

**DOVER ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
MAY 20, 1999**

MEMBERS PRESENT: Dean Trefethen, Chairperson, Bill Colbath, Co-Chairperson, Rick Callaghan, Robert Mullan, and David Ruoff

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

Dean Trefethen called the meeting to order.

ITEM #1: NEW BUSINESS

Approval of minutes for the regular meeting of March 18, 1999

MOTION:

Rick Callaghan made the motion to accept the minutes of March 18, 1999
Robert Mullan seconded the motion
U/A

ITEM #2: OLD BUSINESS

None

ITEM #3:

Z 99-7, The City of Dover, (Applicant: Northeast Credit Union), Sixth street Connector, A/K/A Assessor's Map D, Lot 18, Zoned B-4, requests a Variance from the provisions of (1) Article IX, Section 170-32.D(1) to locate two (2) signs not on the same lot as the use they identify; (2) Article IX, Section 170-32.D(10) to locate two (2) signs within the public right-of-way and (3) Article IX, Section 170-32.D(14) to install a directional sign with an area of approximately seven (7) square feet where a maximum of four (4) square feet is allowed.

Atty. Malcolm McNeill represented Northeast Credit Union. Also present were William Foley, representing the designers of the building, and Devin Parker, representing the owner. When this project was approved by the Planning Board, there was concern about the retention of green areas to the extent reasonably possible in the vicinity of this site. Mr. McNeill displayed pictures of the building and its location. Because of the width of the road and the right-of-way, and the heavily wooded area and high-speed traffic, sufficient exposure of signs is a necessity. If the signs were to be on their property it would not be seen from the road. In order for people to see the bank in time they would have to see the sign in a reasonable amount of time to safely make the turn. They are in agreement with the City to allow other businesses to add their names under Northeast Credit Union as the area develops. The City agreed to license the area to the bank for the signs.

Mr. McNeill stated that as a result of discussion with the City, Northeast is only seeking relief for the first item, to locate 2 signs not on the same lot because these two signs are on City property with the permission of the City. The applicant does not feel that they need relief tonight from the second item based on conversations with the City and the City Attorney. Namely to locate these two signs within the right-of-way is not necessary because the City is the controller of the right-of-way and can waive its own regulations. The applicant does need relief for item #3, to install a directional sign because it exceeds the dimensional requirements.

Mr. McNeill also stated that the hardship in this case is the extra ordinary wide road and there would be confusion as to where the entrance to the property is located. The signs will be allowed by the City by a license. Mr. McNeill reviewed the five Criteria.

Rick Callaghan questioned the size of the directional sign. This space will be shared with future businesses that could go into the undeveloped areas. He asked if the square footage of the white area under the Northeast name will remain the same.

Malcolm McNeill responded that this area could accommodate two more names but if there were more they may have to appear before the Board again.

Dean Trefethen questioned (1) the width of the road and a possible future widening of the road. If the sign is placed where the applicant is proposing, will it be in the way if the road is widened? (2) Why is it a larger identifying sign is in the front of the building and a secondary sign saying this is the entrance as opposed to one sign at the entrance saying both the name and the entrance?

Malcolm McNeill responded (1) the licensing by the City gives the City control over the sign so that if the sign were hazardous to the people then the sign will have to be moved.

Tom Clark added that the City Engineer was involved with this before a decision was made to come before the Zoning Board to make certain that the proposal was in keeping with any foreseeable future plans.

William Foley advised the Board that the reason for two signs is because they saved trees in that area so just one sign would be blocked from view.

Malcolm McNeill added that the large sign is conforming. The only nonconformity is 3.3 square feet and the number of signs is not an issue.

Bill Colbath and William Foley discussed the site plan and the location of the trees and which ones were saved.

Dean Trefethen asked if the main sign is at the maximum allowable size.

William Foley stated that the sign is smaller than the maximum allowable size?

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MOTION:

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

PUBLIC HEARING OPENED

Bruce Woodruff stated that the Planning Department supports granting the variance. In regards to the hardship issue, the maximum size allowed for a sign in the B-4 District when the sign ordinance was first set up was 100 square feet for businesses with Turnpike frontage. It was never envisioned that there would be businesses that had frontage on the connector, only that there would be a City street that would go into the interior of the B-4 District in some fashion. That is the reason a 60 square foot size sign regulation was written. This right-of-way is the largest in the City and is now City right-of-way, not Turnpike right-of-way. It is 200 feet wide. The pavement width is currently 44 feet and soon to go up to 54 – 56 feet and that will be it in that area. There is a need to have a larger sign, or have a sign closer to the pavement. This is a unique circumstance in the whole City. For clarification purposes, the entrance driveway is not going to be used just by Northeast Credit Union. It will be for possibly 3 additional users for development in the back area and there will need to be some kind of direction for people going up that road as to where they are going. That is why it is very important to the City to have that entry sign to carry the businesses and have Northeast on top. Engineering had no problem with the location of that sign. The City Attorney is OK with the legal agreement and if you grant the variance a condition should be added that the license agreement be finalized and approved. Also that the entrance sign shall accommodate future development and that Northeast be on top.

A memo from Beth Thompson, Economic Development Director, was submitted. She asked that the Board look favorably at the variance request for signage as submitted by Northeast Credit Union.

PUBLIC HEARING CLOSED

The Board discussed the licensing agreement between Northeast and the City of Dover, and the movement of the signs if they should present a problem. They also discussed a condition to be imposed on the variance that other businesses be allowed to be placed on this directional sign for future development of properties in the back.

FIVE CRITERIA

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. The excessive width of the City's right-of-way means an allowed sign would be too far from the traffic and would be rendered ineffective. The increased size in the directional sign will allow for other future users.

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2. It is the Board's conclusion that the variance will deliver substantial justice. It will allow reasonable signage in a location that would not render the sign ineffective.
3. It is the Board's conclusion that the variance will be in harmony with the spirit and intent of the zoning ordinance. The location and size of the proposed signs are similar to others in the same zone that is not subject to such an extreme wide right-of-way.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. The signs are consistent with other signs in this type of zoning district.
5. It is the Board's conclusion that the variance will not be contrary to the public interest. It is in the public's interest to have signs that allow proper identification and direction.

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

MOTION:

Bob Mullan made the motion to place the conditions (1) that the license agreement between the City and Northeast Credit Union be fully executed before the erection of any signs, and (2) Other future users of the directional sign must be allowed with the provision that Northeast Credit Union be the first business (at the top) on the sign.

David Ruoff seconded the motion.

U/A

ITEM #4:

Z 99-8, B & B Realty Trust (William and Bruce Belanger, Trustees), 267 Dover Point Rd., A/K/A Assessor's Map L, Lot 45-1, Zoned R-20 requests a Variance from the provisions of Article V, Section 170-16 to subdivide a parcel creating one lot with approximately one hundred two (102) feet of frontage along a public right-of-way where a minimum of one hundred twenty-five (125) feet is required.

Malcolm McNeill represented Mr. Belanger, who was also present. This property is approximately double the required size. The only dimensional problem to this site is the fact that the frontage of this lot with regard to the proposed subdivision on Belanger Rd. is slightly over 101 feet where 125 feet is required. He reviewed the site plan. There have been various zoning changes over time and that changed the frontage requirement. He reviewed the criteria. He believes that the hardship would be the needless restriction.

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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 feels that the hardship was created by the zoning ordinance itself, not that it is a needless restriction. The ordinance of today imposes a greater hardship on this parcel than on the area's surrounding lots. The plan to subdivide this lot out causes the hardship in this circumstance. The Planning Department supports granting this variance.

PUBLIC HEARING CLOSED

Bob Mullan stated that he does not see a hardship and no reason to subdivide this land. He feels that this lot has been cut up enough.

Dean Trefethen stated that he would agree with Bob Mullan if they were looking for a variance on the size of the lot. But since this is a frontage issue between two other existing lots, there is nothing that can be done to change this.

The Board discussed the density of the lots, and the intent of the zoning ordinance for frontage.

Tom Clark stated that Bob Mullan raises a good point. Should the Board choose to grant the variance with the 101 feet of frontage it would make this a nonconforming lot. The provision of the nonconforming lots would then apply. If it is a width of less than 110 feet but greater than 75 then it only needs a minimum side yard of 10 feet. So it gives them a little more latitude as far as building envelope in the width.

Dean Trefethen asked whether or not a condition could be placed to require a 20-foot setback and that would address the density issue.

Tom Clark agreed that they could.

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. (Bob Mullan voted does not) The proposed lot would have similar frontage as adjacent lots created under previous zoning requirements thereby alleviating a hardship imposed on this lot that was always planned to be subdivided.

2. It is the Board's conclusion that the variance will deliver substantial justice. (Bob Mullan voted will not) It allows creation of a lot that has similar frontage to adjacent lots.
3. It is the Board's conclusion that the variance will be in harmony with the spirit and intent of the zoning ordinance. (Bob Mullan voted will not) The intent is to control density and this lot would be similar to adjacent lots.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. The proposed lot is similar to adjacent lots already in existence.
5. It is the Board's conclusion that the variance will not be contrary to the public interest. (Bob Mullan voted will) The creation of a lot with similar frontage to adjacent existing lots does not create a detriment to the public.

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 to add the conditions (1) that the required twenty (20) foot side setback will be maintained on this proposed lot and (2) a note to this effect will be placed on the plat before submittal to the Planning Board.

David Ruoff seconded the motion.

Four voted in favor and one opposed. (Bob Mullan opposed)

Dean Trefethen advised that the ZBA forms will need to be updated to become Y2K compliant. Upon attending Planning Board meetings, he observed that the recommendations from the Planning Department are not part of the Public Hearing but are a staff recommendation after the Public Hearing is closed. He feels that this procedure would be better for the Zoning Board to follow. He presented this for the Board's consideration.

MOTION:

The Chair made the motion to move the Planning Department's recommendation to after the case has been accepted and before the Public Hearing.

David Ruoff seconded the motion.

U/A

MOTION:

Bill Colbath made the motion to adjourn.

Bob Mullan seconded the motion.

U/A

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List of members:

Term Expires

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
John Murphy – regular member	12/31/2001
Douglas Cummings II – alternate member	1/22/2002
David Ruoff – alternate member	4/13/2002