

DOVER ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
NOVEMBER 18, 1999

MEMBERS PRESENT: Dean Trefethen, Chairperson, Bill Colbath, Co-Chairperson, Douglas Cummings, John Murphy, Robert Mullan and David Ruoff

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

ITEM #1: NEW BUSINESS

Approval of minutes for the regular meeting of October 21, 1999.

Dean Trefethen stated that the last paragraph on page 6 should be deleted because it is duplicated on the next page.

MOTION:

Bill Colbath made the motion to accept the minutes with the above correction.

John Murphy seconded the motion.

U/A

ITEM #2: OLD BUSINESS

No old business

ITEM #3:

Z 99-19, Leigh Estes, 65 Bellamy Rd., A/K/A Assessor's Map H, Lot 50, Zoned R-40 requests a Variance from the terms of Article V, Section 170-16 to subdivide a property creating a lot with approximately ninety-seven (97) feet of frontage along a public right-of-way where a minimum of one hundred-fifty (150) feet is required.

The applicant, or a representative, was not present so the Board agreed to postpone hearing this case until after case #Z 99-20.

ITEM #4:

Z99-20, STF Development Corp. Granite Ave., A/K/A Assessor's Map 25, Lot 45, Zoned RM-10 requests a Special Exception as provided for by the terms of Article VI, Section 170-25.1 and Article XII, Section 170-52.C.(3) to construct a four-family dwelling.

David Paolini for STF Development reviewed the criteria on his application.

Bill Colbath asked what the proposed 30 X 30 building would be?

David Paolini responded that it is an option for a future garage.

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John Murphy asked if the other requirements have been met?

David Paolini answered yes, that the site plan shows the screening and parking spaces.

Alternate Douglas Cummings sat on this case.

MOTION:

Bill Colbath made the motion to accept the case.

John Murphy seconded the motion.

U/A

Dean Trefethen asked for Staff recommendations.

Steve Bird responded that the applicant has submitted evidence that the criteria are in place. The only question they have is what type of screening will the applicant use for the parking area. The plan does not show screening and it is one of the criteria.

David Paolini stated that it was his understanding that the building will be used as some of the screening because the cars will be coming in front of it. If side barriers are required on either side they will be installed.

Steve Bird stated that since this is a four-unit building and it will not be coming before the Planning Board for review but to the Building Inspector, he suggests that a condition be placed that screening will be provided to the satisfaction of the Building Inspector. If that happens then it is the Planning Department's recommendation that the Special Exception be granted.

PUBLIC HEARING OPENED

Leonard Silver, abutter, asked how many bedrooms would these apartments have?

David Paolini responded possibly 2 bedrooms.

Leonard Silver is concerned as to how the people would get in and out of this property. He feels that this street will not be able to carry the increase in traffic. However he is not opposed to the location of the building.

PUBLIC HEARING CLOSED

MOTION:

Bill Colbath made the motion to grant the Special Exception with the condition that screening be provided to the satisfaction of the Building Inspector.

Bob Mullan seconded the motion.

U/A

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Dean Trefethen asked if the applicant for Z 99-19 was present?

No response.

MOTION:

Bob Mullan made the motion to table the case.

There was no second to the motion. The Board agreed to hear the case.

ITEM #3:

Z 99-19, Leigh Estes, 65 Bellamy Rd., A/K/A Assessor's Map H, Lot 50, Zoned R-40 requests a Variance from the terms of Article V, Section 170-16 to subdivide a property creating a lot with approximately ninety-seven (97) feet of frontage along a public right-of-way where a minimum of one hundred-fifty (150) feet is required.

Dean Trefethen read for the record the applicant's five criteria on her application.

Dean Trefethen asked Tom if the separate lot on the plan was to be an expansion of this lot?

Tom Clark answered that it is not. It shows a lot line adjustment.

Steve Bird added that the lot line adjustment was approved by the Planning Board about a month or two ago.

Dean Trefethen brought Tom Clark's memo to the attention of the Board in regards to this parcel that was granted a Variance in 1996 to allow two principal buildings to one parcel and to also to establish a light industrial use in an R-40 zone.

The Board discussed the zones and square footage requirements.

Dean Trefethen recalled the case when it was heard in 1996 and wondered what changed in the assurances that were given them in the use of this lot. It is a residential zone and they wanted to do some light industrial work in an existing building. He recalled the discussion at the time as to how else the property could be used in the future and he felt that the applicant wanted to preserve the parcel as is and now they want to subdivide. He questions what has changed.

Alternate David Ruoff sat on this case.

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MOTION:

Bob Mullan made the motion to accept this case
David Ruoff seconded the motion
U/A

Dean Trefethen asked for Planning Staff recommendations.

Steve Bird responded that the absence of the applicant makes it difficult for staff to give recommendations because in discussions with her today she stated that she did not have any problems with the conditions they discussed; however she is not here now to state so to the Board. The conditions they discussed were: (1) No new driveways would be permitted on this property. They have two driveways and one would have to be used for this lot. (2) There would be no further subdivision of either lots; and the covenant would have to be recorded on the deeds for both parcels. (3) The newly created lot would have to tie into the public utilities, water and sewer. He referred to the minutes from the 1996 hearing in which the Planning Department listed five things that they were looking for to justify the variance for the industrial use, and the fifth one was that the lot was very large and does not allow a subdivision without the placement of a City street into the property. This would be more disruptive to the neighborhood than the proposed use. One of the reasons the variance was granted for the industrial use was that it would be a better alternative than more houses. He questions whether that representation is being changed by this request. In the absence of the applicant the Planning Department is not certain that it can recommend this variance request.

PUBLIC HEARING OPENED

Ruby Trask, abutter at 57 Bellamy Rd. She was at the 1996 hearing and she was left with the understanding that there would be no further subdivision or buildings built on that land. That was the reason why she went along with their request for a light industrial business at that property. After reviewing the information on this application, she feels that they are being blackmailed in that if they don't go along with this and allow the one building to be built, the applicant will try to get a development put in there with separate buildings and that does not make her very happy.

PUBLIC HEARING CLOSED

Dean Trefethen stated that he feels that the applicant already has a greater right than the abutters in that they are already being permitted to have industrial use that is a right their neighbors do not have. The applicant has a choice of light industrial or have a lot but not both.

The Board discussed the fact that the applicant can still come up with a sub-division and put a road in.

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does not face an unnecessary hardship. There is no inherent hardship in the land and they already enjoy greater usage rights than their neighbors.
2. It is the Board's conclusion that the variance will not deliver substantial justice. The property already has greater rights than abutters and the proposal would only increase that disparity.
3. It is the Board's conclusion that the variance will not (David Ruoff and John Murphy voted will) be in harmony with the spirit and intent of the zoning ordinance. The spirit and intent is to control reasonable density and this proposal does not accomplish that goal.
4. It is the Board's conclusion that the variance will not (David Ruoff and Dean Trefethen voted will) result in a diminution in value of surrounding properties. The proposed lot with one house on it would not affect abutters values.
5. It is the Board's conclusion that the variance will be contrary to the public interest. More rights to this property would be conveyed under the proposal.

Therefore, based upon the foregoing, it is ordered that the application for the variance be denied. The applicant has twenty days to appeal.

ITEM # 5:

Z 99-21, Bill Dube Inc. (Applicant: Motiva Enterprises, LLC), Long Hill Rd. and Old Rochester Rd., A/K/A Assessor's Map A, Lot A-1 Zoned B-3 requests a Special Exception as provided for by the terms of Article VI, Section 170-23 and Article XII, Section 170-52 C(3) to construct a gasoline filling station.

Atty. Malcolm McNeill represented the applicant. Also present was John Christopher from Motiva Ent. Kerry Forbes, Century One Home Team, was also present to speak on one of the criteria. Atty. McNeill stated that a portion of the property is in Somersworth and he presented the Board with a copy of Somersworth's zoning that allows this use. He described the surrounding area of businesses. The Board also was supplied with a traffic report from the Norway Plains Survey Service. This property will require a Site Review approval. He described the gas pumps, fast food, convenience store and car wash and their locations. He described the entryways to the property which will require State review. He also showed where the buffer would be for the abutters and that Somersworth will also have to give approval. He reviewed the five criteria on the application. The proposed facility will be equipped with water saving appliances and the car wash will recycle approximately 80% to 90% of the water used to wash vehicles. The site will also be required to comply with DES requirements with regard to off-site impacts. The site will retain and infiltrate any new

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regenerated storm water after appropriate pretreatment. The applicant will take on his fair share of the cost of tying into the City water and sewer.

Kerry Forbes spoke on the impact of this on the value of the surrounding property. The property that is in Somersworth is zoned commercial but there is a single family dwelling on it making it a non-conforming use in a commercial zone. The surrounding property is almost all commercial. The value of the residential building is higher as commercial than as a residential so there would be no impact on the value of the surrounding property.

Alternate David Ruoff sat on this case.

MOTION:

David Ruoff made the motion to accept the case.
Bob Mullan seconded the motion.
U/A

Dean Trefethen asked Tom and Steve if they have any disagreements with the traffic report.

Tom Clark stated that Bruce Woodruff usually reviews traffic reports and he is out this week. He is anticipated to review this and a more detailed one that was referred to, as part of the TRC and the Planning Board Site Review process.

John Murphy questioned whether or not a car wash was a permitted use in this zone.

Tom Clark responded that it was decided by Superior Court that a car wash was a Personal Service Establishment. In connection with this proposal, a car wash is a customary accessory use to a gas station/auto service.

Dean Trefethen questioned the retention of newly created storm water.

John Christopher answered that the storm drain system will collect the water coming off the roof of the building, off the canopy, and off the car wash roof, and channel it through water separators and re-infiltrate that into the ground. And it will also collect any site water and process that. The goal is not to let any water get off-site. He explained the process that will be used in reusing the car wash water.

Dean Trefethen asked for staff recommendations.

Steve Bird answered that the applicant has met with the Planning Department about this plan and has indicated some of the issues that were raised during that meeting, traffic etc. The City does have plans on the books for a traffic signal at the intersection of Long Hill Rd. and Rt. 108. The City is expecting a fair share contribution for that work in addition to a fair share contribution to the sewer upgrade that is on the books. Another area of concern is Willand

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Pond that is across the street. There needs to be an adequate containment system for the gasoline tanks to handle any possibility of spills on the top of the ground to contain them so that they do not run off the site. In terms of the Special Exception they feel that they meet the criteria and that the details will be worked out during the TRC process. At the Planning Board level the suggestion is that the applicant agree to contribute to the traffic signal and the water and sewer upgrade.

PUBLIC HEARING OPENED

No response

PUBLIC HEARING CLOSED

MOTION:

John Murphy made the motion to grant the Special Exception with the following conditions:

1. The applicant would be expected to contribute its fair share of planned improvements in the area, particularly for a traffic signal and the water and sewer upgrade as may be required by the Planning Board.
2. It is the Board's desire that the screening shall be maximized between the residential properties and the proposal.

Bob Mullan seconded the motion.
U/A

ITEM # 6:

Z 99-22-A, Durham Rd. Assoc. Inc., (Applicant: Seacoast Veterinary Assoc. Inc.), 96 Durham Rd., A/K/A Assessor's Map I, Lot 14-A, Zoned R-20 requests an Appeal From An Administrative Decision in connection with Article X, Section 170-40 A & B: expansion of non-conforming uses.

Atty. Bill Tanguay represented the applicant. He referred to and expounded on cases that came before the Supreme Court in regards to variances dealing with non-conforming uses. He compared the City's ordinances with the State law.

Dean Trefethen asked Tom Clark for his input as to why the applicant has to appear before the Board.

Tom Clark responded that the handbook states that if a land owner wishes to expand or change a non-conforming use he must either show that the expansion is a natural expansion that does not change the nature of the use, does not make property portion less adequate and does not have a substantial impact, or apply for the variance. Using the specific provision, 170-40,A & B, states that it can not be done. As to whether or not it doesn't comply with State law, he thinks that it would be up to this Board to either uphold the appeal or, if denied, the

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applicant can appeal to the Superior Court and have them tell us that this is not in compliance with State law.

Bill Colbath asked for clarification. They are still talking about expanding the existing structure. The way he reads it the ordinance states that the structure can be altered, it says nothing about expanding the structure.

The Board and Mr. Tanguay discussed the State statues and expanding use.

John Murphy stated that the Board should be looking at the City Ordinance and not what the State says. The issue of whether or not the City is in violation with the State is something for the City Attorney to determine. We should be looking at the issue at hand.

Bill Colbath stated that the question hinges on the expansion of the use by virtue of the structure. The expansion of the structure allows for the expansion of the use.

Tom Clark agreed.

MOTION:

Bill Colbath made the motion to accept the case.
John Murphy seconded the motion.
U/A

Alternate Doug Cummings sat on this case.

MOTION:

Bill Colbath made the motion to uphold the Administrative Decision.
John Murphy seconded the motion.
U/A

Tom Clark will write a memo to Attorney Wattendorf requesting a research into the State cases as cited by Atty. Tanguay.

ITEM #7.

Z 99-22-B, Durham Rd. Assoc. Inc. (Applicant: Seacoast Veterinary Assoc. Inc.), 96 Durham Rd., A/K/A Assessor's Map I, Lot 14-A, Zoned R-20 requests a Variance from the terms of Article X, Section 170-40 A & B to enlarge a non-conforming use. (Veterinary Office, Animal Hospital, Kennel)

Atty. Tanguay represented the applicant and stated that they propose an addition to the front of the building by four additional feet to the road, and a proposed addition to the back. The

more spaces requires Site Review. The applicant could separate the projects and go to Site Review on the parking lot later.

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. The proposal does not violate any setback requirements, but is a natural expansion of an existing use, therefore it would be a needless and unnecessary restriction not to allow the additions.
2. It is the Board's conclusion that the variance will deliver substantial justice. The proposal is a natural expansion of an existing use and does not impact 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 spirit and intent is to maintain reasonable setbacks and to control density and this proposal does not violate any setbacks and does not substantially change the neighborhood density.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. The proposal is for similar existing use and the new sound proofed kennel would benefit surrounding properties.
5. It is the Board's conclusion that the variance will not be contrary to the public interest. It allows natural expansion of a service used and needed by the public.

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

MOTION:

Bill Colbath made the motion to adjourn.
John 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