

DOVER ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
MAY 15, 1997

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

STAFF PRESENT: Thomas Clark, Building Official and Bruce Woodruff, Planning Dept.

Dean Trefethen, Chairman, called the meeting to order.

ITEM #1: NEW BUSINESS

Approval of the April 17, 1997 minutes.

MOTION:

John Murphy made the motion to accept the minutes of April 17, 1997.

Bill Colbath seconded the motion.

U/A

ITEM #2: OLD BUSINESS

MOTION:

Dean Trefethen made the motion to postpone the discussion of possible revisions to the By-Laws until the end of the meeting.

John Murphy seconded the motion.

U/A

ITEM # 3:

Z 97-8 John Wyeth, 7 Roosevelt Ave., a/k/a Assessor's Map 37, Lot 44, Zoned R-12, requests a variance from the provisions of Article V, Section 170-17 to construct/install an accessory structure (in-ground swimming pool) within five (5) feet of a rear property line where a minimum of ten (10) feet is required.

John Wyeth - Believes the hardship is that it is a non-conforming lot. The house is five (5) feet from the property line. The only available place to put the pool. The other areas are either in the front lawn or on the other side of the garage. The problem with the other side of the garage is that the pool cannot be monitored from the house. He would like to have a pool with a deep end for diving.

MOTION:

Bill Colbath made the motion to accept the case.

Bob Mullan seconded the motion.

U/A

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Dean Trefethen - Asked if the applicant had spoken to his abutters.

John Wyeth - Yes, and no one seems to have a problem.

PUBLIC HEARING OPENED

Bruce Woodruff - Asked if the enclosed basement entrance to the rear contains a bulkhead or is an entrance to the house.

John Wyeth - It is the back entrance to the house.

Bruce Woodruff - The Planning Dept. does not see a hardship because there are other possibilities for the pool. Also the pool may go where the applicant would like it to go if he were to relocate the door to the house and move the pool closer. Then it would meet the setback.

John Wyeth - It would be more difficult to relocate the door.

Tom Clark - Asked if a smaller diving pool was considered.

John Wyeth - In checking with the manufacturer, due to the BOCA code, there is a minimum length for a diving pool.

PUBLIC HEARING CLOSED

The Board and Tom Clark discussed the following:

1. The code in reference to the distance between the house and the pool
2. Width of concrete apron and diving board
3. Questioned whether the measurement is to the concrete apron or water's edge

Ingrid Ecks, Abutter - She has no objections to the pool being just 5 feet from the fence.

Dean Trefethen - Questions whether the applicant has presented a legitimate hardship and is concerned with the aspect of safety in the use of the pool.

Bill Colbath - Questions the hardship in having the pool behind the house. It could easily go beside the garage or in the front yard.

Rick Callaghan - Is still concerned with the pool construction, the location of the diving board, and how close it will actually be to the property line. He also cannot see a hardship.

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FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does not face an unnecessary hardship. (Dean Trefethen voted does) The pool could be placed on other parts of the property and be in compliance with all set backs.
2. It is the Board's conclusion that the variance will not deliver substantial justice. (Dean Trefethen voted will) Because the proposal does not conform to the required setbacks.
3. It is the Board's conclusion that the variance will not be in harmony with the spirit and intent of the zoning ordinance. The intent is for a ten foot setback for safety and density reasons.
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) No evidence to the contrary and the abutter at the affected setback agrees with the proposal.
5. It is the Board's conclusion that the variance will not be of benefit to the public interest. The proposal would result in a needless encroachment on the required setback.

MOTION:

Bill Colbath made the motion to deny the request for a variance.

Rick Callaghan seconded the motion.

U/A

Dean Trefethen advised the applicant that he has 20 days to appeal the decision.

ITEM # 4:

Z 97-9 William Hopkins, 168 Central Ave., a/k/a Assessor's Map 12, Lot G, Zoned RM-10 requests a Special Exception as provided under the provisions of Article VI, Section 170-25.1 and Article XII, Section 170-52.C(3) to convert a duplex into a four-unit apartment building.

Philip Kendrick, Arcitect, representing William Hopkins - The main issue of concern is whether the lot coverage of the proposed work is equal to or less than the lot coverage of all the other lots within 200 feet radius of abutters. A survey was done and the results were the average of a ratio of .47. The property coverage is well under that by .30. Mr. Hopkins contacted the abutters and there were no objections. A letter was presented from one of the abutters, Terri & Mark Hale, who are in favor of the request.

Dean Trefethen - Noted that there are 6 parking spaces on the lot and 2 parking spaces on an adjacent lot. Asked if the second lot was co-owned or will there be a lease arrangement.

Philip Kendrick - Both lots are owned by the applicant.

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Dean Trefethen - Asked what is required when parking is included on an adjacent lot.

Bruce Woodruff - A Condition can be placed on the Special Exception that deeds to both properties be amended for a right-of-way.

John Murphy made the motion to accept the case.

Rick Callaghan seconded the motion.

U/A

PUBLIC HEARING OPENED

Bruce Woodruff - The Planning Dept. supports the request for a Special Exception. It will assure that the building will be improved and maintained and screening should be provided to the abutting lot.

PUBLIC HEARING CLOSED

MOTION:

John Murphy made the motion to grant the Special Exception.

Bob Mullan seconded the motion.

Conditions: (1) Screening be provided (type up to applicant) and, (2) Cross easement be applied to both deeds.

Tom Clark confirmed that adequacy of the screening is up to the Inspection Division.

U/A

ITEM #5:

Z 97-10 Irving Oil, (Applicant: Barlo Signs), Knox Marsh Rd., a/k/a Assessor's Map H, Lot 35-C-2-A, Zoned I-2, requests a variance from the provisions of Article IX, Section 170-32.J(2)(c) to erect/install a free-standing sign with an area of seventy-two (72) square feet where a maximum of twenty-four (24) square feet per street frontage is allowed.

Rick Barr, Sales Representative for Barlo Signs and representing Irving Oil - Reviewed his application. Would like to have a sign that has more visibility.

MOTION:

Bill Colbath made the motion to accept the case.

John Murphy seconded the motion.

U/A

The Board and the applicant discussed the size of the existing sign, the proposed sign, the sign ordinance, and the price portion of the sign that is considered informational.

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PUBLIC HEARING OPENED

Dennis Grogan, Progress Realty Inv. across the street from Irving Oil -feels that the request is unwarranted. The existing sign seems to be adequate. They are not in favor of the request.

Bruce Woodruff - Sees several positives to the request.

1. The proposed location of the new sign will be further back from the road than the existing sign.
2. The price informational sign will be higher from the ground then the existing sign.
3. Keeping one sign instead of two signs.
4. This is an Industrial Zone, and the Zoning sign regulations is the root of the hardship.

The Planning Dept. is in favor with this request.

John Murphy - Cannot see the hardship to be allowed to reduce the company name and increase the size of the pricing area.

Bob Mullan - Agrees with John Murphy.

Rick Callaghan - Also agrees. Concerned with the possibility of future pricing area becoming even larger.

Rick Barr and Board discussed the size of the sign.

John Murphy - Perhaps Rick Barr should take time to go back to Irving for options. It is not up to us to amend the size the applicant requests.

Dean Trefethen - Possibility of tabling to allow Rick Barr time to go back to his client.

John Murphy - Can see no reason to table since the applicant has the owner's authority to make a decision on whether or not to reduce the requested size of sign.

Rick Callaghan - Concerned with (1) the Board losing control of the signage because a second sign with pricing could go up. (2) Problem with the hardship.

Bruce Woodruff - The hardship is made by the Zoning Ordinance itself.

Bill Colbath - Does not see a hardship.

Bob Mullan - Sees a hardship.

John Murphy - Sees a hardship.

Rick Callaghan - Sees a hardship.

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Dean Trefethen - Does see a hardship due to the sign regulation but would like to see a sign the same size as they have now.

The Board discussed whether or not to table the case and decided not to. It was the general consensus of the Board to allow a 60 sq. ft. sign or what is currently up now.

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. (Bill Colbath voted does not) The current sign regulations for this zone does not take into account a small building in this zone.
2. It is the Board's conclusion that the variance will deliver substantial justice. (Bill Colbath voted will not) It allows an existing business to update their sign to incorporate what they effectively currently have.
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 voted will not) The spirit and intent is to regulate sign sizes and this proposal will define the signs for business more clearly.
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) The Board's consensus is that the sized sign to be granted will not impact abutters.
5. It is the Board's conclusion that the variance will be of benefit to the public interest. (Bill Colbath voted will not) The proposed sign will be easier to read without effectively increasing its size.

MOTION:

Rick Callaghan made the motion to grant the variance with the following conditions:

John Murphy seconded the motion.

- (1) The main sign shall not exceed 32 sq. ft.
- (2) Informational portion of the sign will terminate upon change of business
- (3) No additional signage shall be attached to the sign post.
- (4) This shall cap the total signs allowed on this property.
- (5) The total sq. footage. shall not exceed existing the main and pricing sign.

Three opposed and two in favor. (Rick Callaghan and John Murphy voted in favor.)

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MOTION:

Bob Mullan made the motion to grant the variance with the following conditions:

Dean Trefethen seconded the motion.

- (1) 48 sq. ft. maximum for the main sign and a total sq. footage not to exceed the present sign.
- (2) No additional signs on the pylons.
- (3) No additional signs on the property.

Three in favor and two opposed (Bill Colbath & Rick Callaghan opposed)

ITEM # 6:

Z 97-11 Ron & Alicia Frye, 10 Old Colony Rd., a/k/a Assessor's Map M, Lot 31, Zoned R-12 requests a variance from: (1) the provisions of Article V, Section 170-16, to construct a two-story addition onto a single family dwelling within approximately fifteen (15) feet of a front property line as it abuts a street where a minimum of thirty (30) feet is required, and within approximately five (5) feet of a side property line where a minimum of fifteen (15) feet is required; and (2) the provisions of Article X, Section 170-41.A to enlarge a non-conforming structure.

Ron Frye - The addition will not come any closer to the street than the main structure and the hardship is that it is a one-bedroom house and they need more living area.

John Murphy - Questioned the setback on the site plan presented.

Tom Clark - The second, more accurate, site plan shows 36 feet to edge of pavement. This plan was presented after the agenda was written and sent to the newspaper.

Dean Trefethen - Asked if the garage will cease to be a garage.

Ron Frye - Yes, it will all be living space.

MOTION:

John Murphy made the motion to accept the case.

Bill Colbath seconded the motion.

U/A

PUBLIC HEARING OPENED

Bruce Woodruff - The hardship is that the lot is shaped like a triangle due to the Spaulding Turnpike taking at least 50% of the property, and the house had to be moved. The setback when the house was moved was quite a bit less.

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PUBLIC HEARING CLOSED

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. The unique configuration of the lot negates any possibility of expansion without relief. The situation was created by the construction of the highway and the taking of much of this original property.
2. It is the Board's conclusion that the variance will deliver substantial justice. It allows expansion and updating of an existing dwelling.
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 maintain reasonable setbacks and that will still be the case for the proposal.
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.
5. It is the Board's conclusion that the variance will be of benefit to the public interest. It allows modernization of an existing structure adding to the housing stock.

MOTION:

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

MOTION:

Rick Callaghan made the motion to postpone discussing the By-laws until the next meeting.
John Murphy seconded the motion.
U/A

MOTION:

John Murphy made the motion to adjourn
Dean Trefethen seconded the motion.
U/A

Dean Trefethen advised the Board that he will not be present for the July 1997 meeting.

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List of members and expiration dates:

	<u>Term Starts</u>	<u>Term Exp.</u>
William Colbath	10/23/94	10/23/97
Dean Trefethen	12/31/94	12/31/97
Robert Mullan (Alternate)	12/31/94	12/31/97
Parks Christenbury	02/20/97	12/31/97
John Murphy Jr.	12/31/95	12/31/98
Richard Callaghan	04/13/97	04/13/2000