

**DOVER ZONING BOARD OF ADJUSTMENT  
MINUTES OF MEETING  
SEPTEMBER 16, 1999**

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

**Staff Present:** Thomas Clark, Building Official, Steve Bird, City Planner

Dean Trefethen called the meeting to order.

Dean Trefethen informed the Board that there are still two Municipal Law Lecture series available to them in this area if they would like to attend.

**ITEM #1: NEW BUSINESS**

Approval of the minutes for the regular meeting of August 19, 1999.

**MOTION:**

Bill Colbath made the motion to accept the minutes of August 19, 1999.

John Murphy seconded the motion.

U/A

**ITEM #2: OLD BUSINESS**

None

**ITEM #3:**

**Z 99-14 David Dupont's Service Center (Applicant: Kevin Ravenelle), 46 Central Ave., A/K/A Assessor's Map 15, Lot 19, Zoned I-1, requests a variance from the terms of Article V, Section 170-16 to construct a gas pump canopy within fifteen (15) feet of a front property line as it abuts a street and within thirty-seven (37) feet of a side property line as it abuts a street where a minimum of fifty (50) feet at both locations is required.**

Paul Connolly represented David Dupont and Kevin Ravenelle. He presented two sketches to the Board for their review. One showing the actual building envelope and setbacks as allowed in the I-1 zoning setback requirements, and a sketch showing the setbacks for the proposed canopy. Although they propose to move the canopy further away from Central Ave., they will be coming closer to Locust Street. The present canopy is approximately 47 feet from Locust St. and it would be coming within 37 feet from Locust Street. The minimum for the I-1 zone is 40,000 square feet and the subject parcel is about one-third of that size. Paul reviewed the five criteria. He stated that granting the variance would allow the proposed canopy to be less non-conforming with regard to the Central Ave. side. The third curb cut closest to the intersection of Central Ave. and Locust St. will be eliminated thus making traffic flow better and safer.

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Dean Trefethen asked if the measurement of 37 feet is from Locust St. to the canopy or to the support for the canopy, and what is the measurement of the overhang of the canopy?

Paul Connolly answered that the 37 feet is to the support of the canopy.

Tom Clark explained further on the measurement from Locust Street to the canopy. The biggest reason that the applicant is here is for the change in location. Gas station canopies have existed in the gray area for several years. Up to the present, a canopy has never qualified as a structure. When the gas station on Portland Ave. was considered, it was a new station with a new canopy, and a decision had to be made whether to categorize this as a structure. The decision was made to consider the supports for the canopy as the structure and it had to maintain the setback that was applicable for that particular zone. The overhang for the canopy was allowed to protrude into the setback. This applicant is the first after that decision was made to request a canopy and to also request a change in location. This is also a very difficult parcel to develop because it is a corner lot.

Dean Trefethen questioned the safety improvements.

Paul Connolly stated that the replacement of the pumps will allow for the approximate equal stacking of cars at each pump without the probability of the cars lining back into the streets. This is safety for traffic movement.

Tom Clark added that the new one will be required to provide all of the life safety requirements.

Dean Trefethen asked Tom if there were any restrictions on hours of operation.

Tom Clark stated that there is not. However, this has already gone to the Technical Review Committee, the TRC is waiting for the results of a traffic analysis report to see whether or not the TRC will send it to the Planning Board for a site review. This will probably address the issues that are in Chad Kageleiry's letter that has been submitted to the Board prior to this meeting.

John Murphy asked, (1) because a gas station is allowed in I-1 zone by Special Exception, is a Special Exception also required for increase in use? (2) In regards to when two streets come together, when the Table of Dimensional Regulations refers to the front setback being fifty feet and the side setback to a street is also fifty feet, how does that relate to the Locust Street?

Tom Clark responded (1) that it was the determination that the use is what the Special Exception is for. Since the use is grandfathered, the Special Exception is irrelevant. (2) The site plan shows fifty feet from both Locust St. and Central Ave. There is a provision in the zoning ordinance to allow a non-conforming lot to have a side setback reduced from what is in the Table. Unfortunately, the frontage along Central Ave. is not small enough to allow them that reduction.

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PG. 3

John Murphy asked the applicant if he looked at the positioning of the pumps and all the modernization in a way as to reduce the encroachment into the setbacks?

Paul Connolly responded that if the current building were destroyed a different arrangement could be possible but this would create a hardship on the owner to meet this setback.

Tom Clark added that if the applicant were to destroy the building and rearrange everything they would still not be able to develop in the building envelope that they have without returning to this Board for a variance for the building setback.

John Murphy referred to Chad Kageleiry's letter, commenting on a shared access to each property and eliminating a curb cut. He asked the applicant if the curb cut that was to be eliminated is the one that is near the old railroad bed?

Paul Connolly responded that the curb cut that will be removed is the one that is the closest to the intersection of Locust and Central Ave. The curb cut that is the closest to the old railroad bed is going to be in part reused but shifted to the east to provide for on-site parking along that property line. The curb cut is an issue for the Planning Board and not the Zoning Board. The canopy request would not affect one way or the other the ability to do or not do a joint curb cut.

**MOTION:**

John Murphy made the motion to accept the case.

Bill Colbath seconded the motion.

U/A

The five regular members considered this case.

Dean Trefethen asked if the plans that are before them now reflect all of the Technical Review Committee's recommendations?

Tom Clark answered that he thinks the only issue that was not is, in referring to the site plan, on the left side of the property line that shows I-1 and R-12 zones, that it is the property line of the abutting parcel. That zoning demarcation should run down the center of the railroad track right-of-way, which he understands, is being corrected.

Dean Trefethen asked, pending the traffic report, the TRC may or may not recommend it to go to the Planning Board?

Tom Clark answered yes. The site review regulations allow for changing of use under certain conditions. But because it is going from service station to convenience store there is a concern about the change of use.

Dean Trefethen asked for comments from the Staff.

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Steve Bird stated that the Planning Department supports this variance request. The size of the lot and the fact that it is a corner lot presents a hardship that is inherent in the land. Strict application of the setback requirements would mean that a new canopy could not be located on the site and today a canopy is an integral part of modern gas stations. A new canopy is a natural expansion that does not change the nature of the use and does not have a different impact on the neighborhood, it will continue to be a gas station. The supports of the canopy and the gas pumps will be further away from Central Ave. property line than the existing canopy and gas pumps. The setback requirement is a needless and unnecessary restriction.

Rick Callaghan and Tom Clark discussed classification of service station, gas station and convenience store and the possibility of changes that could bring them back to the Zoning Board.

#### **PUBLIC HEARING OPENED**

Chad Kageleiry who is an abutter to the west side of this property that is the old railroad bed. He addressed his concerns in the letter that he submitted to the Board just prior to the meeting. He added that he does not think that a gas station and convenience store is a bad use at all at that location. One of the concerns he has is with the expansion there will be an increase in traffic coming in and out of that property. Chad's concern is with the impact this will have with developing his property in the future. Once again he stated that he thinks that this is a good location for a gas station and convenience store but not to the degree that it negatively impacts his property. He feels that this would be the time to address the shared access.

Dean Trefethen stated that a copy of Chad Kageleiry's letter will be in the file.

Jim Jalbert, former member of the City Council, stated that he was on the Council when the Planning Board made the decision to not rezone that area from I-1 to B-3. The reason was a concern for the traffic on Locust Street. The residential members in that area were not happy with the traffic and did not want any curb cuts on Locust Street. The present request will improve the property

David Dupont stated that he is willing to accommodate the abutter, Chad Kageleiry, in accessing his property as long as it does not adversely affect his business.

#### **PUBLIC HEARING CLOSED**

#### **FIVE CRITERIA:**

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. The applicable building envelope is so small, it does not allow for improvements or modernization of the property. Additionally, it would be a needless or unnecessary restriction to make the property conform.

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2. It is the Board's conclusion that the variance will deliver substantial justice. It allows for continued and improved operation of a long-standing use.
3. It is the Board's conclusion that the variance will be in harmony with the spirit and intent of the zoning ordinance. The proposed relocation and increased size of the canopy is still within the goals of the ordinance by way of controlling density.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. The proposed relocation and increased size of the canopy will not effect abutters. Improvement of the property is likely to increase property values.
5. It is the Board's conclusion that the variance will not be contrary to the public interest. The reduction in the number of curb cuts will probably enhance public safety.

Therefore, based on the foregoing, it is ordered that the application for the variance be granted.

MOTION:

John Murphy made the motion to adjourn.  
Bill Colbath 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