

**DOVER ZONING BOARD OF ADJUSTMENT
MINUTES OF PUBLIC HEARING
OCTOBER 19, 2000**

MEMBERS PRESENT: Dean Trefethen, Chairperson, William Colbath, Co-Chairperson, Richard Callaghan, John Murphy, Robert Mullan, David Ruoff and Tom Dolbec

STAFF PRESENT: Thomas Clark, Building Official

ITEM #1: NEW BUSINESS

A. Approval of minutes for regular meeting of September 21, 2000

MOTION:

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

Tom Clark advised the Board that, in regards to the case that was tabled last month, Mr. Singh, of 110-112 Broadway, is still in the process of getting his certified plot plan. The Engineer has been retained, however it may take a few days due to his workload. Mr. Singh anticipates having it by next month.

ITEM #2: OLD BUSINESS

A. Consideration of a Motion for Rehearing request submitted by Stasia Panopoulos concerning Zoning Board of Adjustment case Z 00-30 regarding property owned by Steve Whitcomb, 56 St. Thomas St., A/K/A Assessor's Map 9, Lot 18, zoned RM-10.

Bill Colbath and John Murphy stepped down from this case due to a conflict of interest.

Dean Trefethen asked Atty. Schulte, representing Mrs. Panopoulos, to clarify item #5 of his request for a rehearing, concerning the concept of applicant and Mr. Whitcomb being the applicant rather than his client.

Mr. Schulte responded that the applicant seeking relief from the City has the burden of proof of establishing that he is entitled to whatever he is seeking. So when someone applies to the Building Inspector for a permit, he has the burden of establishing that he is entitled to that permit. If the Building Inspector makes a decision in favor of the applicant and anyone contests that, then someone has to bring it before the Board. The applicant would not do that because he has found favor, so someone else would have to file an appeal with the Board. But the applicant has the same burden of proof before

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this Board that he had before the Building Inspector to prove that his project meets the requirements of the zoning code.

Dean Trefethen asked him to also clarify items #11 (d) and (e). "Commercial storage" in (d) and "sporadic and limited use" in (e).

Mr. Schulte responded that because of the way Zoning Board matters are regulated by statute, and if this eventually goes to court, he has to state in this document all of the issues that he might raise on an appeal. These issues in (d) and (e) are not issues that the Board might address tonight. The Board has to decide whether or not it made an error.

David Ruoff asked Mr. Schulte if he would agree that the appellant has some obligation to establish that there was some error beyond an allegation?

David Ruoff and Mr. Schulte discussed the use of "appellant" and "applicant" and who has the burden of proof before the Building Inspector, the Zoning Board, or the Court.

Tom Dolbec asked who is bringing before this Board the question of whether or not it is an expansion of a nonconforming use?

Mr. Schulte answered that the abutter is raising the issue. Once that issue is raised, it is the applicant's obligation to show that the nonconforming use has not been abandoned.

Tom Dolbec asked why the opposite would also not be true?

Mr. Schulte answered that because it is consistent with the purposes of the zoning ordinance which is to eliminate nonconforming uses over time. As long as you comply with the law you can do it but you cannot expand on it. If there is a legitimate issue raised as to whether the nonconformity has been abandoned then it is up to the person who is claiming that nonconformity to show that he continues to qualify.

Dean Trefethen asked the Board if there is a member who believes that the Board made an error in its vote based on the information that has been provided?

Bob Mullan stated the he believes the error was in the burden of proof in the grandfather clause.

Tom Dolbec also questions whether or not there was enough proof to show that it was a continued use in the same manner however, is not sure that he agrees with the burden of proof as presented in all the cases that the applicant listed.

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Dean Trefethen has a concern with the size of the structure.

The Board and Tom Clark discussed the size of the building and whether or not it was and will be a two-story building.

Rick Callaghan has a concern with the expansion of use and some definition provided in the appeal package where they talked about the three different provisions that are used to define to extend or continue nonconforming use. He had not looked at this before and it may influence him to change his decision.

David Ruoff stated that the burden of proof is not a big issue with him but more of a legal issue. He feels that there are some uncertainties.

MOTION:

David Ruoff made the motion to grant the rehearing.
Bob Mullan seconded the motion.
U/A

ITEM #3.

**Z 00-31, Leigh Estes, 65 Bellamy Rd., A/K/A Assessor's Map H, Lot 50,
Zoned R-40 requests a variance from the terms of Article X, Section 170-40
A and B to increase a nonconforming use (Light Industrial).**

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

Robert Estes, representing Leigh Estes, stated that she would like to move a house from Somersworth to her property for office space use. It would be to direct the customers away from the shop area to the office area. She would move her office space from where it is and it would allow more room in the shop area.

David Ruoff asked why the case is here. It is a nonconforming use. Is it an expansion because they would be moving an office into another building?

Tom Clark answered that it is nonconforming use because its use is not normally allowed in this particular zoning district. In the regulation for nonconforming use it cannot be increased to occupy a greater area of land.

Dean Trefethen stated that the applicant already has a variance that grants it more rights than the neighbors. This property is in a single-family district and this is a single

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family resident and also a light industrial use. The applicant had agreed to the limitations that were stated on the variance that was already granted.

Ray Estes explained that the customers have to go through the work area to get to the office. They would not be increasing the number of employees but the work area being used for the products would be increased.

The Board discussed the issue of concerns at the meeting that the variance was granted in 1996.

MOTION:

David Ruoff made the motion to accept the case.

Rick Callaghan seconded the motion.

U/A

Dean Trefethen read the staff recommendations as submitted in writing by Bruce Woodruff, City Planner.

"Bruce Woodruff reviewed the application and supporting documentation, previous variance records, and visited the property at 65 Bellamy Rd. The owner, Leigh Estes is requesting a variance to increase a non-conforming use by moving an existing ranch style building to the site for use as the office portion of the existing business. It is the Planning Department's understanding that no additional office employees will be hired as a result of this action, and that only existing office workers will be housed in the moved structure, freeing room for safer shipping and receiving."

"Bruce also stated that first, the non-conforming use on the site came into existence by virtue of an approved variance. Staff recommended at the time that the variance be approved because the use would be less obtrusive than many new lots with a new City Street (subdivision). This recommendation was based on the premise that the intent of the ordinance was to make sure that no obtrusive uses were allowed in residential areas that might disrupt the neighborhood. Additionally, that the use limit deliveries to two or three shipments (UPS) a week; that no noise or pollution be generated, that the use is set far back from the road and cannot be seen by abutters on either side, and finally that employees be limited to around five people. The ZBA granted the initial variance with four conditions; 1. A maximum of six employees, (2) owner of the property must be associated with the business, (3) GMEC II, or a direct successor, stops operation at the site, the variance is null and void, and (4) if repeated complaints from various abutters are received, a further review by the ZBA will be held which could result in revocation of the variance. It is also our understanding that four conditions have been satisfactorily met since 1996. Given that the original recommendation relied

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on the intent of the ordinance being met, but that the specific restriction in this case was needless and unnecessary, added to the fact that previous conditions have been upheld, and that it is Planning's feeling that the use as a whole is not expanding, we recommend approval of the variance request with a suggestion that the previous conditions be carried forward."

PUBLIC HEARING OPENED

Mrs. Ruby Track, 57 Bellamy Rd., expressed that she attended the meeting that the variance was granted and it was her understanding that there would be no new buildings on that lot and that the people would only be packing and shipping the product. The product themselves would be assembled by others in their homes. It sounds like this is going to develop into more of an industrial area and she is opposed to this.

PUBLIC HEARING CLOSED

Dean Trefethen asked for comments from the Board.

Rick Callaghan stated that he does not see a hardship.

David Ruoff stated that the business started off small but has grown and he feels that now the intent of the unobtrusive business probably no longer applies.

Dean Trefethen is concerned with granting a variance for a nonconforming use and a business grows. There comes a point where the business may have to be relocated to an area that is zoned for this use.

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does not face an unnecessary hardship. They already have been granted greater rights than their abutters.
2. It is the Board's conclusion that the variance will not deliver substantial justice. The impact to abutters could cause an injustice by increasing the nonconformity.
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 area is zoned for single family use and the proposal would expand its nonconformity even more.

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4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties (David Ruoff and Rick Callaghan voted will). Because of the contour of the property, the proposed site of expansion cannot be seen by the abutters.
5. It is the Board's conclusion that the variance will be contrary to the public interest. The proposal constitutes an obtrusive expansion in a residential area.

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

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

ITEM #4.

Z 00-32, Peter Smith, 24 East Watson St. A/K/A Assessor's Map 19, Lot 54, Zoned RM-10 requests a variance from the terms of Article V, Section 170-17 to construct a second story on an accessory structure (Detached Garage) within approximately seven (7) feet from a side property line and approximately six (6) feet from a rear property line, both where a minimum of ten (10) feet is required.

Peter Smith gave a summary of his 5 criteria.

Dean Trefethen asked Tom Clark about the foundation of this garage?

Tom Clark answered that the foundation situation is what brought out the question of whether or not it would support the second story addition. A new foundation is part of the plan for the addition.

Dean Trefethen asked the applicant if he considered demolishing and rebuilding so that the building would be in conformance.

Peter Smith answered that it would not meet some of the other ordinances and the driveway would not line up with the garage.

MOTION:

Bill Colbath made the motion to accept the case.

Bob Mullan seconded the motion.

U/A

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Dean read the written staff recommendations into the records.

"Bruce Woodruff, City Planner, stated that he has reviewed the application, supporting documentation, spoken with the applicant, and visited the property at 24 East Watson Street, the owner, Peter Smith is requesting a variance to increase the volume or bulk of an existing non-conforming (by way of setback) detached garage by constructing a second story. The existing footprint of the structure would remain the same."

"The detached garage is a very old structure; records indicate that it is at least 50 years old. It was constructed at a time when the setback requirement for accessory structures was six feet. The requirement was changed to 10 feet in 1979. It is the Planning Department's opinion that the application of the ordinance itself in this specific case causes the hardship to the applicant, because he would have been allowed to increase the volume of the structure prior to 1979, but not in 2000, even though the actual distance to the property line remains the same."

"The Planning Department is inclined to recommend that the Board grant the variance request, but with two additional suggestions: (1) That they listen to abutters carefully with regard to their concerns (if any) on the issues of adequate light and air. As you are aware these are "spirit of the ordinance" tenants, and (2) that a condition be attached that states that the second story space shall not be used for a dwelling unit."

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 (Bill Colbath voted does not). Because the lot's width decreases the further back into it, there is little alternative for another location, constituting a hardship.
2. It is the Board's conclusion that the variance will deliver substantial justice (Bill Colbath voted will not). It allows improvement of a deficient structure.
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 voted will not). The intent is to control density by reducing encroachment and this proposal meets that goal.

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4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. The proposed structure would be screened by existing trees and it is similar to the neighborhood.
5. It is the Board's conclusion that the variance will not be contrary to the public interest. The public's interest in this case is to maintain setbacks for safety purposes and that is achieved.

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

MOTION:

John Murphy made the motion that the condition be added that the structure cannot be used as a dwelling unit.

Bob Mullan seconded the motion.

Four in favor and one opposed (Bill Colbath opposed)

MOTION:

John Murphy made the motion to adjourn.

Tom Dolbec 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