

**DOVER ZONING BOARD OF ADJUSTMENT  
MINUTES OF MEETING  
JULY 15, 1999**

**Members Present:** Dean Trefethen, Chairperson, Bill Colbath, Co-Chairperson, Rick Callaghan, Douglas Cummings, and Bob Mullan

**Staff Present:** Tom Clark, Building Official, Bruce Woodruff, City Planner

Dean Trefethen called the meeting to order at 7:02.

**ITEM #1: NEW BUSINESS**

Approval of the minutes for the regular meeting of June 17, 1999.

**MOTION:** Bill Colbath made the motion to accept the minutes of June 17, 1999 as presented. Bob Mullan seconded the motion. U/A

**ITEM #2: OLD BUSINESS**

None

**ITEM #3: Z 99-10 William & Linda Walsh, 5 Mulligan Dr., A/K/A Assessor's Map 21 Lot 25-43, zoned R-12, requests a variance from the provisions of Article V, Section 170-16 to construct a breezeway addition between a single family dwelling and a detached garage which has a side setback of approximately twelve (12), that would convert the garage to part of the principal structure where a minimum of fifteen (15) feet is required.**

William Walsh was present to speak on behalf of his request. He began explaining that when he purchased the home his intentions were to build a garage and a breezeway, unfortunately, he could not afford both at that time. He stated that he had the builders come out construct the garage first. They builders knew that he was going to have a breezeway built with the garage, but that he could not afford it at that time.

Mr. Walsh also stated that they came, plotted the site and made the foundation the same height as the house knowing that he would be having a breezeway put on at a later date. That builder was unable to do the job at the last minute, so he reassigned the construction job to another contractor. Mr. Walsh had no idea that after the second contractor finished the job, that he was out of bounds. Now, 4 years later he is being told that his garage is out of bounds by 3 feet and that was why he was before the Board.

He also stated that he thought maybe there was a communication problem between the first and second contractor, which would have allowed for this error to occur.

Tom Clark gave some supporting information to the Board on behalf of the Walsh's. He stated that the problem occurred just as Mr. Walsh stated. Tom had discussed with the first contractor, the setbacks for an attached and a detached garage, and Tom was not sure where

the communication breakdown occurred, but they did discuss that a detached garage would need a 10-foot setback and an attached would need 15. He went on to say that for whatever reason he chose to build the detached garage, and then the second contractor came in, so there were many instances where the communication breakdown could have occurred.

**Motion:** Mullan made the motion to accept the case. Colbath seconded the motion. Vote: U/A.

Bruce Woodruff, City Planner, stated that he recommended that the case be granted. He stated that the hardship is that this is a classic case of unnecessary restriction. He stated that when you connect the accessory garage with the principal structure, it makes for one structure, which changes the setback from the less severe setback to a more severe setback. He also stated that the fact of the matter here is that the accessory structure garage is already present on the lot, and it is a technicality that the owners are adding a breezeway between the two. He stated that it is the Planning Department's feeling that this is a needless and unnecessary restriction of the Zoning Ordinance in this case.

Public Hearing Opened. No-one present to speak for or against the case.  
Public Hearing Closed.

Mullan stated that he thought the garage would look good. Colbath stated he had no problem with the case.

Callaghan stated that he had no problem and would go along with the Planning Departments recommendation.

1. It is the Board's **CONCLUSION** that, if the applicant complies with the strict letter of the ordinance, he/she does face an unnecessary hardship. This **CONCLUSION** is based on the following **FINDINGS OF FACT**: This would be a needless or unnecessary restriction to enforce the ordinance as the intention was to have the breezeway all along.
2. It is the Board's **CONCLUSION** that, if granted, the variance will deliver substantial justice. This **CONCLUSION** is based on the following **FINDINGS OF FACT**: This proposal will allow fulfillment of the original plan without impacting abutters.
3. It is the Board's **CONCLUSION** that, if granted, the variance will be in harmony with the spirit and intent of the zoning ordinance. The **CONCLUSION** is based on the following **FINDINGS OF FACT**: The spirit and intent is to provide a reasonable setback and the setback is more than required for a detached garage.
4. It is the Board's **CONCLUSION** that, if granted, the variance will not result in a diminution in value of surrounding properties. This **CONCLUSION** is based on the following **FINDINGS OF FACT**: Inclusion of the breezeway will add to the aesthetics of the house and likely enhance the neighborhood.

5. It is the Board's **CONCLUSION** that, if granted, the variance will not be contrary to the public interest. This **CONCLUSION** is based on the following **FINDINGS OF FACT**: Because of the maintaining of a reasonable setback, the public is not harmed in any way.

**THEREFORE**, based upon the foregoing, **IT IS ORDERED** that the application for the variance be **GRANTED** with no conditions.

**ITEM #4:** Z 99-11 Wallace Woods LLC, 23 Wallace Dr., A/K/A Assessor's Map G, Lot 27-13, zoned R-20 request an equitable Waiver from Dimensional Requirements from the provisions of Article V, Section 170-16 and the Planning Board approval of the Wallace Woods Subdivision, dated August 13, 1998 to maintain a single family dwelling within approximately thirty-one (31) feet from a proposed property line as it abuts a future right-of-way where a minimum of thirty-five (35) feet is required.

Bob Stowell, Trittech Engineering and Jeff White, Principal of Wallace Woods were present to speak on their case.

Bob Stowell stated that this situation was a unique one, in that as part of their subdivision approval, they provided an easement across 2 lots at Wallace Woods, which in the future could be converted to a City right-of-way. As part of that, they provided the setbacks on the subdivision plan that would indicate being setback from a public street if in fact it was ever developed. He stated that they have a structure that is 56 feet from the side lot line where a 20 foot side setback is required, but yet, they still do not meet the side setback requirements. He went on to say that the confusion develops over the right-of-way, that we have a 50 foot right-of-way, but 25 feet of it encroaches on our lot # 13 and then from there, when abutting a public street you need a 35 foot setback. He stated that when it was all said and done, they were 3.6 feet short of that requirement. They have about 31.4 feet, and having found that out, they talked to Tom Clark, and it seemed as though the Equitable Waiver was appropriate in this case where the situation out there was not intentional.

Trefethen asked Mr. Stowell if they owned lot #14, and Mr. Stowell stated no. Colbath asked how they went from a foundation certification plan to having a house completely built. Stowell stated that it had been a month or so since they discovered the situation and at that point, the house was substantially complete. Colbath stated to Stowell, isn't it true that the City requires a foundation certification plan before you construct a building. Clark stated the short answer is yes, the long answer is that it is a condition on all building permits for the construction of a single family dwellings and especially new subdivisions so that these problems will not occur. He went on to state that with the rapid construction spreading throughout the City, by the time an Engineer gets out to the property to a foundation certification possibly the framing has already started.

Clark also stated that in some cases, developers assume where the foundation is supposed to be and prior to this they had not had the Engineer come out and pin the location prior to the

excavation, and in these same cases, the excavator will say that a few feet here and there won't make a difference. Unfortunately, in this case it did make a difference. We have received these after the house is under construction, and potentially the contractor is proceeding at their own risk.

Colbath stated that the builder, not the City is taking the risk of proceeding without submitting a foundation certification plan. He also stated that the applicants were expected to produce a foundation certification plan before the home was built, and not show up at the Board stating that you missed it by 3 feet, because that is not what an Equitable Waiver is all about. He went on to say that an Equitable Waiver is about a mistake, not jumping outside the procedure and saying you were sorry.

Mr. Stowell stated that Mr. White requested to have the plan completed, and both of them had assumed that the foundation certification plan was complete. Colbath asked Mr. White when he knew that the house was in the wrong.

Mr. White stated that it was after the house was framed, and Mr. Stowell added that after consulting with Clark they proceeded. Clark stated that he thought the home was only insulated. Mr. White stated that whether it had roughed electrical, or if it was insulated he wasn't sure. He also stated that he has built about 80 houses in the City and has never been before the Board.

There was some discussion over the right-of-way that could be developed into a road in the future. It was stated that another subdivision plan would have to be put in to create the right-of-way into a public street. It was also stated that the abutting lot is owned by Richard Kay and there are no intentions of developing, however, it could be by future owners.

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

Bruce Woodruff stated that the Planning Department took a close look at this case, and they believe that an honest mistake was made and that it is possible that the excavator and the builder did not look at the plans for the subdivision. He also stated that if the road is built, being off by 3.6 feet will not having an impact on a City Street. He went on to say that the nearest abutter is across the street, and the variance hinges on an honest mistake and denying it would be more harmful than good.

The Zoning Board of Adjustment for the City of Dover, New Hampshire, having held a public hearing on July 15, 1999, to consider an application for an Equitable Waiver of Dimensional Requirements, submitted by Wallace Woods LLC for the property located at Wallace Drive, and having heard all of the arguments presented at the hearing, makes the following **FINDINGS OF FACT** and draws the following **CONCLUSION: It is ordered that the application for Equitable Waiver of Dimensional Requirements be granted.**

**ITEM #5**      **Z 99-12 Dover Brook LLC, 25 Constitution Way, (Applicant Norman Mathieu) A/K/A Assessor's Map K, Lot 21-54, zoned R-40 request a Variance from the provisions of Article V, Section 170-17 to construct an accessory structure (detached garage) with no side setback where a minimum of ten (10) feet is required.**

**Note:**            A letter of consent for the applicant to construct the garage was submitted by the owner of the mobile home park to the Board.

Norman Mathieu, owner of #25 Constitution Way was present to speak on behalf of the case. He stated that from his steps to the property line measures to 24 feet and 10 inches, and he is requesting permission to construct a detached garage. He stated that the lot next to him (which the garage would abut) is a vacant lot that in the future will be used for a recreation area.

Mr. Mathieu stated that the reason he needs to place the garage so close to the boundary line is so that it may be parallel with the street.

Trefethen asked if Mr. Mathieu considered building a single car garage and Mr. Mathieu replied that it was not feasible because his family has two cars. Trefethen also asked Mr. Mathieu if he looked at another options of setting it back on the lot. Mr. Mathieu stated if he moved the garage back, it would be behind the house, and he also stated that he did look into rotating the garage etc.

Trefethen asked Clark if there was a possibility of adjusting the lot line to accommodate Mr. Mathieu. Clark stated that it was one of his first suggestions, since Mr. Kaufman, who is the owner of the mobile home park stated that he never intended to develop the lot abutting Mr. Mathieu because it is primarily covered by the PSNH easement. He also stated that unfortunately, it is the City's opinion that the owner still could develop the lot, and he added that as far as why the lot lines were not adjusted, is between Mr. Mathieu and Mr. Kaufman.

Mr. Mathieu stated that the adjacent lot does not have any utilities, and he believes the owner has no intentions of building on the lot. Trefethen asked Clark that since the utilities are in the road, there would be no restrictions to excavating and having utilities in, and Clark stated no.

Colbath made the motion to accept the case, and Mullan seconded the motion. Vote U/A.

Bruce Woodruff stated to the Board that since this is a mobile home park, and they do not have property lines, and because the lot adjacent to the applicant's is supposedly going to be a recreation area, you could grant the variance with zero lot line clearance. He stated that this should only be done with a guarantee that the lot with the power easement on it would never be developed. He went on to state that if the Board granted the variance using needless or unnecessary restriction hardship, that the stipulation would have to come from the owner or developer that the adjacent lot will never be developed and will be a recreation area. He stated that the Board could grant the variance with that condition, and if the owner disagreed with that

condition or did not record something in the Registry of Deeds adhering to that then the variance would be null and void.

Woodruff also stated that if the adjacent lot is not going to become a recreation area, then there is no hardship because you could do several things like build a one car garage, agree to a lot line adjustment, or a longer driveway moving the garage out behind the house.

Trefethen asked Woodruff if they granted the variance with that stipulation and the owner disagreed with it, then Mr. Mathieu would be back to square one. Woodruff stated yes. Woodruff stated that if the adjacent lot is a non-buildable lot than there is a hardship in this case because there would be no sense in having a 10-foot setback. Clark stated that another option would be to go to the Planning Board and ask them to designate the lot as a non-buildable lot so that it is recorded at the Registry or some document as a guarantee for the future economy or a new owner. Trefethen stated that another option would be to table the case, and request a letter from Mr. Kaufman. He added that if the Board received a letter from the owner saying that he has no intention of developing this lot, he would be satisfied with that because the Board could put it in their records.

Woodruff stated that the letter would become part of the variance, and can still be made as part of your approval because it holds up in the court of law. Trefethen stated that another option is to go back to the Planning Board and either adjust the lot line or declare it recreation area, and Woodruff stated that that may also be done via a letter to the Planning Board, so that it is in the official record.

There was a discussion about the letter from Mr. Kaufman, and if it would stand if the entire parcel was sold. They discussed that the letter would be valid as long as the garage was there, and that the only two ways the condition would be removed which would be to never build on the adjacent lot or to have the garage moved.

Trefethen asked Mr. Mathieu if he had any objections to the Board tabling the case, so that he could obtain something in writing from Mr. Kaufman stating that he would either adjust the lot line, or declare it recreation land. Mr. Mathieu stated that he could try and get some sort of documentation, while mentioning that him and Mr. Kaufman had discussed the possibility of erasing the lines. Colbath stated that we would need an official letter that he mailed directly to Mr. Clark. Trefethen explained to Mr. Mathieu that the Board would table the case until the next month's meeting, that he would be first on the agenda, and that the Board would begin where they left off.

Clark stated that he had contact with Mr. Kaufman almost on a daily basis, so he would be able to discuss and request the needed documentation.

**Motion:** Mullan made the motion to table the case. Cummings seconded the motion. Vote 5-0.

Motion to adjourn at 8:30 by Colbath, and seconded by Mullan. Vote 5-0.

ZBA  
7/15/99  
PG 7

Respectfully submitted,

Jamie McCulloch  
Secretary

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