

**DOVER ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
MAY 21, 1998**

MEMBERS PRESENT: Dean Trefethen, Chairman, Bill Colbath, Vice-Chairman, Bob Mullan, Rick Callaghan, John Murphy and David Ruoff

STAFF PRESENT: Thomas Clark, Building Official and Bruce Woodruff, Planning Dept.

Dean Trefethen called the meeting to order.

ITEM #1: NEW BUSINESS

A. Approval of minutes for the regular meeting of April 16, 1998

MOTION:

John Murphy made the motion to accept the minutes of April 16, 1998.
Bob Mullan seconded the motion.
U/A

ITEM #2 OLD BUSINESS

Dean Trefethen reminded the Board of the upcoming Office of the State Planning Workshop and the need to submit their registration to the Building Inspection Office if they plan to attend. He also reminded the Board of the scheduled trial for Advanced Systems for June 29th. He has not heard anything further as of this date.

The five (5) regular members heard the following cases.

ITEM #3

Z 98-6 Curti Family Trust, 2 Nute Rd., A/K/A Assessor's Map L, Lot 2A-2, Zoned R-20 requests a variance from the provisions of Article V. Section 170-17 to construct an accessory structure (detached garage) within two (2) feet of a rear property line where a minimum of ten (10) feet is required.

Ray Curti – Reviewed his site plan and the setback. He also stated that the other places available are further back away from the house or on the other side of the house. He would like to have it as close to the house as possible, and as close to the kitchen door as possible.

Dean Trefethen – Asked if he intended to have the access to the garage from Spur Rd.

PUBLIC HEARING CLOSED

Rick Callaghan – Asked what the front and back of the lot is. If this is the front then the requirement is 35 feet.

Bruce Woodruff – If it is an accessory structure then only ten feet is required.

Tom Clark – This brings up a good point. If Spur Rd. is the front then even an accessory structure requires a thirty-foot setback.

Tom Clark asked the applicant if he approached the City to purchase some of the right-of-way to increase his lot.

Ray Curti – He did not know that he could do this.

The Board discussed the possibility of the applicant obtaining a portion of the right-of-way to get the required setback and also that the garage can be built on another area of the lot. These two points make it difficult to see a hardship.

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does not face an unnecessary hardship. (John Murphy and Bob Mullan voted does) There are several other places on the lot where a garage could go without setback relief.
2. It is the Boards conclusion that the variance will not deliver substantial justice. (John Murphy and Bob Mullan voted will) Little is gained by allowing relief except personal preference. The placement of the house should have been planned to include a site for a garage.
3. It is the Board's conclusion that the variance will not be in harmony with the spirit and intent of the zoning ordinance. (John Murphy and Bob Mullan voted will) The intent is to maintain reasonable setbacks and they can be maintained and still allow a garage.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. Surrounding property values probably would not be impact by a garage near the setback.

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5. It is the Board's conclusion that the variance will be contrary to the public interest. (John Murphy and Bob Mullan voted will not) Public interest is best served by maintaining applicable setbacks

Based on the foregoing, the request for the variance is denied.

The applicant was advised that he has twenty days to appeal.

ITEM #4

Z 98-7A Elliott Rose Co., (Applicant: New England College), 34 Dover Point Rd. A/K/A Assessor's Map K, Lot 19-B, Zoned B-3, requests an Appeal From An Administrative Decision concerning Article II, Section 170-6, Definition of Educational Use.

Craig Williams of Elliott Rose Co. reviewed his application. Dr. Patricia Prinz, representing New England College was also present.

Dr. Prinz – Explained their education program. It is a non-traditional education program for those that are already working and will be attending classes part-time.

Dean Trefethen – Asked if the classes would be in the evening time.

Dr. Prinz – The majority of them will be in the evening. There will be an occasional morning class. But mainly they will be in the evening, as well as Saturdays, and Sundays,

Rick Callaghan – Will other proposed uses such as outreach programs, conferences, professional seminars, be held.

Dr. Prinz – Yes.

Rick Callaghan – Asked how many of these will be held outside of the continuing education programs.

Dr. Prinz – This is difficult to define because a lot of Corporations now want training and college credit. A majority of the students are professionals whose education is paid for by their employers.

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Rick Callaghan – He was looking for the uses. Like the approximate number of hours and days that will be considered the education component. Would food services be required.

Dr. Prinz – That depends on what the people request. They may request full services where they can get coffee and a meal.

Rick Callaghan – But that is not what is normally done with the regular classes and continuing education programs.

Dr. Prinz – Not all the time. It is done for the weekend classes and some graduate classes. And certain corporations request that as part of their graduate courses where it is for their group only. It is not clearly defined.

Rick Callaghan – So any of these functions still relate back to the education process versus a corporate meeting process.

Dr. Prinz – There will be corporate meetings as well.

Craig Williams – He has had other business requests to use the facility for conferences.

Dean Trefethen – Asked Tom for further clarification.

Tom Clark – This is a multi-facet issue. Perhaps the weakness is in the lack of a definition that just says schools giving group instruction are not considered educational. However, we have to deal with the ordinance. It is the applicant's responsibility to show that the proposed use fits into one of the allowed uses. It is his opinion that the information submitted does not do that. Tom went over the information they submitted and the uses in the ordinance. It would be best addressed through an amendment, working with Dr. Prinz and Mr. Williams, to establish a separate definition.

The Board and Tom discussed Personal Use and Educational Use categories and what this applicant's request comes under.

Dean Trefethen – The options are to fit this use into an already existing category or to uphold the Administrative Decision.

Rick Callaghan – Asked why this doesn't fall under the Personal Services Establishment.

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Tom Clark – In out opinion, the definition of Educational Institution better fits the proposal.

MOTION:

Bill Colbath made the motion to accept the case.
Bob Mullan seconded the motion.
U/A

PUBLIC HEARING OPENED

Bruce Woodruff – The Planning Staff supports upholding the Administrative Decision because (1) the definition of educational use as in the current zoning ordinance is consistent with the generally accepted model zoning ordinances across the country, (2) the Building Official has been consistent in classifying this type of use as educational use, and (3) the Planning Dept. agrees that this is an educational use. However, the Planning Dept. will support the variance request that will be coming up next.

PUBLIC HEARING CLOSED

MOTION:

Bill Colbath made the motion to uphold the Administrative Decision.
Bob Mullan seconded the motion.
U/A

ITEM #5:

Z 98-7B Elliott Rose Co., (Applicant: New England College), 34 Dover Point Rd., A/K/A Assessor's Map K, Lot 19-B, Zoned B-3, requests a variance from the provisions of Article IV, Section 170-12, Table I, Part E, to establish an Educational Institution in a B-3 Zoning District.

Craig Williams – Reviewed the 5 items on his application.

Dean Trefethen – Questioned the potential parking problem between the upstairs restaurant and the evening classes. Would there be additional parking? If this is approved, then would it go to the Technical Review Committee?

Tom Clark – Technical Review Committee would be our recommendation. It appears that there would be additional parking required.

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The Board discussed the parking issue.

MOTION:

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

PUBLIC HEARING OPENED

Ed Hoginski - Abutter – Would like to see the parking addressed. Cars now park on his property. He also questioned the apartment on the third floor.

Tom Clark – He believes that the original plan for the building was approved with hotel suites.

Ed Hoginski - If the school comes in will the apartments disappear or will they have both.

Tom Clark – If there is something there that is in violation with the ordinance, it will have to be dealt with accordingly.

Bruce Woodruff – The Planning Dept. supports this request as stated in the previous application with the condition that the applicant come to the Technical Review Committee with a plan that addresses the parking issue.

PUBLIC HEARING CLOSED

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. This specialty use is not addressed in the Zoning code but is clearly a commercial use. It would be a needless or unnecessary restriction to not allow this use in this zone.
2. It is the Board's conclusion that the variance will deliver substantial justice. This is clearly a commercial use and locating this proposal in a B-3 zone is a proper and consistent use of a B-3 zone.
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 locate like uses together so as to allow common uses to flourish without disrupting unlike uses.

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4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. This is a commercial use proposed for a commercial zone and is adjacent to other business.
5. It is the Board's conclusion that the variance will not be contrary to the public interest. This is a proper location to offer this type of business.

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

MOTION:

Rick Callaghan made the motion that the following conditions be added:

- (1) Must obtain Technical Review Committee approval.
- (2) Complete a review of any potential zoning violations.

John Murphy seconded the motion.

U/A

Rick Callaghan – Informed the Board that he will not be at the June meeting. He will be gone from June 17th. Through the 30th.

MOTION:

Bill Colbath made the motion to adjourn.

Bob Mullan seconded the motion.

U/A

List of members and expiration dates:

	<u>Term Expires</u>
John Murphy – regular member	12/31/98
David Ruoff – alternate member	4/13/99
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