

**DOVER ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
SEPTEMBER 17, 1998**

MEMBERS PRESENT: Dean Trefethen, Chairperson, Bill Colbath, Co-Chairperson, Bob Mullan, David Ruoff and Richard Callaghan

STAFF PRESENT: Thomas Clark, Building Official, Steve Bird, City Planner

Dean Trefethen called the meeting to order.

ITEM #1: NEW BUSINESS

A. Approval of minutes for the regular meeting of August 20, 1998

MOTION:

Rick Callaghan made the motion to accept the minutes of August 20, 1998
David Ruoff seconded the motion.
U/A

Dean Trefethen reminded the Board to bring in their registration forms for the annual Municipal Law Lecture Series if they plan to attend. Dean also reminded everyone of the public hearing on September 22, about the various zoning amendments that have been proposed.

ITEM #2: OLD BUSINESS

A. **Z 98-9, Linda & 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. NOTE: This item was tabled from the meeting of July 16, 1998.**

Dean Trefethen advised the applicant that there were three members present at the July meeting and one of them is absent this evening. He gave the applicant the option of again being tabled if he chose.

Malcolm McNeil represented the applicant, Spencer Struble and he stated that the applicant would like to proceed with his petition this evening. Mr. McNeil presented the Board with additional material and photographs showing the common area for the Condominium complex. The documents that the Board had requested in July had also been submitted.

Mr. McNeil stated that although this property has been made into condos, three buildings on one lot, there is no common right to the existing dock. Two owners do not have access to the existing dock because they would have to go through the owner's building to get to it. The parking area is the only area shared by all the owners. There is no sharing of the dock. The waterfront area is shut off from common rights or use because the buildings are too close to the water, and at high tide the water is up to the buildings. Mr. Struble has already obtained the Wetland Board's approval for the new dock. The hardship is the uniqueness that none of

the condos have access to the existing dock without going into the owner's building to reach the dock and the owner does not choose to share.

Bill Colbath asked for clarification of information between the drawing of the property with the common area and what is in the declaration document. (This document is in the file.) This was done by Mr. Struble. Bill Colbath feels that there should be a way to have one dock made available for common use by all condo owners. The ordinance states that one dock is allowed for each lot.

Dean Trefethen summarized that the present dock was built before the regulations and in viewing the plan it was built entirely in the public way and does not appear to be on anyone's land. He personally does not see any way that the present dock can be used by the other two condo owners. He was hoping that the two owners could find a way of having one dock for both of them, but with the limited common area and the setback required for a dock, he does not see how this could be done. He feels that they have a hardship.

Bob Mullan stated that he does not have a problem with another dock but he does not want to see three docks.

Bill Colbath does not see a hardship and feels that there should be one dock per lot as regulated by the ordinance.

David Ruoff stated that he cannot see how one dock could be built as common use.

Rick Callaghan stated that he agrees there is difficulty in accessing the original dock as a common dock due to the additional construction of a deck from the building to the dock.

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. (Bill Colbath and Rick Callaghan voted does not.) The existing dock predates the current regulations and was not constructed to allow sharing. There is no way to accomplish sharing, so this creates a unique situation and the hardship.
2. It is the Board's conclusion that the variance will deliver substantial justice. (Bill Colbath and Rick Callaghan voted will not.) The prominent attribute about this property is the waterfront, and having a dock allows full use for the property owner.
3. It is the Board's conclusion that the variance will be in harmony with the spirit and intent of the zoning ordinance. (Bill Colbath and Rick Callaghan voted will not.) The intent is to promote sharing of facilities, but there is no practical way to share in this instance.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. (Bill Colbath voted will.) Waterfront property customarily has dock facilities so this would not constitute a detriment to anyone else.

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9/17/98
PG. 3

5. It is the Board's conclusion that the variance will not be contrary to the public interest. (Bill Colbath and Rick Callaghan voted will.) It allows customary and full use of a waterfront property.

Therefore, based upon the foregoing, it is ordered that the variance be granted with the following condition:

MOTION:

David Ruoff made the motion to strongly suggest that the dock be a shared dock. Dean Trefethen seconded the motion. Three in favor and two opposed (Bill Colbath and Rick Callaghan opposed.)

B. Review of letter from applicant of Case Z 98-14 RE: compliance with conditions of approval.

Dean Trefethen stated that the Board received a copy of the letter in their packet and it is now just a question of a motion.

MOTION:

Bob Mullan made the motion to accept the letter as meeting the criteria that the Board outlined at the previous meeting. David Ruoff seconded the motion. U/A

ITEM #3.

Z 98-17, Stephanie Van Kleeck and Jann Gray, 254-256 Washington St., A/K/A Assessor's Map 10, Lot 126, Zoned RM-10 requests a Special Exception as provided for by the provisions of Article VI, Section 170-25.1 and Article XII, Section 170-52.C(3) to convert a three-family dwelling into a four-family dwelling.

Stephanie Van Kleeck stated that they would like to put an apartment on the second floor in the carriage house. Stephanie addressed the three criteria on her application.

MOTION:

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

Dean Trefethen questioned the parking availability.

Stephanie Van Kleeck stated that there is room for eight cars and also the use of a garage.

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9/17/98
PG. 4

Rick Callaghan questioned the impact on water and sewer.

Stephanie Van Kleeck stated that they are on City water and sewer.

Tom Clark stated that if the Special Exception were granted the applicants would have to go before the Technical Review Committee where the water and sewer issued would be addressed.

Bill Colbath asked if the square footage requirement was addressed.

Tom Clark stated that it was, including the proposed sunroom.

PUBLIC HEARING OPENED

Steve Bird stated that there is adequate parking and screening and the applicants meet all of the criteria. The Planning Department recommends granting the Special Exception.

PUBLIC HEARING CLOSED

MOTION:

Bill Colbath made the motion to grant the Special Exception.
Bob Mullan seconded the motion.
U/A

ITEM #4.

Z 98-18-A, Ronald Pfeiffer and Elizabeth Pettiford, 10 Summer St., A/K/A Assessor's Map 12, Lot 22, Zoned RM-10 requests a Variance from the provisions of Article VI Section 170-25.3.A to establish an Elderly Assisted Care Home with twelve (12) bedrooms on a lot with approximately 9,250 square feet where a minimum of 30,000 square feet is required.

Ron Pfeiffer stated that they would like to increase the number of bedrooms and residents. They would like to finish off the barn for another suite, however there will be no change to the exterior. Some rooms are now occupied by two people but this has not turned out favorable and therefore they would like to provide each resident with private rooms. There is no need for more parking because the residents do not drive.

Dean Trefethen is concerned that the increase at some future time would become more than this building can accommodate.

Ron Pfeiffer stated that they would not want to go beyond the three additional bedrooms that they are requesting for at this point. Their intent is not to become similar to an institution.

The Board and Mr. Pfeiffer discussed the number of bedrooms and number of residents plus staff that would be residing at this address. They also discussed making more parking spaces.

MOTION:

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

PUBLIC HEARING OPENED

Mark Hale, an abutter at 5 Spring St., stated that he is concerned with the windows that would be installed in the barn which will overlook his property and thus take away the privacy of his tenants. Therefore he objects to having an apartment in the barn.

Dean Trefethen asked Mr. Hale if he would object to the apartment if there were no windows installed on that side of the barn.

Mark Hale responded that if there were no windows he would not object to the apartment.

David Landry of 5 Trakey St and a member of the City Council spoke in favor of the request. This service is clearly an asset to this City and sets quite favorably in this neighborhood. He hopes that the Board would give them every consideration.

Cathy Keefe an abutter at 15 Summer St., stated that she believes that this supplies a good service and it has a nurturing environment for the elderly people. She is in favor of this request.

Steve Bird stated that the Planning Department does not recommend granting this variance because the previous variance that was granted just last year gives them a very viable use, and we support this use. It is more of a density issue. What they are asking for is a density of three times what the zoning permits. For that reason we are concerned that it may be going too far in the number of patients that can be housed in this building. The Planning Department is also concerned with the limited number of parking spaces.

Ron Pfeiffer responded to Mr. Hale's concern in regards to the windows. He stated that there will not be windows on that side of the building. There will only be siding done and a couple of skylight windows to allow more light in. In regards to the Planning Department's concern with the number of residents in the house, the last variance was for 12 residents. Due to the fact that having roommates is not working out, they need to make single rooms available. So the need is for more bedrooms at this point.

Tom Clark, Steve Bird and Ron Pfeiffer discussed the number of people, the number of bedrooms and the ordinance requirement in square footage.

Tom Clark and the Board discussed the parking availability and the potential for parking. The City Engineer did view the site and they did say that there was sufficient room for eleven parking spaces.

PUBLIC HEARING CLOSED

Rick Callaghan stated that he supports the increase to twelve bedrooms but not in number of occupancy. He believes that having private living spaces is important to the quality of living for those people. He is not concerned with the parking.

Bill Colbath stated that he understands the need for the spaces but he is concerned that there will be too many residents in that structure. The structure can expand just so much.

Bob Mullan is concerned with the density, both people and parking.

David Ruoff feels that the center of the hardship is the need of private rooms. He is not concerned with the parking.

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. Holding the applicant to the strict letter of the ordinance would be a needless and unnecessary restriction. The ordinance is not keeping pace with the demands of society and creates a situation where this type of service cannot offer current needs.
2. It is the Board's conclusion that the variance will deliver substantial justice. It allows optimal utilization of an existing structure for a needed service.
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 allows this use to exist and the proposed density is not unreasonable.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. The proposal will be contained within the present structure and proposed improvements will be an improvement for the neighborhood.
5. It is the board's conclusion that the variance will not be contrary to the public interest. It provides for continuation of a needed service for the community.

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

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9/17/98
PG. 7

MOTION:

Rick Callaghan made the motion to place the following conditions:

- (1) To limit the number of residents to twelve
- (2) To limit the number of bedrooms to twelve
- (3) A minimum of eight parking spaces on the lot
- (4) There will be no windows on the wall parallel to 3-5 Spring St.

Bill Colbath seconded the motion.

U/A

Dean Trefethen called a five-minute recess.

ITEM #4A

Z 98-18-B, Ronald Pfeiffer and Elizabeth Pettiford, 10 Summer St., A/K/A Assessor's Map 12, Lot 22, Zoned RM-10 requests a Special Exception as provided for by the provisions of Article VI, Section 170-25.3 and Article XII Section 170-52.C(3) to establish an Elderly Assisted Care Home with twelve (12) bedrooms

Ron Pfeiffer said that he had nothing to add to his written statements.

MOTION:

Rick Callaghan made the motion to accept the case.

Bob Mullan seconded the motion.

U/A

PUBLIC HEARING OPENED

Steve Bird stated the only criteria left to address is the screening of the parking area and he has a fence there now so he meets that criteria.

PUBLIC HEARING CLOSED

MOTION:

Rick Callaghan made the motion to grant the Special Exception.

Bob Mullan seconded the motion.

U/A

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PG. 8

ITEM #5

Z 98-19, David and Deborah King, 36 Florence St., A/K/A Assessor's Map 27, Lot 253, Zoned R-12 requests a Variance from the provisions of (1) Article V, Section 170-16 to construct an attached garage onto a single family dwelling within twenty-three (23) feet from a front property line as it abuts the street where a minimum of thirty (30) feet is required; and (2) Article X, Section 170-41 A to enlarge a non-conforming structure.

David King stated that he would like to add a garage to his house. The reasons why it cannot be built to the rear is because there is a drop-off at the rear of the house and also wetlands. Most of the surrounding properties are also non-conforming.

MOTION:

Bob Mullan made the motion to accept the case
Rick Callaghan seconded the motion.
U/A

PUBLIC HEARING OPENED

Ernest Downing, an abutter, opposed the request because the garage would be too close to his property.

Thomas Clark informed Mr. Downing that the applicant is not here for a variance for the side setback but for the front setback.

Steve Bird stated that the Planning Department recommends granting the variance based on the fact that the proposed garage will be placed further back than the existing house. Also there is a proposed zoning change that will allow this construction without the need of a variance.

PUBLIC HEARING CLOSED

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. Because of the changing of zoning setbacks in the area, it is difficult to add to the structure. Also the land drops off in the rear not allowing the garage to be placed further back.
2. It is the Board's conclusion that the variance will deliver substantial justice. It allows a structure that would be allowed under pending zoning amendments. Allows use of the property similar to surrounding 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 intent is for reasonable setbacks and that will be maintained.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. It does not encroach any further into the setback than the present structure. Other structures in the neighborhood also have diminished setbacks.
5. It is the Board's conclusion that the variance will not be contrary to the public interest. The proposal is not a detriment to anyone.

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

Dean Trefethen advised Mr. Downing, the abutter, that he has 20 days to appeal.

ITEM #6

Z 98-20, Oak Corner Enterprises, Inc., intersection of Portland Ave. and Oak Street, A/K/A Assessor's Map 25, Lot 43, Zoned B-3 requests a Special Exception as provided for by the provisions of Article VI, Section 170-23 and Article XII Section 170-52 C(3) to establish a gas station.

Donald Rhodes, Project Manager of Norway Plains Associates stated that they propose to construct a convenience store with gas service on the corner of Oak and Portland Ave. Access will be from a driveway from Portland Ave. and another driveway from Oak Street and also from Philbrick's Sports store. They do not believe that the proposed use will create any traffic congestion. He spoke with the City Engineer in regards to the services. He reviewed the three criteria on his application. They had an appraisal done to address the impact of this service for the purpose of determining if there would be a detrimental impact on the abutting or surrounding properties and he presented a copy of this to the Board.

Dean Trefethen asked Mr. Rhodes to give more information on the storm drainage.

Donald Rhodes reviewed the site plan and stated that there will be a detention pond developed.

MOTION:

David Ruoff made the motion to accept the case.
Rick Callaghan seconded the motion.
U/A

PUBLIC HEARING OPENED

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9/17/98
PG. 10

Steve Bird stated that the Planning Department recommends approval of this request based on the new information presented this evening.

PUBLIC HEARING CLOSED

MOTION:

Rick Callaghan made the motion to grant the Special Exception.
Bill Colbath seconded the motion.
U/A

ITEM #7

Z 98-21, John Janetos (Applicant: David Paolini), Atlantic Ave., A/K/A Assessor's Map 25, Lots 56A and 56B, Zoned RM-10 requests a Special Exception as provided for by the provisions of Article VI, Section 170-25.1 and Article XII Section 170-52 C(3) to establish a four-family dwelling on each lot (eight units total).

David Paolini reviewed the three criteria on his application. He stated that the buildings will actually be smaller than presented on the plan.

MOTION:

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

PUBLIC HEARING OPENED

The following abutters spoke in opposition to granting the Special Exception:

Jan Lozo of 6 Atlantic Ave., George Snell of 6 Atlantic Ave., Mr. & Mrs. Allen Storms of 11 Atlantic Ave., John Savage, Leopold and Fernande Alie of 9 Atlantic Ave., Matthew Newton of 5 Atlantic Ave., William Burt of 19 Atlantic Ave., and Tom Alie of 28 Atlantic Ave.

They were in opposition for the following reasons:

1. Opposes the number of additional units
2. Opposes to the high density of housing
3. There is no side walk for safety
4. The driveway will be coming out onto a hazardous turn
5. Burden to the schools
6. Busy Street

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9/17/98
PG. 11

Steve Bird stated that the applicant satisfies the lot coverage issue. The issues from the abutters are important issues and will be addressed during the Planning process. The applicant has proven the criteria for a Special Exception. Given that, the Planning Department recommends the granting of this Special Exception.

Dave Paolini addressed the abutters and their concerns. He is doing what is allowed to be done in that zone. He has the same concerns as they do in regards to the traffic and children safety. Prior to this the plans were for 13 duplexes totaling 26 units and he is proposing only a total of 8 units. He feels that this is less of an impact then originally planned.

PUBLIC HEARING CLOSED

Rick Callaghan questioned whether or not the Technical Review Committee would become involved.

Tom Clark stated that it has not been determined yet whether or not they need to go to the Technical Review Committee. This has not been discussed in the Planning Department yet. There are some concerns about the driveway location.

The abutters were advised that this is a more favorable and maximum allowed development to this piece of property.

MOTION:

Rick Callaghan made the motion to grant the Special Exception with the condition that it go to the Technical Review Committee.

Bob Mullan seconded the motion.

Four in favor and one opposed (Dean Trefethen opposed)

ITEM #8

Z 98-22, Ismalia Perry, Varney Rd., A/K/A Assessor's Map A Lot 36-1, Zoned R-40 requests a Variance from the provisions of Article V, Section 170-16 to create a lot with one hundred twenty (120) feet of frontage along a public right-of-way where a minimum of one hundred fifty (150) feet is required.

Michael Seivert, PE represented the owner. He stated the hardship is due to the previous subdivision and wetlands on this lot. He reviewed the plan showing the wetland and that this lot cannot be subdivided. There will be only a single family dwelling on this lot.

MOTION:

David Ruoff made the motion to accept the case.

Rick Callaghan seconded the motion

U/A

PUBLIC HEARING OPENED

A letter was received from Teresa Picard stating that she is in favor of granting this variance.

Steve Bird stated that the Planning Department recommends granting the variance because of the wetlands and the structure will be 300 feet back from Varney Road.

PUBLIC HEARING CLOSED

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. The percentage of wetlands on the parcel make a road undesirable and creates a hardship using the land. By allowing one lot with adequate frontage, these concerns are addressed.
2. It is the Board's conclusion that the variance will deliver substantial justice. It allows creation of a lot while maintaining low density.
3. It is the Board's conclusion that the variance will be in harmony with the spirit and intent of the zoning ordinance. The density will be regulated by allowing one lot on this environmentally sensitive area.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. No evidence presented to the contrary. The proposal will probably enhance area values by maintaining large open spaces.
5. It is the Board's conclusion that the variance will not be contrary to the public interest. It allows for a lot in an area zoned for single family houses.

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

MOTION:

Dean Trefethen made the motion to apply the following conditions:

- (1) The wetlands area is to be put into a conservation easement
- (2) Any structure built must be a minimum of 300 feet from Varney Rd.
- (3) The lot cannot be further subdivided.

Rick Callaghan seconded the motion.

U/A

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9/17/98
PG. 13

MOTION:

Rick Callaghan made the motion to adjourn.
Bill Colbath 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