

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

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

STAFF PRESENT: Thomas Clark, Building Official

ITEM #1:

A. Approval of minutes for regular meeting of March 16, 2000.

MOTION:

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

John Murphy seconded the motion.

U/A

ITEM #2:

No old business

Bill Colbath stepped down from both cases due to conflicts of interest.

John Murphy stepped down from case #Z 00-8 due to a conflict of interest.

ITEM # 3:

Z 00-8, 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 (Table of Dimensional Regulations) to construct a building within fifty (50) feet of a front property line as it abuts a street and within twenty (20) feet of the side and rear property lines where the minimum for the front, side and rear setbacks is seventy-five (75) feet.

Ray Martineau explained that the property was rezoned ten years ago for a minimum of 5 acres and all the setbacks are 75 feet. Because of the irregular shape of the property and some wetlands on the property, he originally was requesting that the setback be reduced from 50 feet from the street and 20 feet from the sides and rear. However, after talking with the Planning Office, and discussing the potential size of the building that will go on the lot, he is now requesting 50 feet from the front, left side 25 feet, and right 20 feet. He would like to put in 2 potential agricultural and retail buildings.

Rick Callaghan asked if the applicant was amending his request?

Ray Martineau answered that he was after discussing it with the Planning Department.

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Dean Trefethen asked if there were to be two business uses and one building?

Ray Martineau answered 2 potential users for the site. One would be 10,000 sq. ft. user and one would be a 12,000 sq. ft. user. There will not be a total 22,000 sq. feet. It will be one or the other. It will most likely be a 100 X 100 building footprint or a 120 X 100 footprint with the required parking.

Dean Trefethen asked if the applicant had a drawing of where the building will be located and where the parking will be?

Ray Martineau answered that he did not.

Rick Callaghan stated that he really would like to know where the building would be located on the lot.

Dean Trefethen stated that he is having difficulty seeing the hardship without a plan showing the location of the building.

Ray Martineau drew on the plot plan basically where the proposed building will be located and the Board discussed this.

Rick Callaghan is still having a problem finding the hardship without a plan showing the location of the building. He doesn't feel that there is enough information to work on this case.

MOTION:

Doug Cummings made the motion to accept the case.

Rick Callaghan seconded the motion.

3 in favor and 1 opposed (Dean Trefethen opposed due to not enough information)

MOTION:

Rick Callaghan made the motion to table the case pending more information on location of building.

Doug Cummings seconded the motion.

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John Murphy sat on the next case.

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ITEM # 4:

Z 00-9, Douglas and Ann Tucker (Applicant: Steven and Katharine Hensel), 49 Littleworth Rd., A/K/A Assessor's Map G, Lot 29-C Zoned R-40 requests a variance from the terms of Article IV, Section 170-12 (Table of Use Regulations), Table 1, Part C.1, to establish an Eating and Drinking Establishment in a residential zoning district.

Steve Hensel, applicant, stated that he has a motor vehicle converted to a vending bus. He obtained a State Permit and attempted to get a Dover permit. He received an inspection by the Health Officer for a Health Permit. Upon further inquiry by the Health Officer, it was determined that the applicant could not operate an eating and drinking establishment in a residential zone. In the permit that he received it does not state that it has to be residential or commercial and that the Licensing Board is the one that makes the decision that it is residential or commercial. He cannot understand where the decision came from that he couldn't do it.

Katherine Hensel stated that it is not an Eating and Drinking Establishment. It will be a mobile lunch truck that will be moved around. They would like to stay plugged in on their land from 8:00 a. m. until 2:00 p. m.

Steve Hensel stated that it would be safer to have the bus on his property rather than on the public right-of-way. He referred to other businesses in the area that received variances to operate their business there.

Dean Trefethen asked Tom Clark if he could shed any light on this case.

Tom Clark stated that the Licensing Board and Zoning Ordinance differ in their requirements. One does not regulate the other. Tom reminded the applicant of their conversation before the applicant purchased the bus and made the renovations, that as long as the applicant purchased the Hawkers and Venders License, and he traveled on the right-of-way, there would be no problem. But he could not establish it on his property in a residential zone.

Steve Hensel asked where that was stated in the law?

Tom Clark answered that it is in the Table of Use Regulations in the Zoning Ordinance adopted by the City Council, that you cannot have an eating and drinking establishment in an R-40 district.

Katherine Hensel responded that it is not an eating and drinking establishment.

Tom Clark responded that in looking at the definition of an eating and drinking establishment it is. It is not a sit-down restaurant but that is the category that the bus comes under if it is on a lot. If it is mobile it is under the Hawkers Peddler License. If it is on a lot it is regulated by the

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land use regulations it is governed by the zoning ordinance and the licensing board does not have the authority to say residential or commercial.

Dean Trefethen stated for clarification to Steve Hensel that he had discussed this with Tom Clark before he bought the bus.

Steve Hensel stated that is correct and that he built it and was going to drive it around. Then when he got the permit it asked for location of sale of goods and he gave his address and he was told that it was ok to open

Tom Clark added that the Health Officer was talking only about health issues. The Health Officer does not cover zoning issues.

John Murphy asked Tom Clark where the different zones are in that district?

Tom Clark described where each of the zones are located on Littleworth Rd.

MOTION:

John Murphy made the motion to accept the case.

Rick Callaghan seconded the motion.

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Dean Trefethen read the staff recommendation from the Planning Department into the minutes. "The Planning Department does not support granting the variance request to establish an Eating & Drinking Establishment at 49 Littleworth Rd. for the following reasons: (1) Staff can discern no hardship with regard to the land or reasonable uses as it pertains to the request. The mobile lunch bus can be moved to a safe location in any City right-of-way with the proper Hawkers & Peddlers and Health permits and legally operate. In fact, the applicant can operate the lunch bus across the street in the Industrial Park within the industrial zone with said permits. (2) Additionally, at the time the Planning Board attempted to rezone this area to a commercial zone, many residents expressed specific opposition to any restaurant or food service uses in their public hearing testimony. As you know, the rezoning initiative failed in this area, therefore the regulations in the R-20 zone still hold sway. (3) A variance to allow a lunch bus to operate on the lot would open the door to a more permanent restaurant use in future years, as the variance would run with the land."

Dean Trefethen asked the applicant if he would like to comment on this recommendation?

Steve Hensel answered that he thinks it would be safer to have it on his property than driving around.

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PUBLIC HEARING OPENED

Ann Tucker, property owner, stated that she has no objections to using her property because she has an investment with her children. She asked the Board to take into consideration that there have already been variances granted to the businesses in that area.

PUBLIC HEARING CLOSED

John Murphy commented that the area is business, however, he sees absolutely no hardship other than needless restriction.

Rick Callaghan stated that he also sees no hardship other than variances have been granted along that road. He does favor a permanent eating & drinking establishment rather than a bus that comes and goes. He asked whether or not an eating & drinking establishment requires a building with a foundation?

Tom Clark answered that the ordinance does not state this. Dover lists the allowed usage and it is up to the applicant to show that what they are doing is either being misinterpreted or should be allowed under a different use. The closest to this is the eating & drinking establishment.

Douglas Cummings stated that he also does not see a hardship.

Dean Trefethen finds it difficult to justify granting this variance when other locations can be used. He also sees no hardship.

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does not face an unnecessary hardship (John Murphy and Rick Callaghan voted does). Because there are numerous other locations in the immediate area that this business could be run with no relief needed, therefore there is no hardship in this land.
2. It is the Board's conclusion that the variance will not deliver substantial justice (Doug Cummings and John Murphy voted will). This particular business could be operated in numerous locations in the immediate area without relief. No injustice would occur with denial of application.
3. It is the Board's conclusion that the variance will not be in harmony with the spirit and intent of the zoning ordinance (John Murphy voted will). This particular business application does not meet the intent of a residential zone.
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 neighborhood is a mixed use already. The addition of this operation would not effect property values.

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5. It is the Board's conclusion that the variance will not be contrary to the public interest (Dean Trefethen voted will). The proposed use is probably desired by the public that works or commutes in the area.

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

Dean Trefethen advised the applicant that he has twenty (20) days to appeal the decision.

MOTION:

John Murphy made the motion to adjourn.

Tom Dolbec 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