

**DOVER ZONING BOARD OF ADJUSTMENT  
MINUTES OF MEETING  
MAY 18, 2000**

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

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

**ITEM #1:**

A. Approval of minutes for regular meeting of April 20, 2000.

**MOTION:**

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

Rick Callaghan seconded the motion.

U/A

**ITEM #2:**

No Old Business.

Bill Colbath stepped down from the next case.

**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.**

**NOTE: This case was tabled at the April meeting.**

Ray Martineau stated that he was asked at the last meeting to submit his site plans with the proposed building location, which he has done. He submitted two plans with two proposed building locations. At a meeting with the Planning Department, they suggested the following setbacks. 50 feet from the front, 20 feet from the right side, 25 feet from the left side, and 75 feet from the rear. The submitted proposed plans still show 20 feet and 50 feet all around. The purpose of the two proposed plans is because the wetland mapping, surveying and all the engineering drainage has not been completed yet.

Ray Martineau and the Board discussed both plans and the possible locations of the building on the lot.

Dean Trefethen asked Steve Bird to clarify where their setbacks came from?

**ZBA**

**5/18/00**

**PG. 2**

Steve Bird answered that the Planning Department did not have these site plans when they worked out the numbers. These numbers were written to provide an adequate building envelope for a reasonably size building for a lot this size. The Planning Department would not oppose the Board's modifying these numbers to fit the lot.

Dean Trefethen asked the applicant where the parking would be?

Ray Martineau answered that there can be parking in the fifty feet at the front, and also at the rear. The problem lies in the 32-foot side setback. He is not opposed to 75 feet at the rear or tightening up the left-hand side that abuts the residential lot. It makes more sense for a retail business to be closer to the road then towards the back.

Dean Trefethen asked Tom Clark what the required number of parking spaces would be for this building?

Tom Clark answered that it depends on the use. The light industrial is one space for each 1-1/2 employees or one space for every 500 square feet of floor area, whichever one is applicable as determined by the Planning Board. This will ultimately go before the Planning Board and Technical Review Committee.

Dean Trefethen's concern is that they could get one row of cars in the front then the other cars would have to go somewhere else.

Steve Bird responded that the Planning Board recently passed amendments to its site plan regulations that encouraged parking to the side or rear of commercial buildings in an effort to have a better appearance for these types of business. So they prefer the alternative plan A because it lends to parking on the side and a row in the front. The idea is not to have a sea of asphalt in the front.

Dean Trefethen stated that there were some concerns expressed for a site plan that shows the proposed location of the building on the lot because it was difficult to establish a hardship. He asked if this is still a concern?

Rick Callaghan stated that he still cannot understand why the building cannot be placed further back on the lot. Still does not know what the wetlands are and what will be done with the rest of the property. He still cannot see a hardship even with the proposed site plan.

Dean Trefethen asked Steve Bird if the Planning Department is still standing on what Bruce Woodruff submitted at the last meeting?

Steve Bird answered that they do.

"The Planning Department strongly supports well-planned commercial development in the appropriate zoning district. The subject parcel is currently a vacant lot with a proposal for development that is allowed by the B-4 use regulations. The Department supports granting the

variance request, with modifications, to decrease the front and side yard setback on the lot to increase the building envelope to a reasonable size for uses allowed in the zone. The hardship appears related to the unique triangular shape, coupled with the fact that the lot is significantly smaller in area than envisioned (5-acre minimum) for development parcels in the zone. The lot, of course, pre-existed the zoning change from R-40 to B-4. The triangular shape combined with the presence of poorly and very poorly drained soils areas affect the useable shape of the building envelope by significantly reducing the size of a conventional commercial structure. That circumstance precludes a reasonable commercial use, including parking, access and maintenance areas on the lot. Mindful of the rural, undeveloped nature of the area to the rear of the lot, the Department recommends approval of a modified setback variance as follows: 50 ft. front setback (from 75 ft.), 20 ft. right (facing lot from street) side setback (from 75 ft.), 25 ft. left (facing lot from street) side setback (from 75 ft.), and 75 ft. rear setback to remain."

#### **PUBLIC HEARING OPENED**

Gloria Michaud at 45 Knox Marsh Rd., abutter to the left. She is concerned about having a parking lot near her property. She is concerned about getting closed in. Bob Sherwood put a business next to her and she gets a lot of trucks beeping and dust. She is concerned about what kind of business is going on this property.

#### **PUBLIC HEARING CLOSED**

Steve Bird stated that this plan shows a very poorly drained soil to the left of this property and that requires a 75-foot setback for any surface alteration. In terms of locating a parking lot, it would have to be 75 feet from the dashed line.

Rick Callaghan is concerned that the building is too big for this small lot. His hardship problem is that they are trying to squeeze a building that is too large on a lot that is too small.

The Board discussed both plans, possible locations of the building, possible setbacks, the concerns of the left side setback and the residential property. Tom Dolbec commented that the building would have to comply with footnote 23 from the Table of Dimensional Regulations.

Ray Martineau stated that Plan A shows the building as far away from the residential property as possible and keeps the building to the front.

#### **FIVE CRITERIA:**

1. It is the Board's conclusion that the applicant does face an unnecessary hardship (Rick Callaghan voted does not). The triangular shaped lot and the usual setbacks leave an irregular shape and too small of size building area, so this lot does have a hardship.

2. It is the Board's conclusion that the variance will deliver substantial justice (Rick Callaghan voted will not). It allows a building size that is compatible with the zone and the size 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 voted will not). Intent of the ordinance is to allow businesses and this proposal is a reasonable size for this lot.
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). It is a business use in a business zone, and has been zoned for this for sometime, including abutting property.
5. It is the Board's conclusion that the variance will not be contrary to the public interest (Rick Callaghan voted will). Broadening of the tax base on land already zoned business is in the public's interest.

Therefore based on the foregoing, it is ordered that the application for the variance be granted with the following conditions:

**MOTION:**

Bob Mullan made the motion that the following setbacks are to be maintained:

50 feet front, 40 feet on both sides, and 75 feet at the rear.

Dave Ruoff seconded the motion.

4 voted in favor and 1 opposed (Rick Callaghan opposed)

Bill Colbath sat on the next case and Tom Dolbec stepped down.

**ITEM #4:**

**Z 00-9, Philip Jennison, 53 Willow St., A/K/A Assessor's Map E, Lot 42-9, Zoned R-40 requests a variance from the terms of Article V, Section 170-16 and Chapter 155, Article IV Section 155-22.F to maintain a single family dwelling in an Alternative Design Subdivision thirty-nine and eight tenths (39.8) feet from an abutting single family dwelling where a minimum of forty (40) feet is required.**

Paul Connolly represented Philip Jennison. They are requesting a setback relief for two tenths of a foot. Mr. Jennison has built 12 houses in this area and this is the first one that the foundation did not meet the setback. This could have been caused by one of the lines accidentally being pushed by someone's foot and thus changing the setback. He believes that this was an honest mistake.

Dean Trefethen asked Tom Clark why this was not an Equitable Waiver?

**ZBA**  
**5/18/00**  
**PG. 5**

Tom Clark answered that an Equitable Waiver would be applicable when a Building Permit was issued based the 39.8 and they proceeded under a valid Building Permit and we could not come along and say that it would have to be moved. There may have been a communication breakdown between Mr. Connolly and Mr. Jennison. The error was discovered on the 5<sup>th</sup> or 6<sup>th</sup> and framing had begun.

The Board discussed the foundation and as-built procedure.

**MOTION:**

David Ruoff made the motion to accept the case.  
Bob Mullan seconded the motion  
U/A

Dean Trefethen asked Steve Bird for staff recommendation.

Steve Bird stated that they agree with applicant's determination with hardship in this case and nothing would be gained in denying this variance so they support this request.

**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. It would be a needless and unnecessary restriction to make the applicant adhere to proper setbacks, given the minute distance in question.
2. It is the Board's conclusion that the variance will deliver substantial justice. It allows the building to remain as is, because no injustice is created by the discrepancy.
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 40 feet and 39.8 feet is close enough.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. The setback is close enough to design intent as to not cause diminution to abutters.
5. It is the Board's conclusion that the variance will not be contrary to the public interest. The discrepancy is not detectable.

ZBA  
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PG. 6

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

**ITEM #5:**

**Z 00-10, Michael George, 11 Cedarbrook Dr., A/K/A Assessor's Map 32, Lot 58, zoned R-12 requests a variance from the terms of Article V, Section 170-16 and Article X, Section 170-41D to construct a carport addition zero (0) feet from a side property line where a minimum of ten (10) feet is required.**

Michael George stated that he applied for a driveway permit to extend his driveway in November. His lot is small and there is no room for expansion anywhere else on his lot. He would like to put in a carport to protect his vehicle. The roof will be constructed so that the water will not drain onto the abutter's property but on his lot. The lots in that neighborhood are all small lots. He thought of using plastic tarps but he would like to construct something that would be nicer.

Dave Ruoff stepped down and Tom Dolbec sat on this case.

Rick Callaghan made the motion to accept the case.  
Tom Dolbec seconded the motion.  
U/A

Dean Trefethen asked for staff recommendation.

Steve Bird stated that the Planning Department cannot support this variance request because they do not see a hardship. He already has a garage and a wide driveway. Most of the homes in that neighborhood either do not have a garage, or if they do they do not have a carport in addition to their garage so the relief he is asking for will be more than the neighbors have. Based on those factors the Planning Department does not see a hardship for a carport.

**PUBLIC HEARING OPENED**

No comments

**PUBLIC HEARING CLOSED**

Bob Mullan stated that he has a difficulty with the hardship also.

Bill Colbath cannot support a zero setback.

Rick Callaghan stated that the houses in that neighborhood are all close and this will be closing it in more.

Tom Dolbec agrees.

**FIVE CRITERIA:**

1. It is the Board's conclusion that the applicant does not face an unnecessary hardship. The property already has equitable non-compliance that is equal to or greater than their neighbors do, so no hardship exists.
2. It is the Board's conclusion that the variance will not deliver substantial justice. A zero foot setback would create an injustice to neighbors.
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 a reasonable setback and this proposal does not meet that criteria. They already have relief from current setbacks.
4. It is the Board's conclusion that the variance will result in a diminution in value of surrounding properties. A zero foot setback will cause an unnecessary dense, cluttered look resulting in possible diminution of property values.
5. It is the Board's conclusion that the variance will be contrary to the public interest (Tom Dolbec voted will not). For safety or access issues, a zero foot setback is incompatible with the public's interest.

Therefore, based upon the foregoing, it is ordered that the application for the variance be denied. The applicant was advised that he has 20 days to appeal the decision.

**ITEM #6:**

**Z 00-11, The Housing Partnership (applicant: Anthony Fallon) 563 Central Ave., A/K/A Assessor's Map 27, Lot 7, zoned Office requests a variance from the terms of Article IV, Section 170-12, Table I, Part A to establish a four-family dwelling on a lot of approximately 3,900 square feet where a minimum lot size of twenty (20,000) square feet is required.**

Anthony Fallon distributed additional supportive documents to the Board. Just prior to closing on the financing, it was discovered that the City of Dover had two zoning ordinances. One was publicly posted and another on the desk of the zoning Administrative office which was being sold by the Clerk's office. The one being sold did not permit a four-unit building in the office zone that the zoning office copy had permitted. The one being sold was in line with the legislation however. So they are seeking a variance due to the two City of Dover zoning ordinances. One of the hardships is parking and they have obtained a parking agreement for this site with the St. Charles Parish utilizing their parking lot.

Bill Colbath questioned the request of putting four units of housing where there is no additional open space around it in a zone that does not allow it. So he is asking relief from the open space requirement to go with the living, not just for the parking.

ZBA  
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PG. 8

Tom Clark advised Bill that they do not need a variance for the parking.

Bill Colbath agreed, however the applicant was using it as a hardship. There is no open space around it to use it as a living unit.

Anthony Fallon agreed if they were talking about 3 or 4 bedroom units, however these will be 1-bedroom units and that is not a concern.

Bill Colbath added that the ordinance does require 5,000 square feet of space and questioned whether the applicant did all of the research needed for the requirements.

Tom Clark advised Bill that the applicant did do the required research, such as sprinkler and parking, but this issue is where they got hung up because of the information he had was incorrect from the City Clerk's office.

Steve Bird attempted to clarify the issue by explaining that this is an amendment approved by the Planning Board and the City Council on February 17, 1999. This was one of twenty amendments that were worked on. The mistake was made when the City Clerk made the changes to this table. Instead of putting footnote 23 in that column, she left it a p. It wasn't until she had already sent out copies that the mistake was noted. When it was brought to her attention she made the change and sent out copies but unfortunately not everyone that had the incorrect copies received the corrected ones. The copy at the City Clerk's office was correct.

Steve Bird added that the change was made because when they were reviewing the zoning ordinance they were identifying the zones where multi-family residential districts were being allowed such a density that it was having a negative impact on the City. This was one that had no density requirements. All they needed was minimum lot size. The purpose for the change in ordinance was to try to control the multi-family density in the Office District.

Anthony Fallon reviewed the five criteria on his application.

Tom Dolbec stepped down from this case and David Ruoff sat on it.

**MOTION:**

Bob Mullan made the motion to accept the case.  
David Ruoff seconded the motion.  
U/A

Dean Trefethen asked for Staff recommendations.

Steve Bird stated that the Planning Department supports this request. It is based on the fact that the total number of bedrooms proposed is four so the impact of what potentially could go there is a lot less. The suggestion is that a condition be placed that these be one-bedroom units. Also, these will be affordable housing units that will be a benefit to the community.

### **PUBLIC HEARING OPENED**

No comments

Dean Trefethen submitted the letter received from John Grimes, an abutter, into the file.

### **PUBLIC HEARING CLOSED**

The Board discussed at length the density, office versus apartments for this property, and the parking.

Bob Mullan stated that he can see a hardship and is in agreement with the Planning Department's recommendation to place a condition that they would be only one-bedroom units.

Rick Callaghan can see a hardship but still has a problem with space.

Bill Colbath is concerned with the quality of life style for the people and cannot see a hardship.

### **FIVE CRITERIA:**

1. It is the Board's conclusion that the applicant does face an unnecessary hardship (Bill Colbath and Rick Callaghan voted does not). Because of the administrative error and because the proposed use is probably less intensive than other allowed uses could be, it is a needless and unnecessary restriction to not grant the request.
2. It is the Board's conclusion that the variance will deliver substantial justice (Bill Colbath and Rick Callaghan voted will not). It allows conclusion of a project that was begun with the intentions of complying with all ordinances.
3. It is the Board's conclusion that the variance will be in harmony with the spirit and intent of the zoning ordinance (Bill Colbath and Rick Callaghan voted will not). The intent is to control density and the proposed use is probably less intrusive than allowed uses could be.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. The improvement of the property will probably improve values of surrounding properties.

**ZBA**  
**5/18/00**  
**PG. 10**

5. It is the Board's conclusion that the variance will not be contrary to the public interest (Bill Colbath and Rick Callaghan voted will). The rehabilitation of a deteriorated structure to be affordable housing is in the public's interest.

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

**MOTION:**

David Ruoff made the motion to (1) limit the building to four one-bedroom apartments, and (2) eight off-street parking spaces must be maintained in accordance with zoning regulations. Bob Mullan seconded the motion. Three voted in favor and two opposed (Bill Colbath and Rick Callaghan opposed)

**MOTION:**

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

**List of members:**

**Term Expires**

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
Richard Callaghan – regular member	4/13/2003