

**DOVER ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
JANUARY 21, 1999**

MEMBERS PRESENT: Dean Trefethen, Chairperson, Bill Colbath, Co-Chairperson, David Ruoff, Richard Callaghan, and John Murphy

STAFF PRESENT: Thomas Clark, Building Official and Bruce Woodruff, City Planner

Dean Trefethen called the meeting to order.

ITEM #1: NEW BUSINESS

- A. The annual nominations for and elections of Zoning Board Officers will be held.

MOTION:

Dean Trefethen made the motion to postpone the nominations and elections until the end of the meeting.

John Murphy seconded the motion.

U/A

- B. Approval of minutes for the regular meeting of December 17, 1998.

MOTION.

John Murphy made the motion to accept the minutes of December 17, 1998.

Bill Colbath seconded the motion.

U/A

ITEM #2 OLD BUSINESS:

Dean Trefethen asked if the Board members have any concerns with the roof top changes that St. Ann's was asked to make. The Board was asked to make a site inspection prior to this meeting.

Thomas Clark stated that the biggest issue is the roof vent that was not on the roof at the last meeting but is on now and has been painted and the architects and owner feel that by adding a chimney-like enclosure around it would make it more obtrusive and asked if they could keep it as it is.

Dean Trefethen asked if the concerned abutter expressed anything?

Tom Clark stated that he had not heard from the abutter.

Dean Trefethen asked the Board if they had any concerns. The Board had no concerns and is satisfied with the changes.

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ITEM #3:

Z 99-1, William Hale and Robert Day, 56 Old Rochester Rd., A/K/A Assessor's Map 40, Lot 23, Zoned B-3, requests a variance from the provisions of Article IV, Section 170.12, Table I, Part D to establish a non-conforming use (light industry) in a B-3 Zoning District.

Atty. Douglas Gray represented the applicants. He described the building, its location and the past use. The building was built in 1978 for the purpose of operating a roller skating rink and was used as such for approximately ten years. The applicants propose to move their business from Horne Street to 56 Old Rochester Rd. There are a couple of somewhat open sheds on the property and if they are used will be enclosed because the proposed use will not involve outside storage. The owners have not been able to sell or make use of this property for some time because of the size of the building and lot, its location and configuration. There has been no one interested in the property that had a viable business for the B-3 area. The only interest came from are Mark and Paul Janetos who operates a business on Horne St. The advantages to the move from Horne St. would be to give them a larger facility and a lesser density residential area.

Mark Janetos stated that the use of the building will be to store and convert polyethylene foam. They are distributors of polyethylene foam. By converting he means the cutting, slitting and combining polyethylene foam and fabrics. The building will mainly be used for storage and the rest for processing.

Atty. Gray added that there would be no noise, no smoke, no outside storage and no affect on the neighbors. This business will not cause anyone any harm. There will be no increase in traffic. He presented the Board with a report from Gregory Koutrelakos wherein he felt that this business would not result in depreciation of surrounding properties. He reviewed the criteria.

John Murphy advised the Board that he would have to step down from this case due to a conflict of interest.

Dean Trefethen advised the applicant that due to John Murphy's stepping down, there will be only 4 members voting and he has the option to go with the 4 members or wait until the next meeting.

Atty. Gray conferred with the applicant and they choose to proceed this evening.

Dean Trefethen asked (1) if the foam process is already in a cured situation or does it mean chemicals that are going to become cured, and (2) will there be any waste in cutting the material and what happens to the waste?

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Mark Janetos responded that (1) it is already cured, and (2) there will be waste which goes to Rollinsford and then to Turnkey.

David Ruoff asked where the waste will be stored?

Mark Janetos responded that it goes right on the truck and the truck goes to Rollinsford everyday which is what is done now at Horne St.

David Ruoff asked if the applicant is just looking for this use, light industrial, and no other?

Atty. Gray responded that it is just this use.

MOTION:

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

PUBLIC HEARING OPENED

Bruce Woodruff stated that the Planning Department does not feel strong either way. However, if the request is granted a condition be should be attached that a specific truck route would be established and maintained by this use. Specifically using Old Rochester Rd. to Long Hill Rd. to Rt. 108 through the Weeks Crossing intersection. That is back and forth. There is a through truck restriction now on Old Rochester Rd. that does not apply if you have a business on Old Rochester Rd. Probably the reason why the Planning Department does not feel strongly either way about the hardship is because there are benefits to this.

Atty. Gray conferred with the applicant in regards to the truck routing issue as presented by the Planning Department.

Atty. Gray stated that the applicant agrees to the Planning Department's suggestion regarding truck routing. He also added that there will be a stack in the roof above one of the main pieces of machinery to vent but not for the purpose of being a smoke stack. There won't be emissions but there will need to be some venting into the atmosphere. It is in keeping with the guidelines with the EPA but there will be no odors. The owners have tried to market this property for the use that would be allowed in the B-3 zone, but because of the size of the building, the size of the lot, its location and everything that is around it has made it difficult to sell. He feels that the hardship is the uniqueness of the land and feels that they have satisfied the hardship

PUBLIC HEARING CLOSED

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Bill Colbath asked (1) what is to be vented and (2) what would be vented out through the stack, (3) what kind of toxicity would this contain if it was lit by fire, (4) asked if plastic has toxicity, and (5) what comes out of this when it is heated.

Mark Janetos responded (1) that they would be venting a laminator and (2) the emission from the heating would be going out the stack. The stack has to be monitored by the EPA. (3) There would be no toxicity if lit by fire. (4) It is molded at Janco and it is the same basic process that is done there. It is all registered with the EPA. It is perfectly safe. (5) The emissions that would come from polyethylene foam is the same as natural gas.

Rick Callaghan asked questions in regards to (1) the operation itself, what would be the number of hours, (2) how many shipments, (3) what is used to cut the foam and what is the equipment powered by that is used for the cutting tools? (4) Asked if the building is fully sprinklered.

Mark Janetos responded (1) that it would be sixteen hours a day, 5 days a week with 2 shifts. There would be seven employees. (2) At the most two to three times a week. (3) Hydraulic press is used to cut. A dye is placed on the material and then it comes down with pressure and it cuts the foam and the tool is run by electricity. (4) Yes, the building is sprinklered.

Rick Callaghan asked Tom Clark if the hazardous content with that kind of industry was looked at for going into that building?

Tom Clark stated that what would be requested along with the Planning Departments conditions is that the applicant would have to go to the Technical Review Committee because of the questions of hazardous contents.

Bruce Woodruff stated that they would be requested to go to the Technical Review Committee because they would need a loading dock at the back of the building. Paving and draining would also have to be addressed.

Rick Callaghan asked in regards to the polyethylene if it is a flame-retardant treated foam.

Mark Janetos stated that it was not.

Rick Callaghan stated that since this material has a high combustible characteristic he shares Bill Colbath's concerns in regards to the time it takes for a fire to spread in that building and the gauge of the sprinkler system is going to depend on the kind of hazard that is placed in that building. Also in regards to the waste he asked where the foam that is not used will go.

Mark Janetos responded that it goes to Turnkey.

Atty. Gray stated after conferring with the applicant that the material is not highly combustible. It takes a great amount of heat for it to react. This is different from the lumber company that is

right next door that has a much lower flash point than the foam. This company is in operation at the present time on Horne Street.

David Ruoff stated that he does not have a problem with granting the variance. He feels that the hardship is in the type and size of the building. He feels that it would be an unnecessary hardship, and that this would have very little impact and improve on it.

Bill Colbath is concerned with the plastics and foam in the B-3 zone. There is no similar light industry in this area. There are other businesses that can fit in the B-3 zone. He does not see a hardship. He does not like the idea of foam in a residential area. It is in a residential area now but it is also an allowed use in that zone.

Rick Callaghan can see the hardship – space, uniqueness of building and light industry. The concerns of the kind of operation will be addressed by the Technical Review Committee and the building is equipped with sprinklers. However, one item that is required for light industry is that it has to be totally within the building and this does not meet that criteria. There are other out buildings that will be utilized even though we are talking about transportation, it requires moving the product from one building to another.

Tom Clark stated that he spoke with the current owner and he said that the applicant was going to fix up the storage sheds and enclose the front with doors so that even the storage outside would be completely enclosed even though it would be in a separate building.

The Board discussed the following issues:

- (1) Number of hours of operation
- (2) Traffic
- (3) Technical Review Committee
- (4) Hardship
- (5) Safety from hazardous materials
- (6) Noise
- (7) Protection for the surrounding residents

FIVE CRITERIA

1. It is the Board's conclusion that the applicant does face an unnecessary hardship (Bill Colbath voted does not). This property is unique and unusual in configuration and siting for a B-3 zone. The proposed use is similar to activities normal to a B-3 zone.
2. It is the Board's conclusion that the variance will deliver substantial justice (Bill Colbath voted will not). The proposed use is similar to and may be less intensive than normal B-3 uses.
3. It is the Board's conclusion that the variance will or will not be in harmony with the spirit and intent of the zoning ordinance. David Ruoff and Dean Trefethen voted will and Bill

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Colbath and Rick Callaghan voted will not. WILL – The proposed use is similar or less intrusive to other B-3 use. WILL NOT – Intent is to have property used for B-3 type activities which would better protect abutter's property.

4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. The proposed use is similar or less intrusive than other possible B-3 allowed uses.
5. It is the Board's conclusion that the variance will not be contrary to the public interest (Bill Colbath voted will). It allows use of the property that will improve the conditions of the property.

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 days to appeal.

ITEM #4:

Z 99-2, Lucius Hallett, Trustee, Three Rivers Farm Rd., A/K/A Assessor's Map N, Lot 3, requests a variance from the provisions of Article V, Section 170-16 for a subdivision to create a lot with no frontage along a public right-of-way where a minimum of one hundred fifty (150) feet is required.

Atty. Virginia Sheehan represented the Trustee of Trust under Ashton Rollins. They are asking for relief from the frontage requirement based on the fact that this is a unique lot. The property has been placed in a trust since 1948 at the death of Ashton Rollins. They are in the process of partially terminating the trust and trying to decide what to do with the property. They have been trying to come up with a way to preserve the property for the heirs in a way that they can continue to own it and enjoy it and afford to do that. They have just had to sell the main mansion house in part to be able to keep the rest of the land and do the subdivision. This is the last step in this process. She stated that Kevin McEneaney would explain the plan.

Kevin McEneaney displayed a plan of the lots. He explained the plan and the location of the lot in question. There are 4 lots that are owned outside of the trust. A subdivision of the main parcel owned by the trust is being proposed. At this point what is needed is relief from the frontage provision for lot eleven. This is a unique parcel in that it is surrounded by water on three sides and it contains the family cemetery. The heirs desire to own this lot jointly.

Virginia Sheehan stated that this is a unique lot and the heirs desire to co-own it and be able to have access to it to enjoy "The Point", which is what the family calls lot eleven, and visit the family cemetery. She reviewed the five criteria. This will be a separate house lot but it will be co-owned by fourteen people and it is highly unlikely that it will ever be developed.

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Dean Trefethen asked for clarification of the statement that these lots, once they are created, will not be subdivided once again. Is this going to be a covenant or a restriction in the deed?

Virginia Sheehan responded that it would be both a covenant and in each one of the deeds.

Bill Colbath asked why this cannot be accomplished in the form of an alternate design where they all hold a piece of common land.

Virginia Sheehan responded that in this whole process, it was determined that the other lots meet all the other requirements for the conventional subdivision and there doesn't seem to be any reason to go for an alternate design.

The Board discussed the combined ownership of "The Point", and alternate design subdivision. Providing access to the point would be more difficult and costly. This lot would be kept as a saleable and buildable lot. The number of lots and buildings would be limited to seven.

Virginia Sheehan presented the Board with letters from Michael & Elizabeth Hallett, who are heirs and they are in supportive of having an easement going across their property to allow access to The Point.

MOTION:

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

PUBLIC HEARING OPENED

Dr. Wallace Gaye at 3 Cullen Bay, across from the point, stated that he is in favor of granting the variance and hopes that the property will be kept as it is.

Atty. Anthony Hartnett represented Jack and Carl Davis, Rollins heirs. He reviewed the lots, ownership and location. He also reviewed the criteria. The heirs are in favor of the request for a variance. The hardship is the difficulty in developing access to the lot that is "The Point."

Bruce Woodruff, City Planner, stated that the Planning Department wholeheartedly supports granting this variance. There are two issues and one is the unique characteristic of the complete parcel. Also the land trust that goes with the land is a unique circumstance which is tied together with its characteristic. Without the land trust that says that these things have to be done, and it is in probate, there would be no hardship. But when the two are put together, there is a hardship. The second part of the hardship, which is the frontage in this case, because of the easements to one house, is a needless and unnecessary restriction.

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Dan Philbrick, new owner of the family house, is in favor of the request for the variance.

Jack Davis, one of the heirs, stated that there has been a lot of work that has gone into this proposal and a lot of people involved. He is in favor of the request.

PUBLIC HEARING CLOSED

Dean Trefethen reminded the Board that the variance request is for lot eleven. Other issues concerning other lots are not really relevant to whether or not a variance should be granted to lot eleven.

FIVE CRITERIA

1. It is the Board's conclusion that the applicant does face an unnecessary hardship (John Murphy voted does not). The parcel has a unique configuration and a unique circumstance attached to it through the land trust. Also, the location of the family cemetery and the existing defined parcels contribute to the hardship of this parcel.
2. It is the Board's conclusion that the variance will deliver substantial justice. It allows the resolution of a trust's conditions in an equitable manner without impacting any present land owners or 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 intent in this case would be to regulate density and the proposed plan complies with that intent.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. The proposal should have no noticeable impact on surrounding properties and will likely assure their value in the future.
5. It is the Board's conclusion that the variance will not be contrary to the public interest. By voluntarily limiting density, the proposal protects the public's interest.

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

MOTION:

Bill Colbath made the motion that there be no further subdivision after this proposal's approval. Rick Callaghan seconded the motion.

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NOMINATIONS AND ELECTION:

MOTION:

Rick Callaghan made the motion to reelect Dean Trefethen as Chairperson and Bill Colbath as Co-Chairperson.

Dave Ruoff seconded the motion.

U/A

MOTION:

John Murphy made the motion to adjourn.

Bill Colbath seconded the motion.

U/A

List of members and expiration dates:

	<u>Term Expires</u>
John Murphy – regular member	12/31/98
David Ruoff – alternate member	4/13/99
Robert Mullan – regular member	12/31/99
Richard Callaghan – regular member	4/13/2000
William Colbath – regular member	10/23/2000
Dean Trefethen – regular member	12/31/2000
Douglas Cummings II – alternate member	1/22/2002