

**DOVER ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
AUGUST 17, 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 Bruce Woodruff, City Planner

ITEM #1:

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

MOTION:

Bill Colbath made the motion to accept the minutes.

Rick Callaghan seconded the motion.

U/A

ITEM #2:

Old Business – none

ITEM #3:

Z 00-20, Donald & Eleanor Bryant and Bernard and Eleanor Duffy request an Appeal From An Administrative Decision in connection with Article III, Section 170-10 E as it relates to a property owned by Motiva Enterprises, 169 Silver St., A/K/A Assessor's Map 11, Lot 4 zoned B-3/RM-10.

Don Bryant of 7 Arch St. distributed documents to the Board that are relevant to this case for the expansion of the convenience store, Dunkin Donuts and car wash on Silver St. He submitted an appeal because he believes that the proposal does not meet with the ordinance of the City of Dover. He also represented Mr. & Mrs. Duffy who are also abutters. Mr. Bryant reviewed the information he presented in his documents in which he gave an account of the history of the property, the changes that have taken place, and the applicants objections.

The information stated that the proposal violates Chapter 170, Section 10E. His objections are (1) that the proposal calls for commercial use of an area more than 50 feet from the borderline of the Thoroughfare Business District, and (2) that section 170-10E gives permission to the Zoning Board to extend the provisions of the Thoroughfare Business District for 50 feet from the district boundary. This extension should not be allowed, since the new construction would be detrimental to the public interest. (3) The use of the RM-10 zone for entrance and exit of vehicles of a commercial facility is a non-conforming use which may not be expanded under the provisions of the Zoning Ordinance, and (4) that the proposed project violates Chapter 170-3 of the Zoning Ordinance, since it is contrary to the maintenance of Dover's economic and aesthetic quality of life, and it is not the most appropriate use of land throughout the

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City of Dover. Mr. Bryant respectfully submitted that the proposal of Motiva should be denied and that the appeal should be upheld.

Dean Trefethen asked Tom Clark for his comments.

Tom Clark stated that he had submitted a memo to the Board in response to Mr. Bryant's appeal and did not feel that it was necessary to read it but that he would highlight some of the points and give some additional comments. He wanted to make it clear that the proposed development is an allowed use in the B-3 zoning district. In addition, the existing use has been in operation at this location for almost 35 years by virtue of a variance granted in 1966. The only question before the Board this evening is the location of the driveway. Not discounting the concerns of the abutters, such as traffic, the issue is not whether or not this is the best use of the property, that is to be decided by the Planning Board. Tom disagreed with Mr. Bryant's comment in regards to the use influencing the driveway. The use is the building and the use of the buildings. Even if the driveway were to be considered in the use, the driveway is being reduced, not expanded. In regards to Mr. Bryant's comment on page 7 to the proposed plan turning the area into a commercial area, it is already zoned commercial. The proposed expansion of the use is allowed in the B-3 zone. The intent of article 170-10E is to control the location of the commercial uses in the residential districts, not to restrict the placement of driveways. Atty. George Wattendorf submitted a memo in which he agrees with Tom's decision. Based on this, Tom requests that the Board uphold the Administrative Decision and deny the appeal.

MOTION:

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

Tom Dolbec stepped off this case.

Dean Trefethen asked for Staff Recommendation.

Bruce Woodruff answered that the whole Planning staff was involved in this application. He has read all of the briefs presented for this case. The City Attorney concurs with the Building Official, as does the Planning Department in all aspects. The Planning Staff strongly recommends upholding the Administrative Decision.

PUBLIC HEARING OPENED

Malcolm McNeill represented the owner, Motiva. Mr. McNeill addressed Mr. Bryant's memo. The discretion for noise etc., is for the Planning Board and the violation #5 issue is not the use but the driveway. Mr. McNeill reviewed a site plan showing the commercial building relocated back out of the residential zone. The car wash will be further than 200 feet away from the

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residential zone. The driveway will be reduced in size. Mr. McNeill reviewed his memo that was presented to the Board just prior to the meeting (see copy in file).

The following abutters expressed their concerns: Theresa Foley, Carol Foley, Bernard Duffy, John Slater, Allan, Jim Toby, Edwin McIntosh, Eleanor Duffy and Larry Tetreault. The following were their concerns: Maintaining the historic value of Silver St., the odor of gas, traffic, different use of the driveway, accessory use and the words "shall" and "may", father's agreements were not upheld, lost faith in the government and poor record system, exiting from residential driveways, traffic of school along with traffic coming off the turnpike, and that the zoning ordinance is being violated.

PUBLIC HEARING CLOSED

Bill Colbath commented that access ways are not going to be considered a part of the use. The only things to be considered to the use is the structure.

Dean Trefethen commented that the way the proposal is presented, most of the expansion takes place in the B-3 zone. Car wash, Dunkin Donuts and convenience store are all permissible in a B-3 zone. The portion of the building that will be in the RM-10 and the extension of the driveway are all within the 50 foot zone that is defined in the ordinance, which is why this is being heard tonight.

Bill Colbath stated that the argument is whether the building and driveway would have been approved if the other items were in place. The original variance was to place the building, pumps, and driveway primarily in the residential zone. The way the property is laid out now there is more of the commercial use in the residential zone than there was in the business.

Rick Callaghan stated that he is also stuck in a quandary. He doesn't see the new buildings going into the business space as the issue. He sees the question of the extended driveway as being the issue. He does not see the traffic and other issues as a concern because this is an Administrative Appeal, so the focus needs to be on whether or not this development is a violation of the zoning ordinance.

Bob Mullan stated that he does not see anything different from other convenient stores with Dunkin Donuts in town. There was no driveway restriction on the variance so the driveway can be put any where they want to within the limits of the letter. Since there is no evidence showing that there is a violation, he cannot support this appeal. The driveway will still be a driveway.

David Ruoff stated that he is having a difficult time in saying that it is going to be the same use because there will be so much more traffic going in and out of that driveway. He cannot help but take into account that when the original variance was granted they did not consider what is being proposed today. He thinks that there should be some limitations on what was approved a long time ago.

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Tom Clark, Bill Colbath and Rick Callaghan discussed the 50-foot setback and the ordinance.

MOTION:

Rick Callaghan made the motion to uphold the Administrative Decision.
Bill Colbath seconded the motion.
3 in favor and 2 opposed (Bill Colbath & David Ruoff)

Rick Callaghan stepped down and Tom Dolbec sat on the remaining cases.

ITEM #4:

Z 00-21, Lester and Doris Loomis, 25 Isaac Lucas Cir., A/K/A Assessor's Map M, Lot 90-L, zoned R-40, requests a variance from the terms of Article V, Section. 170-16 to construct a single family dwelling with attached garage covering approximately eighteen (18) percent of the lot where maximum coverage is ten (10) percent.

Malcolm McNeill represented the applicant. He displayed a drawing of the proposed house. Due to the advanced age of the applicants, and a grandson who is in a wheelchair, the house has been designed to accommodate these two needs and have all facilities on one floor. The applicant meets all of the other ordinance requirements except the coverage percentage. Mr. McNeill reviewed the five criteria on the application.

MOTION:

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

Dean asked for Planning staff recommendations.

Bruce Woodruff responded that they recommend granting the variance and agree with Mr. McNeill in that the hardship is that the ordinance is flawed in the percentage of coverage.

PUBLIC HEARING OPENED

No comments

PUBLIC HEARING CLOSED

Dean Trefethen read Kenneth Appel's letter (16 Isaac Lucas Cir.) that is in the file. Mr. Appel is in favor of the variance.

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does face an unnecessary hardship (Bill Colbath and Tom Dolbec voted does not). The hardship is created by an oversight in the ordinance by not providing a different coverage permitted for a smaller lot, as other size lots are accounted for in the ordinance.
2. It is the Board's conclusion that the variance will deliver substantial justice (Bill Colbath and Tom Dolbec voted will not). The proposed structure is reasonably consistent with other houses on similar size lots in the neighborhood in terms of total square footage.
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 Tom Dolbec voted will not). The spirit and intent of the ordinance permits greater lot coverage as lot sizes diminishes and this proposal is consistent with that goal. Density is still controlled under this proposal.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. The proposed house is similar in size to others in the neighborhood and has been approved by the neighborhood association.
5. It is the Board's conclusion that the variance will not be contrary to the public interest. The use is consistent with the neighborhood.

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

MOTION:

Bob Mullan made the motion that the structure is (1) to be limited to one story construction and (2) the lot coverage is to not exceed 18%.
David Ruoff seconded the motion
4 in favor and 1 opposed (Bill Colbath)

ITEM #5:

Z 00-22, Scott Leighton (Applicant: Joann Young), 187 Watson Rd., A/K/A Assessor's Map E, Lot 32-2, zoned ETP, requests a variance from the terms of Article IV, Section 170-12 Table I, Part B, to establish a veterinary office use.

Malcolm McNeill represented the applicant. Mr. McNeill presented a picture of the proposed building to the Board for their review. He stated that Ms. Joann Young wishes to establish a cat only veterinary office in Dover. It will be only an interior service and there will be no outside runs. He reviewed the site plan and the other office buildings in the area. He added that there would be cat condos in the building and he asked Ms. Young to give an explanation of the condos.

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Joanne Young explained that there would be cat condos where owners, while away, can house their cat in an area big enough for activity. They are from floor to ceiling height with perches for climbing, and litter boxes on the bottom.

Mr. McNeill also stated that the hours would be from 8:00 a.m. to 5:00 p.m. The number of employees would be three employees per doctor, and emergencies are generally handled off-site. He emphasized that this would be an office use in an ETP zone that would be similar to other businesses in this area and will also be subject to Site Review. Mr. McNeill reviewed the five criteria in the application.

Tom Clark asked for clarification of kennels.

Mr. McNeill answered that there would be no outside kennels.

MOTION:

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

Dean Trefethen asked for Planning Staff recommendation.

Bruce Woodruff answered that he agreed with Mr. McNeill in that the lot was created prior to becoming part of the ETP zone. In reference to the hardship issue, the only reasonable use of the lot that he can foresee happening is that the lot could be purchased by some other development that would use it as a driveway. The Planning staff disagrees slightly with the Zoning Officer in that this is a typical veterinary office and that the applicant may not have to come before the Board at all. This is a professional office and there are no outside runs and kennels. The Board could put reasonable conditions on this variance should the variance be approved. The Planning Department supports granting this variance with the conditions that there be no outside runs, kennels or other types of animals.

PUBLIC HEARING OPENED

Dana Lynch of Civil Works, abutter, stated that they had no objections to the proposal with the conditions that the Planning Department proposed.

PUBLIC HEARING CLOSED

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. The proposal is professional office space, is not a traditional veterinarian office, and the use is less intensive than other permitted use (laboratories as example), which constitutes the hardship.

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2. It is the Board's conclusion that the variance will deliver substantial justice. The proposal allows a unique, but viable use on a lot that would otherwise be difficult to use under the ordinance.
3. It is the Board's conclusion that the variance will be in harmony with the spirit and intent of the zoning ordinance. The proposed use is for a professional office with services less intensive than other permitted uses in the zone.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. The proposed structure and proposed use are consistent with the area.
5. It is the Board's conclusion that the variance will not be contrary to the public interest. The proposal will offer a unique service to the public without adverse effects on abutters.

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

MOTION:

Bill Colbath made the motion to add the following conditions: (1) The facility will treat only cats. (2) All operations will be indoor and no outdoor kennels, containments, or run will be allowed.

Bob Mullan seconded the motion.

U/A

ITEM #6:

Z 00-23, William and Charlene Paul, 71 Henry Law Ave., A/K/A Assessor's Map 20, Lot 25, zoned RM-10, requests a variance from the terms of Article V, Section 170-17 to construct an accessory structure (above ground swimming pool) within approximately eight (8) feet from side lot lines where a minimum of ten (10) feet is required.

William Paul did not have any additional comments to his application other than the fact that the soil is clay and he is putting a drainage system around the pool so that it should not affect any of the abutters. He was open to any questions from the Board.

Dean Trefethen asked Tom Clark how the deck that is attached to the pool affects the setback?

Tom Clark answered that there is a provision in the ordinance that allows the extension of an uncovered deck of a building to extend up to three feet into the setback. Unfortunately that is

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under the definition of a principle structure, not for an accessory use. An accessory use is held to a higher standard than a principle structure, such as the reduction in frontage allows an expansion of setback for a principle structure that does not apply to an accessory structure including a swimming pool.

Bill Colbath asked if the walkway for an in-ground pool is counted in the setback?

Tom Clark answered that it is not counted in. You go to the edge of the water because you can put in a paved patio, and those are not considered a structure.

MOTION:

David Ruoff made the motion to accept the case.

Bill Colbath seconded the motion.

U/A

Dean Trefethen asked for Planning Staff recommendations.

Bruce Woodruff stated that the lot is a nonconforming lot and it has a unique shape. Emergency vehicles can still get around the principal structure. The Planning Staff recommends approval of the 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. The unique lot shape constitutes a hardship when it comes to conforming to the setbacks. The proposal is reasonable.
2. It is the Board's conclusion that the variance will deliver substantial justice. Most of the neighborhood structures do not conform to current setback requirements and granting the proposal does not give the owner additional rights over his neighbors.
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 have reasonable setbacks and this proposal achieves that goal.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. The proposed setbacks will be greater than most surrounding properties have.

5. It is the Board's conclusion that the variance will not be contrary to the public interest. The proposed setbacks are greater than required for the principal structure.

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

ITEM #7:

Z 00-24, John DeAngelis (Applicant: Brad Dudley D/B/A Sign Graphix Inc.) 802 Central Ave. A/K/A Assessor's Map 37, Lot 30, zoned Office, requests a variance from the terms of (1) Article IX, Section 170-32.1 3(b) to maintain a freestanding sign with an area of eight (8) square feet where a maximum of four (4) square feet is allowed; and (2) Article IX, Section 170-32.1 3(d) to maintain a freestanding sign with internal illumination.

Brad Dudley purchased this company last November and now is trying to make some changes. The sign that is there now was put up by the previous owner and he understands that it was put up against code. They would like to keep the size that is up there now, which is a two-foot by four-foot sign, while they have another sign built. They will be having external illumination.

Dean Trefethen asked Tom Clark how this sign came to be.

Tom Clark answered that the former owner did apply for the sign permit but apparently there was some misunderstanding in the size of the sign. His application showed an eight square foot sign where the office zoning district max. is four. The eight-foot sign was installed. Tom and Mr. DeAngelis had subsequent conversations and in the interim Mr. DeAngelis left town and dropped it into the applicant's lap. Tom did inform the new owner of the violation and that he would have to go to the Zoning Board of Adjustment to maintain that sign. The reason the internal lighting is mentioned in the agenda is because that is what it is now, so in order for him to maintain that the second part of the variance would also have to be granted. In the future, if a sign goes up, and assuming he is granted the variance, installs exterior lighting, that would be in compliance with the code.

Brad Dudley advised the Board that as soon as the new sign has been constructed they would be getting rid of this sign.

MOTION:

Dave Ruoff made the motion to accept the case.

Bob Mullan seconded the motion.

U/A

Bill Colbath asked what the hardship would be for the size of the sign?

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Brad Dudley answered that the required size is too small for that area for people to see. They are a new company and would like to have a larger size sign.

Dean Trefethen asked for Planning staff recommendation.

Bruce Woodruff responded that it can be clearly seen that there is a transition taking place in that area and a larger sign would be in keeping with the neighborhood. He advocates internally lit signs because it is softer lighting and external lights shine in the eyes on the driver's adjacent roadway.

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 area is in transition and larger signs are permitted in the area, including across the street, and adhering to the ordinance would create a hardship.
2. It is the Board's conclusion that the variance will deliver substantial justice. The proposal will grant equity to this property compared to the 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 spirit and intent of the zoning ordinance is to allow proper identification without being intrusive 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 proposed sign is similar to abutters.
5. It is the Board's conclusion that the variance will not be contrary to the public interest. A sign of the proposed size allows safe identification of the property by passing traffic.

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

MOTION:

Bob Mullan made the motion to place a condition that the sign size be limited to 8 square feet, and (2) internal lighting to be eliminated in 90 days.

Bill Colbath seconded the motion.

U/A

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MOTION:

Bob Mullan made the motion to adjourn.
Bill Colbath 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