

DOVER ZONING BOARD OF ADJUSTMENT  
MINUTES OF MEETING  
JANUARY 16, 1997

MEMBERS PRESENT: Dean Trefethen, Chairman, Bill Colbath, Vice Chairman,  
Robert Mullan, and Rick Callaghan

STAFF PRESENT: Thomas Clark, Building Official and Steve Stancel, Planning Director.

Dean Trefethen called the meeting to order and explained due to the presence of only four Board Members, the applicants would be given the opportunity to postpone the hearing for their application.

MOTION:

Dean Trefethen made the motion to postpone the nominations and election of officers until the end of the meeting.

Bob Mullan seconded the motion.

U/A

ITEM #1: NEW BUSINESS

Approval of the December 19, 1996 minutes.

MOTION:

Bob Mullan made the motion to accept the minutes of the December 19, 1996 meeting.

Bill Colbath seconded the motion.

With the following changes:

1. Pg. 3, #1 of the FIVE CRITERIA, 2nd. line should read "...voted does not for the deck and fence.)"
2. Pg. 8, 2nd. paragraph down, 1st. line should read, "This was a residential building ..."
3. Pg. 3, under FIVE CRITERIA, paragraph 1, change "Wm." to "BILL."

U/A

ITEM #2: OLD BUSINESS

- A. **Consideration of a Motion for Rehearing request submitted in connection with Case #Z 96-30; Strafford Guidance Center, 130 Central Ave., a/k/a Assessor's Map 15, Lot 105, Zoned RM-10. (Variance granted to establish a hospital-type facility).**

ZBA

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Steve Stancel - Respectfully requests a rehearing in February. RSA 677:2 allows any party or persons directly affected to apply for a rehearing. This has been discussed with the City's Legal Counsel, George Wattendorf, as well as researching, and a non-bias opinion from a Staff Attorney of the N. H. Municipal Association. Both attorneys agree that the Planning Dept. is within its rights to act as an applicant for a rehearing. They both feel that the Department is a party to the action because we speak at a public hearing for or against a particular project. The NHMA Attorney felt that in lieu of a Selectman, under a Council/Manager form of government, when directed by the City Manager, who is the CEO of the City, the Department has the right to apply in behalf of the residents of the City of Dover. The Department feels that the Board erred in their decision. The application did not meet the criteria as required. Feels that the Board lost its focus and made its decision for reasons outside these criteria. This service provided by Strafford Guidance is well needed by the community, but it is not the Board's function to take this into consideration. The Board is supposed to only look at whether or not the proposal meets the strict interpretation of the requirements. It is up to the City Council and the Planning Board to decide if it makes sense to alter the zoning to allow such uses on a particular lot or building. Steve reviewed his written request for a rehearing.

Steve Stancel addressed a couple of issues stated in the objection to the request for a rehearing. (1) That the Planning Dept. is to act as an impartial advisor to the Board. The Planning Dept. does not take an impartial view on any application. It is the duty of the Planning Dept. to make specific recommendations pro or con on any application. (2) In regards to new evidence submitted tonight, the applicant stated that it could have been discussed the night of the meeting. Steve stated that he did have a lot of questions the night of the meeting, and he felt that there were several contradictions, as well as clarifications that were made, which he felt opens the door to more research.

The Board took a few minutes to review the Objection to Motion for Rehearing submitted by the applicant just prior to the meeting.

Atty. Ford - Reported that he did not have the Police report, which is new evidence submitted by the Planning Dept., and asked for a copy. Feels that this report is not a reason for time spent on a rehearing. Feels that every argument that Mr. Stancel is making tonight was made at the last meeting. Time was already spent in analyzing these arguments and the Board made a decision. The only argument that is perhaps new is that the vote was considered defective. Requests that the Request for Rehearing be denied.

ZBA

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Dean Trefethen - Feels that a rehearing is required in order to determine whether the Planning Dept. has a legal standing. The new evidence submitted, and whether or not the Board made an error, are also sufficient reasons for a rehearing. Dean asked the Board for their opinion.

Rick Callaghan - Felt that there is a lot to consider. Should discuss tabling due to missing Board members, also due to the last minute information received and the new evidence.

Bill Colbath - Still cannot see a hardship. Agrees to error made in the vote. In order to support a variance you must agree that the 5 criteria were met.

Bob Mullan - Supports the Planning Dept's. request for rehearing. There is some new evidence to consider which warrants a rehearing

Dean Trefethen - Agrees with Bill Colbath that a technical error was made on the voting. The majority of the Board made an error in the decision in considering the service and not the land. Also need to consider the new evidence of the police report and the number of calls made to the sites.

**MOTION:**

Bill Colbath made the motion to grant the rehearing.

Bob Mullan seconded the motion.

U/A

The rehearing will be held at the February 20, 1997 meeting.

**B. Consideration of a Motion for Rehearing request submitted in connection with Case #Z 96-29, Cricklewood on the Bellamy Trust (Joseph Sawtell, Trustee), Clearwater Dr., a/k/a Assessor's Map L, Lot 49-A, Zoned RM-12. (Variance denied to maintain a non-conforming sign.)**

Dave Hancock - Has been given the task to seek to have the non-conforming sign be allowed to remain. He understands that the nature of a rehearing is to have new evidence. It is difficult for him because he was unable to attend the last meeting to present his case. He feels that the history of how the sign came to be is significant and wishes to be allowed to present his case.

ZBA

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Dean Trefethen - Stated that the Board reviewed the information on his application and made their decision based on that. At this time the Board would be looking for new evidence that was not on the application before.

Dave Hancock - Feels that some of the new evidence would be the work the State is doing in putting a new off-ramp to the entrance. Even though it was not evident at the time that the application should have been made, it is even more significant now where the sign is.

Dean Trefethen asked the Board for their opinion.

Rick Callaghan - Sees no new evidence or other reason for the rehearing.

Bob Mullan - Not enough new evidence for a rehearing.

Bill Colbath - No new evidence.

Dean Trefethen - No new evidence.

Dave Hancock - Asked what reasons were given at the meeting to deny the variance.

Dean Trefethen - Read the 5 criteria from the Findings of Facts to Mr. Hancock, that brought them to the conclusion to deny the request for a variance.

**MOTION:**

Bill Colbath made the motion to deny the rehearing.

Rick Callaghan seconded the motion.

U/A

**ITEM #3:**

**Z 97-1, Catholic Charities of New Hampshire, Inc. (Applicant: Coldstream Real Estate Advisors Inc.), Dover Point Rd., a/k/a Assessor's Map L, Lot 15-A, Zoned R-20 requests a Special Exception as provided for under the provisions of Article VI, Sections 170-25.3 and 170-25.4 to establish an Elderly Assisted/Congregate Care Facility in addition to a Nursing Home in a R-20 Zoning District.**

ZBA

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Atty. Bill Donovan - Representative of the N.H. Catholic Charities. Proposed plans are to build a new nursing home and convert the existing nursing home to housing for the elderly. The following was not addressed on the application:

- (1) Conservation Commission voted to endorse the project.
- (2) A letter from the Bishop endorsing the proposal. It does require a lot line adjustment to give enough land to this project to fulfill the ordinance requirements.
- (3) A letter from an abutter, Robert Foster, who has no problem with the proposal.

David Breitrick - Engineer - Described the site plan and proposed addition. He presented a revised site plan to the Chairman of the Board. He addressed the following items:

- (1) Landscaping & screening
- (2) Drainage
- (3) Utilities
- (4) Traffic flow and parking (Memo on the traffic impact.)

Mr. Breitrick and the Board discussed the site plan, traffic flow, driveways, and parking.

Steve Stancel and the Board expressed concern regarding the location of the St. Thomas Aquinas High School soccer field after the lot line adjustment.

Steve McKenzie - Architect - described the construction which will be done in phases. Because of the slope in the land, a portion in the back will have 2 stores which will line up with the one floor at the front.

Mr. McKenzie and the Board discussed the height of the structure and how it would line up with the existing roof.

Thomas Clark advised the Board and applicant that the addition of the roof onto the existing building constituted an increase in a non-conforming structure and was not allowed without receiving a variance.

#### MOTION:

Rick Callaghan made the motion to accept the case.

Bob Mullan seconded the motion.

U/A

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The Board discussed the traffic study and the number of people who would actually be coming and going along with the school traffic.

**PUBLIC HEARING OPENED**

Steve Stancel - The Planning Dept. met with the City Engineer and feel comfortable with the request for Special Exception.

**PUBLIC HEARING CLOSED**

**MOTION:**

Bob Mullan made the motion to grant the Special Exception.

Bill Colbath seconded the motion.

The following issues need to be resolved to the satisfaction of the Technical Review Committee and the Planning Board:

1. The use of the soccer field
2. Traffic Impact
3. Landscaping

U/A

Nominations and elections of ZBA Officers

**MOTION:**

Bob Mullan made the motion to nominate the current officers to continue in their positions, namely, Dean Trefethen, Chairman, and Bill Colbath, Vice-Chairman.

Rick Callaghan seconded the motion.

U/A

**MOTION:**

Bill Colbath made the motion to adjourn.

Rick Callaghan seconded the motion.

U/A

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List of members and expiration dates:

	<u>Term Starts</u>	<u>Term Exp.</u>
Robert Callan	4/13/94	4/13/97
Richard Callaghan	4/13/94	4/13/97
William Colbath	10/23/94	10/23/97
Dean Trefethen	12/31/94	12/31/97
Robert Mullan	12/31/94	12/31/97
David Paolini	10/23/94	12/31/97
John Murphy Jr.	12/31/95	12/31/98