

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

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

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

**ITEM #1:**

A. Approval of minutes for regular meeting of June 15, 2000

**MOTION:**

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

Rick Callaghan seconded the motion.

U/A

**ITEM #2:**

Old Business

Dean Trefethen asked Tom Clark for an update of the Al Estes, Long Hill Rd. Ext. variance.

Tom Clark stated that there was a new plan from the engineer that had the one hundred-foot frontage, which would not (per previous determination) require further review. They are waiting for the engineer's stamp on it.

**ITEM #3:**

**Z 00-12A, Diocese of Manchester (Applicant: St. Mary's Academy) 110 Locust St., A/K/A Assessor's Map 9, Lot 89, zoned Office requests an Appeal From An Administrative Decision in connection with IX, Section 170-32.R, Definition of Sign Area.**

Rosemary Reese, Principal and representative of St Mary's Academy stated that in question is the Pre-K sign on Locust Street. Ms. Reese objects to it being construed as two signs because there is a door, which divides and separates it. The Pre-K sign is one enterprise and is intended to be a single sign.

Tom Clark explained the definition of sign area being the entire area within a single continuous perimeter enclosing the extreme limits of the actual sign surface, or in this case the perimeter of the letters. It was Tom's opinion to uphold this sign definition and recommend a variance. Tom determined that this should in fact be determined as two signs or one sign with an area (including the doorway) which exceeds the legal limit. Also noted, a non-residential zoning district allows wall signs for each frontage, but the applicant does not have the latitude to put both of them on one building side. Tom also pointed out that the sign was installed without a sign permit.

**ZBA**  
**7/20/00**  
**PG. 3**

Dean Trefethen asked Ms. Reese if she would object to a condition placed on the variance that would prohibit placing a sign on the Church Street side?

Rosemary Reese answered that she would have no objection to it.

Dean Trefethen asked for Staff recommendation.

Steve Bird, City Planner responded that the sign is attractive and assumes it is accepted by surrounding abutters. It is a needless and unnecessary restriction and supports the request if the condition of forgoing of a sign on the Church Street side is added to the variance

### **PUBLIC HEARING OPENED**

No comments

### **PUBLIC HEARING CLOSED**

Rick Callaghan stated that the front of the building, with such limited amount of open space, presents a hardship within itself and does not lend itself easily to utilizing this sign.

Tom Dolbec added that if the doorway were not there, the sign would be within the limits of what the zoning rules are for one sign on one side.

Bill Colbath suggested a tradeoff or adjustment. That would be to allow the consolidation of the sign on Locust Street, the total area of which would not exceed 24 square feet (using Tom's calculations), and in return require a forfeiture of the right to a sign on Church Street. He has a problem with allowing an 18 square foot sign on the front and another 12 square foot on the Church Street side.

Rick Callaghan stated that he has a problem with finding a hardship, in light of the fact that they did not have a permit to install the sign.

Dean Trefethen sees no hardship but will go with the variance on the no extra sign condition.

### **FIVE CRITERIA:**

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. (Dave Ruoff and Dean Trefethen voted does not) Holding the property to the strict letter of the ordinance would be a needless and unnecessary restriction. The frontage of the structure on Locust St. does not easily allow an aesthetically pleasing sign of appropriate size.
2. It is the Board's conclusion that the variance will deliver substantial justice. (Dean Trefethen voted will not) The proposal will allow a reasonably sized sign for this property.

Steve Bird stated the Phofolos lot is nonconforming in terms of its frontage. Under the City's nonconforming law clause the principle structure is allowed a six-foot setback on the side. In this case, however, it is an accessory structure and the ten-foot still applies. Using the City's ordinance as a measuring stick and the fact that neighbors on the south and the rear support this variance, the Planning Dept. would support this request if the setbacks were six feet both on the side and rear.

Dean Trefethen asked Mrs. Phofolos if she would mind side and back setbacks of six feet?

Mrs. Phofolos answered that the garage would only be abutting another garage and wants the four-foot side setback to allow her driveway to go straight back rather than curve in.

#### **PUBLIC HEARING OPENED**

No comments

#### **PUBLIC HEARING CLOSED**

Tom Clark explained to the Board that if a fire or other hazard destroys a structure, it could be replaced in its existing footprint, provided it is done within 12 months of the act of destruction. On the other hand, if the building were voluntarily demolished, it would have to comply with the regulations. The other hazard portion involves neglect, i.e. it collapses on its own due to a snow load, high winds or dry rot, etc. They have not decided if neglect is a hazard or self-imposed.

Dean Trefethen pointed out that it is a very dense neighborhood and he didn't think there was much to be gained by enforcing the six-foot side setback.

Rick Callaghan concurred, in light of the demographics of the neighborhood; it would be forcing them to meet a higher standard.

#### **FIVE CRITERIA:**

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. (Tom Dolbec and Bill Colbath voted does not) Requiring larger setbacks would be holding the property to a higher standard than neighboring properties.
2. It is the Board's conclusion that the variance will deliver substantial justice. (Tom Dolbec and Bill Colbath voted will not) It allows similar use and setbacks as neighboring property.
3. It is the Board's conclusion that the variance will be in harmony with the spirit and intent of the zoning ordinance. (Tom Dolbec and Bill Colbath voted will not) The intent is to provide reasonable setbacks, which this proposal achieves, and in fact the side setback would be increased.

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7/20/00  
PG. 7

Nancy Christie answered that it was 25 feet and approximately 100 feet, respectively.

Tom Clark clarified for the Board that the proposed subdivision is sketched over the aforementioned 1995 lot line adjustment; therefore, the new parcel area of 1.68 is referring to the Christie's present lot, not to the proposed new lots. The individual lots will probably be just over 12,000 sq. feet and will have the 100-foot minimum requirement of R-12 zone frontage, even though it is along a private right-of-way.

In response to Rick Callaghan's question, Tom explained that frontage on a cul-de-sac can be measured at the building setback, not just at the street line; so the arc may well be less than 100 feet, but at the building setback it would be 100 feet or more.

Tom Dolbec asked Ms. Christie for the distance from her home to the right-of-way?

Nancy Christie answered approximately 15 or 16 feet and stated she has no plans to erect a garage on her existing lot.

Steve Bird mentioned he had viewed the area and wondered where the rear property line was in relation to its close proximity to the river and surrounding wetlands. Are these lots buildable in their entirety?

Nancy Christie answered that she did have an engineer out on the property who said that they were in fact buildable and stated that the slope towards the river is actually the Bardwell property. The engineer has not stamped the plan, pending the variance request.

**MOTION:**

David Ruoff made the motion to accept the case.  
Rick Callaghan seconded the motion.  
U/A

Bill Colbath expressed concern about the way the lots are shaped, whether there is adequate building area and proper setback allowances. He foresees future variances for additions such as decks, garages, etc.

Tom Clark stated that the maintenance of the private right-of-way is the responsibility of the applicant. It will not be a city street or city maintained. New construction is held to the same setback requirements on a private road as they are on a public one. This still has to go to the Planning Board.

The Christie lot is determined to be a nonconforming lot. Bill Colbath does not feel that the Board has enough information to make a decision if there is a reason to take a lot that exists and divide it into four. It would be irresponsible to create three new lots without the clearly stated dimensions and building envelope on the plan.

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**7/20/00**  
**PG. 9**

Mr. Forbes asked if they would be able to withdraw this request for three and change it to two lots on a private drive?

### **PUBLIC HEARING CLOSED**

The Board discussed the legality of amending the application.

Dean Trefethen feels that the hardship on this land has been self-created. They bought the additional land that has created an extra large parcel.

Rick Callaghan stated that even though the economic gain may disqualify this as a hardship, this is a large parcel (regardless of how or why it became as such); and they are stuck with it and have the obligation of maintaining it.

Tom Dolbec pointed out that the owners let this structure fall into disrepair creating an eyesore. Taking it down definitely improves the property; but that doesn't necessarily mean that it will improve property value.

Bill Colbath agrees with Tom Dolbec. A building in disrepair does not constitute a hardship. Hardship is in the land and not in the structures on it.

Dean Trefethen instructed the Board to keep in mind before they vote that the applicant has requested to amend the application to be two additional lots, not three.

### **FIVE CRITERIA:**

1. It is the Board's conclusion that the applicant does not face an unnecessary hardship. (David Ruoff and Rick Callaghan voted does) This property is usable as a single family lot and could be used for several other uses under the zoning regulations, therefore there is no hardship.
2. It is the Board's conclusion that the variance will not deliver substantial justice. (Rick Callaghan voted will) This is a single family zone and there are other uses allowed, so no injustice occurs by denying the proposal.
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 spirit and intent is to control density through required frontage. The proposal did not achieve that goal.
4. It is the Board's conclusion that the variance will result in a diminution in value of surrounding properties. (Rick Callaghan voted will not) The proposed increase in density would likely impact adversely abutters property values.

Tom Clark informed the Board that Crestview Dr. was originally zoned R-1 with 20 feet setback.

Rick Callaghan agreed with reducing the dimension by six feet and suggested adding that lost square footage to the back of the building.

Mr. Else replied that extending it back would make it very difficult to match up rooflines.

Tom Dolbec asked Mr. Else where the leach field was and if it was creating this drainage problem.

The Board members discussed other possibilities for solving the drainage problem and ways to lessen the variance request without engineering their addition for them. It turns out that going back to the original zoning figure of 20 feet seems to be the most practical figure and was agreed upon.

**FIVE CRITERIA:**

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. The shape of the lot and the location of the septic system renders a reduction in the building envelope, constituting the hardship.
2. It is the Board's conclusion that the variance will deliver substantial justice. It allows the improvement and expansion of an existing single family home while maintaining 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. The spirit and intent is to maintain reasonable setbacks 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. The proposal is consistent with surrounding properties.
5. It is the Board's conclusion that the variance will not be contrary to the public interest. The public interest is to have reasonable setbacks for safety purposes and that goal is maintained.

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

ZBA  
7/20/00  
PG. 13

**MOTION:**

David Ruoff made the motion to accept this case.

Rick Callaghan seconded the motion.

U/A

Discussion on placement of sign on building, i.e., clearance from power lines and location on building in relation to P.C.'s exact office area inside the mill building.

Dean Trefethen asked for Planning staff recommendation.

Steve Bird finds that the proposed sign is attractive and the style is acceptable. There was initial concern about the size. The ordinance permits nine and this is 75. But the Planning office is persuaded by the scale argument that this is a much larger building than the one in the Portsmouth example. The Planning staff does not object to this variance. If this is going to be a common request of other tenants in the building, the Planning Staff sees a need on the Planning Department's part to develop some amendment to the sign ordinance to better regulate it so that not everyone has to come in for a variance.

**PUBLIC HEARING OPENED:**

No comment

**PUBLIC HEARING CLOSED**

David Ruoff thinks scale is a good reason to grant the variance, given the traffic and the congestion. A small sign could be a hazard

It was established that P.C. Connection occupies roughly 45,000 square feet out of 400,000 square feet.

Bill Colbath was concerned not so much about the request but the volume that will grow from this and wanted to know what formula is used to calculate sign allotment in relation with area of tenant occupancy.

Tom Clark said that the wall-mounted signs are based on one square feet per two hundred square feet of occupied office space.

The Board continued to talk about the size and scale of individual signs, number of signs and future requests, sign placement on the building in relation to tenant location and consistency in size of signs, etc.

waste oil tank that is picked up by Clean Harbors every week. They will employ 4 full-time employees. There will be no vehicles stored on the site after they close up at 5 p.m.

**MOTION:**

Rick Callaghan made the motion to accept the case.  
Bill Colbath seconded the motion.  
U/A

The Board discussed the extent of the service. Mr. King informed the Board that there is no lift in the building and that they will not be changing tires or doing inspections. They add transmission fluid and antifreeze but do not change it.

Tom Clark informed the Board that a setback variance was already granted to this property. If this variance were granted, then this property would have two variances. The proposed building meets the setback requirement. This variance is strictly a use variance.

Dean Trefethen asked for Planning Staff recommendation.

Steve Bird said that Planning would support this variance with the following conditions: (1) No vehicle repairs other than those outlined in his proposal, (2) No storage or sale of vehicles on this property, (3) When he comes to the Planning Board for site plan approval, he will be required to prove that this service is not in the ground water protection district, and (4) rescind the previous variance. In answer to Bill Colbath's question, Steve said that the applicant can be inside the district but will have to take extra precautions. He may require a conditional use permit and the storm water collection system would be mandatory.

**PUBLIC HEARING OPENED:**

A letter was received from Beth Thompson, Economic Development Director, supporting the variance. She stated that the proposed use is one that will help keep shopper's dollars in our community and will add to the tax base and employee base of our community.

**PUBLIC HEARING CLOSED**

**FIVE CRITERIA:**

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. The shape and size of the lot does not lend itself to any of the allowed uses, thus the lot has a hardship.
2. It is the Board's conclusion that the variance will deliver substantial justice. It allows use of a business-zoned property by a compatible use.

**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