

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

MEMBERS PRESENT: Dean Trefethen, Chairperson, Bill Colbath, Co-Chairperson, Douglas Cummings, John Murphy and Richard Callaghan

STAFF PRESENT: Thomas Clark, Building Official

ITEM #1: NEW BUSINESS

Approval of minutes for the regular meeting of November 18, 1999.

MOTION:

John Murphy made the motion to accept the minutes of November 18, 1999.

Doug Cummings seconded the motion.

U/A

ITEM #2: OLD BUSINESS

Tom Clark reminded the Board that at the November meeting the Dover Veterinary Hospital petitioned for and received a variance for an expansion of a non-conforming use. The applicant was concerned about the comment that consideration should be given to the possibility of limitations for future requests, because they would like to know what they would have to do if they wanted to expand the addition that was approved. Tom's suggestion to them was to not start on any building, come in under Old Business, and request a modification of the existing variance since all criteria had already been proven, as opposed to building the addition and then come back in three or five years. After that meeting they considered what their long term goals and objectives were and realized that what they asked for was not enough. It is not on this agenda but may be on the next.

ITEM #3:

Z 99-23 Karen and Stephen Root, 15 Digby Ln., A/K/A Assessor's Map I, Lot 48-B-9, Zoned R-12, requests a variance from the terms of Article IV, Section 170-12, Table 1, Part A to establish a two-family dwelling.

Karen Root would like to convert the existing room above her garage to a separate living unit for her father. She claims that her hardship is her father's failing eyesight and she would like to be able to take care of him. He is alone and she feels that the increase would not change the appearance of the house.

Dean Trefethen advised the applicant that the purpose of the restriction on in-law-apartments is because it is too easily used after for students and others than originally intended for.

Karen Root assured the Board she does not intend to use it as an apartment after her father can no longer use it. She just wants to take care of her father. She is willing to sign restrictions if the Board so chooses.

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12/16/99
PG. 2

Dean Trefethen asked if there is access directly into the main part of the house from the area above the garage.

Karen Root responded that there is a spot for a door to go through directly into her bedroom.

Dean Trefethen asked if the variance were granted, would a door go in place.

Karen Root answered that there would be.

Dean Trefethen asked the applicant to describe the interior of the area in question.

Karen Root responded that there would be a small kitchen because her father does enjoy cooking, a bathroom, bedroom and living room. The area is not large but will be comfortable for him. He is presently living in Portsmouth.

MOTION:

John Murphy made the motion to accept the case.

Rick Cummings seconded the motion.

U/A

Dean Trefethen entered the Planning Departments comments into the record. They are recommending denial of the variance request.

Tom Clark asked to elaborate on the Planning Department's comments per their request. The Planning Department strongly opposes this. It is a new house in a new subdivision in an R-12 zoning district and they feel that the granting of the variance would establish a dangerous precedent.

Karen Root explained that the house is already there and it would not change its appearance in anyway.

PUBLIC HEARING OPENED

No comments

PUBLIC HEARING CLOSED

John Murphy stated that he has no problem with this request. On a previous case an addition was involved which changed the appearance of the house, but this one doesn't.

Dean Trefethen stated that he reviewed the previous case and the same conditions that were applied on that case can be applied to this one.

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12/16/99
PG. 3

The Board discussed means of enforcing the variance by restricting it to her father only and wording such in the deed.

Rick Callaghan feels that it is important to have some means for people to be able to take care of their parents. However, he does share the long-term concerns of creating a new space, that it is a new house designed as a single family dwelling, and in a new subdivision. There needs to be a way to prevent it from being used as a separate unit in the future by others.

Dean Trefethen read the conditions that were applied in the previous case. (1) A deed restriction will be executed that will require removal of the kitchen upon transfer or sale of the property OR when her father no longer resides at this location. Wording of this restriction to be reviewed by the City Attorney and a final approval by this Board. (2) Occupancy of the second unit to be limited to her father. (3) Variance to expire upon transfer or sale of property.

Karen Root agreed to have those same conditions applied to her variance.

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. It would be a needless or unnecessary restriction to make the applicant create a living space for a relative without both a bathroom and kitchen when they are trying to provide a comfortable and functional space for a relative to live.
2. It is the Board's conclusion that the variance will deliver substantial justice. It allows a relative to continue living with the applicant while providing comfortable and functional space while also protecting 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 prevent two families in two units on the same lot. This proposal is actually allowing only one family.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. The existence of the second unit would not be apparent, as no outside alterations to the structure would be done.
5. It is the board's conclusion that the variance will not be contrary to the public interest. It would still be a single family home, in essence, and would not have an effect on the public or the neighborhood.

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

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12/16/99
PG. 4

MOTION:

John Murphy made the motion to apply the following conditions:

- (1) A deed restriction will be executed that will require removal of the kitchen upon transfer or sale of the property from the Roots, OR when Karen Root's father no longer resides at the property. Wording of this restriction to be reviewed by the City Attorney and final approval by this Board.
- (2) Occupancy of the second unit to be limited to Karen Root's father only.
- (3) Variance to expire upon transfer or sale of the property or the death of Karen Root's father.

Douglas Cummings seconded the motion.
U/A

ITEM #4:

Z 99-24 Karen & Stephen Root, 15 Digby Ln., A/K/A Assessor's Map I, Lot 48-B-9, Zoned R-12, requests a variance from the terms of Article V, Section 170-17 to maintain an accessory structure (storage shed) within approximately two (2) feet of a rear property line where a minimum of ten (10) feet is required.

Karen Root explained that she was not aware that a Building Permit and a variance was required to place a shed at the location that it was placed. She went back to the builder and asked why it was placed in that particular spot and she was told that because of the soft and slightly inclined ground it was necessary to place the shed back towards the tree line for firmer ground.

Dean Trefethen asked if the applicant had considered placing the shed somewhere else on the property where it would meet the setback requirements?

Karen Root responded that the ground is soft all around.

MOTION:

John Murphy made the motion to accept the case.
Rick Callaghan seconded the motion.
U/A

Dean Trefethen entered the Planning Department staff's recommendation into the record. The Planning Department had no strong recommendation either way on this variance request.

PUBLIC HEARING OPENED

No comments.

PUBLIC HEARING CLOSED

Rick Callaghan feels that there are remedies for soft ground and finds that it is not necessary to leave the shed so close to the property line.

Dean Trefethen feels that if the shed were allowed to remain, this property would be getting more rights than their neighbors would have.

Bill Colbath agrees that the shed can be moved

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does not face an unnecessary hardship. (John Murphy voted does). There are areas on the property that the shed could be placed that would meet the required setbacks and be made structurally sound.
2. It is the Board's conclusion that the variance will not deliver substantial justice. (John Murphy and Doug Cummings voted will). The applicant should not enjoy more rights than their abutters considering that there are legitimate options on placement of the shed.
3. It is the Board's conclusion that the variance will not be in harmony with the spirit and intent of the zoning ordinance. The spirit and intent was to maintain reasonable setbacks.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. (Dean Trefethen voted will). The current location of this temporary structure has limited, if any effect on surrounding properties.
5. It is the Board's conclusion that the variance will be contrary to the public interest. (John Murphy voted will not). The public interest is to maintain adequate setbacks for public safety.

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

MOTION:

Dean Trefethen made the motion to allow the applicant until July 1, 2000 to move the shed that will bring it into compliance.

Bill Colbath seconded the motion.

Four in favor and 1 opposed. (John Murphy opposed).

The applicant was informed that she has twenty days to appeal the decision if she wishes to.

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12/16/99
PG. 6

ITEM #5:

Z 99-25, Brian Fischer (Applicant: Scott Gustafson), 14 Fourth St., A/K/A Assessor's Map 31, Lot 27, Zoned RM-8 requests a variance from the terms of Article IV, Section 170-12, Table 1, Part C-1 to establish an Eating and Drinking Establishment.

Scott Gustafson stated that he plans to put a subshop at this location but it does not comply with the ordinance. It has been grandfathered as retail for the past 20 years. He proposes a low impact take-out, and a small sit-down, eat-in restaurant. There will be limited hours and no alcohol.

Bill Colbath asked what the normal hours of operation would be?

Scott Gustafson responded from 9:00 a.m. to 9:00 p.m. – 7 days a week.

Dean Trefethen entered the Planning Department staff's comments into the record. The recommendation of the Planning Department is to have either retail use or restaurant use but not both. Dean asked the applicant how he felt about that.

Brian Fischer, owner, responded that he would rather have it for both because he had tried to rent it and was unsuccessful. His first concern is with the possibility that if a lease could not be worked out with applicant for a subshop, then he would want to still be able to rent it out to a retail business. The second concern is that if the restaurant closes would he have to come back for a variance for a retail business. He does not understand why he could not have both uses allowed. Could it be written that he could have one or the other but not both at the same time?

Bill Colbath feels that it is not reasonable to deny the retail use.

John Murphy agrees. There has been an accepted business use on this property since the 1930s.

Bill Colbath does have a concern with the sale of alcohol in a residential area. He would like to add the condition that there would be no alcoholic beverages.

Dean Trefethen asked the owner how he felt about adding a condition that no alcoholic beverages be allowed.

Brian Fischer answered that he already has it in his lease that there would be no alcohol.

ZBA
12/16/99
PG. 7

MOTION:

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

PUBLIC HEARING OPENED

Nancy Smith, abutter, is concerned with the alcohol and also the hours of operation. There is a church next door and they have two services. She is concerned with the traffic.

PUBLIC HEARING CLOSED

Scott Gustafson stated that he feels there would not be traffic tie-up because he doesn't get busy before noontime on Sundays.

John Murphy added that a provision might be added to the hours of operation.

The Board and applicant discussed the hours of operation.

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. Because the building was built for and has been used for similar type uses, and due to the fact the property line abuts the B-2 zone constitutes the hardship.
2. It is the Board's conclusion that the variance will deliver substantial justice. Allowed continued use similar to historical uses of the building.
3. It is the Board's conclusion that the variance will be in harmony with the spirit and intent of the zoning ordinance. Because the property abuts the B-2 zone and the neighborhood is a transitional area makes the proposal in agreement with the spirit and intent of the zoning ordinance.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. The proposed use is similar to historical uses of the property.
5. It is the Board's conclusion that the variance will not be contrary to the public interest. It is in the public's interest to have the building used, particularly due to its historical uses being similar to the proposed use.

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

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12/16/99

PG. 8

MOTION:

Bill Colbath made the motion to add the following conditions:

1. The hours of operation are limited to between the hours of 6:00 a.m. and 9:00 p.m.
2. No alcohol can be sold, served, or consumed on the premises.

John Murphy seconded the motion.

U/A

MOTION:

Bill Colbath made the motion to adjourn.

John Murphy seconded the motion.

U/A

List of members:

Term Expires

Robert Mullan – regular member
Richard Callaghan – regular member
William Colbath – regular member
Dean Trefethen – regular member
John Murphy – regular member
Douglas Cummings II – alternate member
David Ruoff – alternate member

12/31/99
4/13/2000
10/23/2000
12/31/2000
12/31/2001
1/22/2002
4/13/2002