

**DOVER ZONING BOARD OF ADJUSTMENT  
MINUTES OF MEETING  
OCTOBER 15, 1998**

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

**STAFF PRESENT:** Thomas Clark, Building Official, and Bruce Woodruff, City Planner

Dean Trefethen called the meeting to order.

**ITEM #1: NEW BUSINESS**

A. Approval of minutes for the regular meeting of September 17, 1998

**MOTION:**

Rick Callaghan made the motion to approve the minutes with the following correction.

Pg. 4, third paragraph from the bottom, change first line from "increase the number of bedrooms," to read "increase the number of bedrooms and residents."

Bill Colbath seconded the motion

U/A

**ITEM #2: OLD BUSINESS**

Tom Clark addressed the Board in regards to the conditions of case #Z 97-4, St. Ann's Nursing Home. Abutters have expressed a concern in regards to the roof top equipment. The original concern was about antennas and satellite dishes however the condition to the variance states that no objects not related to the roof structure are to be allowed. Now there are plumbing and venting stacks that are typically seen on any type of construction. The question is whether this is related to the roof structure, in the Board's opinion, and the abutters raised a concern that this is on the roof and as the construction goes on there will be more. When the condition was imposed these were not shown on the elevation.

John Murphy stated that he was at the original meeting and as he recalls, the point was to mostly eliminate antennas. It was not expressed specifically what was to be eliminated and typically, commercial buildings have venting stacks on the roofs. The intent as he recalls was to keep the antennas and dishes off.

Bill Colbath asked Tom Clark what his opinion was of what is there. Was this for convenience sake? Are there possibilities of putting them elsewhere?

Tom Clark stated that it was primarily for convenience sake because they can just go straight up. They can probably route some of them to the rear but they would still be on the roof.

Rick Callaghan asked if they could build a dog-house dormer on the rear slope of the building and run the vents out through the dog house and then they wouldn't see anything on the roof. It is also better in the long run for the building itself because it holds up to the weather for a longer period of time.

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Tom Clark stated that this could be done.

**MOTION:**

John Murphy made the motion to review this case at the next meeting and to have the architects and trade personnel present.

Rick Callaghan seconded the motion.

U/A

**ITEM #3.**

**Z 98-23, Karen Ott, 134 Broadway, A/K/A Assessor's Map 27, Lot 275, Zoned RM-10, requests a Variance from the provisions of Article V, Section 170-17 to construct an accessory structure (detached garage) within four (4) feet from a side lot line and within four (4) feet from a rear lot line where a minimum of ten (10) feet is required from both lines.**

Karen Ott and Gene McCarthy stated that they would like to build a detached garage however the proposed location does not meet the required setbacks. The lot is a gradually sloping lot. They would like to construct the garage within four feet of the property line because it would create a more positive drainage. There is a run off from surrounding lots that runs through their property and their neighbor to the right. Having the garage closer to the property line will also be more consistent with the continuity of the driveway. It would also be consistent with the neighborhood. There are garages in the neighborhood that are also too close to the property line.

The five regular members heard this case.

Dean Trefethen asked for clarification of the drainage.

Gene McCarthy stated that by having the building close to the lot line they would be able to add a foot to the frost wall which would allow building it up to the building thus creating positive drainage right around the building as well as the front to the back. The leaves that drop from the trees collect in that area and do not allow the water to run off thus causing water to run to the back of the lot and to the back of their house along the foundation and down into the basement.

**MOTION:**

Bill Colbath made the motion to accept the case.

Bob Mullan seconded the motion.

U/A

**PUBLIC HEARING OPENED**

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Costas Phofolos, abutter at 136 Broadway, spoke in favor of the variance request.

Dean Trefethen read a letter from abutters, Marie & Emile Boucher, who oppose the request.

Bruce Woodruff stated that the Board may not have all the information needed to make a decision. He believes that there is a building to the left of the proposed garage footprint that is not shown on the plot plan.

Karen Ott stated that there is a shed that sits on the opposite corner of the lot that was there when they bought the house.

Bruce Woodruff stated that knowing that there is another accessory structure on the lot that does not meet the required setbacks, and that others in the neighborhood also have accessory structures that do not meet the setback is something that the Board should take into consideration. It is also interesting that if the garage were to be attached to the house the setback would be six feet rather than the ten feet for an accessory structure. The hardship could be needless and unnecessary restriction, especially in this neighborhood. For this reason the Planning Department supports an amended variance of six feet rather than four.

### **PUBLIC HEARING CLOSED**

Dean Trefethen questioned whether improved drainage could still be achieved by being a little bit further away from the property line.

Gene McCarthy stated that by moving the building over two feet does not help them any and there is an approximate three-foot drop in grade. He stated that they would also like to maintain the continuity between the existing driveway and the proposed garage.

The Board and applicant discussed the water run off from Oak Street, a positive drainage from the applicant's lot and the type of roof on the proposed garage.

John Murphy stated that he does not have a problem with the four feet.

Rick Callaghan stated that he has a difficulty with the hardship. He feels that two feet will not make that much difference. He leans towards the six-foot variance.

Dean Trefethen also has a problem with the hardship and would also prefer to see the six feet.

Bob Mullan does not have a problem with the four feet.

Bill Colbath stated that placing the garage elsewhere does not work because it is downslope. You cannot access it from the other side. You don't want your driveway to downslope into the garage. He does not have a problem with the four-foot setback.

**FIVE CRITERIA:**

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. The structure at the proposed location mitigates a drainage problem for this lot that constitutes a hardship.
2. It is the Board's conclusion that the variance will deliver substantial justice. It allows construction of a garage in similar fashion to surrounding properties.
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 to have reasonable setbacks and four feet for this area is reasonable.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. The proposed construction is similar to other garages in the area.
5. It is the Board's conclusion that the variance will not be contrary to the public interest. The proposal will help to alleviate parking on the public right-of-way.

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

**MOTION:**

John Murphy made the motion to attach a condition that before the foundation is poured a survey plan for the four-foot side and rear setback is to be submitted.  
Rick Callaghan seconded the motion.  
U/A

**ITEM #4.**

**Z 98-24, James and Lillian Spillane, 1 Wellington Rd., A/K/A Assessor's Map D, Lot 9-S, Zoned R-12, requests a Variance from the provisions of Article V, Section 170-16 to construct an attached garage onto a single family dwelling within twelve (12) feet six (6) inches of a side property line where a minimum of fifteen (15) feet is required.**

James Spillane stated that he would like to build a garage onto their porch. He has contacted his abutters and they have no objection to the request. He was ready for any questions that the Board might have.

Dean Trefethen asked the applicant if it was going to be a one large door or two separate doors. He stated that if he would consider having one single door he could probably have a smaller garage.

James Spillane explained that when you bring two cars into a small garage it makes it difficult to get in and out of them without damaging one of the cars.

### **PUBLIC HEARING OPENED**

Dean Trefethen read a letter from William Kingston of 12 Strafford Rd. who has no objection to the request for a variance.

Bruce Woodruff stated that there may not be enough information on the plot plan to form an opinion in regards to the hardship issue. The plan does not show the dimensions from the property line to the house on the opposite side of the property or to the rear. It is the Planning Department's recommendation to get that additional information to help make the decision. The Planning Department is not against granting this variance but they are also not for it because, based on the information submitted, they do not see a hardship. Also, if the applicant had constructed their garage at the time the house was built they would not have had a setback problem, but due to zoning changes they now do not meet the setback.

### **PUBLIC HEARING CLOSED**

### **FIVE CRITERIA**

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. The current zoning setbacks prohibit equitable use of the property constituting a hardship. The property conformed to zoning originally and the setbacks have changed.
2. It is the Board's conclusion that the variance will deliver substantial justice. The proposal allows for the intended placement of a garage, resulting in equitable use of the property.
3. It is the Board's conclusion that the applicant will be in harmony with the spirit and intent of the zoning ordinance. The intent was to maintain reasonable setbacks and this proposal provides for that. Also the proposed setback is larger than the original setback for the lot.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. It is likely to increase in value because the property will become more like others in the neighborhood.
5. It is the Board's conclusion that the variance will not be contrary to the public interest. The proposal will have no impact on the public's interest.

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

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**MOTION:**

Bill Colbath made the motion to adjourn.  
John Murphy seconded the motion.  
U/A