

**DOVER ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
August 19, 1999**

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

Staff Present: Bruce Woodruff, City Planner

Dean Trefethen called the meeting to order.

ITEM #1: NEW BUSINESS

Approval of the minutes for the regular meeting of July 15, 1999.

MOTION:

Bob Mullan made the motion to accept the minutes of July 15, 1999.
Correction: Douglas Cummings was present and David Ruoff was absent.
Bill Colbath seconded the motion.
U/A

ITEM #2: OLD BUSINESS

- A. **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: This case was tabled at the July meeting.

Dean Trefethen read the letter from Mark Kaufman of Dover Brook LLC which stated that they do not have any objections to Mr. Mathieu's proposed garage and due to the small area of usable building space on the lot next to the Matheiu's, they would not be placing a manufactured home on that site. Dean also read the memo from Tom Clark which stated that he confirmed with Mr. Kaufman that the statement is intended to confirm his verbal comments to the applicant that the abutting site will never be used for residential purposes, only for open space, or recreational or storage uses.

Dean Trefethen asked Mr. Mathieu if he had anything to add and he responded that he did not.

Dean asked Bruce Woodruff if they ^{are} still are for the request and he responded that they are as long as a condition is placed that the abutting recreational lot will be used for no other purpose than recreational.

PUBLIC HEARING OPENED

No response

PUBLIC HEARING CLOSED

Dean Trefethen asked the Board if the letter from Mr. Kaufman and the memo from Mr. Clark satisfies their concerns.

Bob Mullan responded that it satisfies his concerns with the restrictions as suggested by the Planning Dept.

Bill Colbath responded that it is obvious from the letter that there will not be a manufactured home on this piece of property. However he believes that the Board asked that the letter state there would not be anything built on this property, and that is not what the letter says.

Bruce Woodruff wanted to clarify that although these are separate mobile home lots, which carry less weight than regular property lines, to the City this is only one large lot and the variance will be given to the entire parcel. The Board can put a condition on the variance that no buildings will be built on the adjacent site.

Rick Callaghan also has concerns for the use of storage. An 18 wheeler trailer could be left on the lot and used for storage and then the issue of structure is not covered. He feels that the letter and memo do not cover this sufficiently.

The Board discussed the wording of the use of the adjacent lot and the conditions. Also discussed the space between the storage of items and the garage.

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. Because the adjacent lot is an unbuildable lot it would be a needless or unnecessary restriction not to grant the request.
2. It is the Board's conclusion that the variance will deliver substantial justice. It allows complete utilization of the property without impacting any 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 proposal does not increase density and maintains an effective setback.
4. It is the Board's conclusion that the variance will result in a diminution in value of surrounding properties. Improving the property will enhance the neighborhood and the adjacent lot will not be used for a residence.
5. It is the Board's conclusion that the variance will not be contrary to the public interest. The proposal does not increase density or compromise public safety.

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

MOTION:

Bob Mullan made the motion to place the following conditions:

1. No structures of any kind to be placed on the lot (lot #55) immediately adjacent to the garage.
2. No items of any kind can be placed or stored on lot #55 within ten (10) feet of the garage.

Rick Callaghan seconded the motion.

U/A

ITEM #3:

Z 99-13 Michael Clark, Tolend Rd., (Applicant: Gary Allen) A/K/A Assessor's Map E, Lot 48-B, Zoned R-40 request a Variance from the provisions of Article V, Section 170-16 to subdivide a parcel creating one lot with one hundred forty-seven (147) feet of frontage along a public right-of-way where a minimum of one hundred fifty (150) feet is required.

Gary Allen stated that the request for a variance on his application was pretty straightforward. He is requesting subdivision with one lot to have 147 feet of frontage.

Dean Trefethen asked if the applicant intends to maintain this at three lots or does he have some long-range plans.

Gary Allen responded that it is his intention to subdivide this parcel into three lots and sell off two lots and build his house on one of the lots.

Dean Trefethen asked if the applicant intends to keep the middle lot, which has 20 acres, as it is.

Gary Allen responded yes, that he just wants to subdivide into 3 lots.

Rick Callaghan asked (1) what the applicant's relationship is to Michael Clark. (2) Where did Gary get the figure of 447 feet on the front. (3) He questioned the 3 to 6 acreage noted on the plan

Gary Allen responded that (1) Michael Clark is the current owner and he has an offer on it contingent on his being able to subdivide it into three lots, and (2) that figure comes from the deed. (3) This was taken from the deed.

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Rick Callaghan expressed two concerns. (1) The number that the Board may agree to may be less than what they are looking at. (2) A lot of the property will be taken up by the entrances to the back half of each of the two new properties. That is why he would like to have the acreage of 3 to 6 clarified, otherwise the results could be that two properties could become restricted in their setbacks or wetlands and could cause other applicants to make a request for variances.

The Board and City Planner discussed the requirements for a subdivision and what to look for in buildable area.

Bruce Woodruff stated that it appears that the Board is looking for assurance that the lots that eventually go to the Planning Board will be large enough to accommodate residential uses without coming back to the Zoning Board for dimensional variances in regards to setback. He believes that if the board makes the 5 acre minimum condition, considering the wetlands etc., the left and right lots can be developed as residential use without any problem. He thinks that what the Planning Board will eventually see is a dedicated driveway easement for all three lots. One driveway.

MOTION:

Rick Callaghan made the motion to accept the case.
Bob Mullan seconded the motion.
U/A

Dean Trefethen asked for staff recommendation.

Bruce Woodruff stated that where zoning is in place and outlines definite dimensional restrictions, one has to make sure that those rules, such as 150 feet frontage requirements, do not obscure the reason behind the rules. Frontage requirements ensure optimum building space on each lot, tempered by the character of the area. Thus R-40 is 150 feet, R-12 is 125 feet. Frontage requirements additionally ensure a "minimum square" or building envelope. In this case, the deficit of 3 feet, coupled with the immense depth of the subject lot, renders the reason for strict adherence to 150 feet unnecessary.

Staff recommends for a variance up to 5 feet (or 145 feet) if needed, with 2 lots at a minimum of 5 acres, but would be much more comfortable if a "no further subdivision" condition was explored with applicant.

Applicant would need to retain a surveyor to survey and prepare a plot plan for building permit review and approval. By granting with the condition of no further subdivision, the variance will prevent the land from being used to the highest density allowed which is a plus for the neighborhood, environment, and the City as a whole.

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PUBLIC HEARING OPENED:

No comments.

PUBLIC HEARING CLOSED:

Doug Cummings stated that he has no problem other than the restriction of further subdivision of the lots.

Rick Callaghan agrees with the 3 recommendations from the Planning Department.

Bill Colbath and Bob Mullan also agrees.

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. The overall size of the proposed 3 lots negates the need for 150 foot frontage on the third lot.
2. It is the Board's conclusion that the variance will deliver substantial justice. It allows a reasonable subdivision while maintaining overall zoning objectives.
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 & intent in the zone is to maintain a rural character and this proposal achieves that objective.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. The proposed lot sizes are well above minimum size.
5. It is the Board's conclusion that the variance will not be contrary to the public interest. The public's interest is to control density and the proposal achieves the objective.

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

MOTION:

Rick Callaghan made the motion to set the following conditions:

1. The two smaller lots will have a minimum of five (5) acres and 150 foot minimum frontage.
2. The non-conforming lot will have a minimum of 140 foot frontage.
3. There will be no further subdivision of any kind on any of the proposed lots.

Bill Colbath seconded the motion.

U/A

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Bill Colbath made the motion to adjourn.
Rick Callaghan seconded the motion.
U/a

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