

**DOVER ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
JULY 16, 1998**

MEMBERS PRESENT: Dean Trefethen, Chairman, Bill Colbath, Vice Chairman, and John Murphy.

MEMBERS ABSENT: Bob Mullan, Rick Callaghan, and David Ruoff

STAFF PRESENT: Thomas Clark, Building Official and Steve Bird, Planning Department.

Dean Trefethen called the meeting to order and stated to the audience that because there are only 3 members present, petitioners have the option to come back to another meeting to present their case. He explained that with only 3 members in attendance, the vote would have to be unanimous to have a variance granted.

ITEM #1: NEW BUSINESS

- A. Approval of minutes for the regular meeting of May 21, 1998

John Murphy made several minor corrections to the minutes.

John Murphy made the motion to accept the minutes of May 21, 1998.
Bill Colbath seconded the motion.
U/A

ITEM #2: OLD BUSINESS

NONE

Three (3) regular members heard the following cases:

ITEM #3:

Z 98-8, Norman Gagne, 2 Cross St., A/K/A Assessor's Map 25, Lots 9 and 10, Zoned R-12 and RM-10, request variances from the provisions of Article V, Section 170-16 and 170-17 to (1) create four (4) lots with non-conforming frontage and area; and (2) to create or relocate non-conformities relative to structures.

Ken Moore, 52 Spruce Lane, surveyor of the property, explained that this involves creating four lots which do not meet the set backs and also involves abandoning an existing lot line which currently runs through an existing building.

Murphy clarified that the lot line runs through an existing garage.

Trefethen asked if there have been two separate tax bills for these two properties.

Mrs. Gagne stated yes.

Trefethen asked if this same plan had been before the Planning Board.

Mr. Moore stated yes, and they were instructed on what would be needed for approval.

Tom Clark clarified that the Planning Department has reviewed the plans, not the Planning Board.

MOTION:

John Murphy made the motion to accept the case.

Bill Colbath seconded the motion.

U/A

PUBLIC HEARING OPENED

Steve Bird – The Planning Department does not object to this proposal as it reduces some of the non-conformities that exist, and that it will not increase the impact on abutters. It would allow 4 properties to be sold.

PUBLIC HEARING CLOSED

Dean Trefethen asked the Gagnes if they were aware that if this variance was granted, that nothing could be added to any of the structures in the future at all.

The Gagnes stated yes they are aware.

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. These two lots with four homes between them present a unique situation. The proposed subdivision will allow each home to be on a lot of its own, alleviating some of the zoning deficiencies.
2. It is the Board's conclusion that the variance will deliver substantial justice. The proposal lessens the non-conformities of the existing homes by putting each home on a lot of its own facilitating the future sale of these homes.
3. It is the Board's conclusion that the variance will be in harmony with the spirit and intent of the zoning ordinance. Spirit and intent is to have only one home per lot and this proposal accomplishes this.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. Nothing changes with any of the structures and having each home on its own lot will potentially enhance property values.

5. It is the Board's conclusion that the variance will not be contrary to the public interest.
Having each home on its own lot will facilitate future sale and maintenance of each structure.

Therefore, based on the foregoing, it is ordered that the application for the variance is granted with no conditions.

ITEM # 4:

Z98-9, Linda and Spencer Struble, 316-C Dover Pt. Rd., A/K/A Assessor's Map L, Lot 113, Zoned R-20, requests a variance from the provisions of Article VII, Section 170-27.C(3)(b) to construct a second boat dock on a lot where a maximum of one dock per lot is allowed.

Glenn Normandeau, Pickering Marine Corp. spoke on behalf of the Strubles stating that the Strubles are doing the permitting after the fact because that is when the Building Inspector advised them the ordinance only allows one boat dock per lot. He continued by explaining that in this particular situation, there are 3 condominiums on this lot, but each is considered a separate section with water access only in front of their own unit. He stated the tax bills are billed accordingly, with each unit paying for their own percentage of water frontage. He stated there is an existing dock at the middle unit, which is only accessible through the condo unit itself.

Trefethen asked how the current dock came into existence?

Mr. Normandeau stated he did not know. He stated that he understands that the ordinance was written to prevent "mini marinas" in a condo situation, but the existing dock was built before the property was "condoed" and cannot be utilized by the other residents. He stated that the State Wetlands Board has approved the dock, the Conservation Commission recommended approval to the Wetlands Board, the Port authority has o.k.'d it and the abutters all agree.

Trefethen asked how the dock will be stored?

Normandeau described the various ways that this can be handled.

John Murphy asked Mr. Clark if there is any precedent for this case?

Clark stated there was a similar request from a neighbor, but they did not follow through the procedure.

Clark asked for clarification of the Wetlands Board decision.

Normandeau explained that the ruling at the State level is really meant to be applied to lakes and boat slips and is not appropriate for the seacoast area. He stated they will usually put a condition on the permit that it will be the only dock on the premises (residences only) and secondly, that the owners will have to go back to the Wetlands Board if changed.

Clark asked how they approved this then since there already is a dock?

Normandeau explained that the Wetlands Board assumed that because each owner paid property taxes individually on the water frontage, it was counted as separate lots. He then explained the various other steps that still need to be completed for approval.

Colbath stated that the plans presented do not show the frontages of the property. Mr. Struble explained that each unit has 50' of water frontage which they pay their taxes on. Trefethen stated that in the past, the Conservation Commission has specifically stated it doesn't want the float stored on the marshland areas. Mr. Normandeau stated his recollection is that they approved the application as presented.

Colbath asked for clarification as to who is a part of the association in question on the map provided?

Clark explained that it is one lot, and 3 members of the Association.

Steve Bird stated that on the application, they stated that the hardship is that the property would be devalued if not allowed, and asked for an explanation.

Normandeau stated that his feeling is that any waterfront property that doesn't have access to a dock will be less saleable than one with a dock.

John Murphy made the motion to accept the case.

Bill Colbath seconded the motion.

U/A

PUBLIC HEARING OPENED

Elizabeth Loury, 306C Dover Pt. Rd. – stated she lives 2 lots away and is in favor of the dock. She stated that the taxes are paid on land, building and waterfront and feels that the Strubles should be allowed use of the water. She stated she is an Environmental Marine biologist and feels that there will not be negative impact on the salt marsh grass etc., as there is a proper way to move the floatation device.

Steve Bird stated that the intent of the Ordinance is clear that there should be one dock per lot, and because one already exists, sharing of the facilities should be encouraged. He stated the Planning Department doesn't support this variance request and feels that the nature of condominiums is to share common areas.

Mr. Struble explained that the only shared area in this condo complex is the parking area. He further explained that the existing dock absolutely cannot be shared as the only access is from inside the home itself. He stated that all of the neighbors are o.k. with this application and feels that this is a unique situation which warrants a variance.

PUBLIC HEARING CLOSED

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Murphy asked Bird if the Planning Department staff has thought of a way in which the Strubles can access the existing dock?

Bird stated no.

Trefethen stated he understands the Planning Department position, but feels that this was a preexisting condition and is why the ZBA exists.

Bird stated that the Planning Department is looking at the property as a whole and is upholding the intent of the ordinance.

Trefethen stated he understands their position, especially in light of the letter received from the other abutter (see letter from the Sanborns July 9, 1998), which states that if this goes through, they will be requesting the same variance. He stated he still feels, however, that this is a unique situation and that there is no way to share the preexisting dock.

Colbath stated he is unclear of the water frontage issue and is not in favor of granting this variance. After discussion, he concluded that he would need documentation of the deeded properties as well as the condo association covenants in order to even consider this further.

Trefethen asked the applicant if they would be favorable to tabling this request until the September meeting (Mr. Colbath will be absent from August meeting) in order for them to get the information requested.

Mr. Struble stated he feels this is a moot point as the Scott's will not share their dock, but is willing to get the requested information for the September meeting.

MOTION

Colbath moved to table, seconded by Trefethen.

U/A

Murphy asked that in light of the letter from the Sanborns, should some effort be made to consolidate the requests?

Trefethen encouraged the Strubles to talk further with their neighbors.

RECESS/RECONVENED (5 minutes at 9:00 p.m.)

ITEM #5:

Z98-10, N.H. Catholic Charities, Inc., 195 Dover Pt. Rd., A/K/A Assessor's Map L, Lot 15-A, Zoned R-20 requests a variance (1) from the provisions of Article IX, Section 170-33.A to maintain a fence eight (8) feet in height where a maximum of six (6) feet is allowed, and (2) from the provisions of Article V Section 170-17 to maintain an accessory structure (Emergency Generator) within sixteen (16) feet from a front property line as it abuts a street where a minimum of thirty-five (35) feet is required.

Ray Mailloux introduced the "team" of people involved with the design and construction of the St. Ann's Home addition. He explained that the first request to change the fence from the usual 6' fence to an 8' fence is a safety issue. He stated that this fence goes around the Alzheimer's unit and there have been reported incidences at other facilities where patients have been able to climb over a 6' fence. He stated that it doesn't abut anyone directly and is an attractive fence.

Secondly, he stated the generator was the result of discovering that the existing generator was not going to meet the requirements for both parts of the building as had been thought. He stated when the generator was placed, the setback requirements were overlooked. He stated it is located in a spot to the side of the property and is naturally screened by trees, and will plant more trees as directed. He stated it will also be painted green to blend in better. He stated that this site was the most ideal for all involved as it is not too close to the building to bother the patients, nor is it near any neighbors.

Mr. Donovan apologized for this oversight and then addressed the 5 criteria as it pertained to the patients of the facility.

Colbath asked why it was assumed that the generator needed to go in the front of the building rather than the back?

Michelle Dufresne, architect, explained that this was discovered after the concrete floor had been poured, and therefore, the cabling could not be run underneath to go in the back.

Colbath asked why it was not put in the same place as the old generator?

Ms. Dufresne stated it was too big.

Trefethen stated he is concerned that this project has already been before the ZBA and feels that they should have checked before going ahead with the changes.

Mr. Mailloux stated that again, he apologizes, but there has been a great deal of activity involved at a tremendous pace.

Colbath moved to accept, seconded by Murphy.

U/A.

PUBLIC HEARING OPENED

Frank Gibson, 2 Evans Drive – stated he is an abutter and feels that the project is going well. He stated the neighbors have been kept informed throughout the project. He stated the fence is 200' from his property line and is fine, and is glad the generator will be painted from its current yellow color. He stated it is located 300' from his property line and feels that it is for emergency use only, and therefore, will not be continuously running.

Steve Bird, Planning Dept. – stated the Department has no objections to the 8' fence as it doesn't block anyone's view or block light. He stated that regarding the generator, it should have been located to the side or rear of the building. He stated that this wasn't a

part of the site plan and therefore was never discussed. He stated the Department would prefer that it be moved to comply with the setbacks, although it may not be possible.

Colbath asked about the kilowatt rating, decibals, etc.

Ms. Dufresne stated the new generator is 165 kilowatts and the old was only 80. No one was sure of the other figures.

Colbath stated his primary concern is the noise being shifted from the facility itself to the neighbors across the street. He stated that there is a requirement to do weekly runs of the generators and would like it determined when this will be done.

Mr. Gibson (neighbor) stated he was told that it would occur on Tuesdays at 3:00 p.m. Mr. Donovan stated that this was decided because it is when the kids are getting out of school next door and it is already noisier in the area than usual.

PUBLIC HEARING CLOSED

Discussion ensued regarding the vegetation issue.

FIVE CRITERIA: (Fence)

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. Because the fence height is needed for security reasons and not for screening, it would be a needless or unnecessary restriction to make the fence conform to the regulation height.
2. It is the Board's conclusion that the variance will deliver substantial justice. Allow a height that enhances security measures without affecting abutters.
3. It is the Board's conclusion that the variance will be in harmony with the spirit and intent of the zoning ordinance. Spirit and intent was to limit fence heights so as not to adversely affect abutters and this proposal does not contradict that intent.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. It's distance from any surrounding properties precludes it from having any affect.
5. It is the Board's conclusion that the variance will not be contrary to the public interest. The distance from any property line means it will have little impact on the public and it assures an adequate means of providing additional security to patients of the facility.

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

FIVE CRITERIA: (Generator)

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. The existence of the new structure and the timing of the installation limits where it could go and the proposed location, provide the best solution while also staying within the technical limitation of 200' from the electrical service room.
2. It is the Board's conclusion that the variance will deliver substantial justice. It allows the project to proceed while limiting affect on abutters.
3. It is the Board's conclusion that the variance will be in harmony with the spirit and intent of the zoning ordinance. Spirit and intent is to minimize affect to abutters and this proposal along with adequate screening, meets that intent.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. It is located an adequate distance from the abutters and will be screened to reduce its visibility and noise.
5. It is the Board's conclusion that the variance will not be contrary to the public interest. Proposed screening will minimize the generator's impact to the public.

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

MOTION:

Trefethen moved that the following conditions be added:

- (1) Testing of generator to be limited to weekdays between 1:00 p.m. and 5:00 p.m.
- (2) To be painted a color to blend in with landscaping and proper screening to be determined by the City staff or other boards.
- (3) To have the new location approved by the Planning Board and Technical Review Committee.

MOTION:

Colbath moved to adjourn.
Murphy seconded the motion.
U/A