

**DOVER ZONING BOARD OF ADJUSTMENT  
MINUTES OF MEETING  
AUGUST 20, 1998**

**MEMBERS PRESENT:** Dean Trefethen, Chairperson, Bob Mullan, David Ruoff, Rick Callaghan, and John Murphy

**STAFF PRESENT:** Thomas Clark, Building Official

Dean Trefethen called the meeting to order.

Thomas Clark advised the Board and the public in attendance that case # Z 98-12, Dover Brook LLC, withdrew their request for a variance so that if anyone were present for this case, they need not remain. It was determined that although the allowed use is in the R-40 zone which does not allow the installation of signs, the sign is in the B-3 zone and is allowed, therefore it is legal and does not require a variance.

**ITEM #1: NEW BUSINESS**

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

**MOTION:**

John Murphy made the motion to accept the minutes of July 16, 1998.

Rick Callaghan seconded the motion.

U/A

**ITEM #2: OLD BUSINESS**

No Old Business

Dean Trefethen stated that he attended the informational meeting for ward 4 and 5 concerning the proposed zoning amendments, and one of the handouts was a list of what was going to be presented to the Planning Board on September 23. He asked Tom where on the list was the proposal for alleviating the need for variances for houses that are nonconforming.

Thomas Clark advised Dean that it was item #13.

Dean Trefethen advised the Board that the Planning Department presented written comments because staff is unable to attend this meeting and the comments will be read for each case. Copies were distributed to applicants that were present.

**ITEM #3**

**Z 98-11, Michael and Donna Wentworth and Raymond and Lisa Beaudette, 49 and 51 Sixth St., A/K/A Assessor's Map 30, Lots 48 and 49-A, requests a variance from the terms of Article V, Section 170-16 for a lot line adjustment to create a lot having approximately fifty-nine (59) feet of frontage along a right-of-way where a minimum of eighty (80) feet is required and to establish a building side yard setback of three and one-half (3-1/2) feet where a minimum of six (6) feet is required.**

Mike Wentworth stated that a lot line adjustment is being requested to allow parking spaces for tenants in order to get the cars off the road and to clean up the yard.

Dean Trefethen asked how the lot line adjustment would allow more parking spaces for his property.

Mike Wentworth stated that there is no land at all on the left side of the building and by moving the line it will allow 4 cars to be parked on that side and get them off the road. One of the difficulties is in the winter time when the cars are parked out front, the neighbors have difficulty backing out of their driveway, and with snow banks it makes it even more difficult to see oncoming traffic.

Dean Trefethen asked (1) if it is a 2-unit building, and (2) how many vehicles are presently parked there?

Mike Wentworth responded (1) It is a 4-unit building, and (2) there are 6 vehicles there. There is a shared driveway on the other side of the building and they are not allowed to park cars there.

David Ruoff asked (1) what is presently on the left side of the building, and (2) is there a fence?

Mike Wentworth responded (1) There is just grass, and (2) there is no fence.

**MOTION:**

Bob Mullan made the motion to accept the case.

John Murphy seconded the motion.

U/A

**PUBLIC HEARING OPENED**

Tom Clark read the comments from the Planning Dept. The Planning Dept. supports granting the variance to increase the sideyard setback and frontage on one lot while reducing the frontage on the adjacent lot (see the file for the reasons).

**PUBLIC HEARING CLOSED**

**FIVE CRITERIA:**

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. The present setback at certain points is practically zero and this presents a hardship in maintaining the property.
2. It is the Board's conclusion that the variance will deliver substantial justice. It allows for the applicant to have some setback and useable area at the front of the structure.
3. It is the Board's conclusion that the variance will be in harmony with the spirit and intent of the zoning ordinance. Because of the current near zero setback situation, this proposal gives some to the property.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. Since no structure change is proposed there is little or no effect on abutters and the creation of useable setback would likely enhance the applicant's property value.
5. It is the Board's conclusion that the variance will not be contrary to the public interest. The application proposes to create additional off-street parking that would be a benefit to the public's interest.

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

**ITEM #4:**

**Z 98-12, Dover Brook LLC has been withdrawn.**

**ITEM #5:**

**Z 98-13, Clement Sparkman, 232 Tolend Rd., A/K/A Assessor's Map F, Lot 3-D, Zoned R-40 requests an Appeal From An Administrative Decision concerning the building configuration in connection with a variance (ZBA Case #Z 98-4) granted on March 19, 1998 at 254 Tolend Rd., A/K/A Assessor's Map F, Lot 5, Zoned R-40.**

Clement Sparkman stated that the basis for his appeal was detailed in the application and he is prepared to answer any questions from the Board. He understands the Planning Department's written comments to dismiss this because it was untimely filed but he does not agree with it. There were many circumstances pointed out in the appeal that renders the decision incorrect and that it should be reconsidered. He feels that what is being done is a deviation to what was granted.

Dean Trefethen stated that the applicant had written in his application that the Board had required a survey to mark the location of the building addition prior to pouring the foundation and asserted that this was not done. He asked the applicant what he based this on.

Clement Sparkman stated that he cannot see how the survey that was done with temporary markers along the stone wall could have accurately located the foundation from the boundary line. The survey that was done appears to be a straight line, point to point, corners of the existing property that are marked. That is inconsistent with my deed that has a break in that wall.

Dean Trefethen stated that the issue tonight is the Administrative Decision. In the applicant's written remarks he gave very little on what he believes the Administrative Decision was. Asked if the applicant would elaborate.

Clement Sparkman responded that he assumes that it is the Board's approval of the variance that he is appealing.

Tom Clark advised the Board that when he discussed this with Mr. Sparkman it was based on an anticipated change in the building configuration from the site plan that was granted with the variance back in March. At the time he raised the issue Tom went out to the property and there had been only excavation. There was no construction at that time so he was unable to determine what actual size or shape the building would be. After getting a plan from Mr. Forbes, he discussed this with the Planning Office and it was determined that even though the configuration was changed they felt that it was still in compliance with the variance.

After advising Mr. Sparkman of this decision, he asked Tom what avenue he could take if he disagreed with that decision, and the decision that he was talking about was just the change in configuration and not the variance, and Tom advised him that it would be an Appeal From an Administrative Decision. On his application he stated that it was an appeal to a variance that was granted to this property. That is not the case since it is far pass the appeal period. We can only look at the Administrative Decision. For this reason he feels that any comments on his application referring to the variance should not be considered.

Tom Clark continued, the reasons they felt that the current configuration is still in compliance with the variance is that the initial plan that was submitted to the Board was a sketch showing, in our opinion, a general location of the proposed building in relation to the side property line in question, and the current foundation that is there is even further from the lot line than what was granted. This setback lessens the granted nonconformity. The footprint impact measured in square footage is approximately the same, 450 square feet. For these reasons we request that the appeal be denied.

Dean Trefethen advised the Board that Bob Mullan is not sitting on this case due to a conflict of interest.

**MOTION:**

John Murphy made the motion to accept the case.  
David Ruoff seconded the motion.  
U/A

**PUBLIC HEARING OPENED**

Malcolm McNeill representing Mr. & Mrs. Forbes presented the Board and applicant with some documents that he thought would help clarify the situation.

Mr. McNeill stated that the issue is not on what the Zoning Board of Adjustment voted on but on the Administrative Decision. He also offered copies of the construction showing the relation between the foundation and the sideline. Mr. McNeil proceeded to demonstrate how the overall living area is less and the setback is greater than what was originally granted by presenting figures showing the bulk and the setback. The variance was for a sideline setback, for a two-story structure with a minimum setback approved for 10 feet. The difference between what the Board approved and what is in the ground is insignificant and that what is seen is reasonably close to what Mr. Forbes was told he could have.

Tom Clark read the comments from the Planning Dept. The Planning Department does not support granting the appeal from an Administrative Decision concerning the building configuration at 254 Tolend Road (see the case file for the complete report of reasons).

Clarence Sparkman stated that the two-story addition was not addressed by the Zoning Board. The only place this was mentioned was in the agenda. The current plans for the house shows a one-story addition and a two-story garage. He pointed out that the application clearly required a surveyed plot plan. He does not believe that the plot plan was accurate in that it does not show the measurement of the structure. He believes that what is being built is far beyond what was supposed to be built.

**PUBLIC HEARING CLOSED**

Dean Trefethen reminded the Board that the issue is with the Administrative Decision concerning whether what is being built is in conformance with the variance that has been granted.

John Murphy stated that he has no problem with the issue of whether or not it is a two-story building, nor does he have any problem with whether it is 20 feet or 11-1/2 feet from the lot line. His issue is with the fact that there is more building structure within the setback than was originally presented.

Dean Trefethen stated that he agrees with John Murphy's comments. He also has an issue with the substantial increase in footprint of the building.

David Ruoff stated that although he was not on the board at the time of the original case, he feels that this Board can sit in Mr. Clark's place and make the decision whether or not his decision was right or wrong. Based on that, he knows how he would vote.

Rick Callaghan stated that he also was not at the meeting for the original case and he also has to base his decision on what takes place tonight. In comparing the enlarged plan with the original, the size of the addition appears to be larger than the size of the house. He has no issue with Tom Clark's decision in regards to the lot line, but he does have an issue with the size of the addition.

Dean Trefethen stated that he will vote to uphold the Administrative Decision because he feels that although the spirit of the law was broken, the letter of the law has been upheld

**MOTION:**

Rick Callaghan made the motion to uphold the Administrative Decision.  
Dean Trefethen seconded the motion.  
David Ruoff and John Murphy opposed.  
The Administrative Decision was upheld.

Dean Trefethen called a 3-minute recess.

**ITEM #6**

**Z 98-14, Timothy and Cynthia Buck, 532 Tolend Rd., A/K/A Assessor's Map C, Lot 30, Zoned R-40, requests a variance from the provisions of Article IV, Section 170-12, Table 1, Part A to establish a two-family dwelling in a single family (R-40) zoning district.**

Timothy Buck stated that he is requesting a variance to put an addition onto his house for his mother that will include a kitchen and bathroom. His mother is using the guest room in the basement and it is not very convenient for her. Because a two-family house is not permitted in this zone, he is willing to have it stated in his deed that this is a single family dwelling and cannot be sold as a two-family dwelling in order to accommodate his mother and insure that it will not be used or sold as a two-family house when he no longer resides there.

Dean Trefethen asked Tom Clark for clarification of what constitutes a two-family dwelling.

Tom Clark stated that he understands and is sympathetic with what Mr. Buck is trying to do, but we have to go by the definition of a dwelling unit and not the ownership. The definition of a dwelling unit is a building or an entirely self-contained portion thereof containing complete housekeeping facilities not in common with any other dwelling unit except for vestibules, entrance halls, porches or hallways. Regardless of who is living there, it is considered a dwelling unit.

**MOTION:**

John Murphy made the motion to accept the case.  
Bob Mullan seconded the motion.  
U/A

**PUBLIC HEARING OPENED**

Tom Clark read the comments from the Planning Office. The Planning Department does not support granting the variance to allow a two-family dwelling in a single family zoning district (see the file for the reasons).

**PUBLIC HEARING CLOSED**

The Board discussed the hardship and locking in the use and how to enforce the use of this structure as a single family dwelling.

**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 kitchen and a bathroom when they are trying to provide a comfortable and functional space for the relative to live.
2. It is the Board's conclusion that granting the variance will deliver substantial justice. It allows a relative to continue living with the applicant while providing comfortable and functional space.
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 structure conforms to all setbacks and it is only the interior appurtenances that are the difference.
5. It is the Board's conclusion that the variance will not be contrary to the public interest. It will still be a single family home and would not have an effect on the public or neighborhood.

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

**MOTION:**

Bob Mullan made the motion to add 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 Bucks. 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 a person related by blood or marriage.
- (3) Variance to expire upon transfer or sale of property.

Rick Callaghan seconded the motion.

U/A

**ITEM #7**

**Z 98-15, Stephen Doherty, 21 Toftree Ln., A/K/A Assessor's Map M, Lot 116, Zoned R-40 requests a variance from the provisions of (1) Article V, Section 170-16 to construct an addition and attached garage onto a single family dwelling within approximately forty (40) feet from 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.**

Stephen Doherty quoted the comment by the Planning Department in regards to the zoning amendment that is in the approval process right now whereas variances would be unnecessary for a setback such as this. He would like to have a garage and it will be in keeping with the surrounding properties.

Tom Clark asked Mr. Doherty if this is to be a one or two-story building.

Stephen Doherty stated that the addition will be 10 feet by 20 feet with a farmer's porch on the front and a bedroom on the second floor. There will be storage above the garage.

**MOTION:**

Bob Mullan made the motion to accept the case.

Rick Callaghan seconded the motion.

U/A

**PUBLIC HEARING OPENED**

Tom Clark read the comments from the Planning Dept. The Planning Department supports granting the variance to construct an addition and attached garage (see the file for the reasons).

**PUBLIC HEARING CLOSED**

**FIVE CRITERIA:**

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. The zoning setbacks changed to a larger figure shortly after the subdivision was approved putting this lot and most others in the subdivision in non-conformance. They are not proposing going any closer to the front setback and the Planning Dept. is pursuing an amendment that would make a variance unnecessary.
2. It is the Board's conclusion that the variance will deliver substantial justice. It allows expansion of a home similar to others in the neighborhood.
3. It is the Board's conclusion that the variance will be in harmony with the spirit and intent of the zoning ordinance. The proposal does not encroach any further than the current structure.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. No evidence to the contrary. The proposal would probably enhance values.
5. It is the Board's conclusion that the variance will not be contrary to the public interest. The proposal is similar to others that have been allowed in the subdivision.

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

**ITEM #8.**

**Z 98-16, Quinto Development Co., LLC, 15 Highland St., A/K/A Assessor's Map 10, Lot 19-A, zoned R-12 requests an Equitable Waiver of Dimensional Requirements to maintain a single family dwelling within approximately twenty-eight (28) feet from a front property line as it abuts a street where a minimum of thirty (30) feet is required and within approximately five (5) feet from a side property line where a minimum of ten (10) feet is required.**

Ed Hayes, Manager of Quinto Development represented the owner. Mr. Fagan, who was the previous owner was also present and so was Arthur Young, the builder. Mr. Fagan showed Quinto Development representatives around the property boundaries and showed them where generally things should be. The builder plotted where the foundation was going to go and he found the stake in the back and in the front that turned out to not be in the right position. The surveyors came with metal detectors and found a stake in the front left corner that was buried. Then they found that the stake in the back had been moved back and over a substantial distance causing them to not be in conformance with the ordinance. With this they went to Tom Clark to see what they needed to do. This was a good faith mistake and they request that the Board grant an Equitable Waiver of Dimensional Requirements. He presented to the Board a letter of support from an abutter.

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Dean Trefethen read Mr. Fagan's letter who is the abutter across the street. The abutter is in favor of the request.

**MOTION:**

Bob Mullan made the motion to accept the case.

John Murphy seconded the motion.

U/A

**PUBLIC HEARING OPENED**

Tom Clark read the Planning Department's comments in which the Planning Department supports granting the Equitable Waiver request (see the file for the reasons).

**PUBLIC HEARING CLOSED**

**FOUR CRITERIA:**

1. It is the Board's conclusion that the request does involve a dimensional requirement.
2. It is the Board's conclusion that the non-conformity was discovered after the structure was substantially completed or after a vacant lot in violation had been transferred to a bona fide purchaser, AND the violation was not an outcome of ignorance of the law or bad faith but resulted from a legitimate mistake.
3. It is the Board's conclusion that the non-conformity does not constitute a nuisance nor diminishes the value or interfere with future uses of other property in the area.
4. It is the Board's conclusion that the cost of correction does outweigh any public benefit to be gained.

Therefore, based upon the foregoing, it is ordered that the application for Equitable Waiver of Dimensional Requirements be granted.

**MOTION:**

John Murphy made the motion to adjourn.

Bob Mullan seconded the motion.

U/A

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**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