

DOVER ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
OCTOBER 21, 1999

Members Present: Dean Trefethen, Chairperson, Bill Colbath, Co-Chairperson, Robert Murphy, Douglas Cummings, and David Ruoff

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

Dean Trefethen called the meeting to order.

ITEM #1: NEW BUSINESS

Approval of minutes for the regular meeting of September 16, 1999.

John Murphy made the following correction:

Page two, last line of the second paragraph from the bottom. Change from "and the abutting lot being three hundred fifty," to read, "and the side setback to a street is also fifty feet, how does that relate to Locust Street?"

MOTION:

John Murphy made the motion to accept the minutes with the above correction.

Bill Colbath seconded the motion.

U/A

ITEM #2: OLD BUSINESS

Tom Clark addressed the Board in regards to zoning case #Z 99-13, Gary Allen, Tolend Rd., Assessor's Map E, Lot 48-B for a frontage variance. Tom brought to the attention of the Board the second item of conditions that was imposed in the granting of the variance of this subdivision. (#2. The non-conforming lot will have a minimum of one hundred-forty (140) feet frontage.) After the survey it was determined that the total frontage along Tolend Rd. is 437.97 feet, which means the third lot is now less than the minimum that was granted as a variance. The purpose of this is to see if the Board would like to act on this and change the condition under old business or at the end of the meeting.

Dean Trefethen asked the Board for comments.

Doug Cummings stated that he would agree to allow them the two feet.

John Murphy stated that although he was not at the meeting, he was not opposed to granting the 2 feet.

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Bill Colbath stated that he did not oppose the two feet.

David Ruoff stated that he did not oppose the two feet.

MOTION:

Bill Colbath made the motion to change the condition to 137 feet frontage.

John Murphy seconded the motion.

U/A

ITEM #3:

Z 99-15, Kevin Winn, 5 Mt. Vernon St., A/K/A Assessor's Map 30, Lot 110, Zoned RM-10 requests a variance from the terms of Article V, Section 170-15, to maintain an accessory structure (storage shed) with side and rear setbacks of approximately five (5) feet where a minimum of ten (10) feet is required at both locations.

Kevin Winn stated that if he were to have ten feet in all directions he would be left with no back yard because of the size of the lot and the shed. The shed was given to him in sections and it was put back together and placed on the lot so that he would not have to take a tree down. He has spoken to his abutters and no one is opposed to the shed.

MOTION:

John Murphy made the motion to accept the case.

Doug Cummings seconded the motion.

U/A

Dean Trefethen asked for a staff recommendation.

Steve Bird stated that the Planning Department is in favor of this request due to the lot's width, which is only 50 feet wide, and because of the reduced frontage the zoning ordinance would allow the house on the property to be within six feet of the lot line. In this case holding the applicant to the ten foot requirement does not make sense because in order to comply the shed would have to be attached in some manner to the house which would make it not attractive to the neighborhood.

John Murphy asked how this case came to be.

Tom Clark stated that he just happened to notice it being pieced together while driving by one day. He stated that there are enough such situations in Dover that he is

considering proposing an amendment to increase the size of the accessory structure under the ordinance so that sheds of this size may not be required to meet the ten-foot setback. There are many substandard lots where a shed just would not fit if required to maintain the ten-foot setback.

PUBLIC HEARING OPENED

No comments

PUBLIC HEARING CLOSED

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. The setback of the shed is approximately the same as would be allowed on this lot for a principle structure, so enforcing the ten-foot requirement would be needless and unnecessary.
2. It is the Board's conclusion that the variance will deliver substantial justice. It allows improvement to the property while maintaining setbacks similar to the main structure.
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 is to maintain adequate clearance from property lines for access and that is not hampered.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. Setbacks are similar to the existing main structure and existing trees will be maintained.
5. It is the Board's conclusion that the variance will not be contrary to the public interest. Density control and safety access are maintained with the proposed setbacks.

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

ITEM #4:

Z 99-16, Tri City Dodge Inc., 7 and 11 Weeks Ln., A/K/A Assessor's Map 38, Lots 34 and 35, Zoned B-3 requests a variance from the terms of: (1) Article V, Section 170-16 to construct a side addition onto a proposed commercial building within thirty (30) feet of a front property line as it abuts a street where a minimum of fifty (50) feet is required; and (2) Article X Section 170-41A to enlarge a non-conforming structure.

Atty. Gregory Worth represented Tri City Dodge Inc. and a prospective purchaser, Ron Stock. He reviewed the location and size of the lots. There is a municipal sewer line and easement that runs across to the rear and close to the center of the property which renders a third of each of these lots undevelopable. He described the surrounding area, which is business and also non-conforming properties. It is anticipated that the two lots will be combined making it conforming. He reviewed the five criteria. Because of the sewer line, and the loss of some of the property when Weeks Lane was constructed, there remains very little buildable space on these lots.

Tom Clark questioned the Attorney's statements that the addition would not increase the non-conformity of the setback.

Atty. Worth replied that the setback with the existing structure is 30 feet, which is non-conforming. He stated that it is his opinion that unless the 30 feet is changed to 29 feet or 28 feet the non-conformity is not increased.

Steve Bird, City Planner, asked (1) what the rationale is in keeping the existing house. Would it not be better to tear it down and start with a new building, and (2) why the building could not be rotated so that it would comply and they would not have to seek a variance?

Atty. Worth replied (1) that it was considered but found to be unnecessary. He gave the Board pictures of the buildings. That building will be incorporated and be substantially renovated and used along with the rest of the structure. The garage will be taken down. (2) The problems with that are the parking and the access issue. They have tried to provide access for the elderly and handicapped by having the majority of parking spaces on the right hand side. Also if the building were changed there would be a question of turn-around area and taking into account the deliveries that will be made.

David Ruoff asked why they needed a building the size that this is?

Atty. Worth responded that it would allow future expansion.

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Dean Trefethen stated that he also has concerns with maintaining the existing building and changing the location of the building.

The Board and applicant discussed using the existing structure versus replacing it.

John Murphy asked what the area in the rear would be used as?

Atty. Worth replied that it would be used for future expansion.

They discussed the buildable area, other building location possibilities, parking area and the sewer easement.

Bob Stowell, Tri-Tech Engineering, stated that when the house was used as residential, the sewer easement did not matter, however now that zoning has changed it to commercial, the sewer easement does restrict the buildable area.

MOTION:

John Murphy made the motion to accept the case.

David Ruoff seconded the motion.

U/A

John Murphy and the applicant discussed the appearance of the building with the addition.

Dean Trefethen asked for the staff recommendations.

Steve Bird stated that the Planning Office agrees with most of the arguments given in the application. They however have difficulty with the hardship issue. The question is do they have other alternatives other than the variance. Combining the two lots into one would eliminate some of the constraints. The Planning Department sees this as a viable site for the business proposed but they have a problem recommending a variance in this case because they see alternatives to seeking a variance. Based on this they cannot support the variance. They see this as a viable site for this business and are willing to work with the applicant to make it work.

PUBLIC HEARING OPENED

Chad Kageliery, representative of Tri-City Dodge. He was hired to sell the property but has been unable to because of the physical constraints and the sewer easement. This limits the use of the property. Believes the variance would be appropriate.

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Dan Gabriel, a citizen familiar with the property. Believes that granting the variance would be within the spirit and intent of the ordinance. The sewer easement presents the hardship and he believes it is a reasonable plan.

A letter from abutter Dr. Kevin Reichlin was submitted for the file. He stated that he is in favor of the request for a variance.

PUBLIC HEARING CLOSED

Bill Colbath stated that the sewer easement enters into the matter as well as the similarity in setback to the surrounding area. The opportunity to put the building in the envelope and make it fit within the setback is there. It is not fair to impose a restriction that the 50-foot setback has to be maintained when the surrounding buildings have 30 feet.

David Ruoff asked the applicant how much land was loss when the Weeks Ln. was constructed.

Atty. Worth stated that it was his understanding that it was a couple of feet.

John Murphy stated that he has no concerns and that he feels it is a nice project. He feels that it is unreasonable to request that the building be torn down. However, is concerned with the appearance of the complete structure when finished.

The Board discussed the hardship.

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. Holding the applicant to a fifty-foot setback would be an unnecessary and needless restriction because their abutters and others in the immediate area have the approximately thirty feet requested. The placement of the sewer easement is unique to this lot.
2. It is the Board's conclusion that the variance will deliver substantial justice. It allows the setbacks to be consistent with neighboring properties while at the same time avoiding encroaching any closer to the front setback.

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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 and intent is to have reasonable setbacks and this proposal allows that. The proposal is also in agreement with the City's master plan for business growth in this area.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. Enhancement of the property as proposed will likely improve area property values.
5. It is the Board's conclusion that the variance will not be contrary to the public interest. Combining the two non-conforming lots to one conforming lot is in the public's interest. The proposal also agrees with the publicly stated master plan for business growth.

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

MOTION:

John Murphy made the motion to place a condition that if the present structure remains, its exterior finish will be upgraded to be the same as the addition's exterior finish. Bill Colbath seconded the condition.
U/A

The applicant for items #5 and #6 asked if these two cases could be heard simultaneously since they are both same owners and issues.

Dean Trefethen had no objection to this request however, reminded the Board that each cases will be voted on separately.

ITEM #5:

*Z 99-17 Aranco Oil Co., 52 Central Ave., A/K/A Assessor's Map 15, Lot 71, Zoned B-3 requests a variance from the terms of Article V, Section 170-16 to construct a gas pump canopy within approximately thirty-one (31) feet from a front property line as it abuts a street where a minimum of fifty (50) feet is required.

ITEM #6:

*Z 99-18 Aranco Oil Co., 862 Central Ave. A/K/A Assessor's Map 38, Lot 28, Zoned B-3 requests a variance from the terms of Article V, Section 170-16 to construct a gas pump canopy within approximately nineteen (19) feet from a front property line as it abuts a street where a minimum of fifty (50) feet is required.

Paul Kenney represented Aranco Oil. Both of these stations are at an angle. The present canopy at each station is obsolete and has to be replaced. The one at 52 Central Ave. has a canopy that extends over the right-of-way. The canopy at 862 Central Ave. extends right to the property line. The proposal is to remove the existing canopies and replace them with modern canopies. Because of the setback problems the buildings cannot be moved. One reason for the new canopy is the new electronic pumps that are sensitive to outside weather and should be covered. There will be no change in use and traffic pattern. Some of the pump islands at 862 Central Ave. will be removed as well as a light and one sign. The property at 52 Central Ave. will continue to have 2 signs. The buildings will be modernized. He reviewed the five criteria.

Dean Trefethen asked if there would be any safety equipment or requirements for the new canopies?

Paul Kenney responded that whatever the local chief will demand. These are full service stations so automatic fire represent is not required.

The Board discussed the sizes of the existing canopies compared to the new, and the setbacks.

MOTION:

David Ruoff made the motion to accept both cases.

Doug Cummings seconded the motion.

U/A

Dean Trefethen asked for staff recommendations.

Steve Bird, City Planner responded that the Planning Department is in favor of these requests for variances because the supports are no closer to the front lot line than the existing supports and the proposed canopy is further from the front lot line than the existing. Without the variance the new canopy would not be possible. A canopy is an integral part of a modern gas station.

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PUBLIC HEARING OPENED

None

PUBLIC HEARING CLOSED

FIVE CRITERIA:

Z 99-17, Aranco Oil Co., 52 Central Ave.

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. The operation of a modern service station requires a modern canopy to protect pumps and patrons from the elements and this proposal allows for that while moving the supports and the roof of the canopy further back from the street.
2. It is the Board's conclusion that the variance will deliver substantial justice. It allows modernization of an existing service station to current industry and competitive standards.
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 is reasonable setbacks and the proposal means the supports and the actual canopy are moving further away from the street.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. Modernization of the existing service station should enhance values.
5. It is the Board's conclusion that the variance will not be contrary to the public interest. The public will be better protected from the weather with the proposed canopy.

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

FIVE CRITERIA:

Z 99-18, Aranco Oil Co., 862 Central Ave.

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. The operation of a modern service station requires a modern canopy

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to protect pumps and patrons from the elements and this proposal allows for that while moving the supports and the roof of the canopy further back from the street.

2. It is the Board's conclusion that the variance will deliver substantial justice. It allows modernization of an existing service station to current industry and competitive standards.
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 is reasonable setbacks and the proposal means the supports and the actual canopy are moving further away from the street.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. Modernization of the existing service station should enhance values.
5. It is the Board's conclusion that the variance will not be contrary to the public interest. The public will be better protected from the weather with the proposed canopy.

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

MOTION:

Bill Colbath made the motion to adjourn
Robert Murphy 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