and Bortz's lots and the new road. Brian will be exchanging a portion of the back of his lot to make Vaillancourt's lot conforming for the small piece on the side of Bortz's lot which is owned by Vaillancourt.

MOTION:

Rick Callaghan made the motion to accept the case.

John Murphy seconded the motion.

U/A

Dean Trefethen asked for Staff recommendations.

Steve Bird stated that the Planning Department supports this request because this strip of land being added is of no use to the lot owned to the rear. This is a case of a needless and unnecessary restriction.

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 any unforeseen combination of circumstances, this would be a needless or unnecessary restriction not to allow this proposal.
2. It is the Board's conclusion that the variance will deliver substantial justice. It will allow conveyance of maintenance of the property to the rightful person while maintaining proper lot sizes and a reasonable setback.
3. It is the Board's conclusion that the variance will be in harmony with the spirit and intent of the zoning ordinance. All intents of the zoning ordinance are maintained with this proposal.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. The conveyance of this small portion of property will be invisible to anyone else.
5. It is the Board's conclusion that the variance will not be contrary to the public interest. Proper maintenance of the land and drainage area will be in the public's interest.

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

ITEM #5:

Z 00-6, Richard Goulet, 132 County Farm Cross Rd., A/K/A Assessor's Map B, Lot 14-E, 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 horses approximately twenty-five (25) feet from a property boundary(ies) where a minimum of one-hundred (100) is required.

James Markel represented Richard Goulet. Mr. Markel presented a letter to the Board from Mr. Goulet authorizing Mr. Markel to represent him. Mr. Markel stated that they are in the process of purchasing this home and land from Mr. Goulet. In reference to the hardship, Mr. Markel stated that the designation of R-40 allows the pasturing of horses but a shelter requires a minimum of 100 feet from the lot line. He also submitted letters from three of the abutters to the Board stating that they are in support of this request. He stated that there are a number of horses, sheep and cows in this area so it is common to this use. There have been variances granted for this area for keeping horses. Mr. Markel stated that 3 of the 4 lot line setbacks would be met. It would be 100 feet from the rear and other property line and about 300 feet from the nearest structure other than the house.

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Dean Trefethen asked (1) which of the two plans that he presented is the applicant going to use? (2) What he proposes to use as a paddock? (3) What does he propose for a schedule of removal of waste?

James Markel responded (1) that he will be using the one that has the barn close to the house, (2) and that there would be a steel fence with PVC on top of it. It would enclose the barn and would not come close to the brook. (3) He would be contracting with a company that does this type of removal and it could be done on a monthly or twice a month basis.

MOTION:

John Murphy made the motion to accept the case.

Bill Colbath seconded the motion.

U/A

Dean Trefethen asked for staff recommendation.

Steve Bird made a few suggestions to the Board. There is a stream on the property so the placement of the building needs to be considered. There is a setback requirement of fifty (50) feet from the stream for any structure. There may be a wetlands permit issue involved because of the stream. He is concerned with how the animals will get from the house location across the stream to the barn location. This does not necessarily affect the variance. This is just for the Board's information.

Dean Trefethen asked if the stream runs between the house and the proposed barn?

Steve Bird answered that it does. There have been variances granted in this area and he suggests that if the Board does grant this variance they may consider some conditions. (1) Limiting the number of horses, (2) there would be no boarding of other people's horses, (3) waste removal, (4) the structure used for horses only and meet the Wetland Board setback requirements. The Planning Department supports this request with the suggested conditions.

Bill Colbath asked how the stream relates to the paddock area?

Tom Clark responded that there is no local ordinance but the State may have one. They will have to be contacted.

PUBLIC HEARING OPENED

Mr. Steele, 120 County Farm Cross Rd. They have a barn on their property. His basic concern is that this property is the lowest property in the area and swampy. There appears to be no pastureland. Horses will be sitting in mud. He feels that it is not appropriate for horses. Other than that, he has no objections.

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PG. 7

Mrs. Markel stated that there were horses there previously and the neighbors across the street hope to get some horses for their barn. She walked the property when it was wet and where the stream is it was wet but beyond that it was dry. They were hoping to get a pasture but cannot so they will be feeding them hay.

PUBLIC HEARING CLOSED

Bill Colbath was concerned with erosion

John Murphy stated that he has no problem with two horses and with contracting to have the waste removed. There are also cows next door. He feels that the distance between where the horses will be and the stream is great enough that he has no concern with it.

Rick Callaghan asked for clarification of the 100-foot setback requirements.

Tom Clark explained that the 100-foot setback for the barn is the potential impact of the smell and noise on the abutters.

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. (Dean Trefethen voted does not). Because the lot is configured with a narrow frontage, but there is the proper amount of land to support the proposed use, this lot is unique compared to most lots in the area.
2. It is the Board's conclusion that the variance will deliver substantial justice. It allows the use of a lot in the R-40 zone to take advantage of its right to have horses on it.
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 intent was to allow a reasonable distance from the stable to an adjacent home 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. (Dean Trefethen voted will). The proposal is consistent with other lots and their uses in the surrounding area.
5. It is the Board's conclusion that the variance will not be contrary to the public interest. Boarding of horses is allowed in this zone and is a common occurrence in the neighborhood.

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

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PG. 8

MOTION:

Rick Callaghan made the motion to place the following conditions:

1. Limited to only 2 horses at any given time.
2. No boarding of horses.
3. Proper schedule of waste removal to be maintained.
4. The only type of livestock to be housed in this structure is horses

John Murphy seconded the motion.

4 in favor and 1 opposed (Dean Trefethen opposed)

ITEM #6:

Z 00-7, Redden Development Co. (Applicant: New Redden Development Co. L.P.), Adelle Dr, A/K/A Assessor's Map I, Lot 20-A-5 Zoned RM-20/R-20 requests a variance from the terms of Article V, Section 170-17 to construct an accessory structure (Community Building) within twenty-five (25) feet of a front property line as it abuts a street where a minimum of fifty (50) feet is required.

Brian Poulin represented New Redden Development. They currently have Redden Gardens under contract to purchase it. They plan extensive renovations as well as a new community building that will also have a manager's office. They currently have a small manager's office building with a garage. They propose an approximate 2900 sq. ft. bldg. The proposed structure does not meet the front setback of 50 feet; however, it will be placed on top of the footprint of the existing building and will be no closer than the current building. He reviewed the application's five criteria.

Dean Trefethen asked Tom if all other setbacks are met.

Tom Clark answered that the side does. When the application was first submitted, it was questioned as to whether or not this would be designated as part of the principle use or an accessory use. It was determined that it is an accessory use, so it needs 10 feet from the sideline; therefore, a variance from the side setback is not necessary. However, the concern was the 11-foot distance between this building and the nearest apartment building. The requirement is the distance between the accessory building and the apartment building needs to be at least equal to the height of the rear wall of the proposed building. Because of the size of the building, this will require site review by the Planning Board.

MOTION:

Bill Colbath made the motion to accept the case.

John Murphy seconded the motion.

U/A

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PG. 9

Steve Bird asked the applicant (1) if the existing parking spaces are for the tenants or workers. It appears as though they would be losing some spaces, and (2) if they anticipate additional parking spaces will be needed for the community building or do they plan on tenants walking there? (3) Do they anticipate additional employees? (4) Asked if they anticipate any problem in meeting the 11-foot distance between the community building and the apartment building?

Brian Poulin answered (1) that there are over 200 parking spaces, so there are sufficient parking spaces. Currently those spaces are used by staff which are two. (2) This will be primarily for the tenants. (3) They anticipate only one more employee during the construction and then to return to 2 employees. (4) They do not anticipate any problems in meeting the 11 feet.

Dean Trefethen asked for staff recommendations.

Steve Bird stated that the Planning Department supports this variance request because it will increase the attractiveness of this development and provide a necessary facility for the residents. Also, the existing buildings are within 25 feet of the road, and this building at its present location is actually about 34 feet from the road so meets the spirit and intent of the ordinance.

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. The proposal does not encroach any closer to the road frontage than adjacent existing buildings and without this relief it would be impossible to modernize the complex for contemporary needs.
2. It is the Board's conclusion that the variance will deliver substantial justice. It allows improvement and expansion of tenant's services without impacting any adjacent abutters.
3. It is the Board's conclusion that the variance will be in harmony with the spirit and intent of the zoning ordinance. The intent is to maintain reasonable setbacks, and the proposed structure will be no closer than other existing structures.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. Improvement of the complex should, in fact, enhance surrounding properties.

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PG. 10

5. It is the Board's conclusion that the variance will not be contrary to the public interest. It is in the public's interest to maintain affordable housing and to expand services available to the tenants of the complex.

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

MOTION:

John Murphy made the motion to adjourn.
Bill Colbath 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