

**DOVER ZONING BOARD OF ADJUSTMENT  
MINUTES OF MEETING  
JUNE 19, 1997**

**MEMBERS PRESENT:** Bill Colbath, Vice Chairman, Rick Callaghan, John Murphy, and Parks Christenbury

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

Bill Colbath, Vice Chairman, called the meeting to order.

**ITEM #1: NEW BUSINESS**

Approval of the minutes of May 15, 1997 and Special Meeting of June 2, 1997

**MOTION:**

John Murphy made the motion to accept the minutes of May 15, 1997.  
Parks Christenbury seconded the motion.

U/A

**MOTION:**

John Murphy made the motion to table the approval of the minutes of June 2nd. special meeting because not all pertinent information was included in the minutes. An addendum will be submitted at the July 17th. meeting.  
Parks Christenbury seconded the motion.

U/A

**ITEM #2: OLD BUSINESS**

**MOTION:**

John Murphy made the motion to postpone the discussion of possible revisions to the By-Laws until the August 21st meeting.

Parks Christenbury seconded the motion.

U/A

Bill Colbath advised the applicants that, since there are only 4 Board members present, they have the option to withdraw their request and be submitted for the next meeting, which is July 17, 1997

**ITEM # 3:**

Z 97-12 Field & Foster, 481 Central Ave., a/k/a Assessor's Map 3, Lot 61, Zoned B-2, requests a variance from the terms of Article IX, Section 170-32F. to maintain two (2) accessory wall signs where one (1) is allowed.

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Mark Foster - They have been struggling for ten years, along with other businesses, with the tree foliage on Central Ave. One of their signs cannot be seen due to this foliage.

Rick Callaghan - Asked which of the two signs was he seeking a variance for.

Mark Foster - The original sign that is on the building.

#### MOTION:

Parks Christenbury made the motion to accept the case.

John Murphy seconded the motion.

U/A

John Murphy - Asked Tom Clark if there are any other businesses in this area that requested a variance because of this issue.

Tom Clark - He is not aware of any requests due to visibility.

Tom and the Board discussed future plans for the pruning of the trees, and making changes in the ordinance addressing this specific issue.

#### PUBLIC HEARING OPENED

Bill Colbath - Read the written comments from the Planning Department because no one was present to represent this Department. The Planning Dept supports granting the sign variance due to the fact that the sign is not a lighted sign and not obtrusive, and there is a valid hardship that relates to the land, being the trees planted by the City in the right-of-way that the business owners do not have any control over.

#### PUBLIC HEARING CLOSED

John Murphy - It is obvious that the trees do block the sign and by putting the other sign where it is now corrects the problem.

Rick Callaghan - Asked if the Technical Review Committee will be reviewing this and addressing how this problem will be corrected.

Tom Clark - The function of TRC is limited to a specific application and certain site conditions and not to an overall City problem.

Rick Callaghan - His second point is that this will be the only business that will have the ability to do this. Others will not be treated equally in the long run.

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Parks Christenbury - Need to address this case before them and it is clear that the City has, on its own property, created a hardship. The issue with the trees is out of this Board's hands.

**FIVE CRITERIA:**

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. The applicant faces loss of business due to the City's negligence of tree pruning.
2. It is the Board's conclusion that the variance will deliver substantial justice. It provides relief from circumstances beyond his control.
3. It is the Board's conclusion that the variance will be in harmony with the spirit and intent of the zoning ordinance. (Rick Callaghan voted will not) The spirit and intent of the ordinance was not to limit signage that cannot be seen by the public.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. No evidence was presented.
5. It is the Board's conclusion that the variance will be of benefit to the public interest. (Rick Callaghan voted will not) It will allow greater visibility for drivers.

**MOTION:**

John Murphy made the motion to grant the variance.  
Parks Christenbury seconded the motion.  
Condition: the sign is to remain non-illuminated  
3 in favor and 1 opposed (Rick Callaghan opposed)

**ITEM # 4.**

**Z 97-13, Jean Darling & Bruce Tibbetts, 20 Sunnybrooke Dr., a/k/a Assessor's Map I, Lot 30-B-15, Zoned R-40 requests an Equitable Waiver of Dimensional Requirements from the provisions of Article V, Section 170-17 to maintain an accessory structure (detached garage) with a side yard setback of less than one (1) foot where a minimum of ten (10) feet is required.**

Jean Darling - They relied on the contractor that sold them the property to indicate the lot lines to them. With Tom Clark, the contractor and themselves on site, Jeff White indicated where the lot lines were. They obtained a Building Permit to build a garage and it was inspected and approved. When they went to sell the lot, the Real Estate agent asked for a surveyed plot plan and upon obtaining it, the garage was indicated to have been built 6 inches over the lot line.

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**MOTION:**

Parks Christenbury made the motion to accept the case.

John Murphy seconded the motion.

U/A

**PUBLIC HEARING OPENED**

The written comments from the Planning Dept. were read - The Planning Dept. supports granting the waiver because it is the Planning Dept's conclusion that all four of the findings required under RSA 674:33-a can be satisfactorily proven.

Richard Lucier - Abutter of 18 Sunnybrooke Dr. - Opposes the request. Other buildings in the park have had the required ten feet setback. He feels that for his safety, this building should be moved or taken down. If there is a fire, there is no distance to protect himself. This is a 2-story building.

**PUBLIC HEARING CLOSED**

Parks Christenbury - Asked Tom (1) if any protest was made in regards to the setback at the time of the construction of the garage in 1993, (2) for clarification, is the garage 15 feet away from the abutter's home, (3) Asked if there are a number of structures in the City that the Fire Dept handles where the boundaries are even closer, (4) in the Inspector's opinion, was Mr. White just in error and was it an honest mistake.

Tom Clark - (1) No protest was made, (2) The garage is 15 feet from the abutter's driveway and his home is on the other side of that, (3) as far as the distance of the applicant's garage to the abutter's building, it is not a great situation, but should the garage catch fire and collapse onto the abutters property, it appears that, even with the 2-story height, it would not come in contact with the abutter's building, (4) yes, he was not trying to deceive them purposefully.

John Murphy - Comment, evident that everything was done in good faith and that there was no deceit, however there is an abutter who is dissatisfied. Cannot see that any relief can be given. In reviewing the 4 criteria, in his opinion, there would be a diminution of value in property, so he does not agree with the Planning Dept's findings that all 4 criteria will be met. A lot line adjustment could be a resolution.

Tom Clark - This is not an option because the abutter is not willing to sell a piece of his property.

Rick Callaghan - Asked what would happen if the abutter were to build a similar structure on his lot that met the required setbacks.

Tom Clark - The ordinance does not address the issue of the distance between 2 structures on separate lots. It addresses the distance between an accessory structure and the principal structure on the same lot, which has to be equal to the height of the accessory structure. It does not address distances between structures on abutting lots.

The intent being that each building would be at least 10 feet from its lot line. Should this waiver be granted, there would be that problem if the abutter would want to build a building at least 10 feet off his line, and he could do it without a variance but from the building code perspective, we would have to address the fire separation distance and modification would have to be made to either or both buildings for a fire separation.

The Board discussed the RSA 674:33-a, Equitable Waiver of Dimensional Requirement and addressed each criteria.

1. Does the request involve a dimensional requirement, not a use restriction?

Vote - Yes

- 2a. Was the nonconformity discovered after the structure was substantially completed, or after a vacant lot in violation had been transferred to a bona fide purchaser.

Vote - No

- 2b. Was the violation not an outcome of ignorance of the law or bad faith but as the result of a legitimate mistake?

Vote - Yes

3. Does the nonconformity not constitute a nuisance or diminish the value or interfere with future uses of other property in the area?

Parks Christenbury voted yes  
John Murphy, Rick Callaghan, and Bill Colbath voted no

4. Would the cost of correction far outweigh any public benefit to be gained?

Parks Christenbury voted yes, John Murphy, Rick Callaghan, and Bill Colbath voted no

According to RSA 674:33-a, and the NO responses indicated above, the request for an Equitable Waiver of Dimensional Requirements was denied. Applicant was advised that they have 20 days to appeal.

#### ITEM #5

Z 97-14, Douglas Rogers, 29 Littleworth Rd., a/k/a Assessor's Map G, Lot 6, Zoned I-2, requests a variance from the provisions of Article IV Section 170-12, Table 1, Part C-2 to maintain a Used Car Sales place in an I-2 Zoning District.

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Douglas Rogers - He would like to have a low-key used car lot. Feels that this would not be detrimental to his neighborhood because of the other businesses that surrounds him. He presented pictures of a similar type of used-car sales lot.

Parks Christenbury - Referred to item #3 of the Planning Dept's comments in regards to pavement, drainage, auto drip fluids and mud, screening, lighting and security.

Douglas Rogers - This is his home and intends to keep it maintained.

Parks Christenbury - Asked what number of cars will be on the lot.

Douglas Rogers - It will vary depending on what is obtained from local dealerships.

Parks Christenbury - Concerned with the screening and security of the lot.

John Murphy - Asked Tom Clark if there are any plans to rezone this area or to allow sale of used cars other than accessory to new cars.

Tom Clark - None that he is aware of.

John Murphy - Asked Mr. Rogers how long he has had cars for sale on that lot.

Douglas Rogers - (Answer unaudible).

John Murphy - Asked what brings this case before the Board.

Tom Clark - This was brought to our attention by a phone call in regards to the increase in number of cars on the lot which appeared to be a used car lot. His inspection showed about 12 cars and he approached Mr. Rogers about it. In order to continue this used car business, he has to come before this Board.

#### MOTION:

Parks Christenbury made the motion to accept the case.

Rick Callaghan seconded the motion.

U/A

#### PUBLIC HEARING OPENED

The applicant & Board members took a few minutes to read the Planning Dpet's comments.

Although the Planning Department has a hard time seeing a hardship, it recommends approval if the applicant agrees to these conditions:

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1. The previous variance granted in 1967 to allow both residential use and the sale and manufacture of "yard goods," would have to be given up.
2. Site Review with the Planning Board is mandatory to address the issues of number of used cars, pavement, drainage screening, lighting and security.
3. State licenses, bonds and permits must be obtained.

#### PUBLIC HEARING CLOSED

#### FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. Literal enforcement of the Zoning regulation will hold the applicant to a standard which is not equitable to the neighboring properties.
2. It is the Board's conclusion that the variance will deliver substantial justice. It will allow a reasonable use for the property similar 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 of the ordinance was to keep a neat and tidy business appearance which State regulations will help insure.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. Proper operation will tend to enhance the surrounding values.
5. It is the Board's conclusion that the variance will be of benefit to the public interest. It will provide a business opportunity that is in demand in the area.

#### MOTION:

Parks Christenbury made the motion to grant the variance.

John Murphy seconded the motion.

Conditions: (1) The prior variance is rescinded, and

(2) Technical Review Committee and Planning Board approvals are required.

U/A

Councilor Howard Williams addressed the Board in regards to the used car lot issue - the Council will be addressing this issue because, as the zoning stands, anyone can come in and challenge it and put a used car lot anywhere they want to in the City. The City has no control. There is a used car lot slowly developing on Central Ave. which the Building Inspector has been dealing with. The issue of people putting cars for sale on other peoples property, and the number of cars per square feet will be addressed by the City Council.

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**ITEM #6:**

Z 97-15, Scott Picard, 19 Shady Ln., a/k/a Assessor's Map I, Lot 77-Z, Zoned R-12, requests a variance from: (1) the provisions of Article V, Section 170-16 to construct a front deck addition onto a single family dwelling within sixteen (16) feet of a front property line as it abuts a street where a minimum of twenty-seven (27) feet is required; and (2) the provisions of Article X, Section 170-41.A to enlarge a non-conforming structure.

Scott Picard - He is unable to build a deck due to insufficient setback. There was a deck near the one that he wants to build that was destroyed by fire prior to his ownership, and it was not reconstructed. They would like to put a door in on the driveway side of the house for convenience. At the present time they have to go to the back of the house to enter. This will also create a second means of exit where only one exists. On the proposed plan, there is approximately 16 feet remaining between the proposed deck and property line. There is also 6 feet additional to the curbside of the road, so there would actually be 22 feet between the proposed deck and the road. He presented a copy of the tax card showing where a deck did exist. Though they can put a door in with a set of stairs, they would like to increase the existing deck by adding on to it with this new doorway and deck

**MOTION:**

John Murphy made the motion to accept the case.

Rick Callaghan seconded the motion.

U/A

The Board and Tom Clark discussed the setback to boundary line vs. to the road, and the amount of encroachment allowed into the setback by stairs.

**PUBLIC HEARING OPENED**

The Planning Dept's comments - The department does not support the setback variance request. Upon inspection, the Planning Dept. did not see where any of the neighbors had setback encroachments for front decks or other structures, and the applicant can construct a deck parallel to the house on Shadow Drive side that would meet the setback requirement.

**PUBLIC HEARING CLOSED**

Bill Colbath - Issues unique to this lot, (1) this lot has frontage on 2 streets that most of the neighbors do not have, (2) this is a 2-family dwelling which limits the placement of the deck, and (3) the house is built on the side of a hill.

John Murphy - Can see a hardship in having to go to the rear to enter the house but does not see the need for a wrap-around deck. They can have a door with steps which will also require a variance.

#### FIVE CRITERIA

1. It is the Board's conclusion that the applicant (Bill Colbath & Parks Christenbury voted does and Rick Callaghan and John Murphy voted does not) face an unnecessary hardship. There are alternative locations for deck construction and door locations.
2. It is the Board's conclusion that the variance (Parks Christenbury and Bill Colbath voted will and John Murphy and Rick Callaghan voted will not) deliver substantial justice.
3. It is the Board's conclusion that the variance will not (Parks Christenbury voted will) be in harmony with the spirit and intent of the zoning ordinance. The intent is to maintain reasonable minimum setbacks.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. No evidence to support diminution.
5. It is the Board's conclusion that the variance (Parks Christenbury and John Murphy voted will and Rick Callaghan and Bill Colbath voted will not) be of benefit to the public interest. The public interest is not served by lessening the setbacks.

#### MOTION:

Parks Christenbury made the motion to grant the variance.  
Rick Callaghan, Bill Colbath and John Murphy Opposed the motion.  
The request was denied.  
The applicant was advised he has 20 days to appeal.

#### ITEM # 7.

**Z 97-16, Teresa Smith, 45 Columbus Ave., a/k/a Assessor's Map F, Lot 1-K, Zoned R-40 requests a variance from the provisions of Article IX, Section 170-33 B(1) to maintain a fence with the finished side facing inwards to the property on which the fence is located.**

Teresa Smith - When she bought the house in January of 1994, a portion of the lot was already fenced in. Last spring she fenced the remainder of the lot and she put it in to match the existing fence. She was not aware at the time that the existing fence was built in violation of the code.

Parks Christenbury - Asked if the applicant considered turning the fence around.

Teresa Smith - It would be a hardship on her to redo the fence.

Teresa Smith and the Board discussed the installation of the new fence and the fence ordinance.

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**MOTION:**

John Murphy made the motion to accept the case.

Rick Callaghan seconded the motion.

U/A

**PUBLIC HEARING OPENED**

Veronica Wentworth, applicant's sister - Spoke in favor of the fence. She feels that it would be a hardship to turn the fence around because of the trees and difficulty in keeping the posts in the ground.

Bob O'Connor - Abutter to 2 lots. The fence is a heavy fence and has been blown down a few times. He has small children that play in the yard and feels that it is a danger to them. He presented pictures of the fence to the Board.

Bruce Woodruff, Planning Dept. - The Planning Department does not support granting the variance because there does not appear to be a hardship that relates to the land. Although a permit or inspection is not required for a fence, the location and direction of finished fencing requirements are known by local installers. The Department would recommend that the older portion of fencing with this condition remain as a lawful non-conforming use until it needs replacing.

Teresa Smith - She did have a problem with the fence falling down during the winter months. She has done what she could to secure the fence and she has no problem with painting the back side.

Parks Christenbury - Asked, if when the fence needs to be replaced, does it need to be brought into compliance.

Tom Clark - The ordinance states that if a non-conforming structure is replaced it needs to be replaced with something that meets with the provision of the code. The fence would have to be in compliance.

The Board discussed the location of the new fence, when each section was installed, and the "grandfather" clause.

**PUBLIC HEARING CLOSED**

**FIVE CRITERIA:**

1. It is the Board's conclusion that the applicant does not face an unnecessary hardship. The fence can be brought into compliance and should satisfy ordinances on date of installment.
2. It is the Board's conclusion that the variance will not deliver substantial justice. Owner would realize a greater right than the abutters have.

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 spirit and intent was to have uniform fence structures with finished side out.
4. It is the Board's conclusion that the variance will result in a diminution in value of surrounding properties. Because of condition and installation of fence, it results in a diminution of value to effect abutters.
5. It is the Board's conclusion that the variance will not be of benefit to the public interest. Violation of ordinance gives owner rights beyond any abutters.

**MOTION:**

Parks Christenbury made the motion to deny the variance.  
John Murphy seconded the motion.  
U/A

The applicant was advised that she has 20 days to appeal.

**ITEM # 8**

Z 97-17, Gerald Nash and S.A.T. Sr. Ltd. Partnership, Malcolm McNeill representing the applicant, requested to be heard at the July meeting due to the fact that only 4 Board members were present.

Tom Clark - Advised the Board that the Declaratory Judgement for Strafford Guidance Ctr. which was decided in favor of Strafford Guidance, which to his understanding negates the appeal process that the Planning Dept. filed. The Planning Dept is conferring with the City Attorney to see whether or not it is a dead issue or is a request required to withdraw their application. The Superior Court agreed with Strafford Guidance Ctr. that there is no zoning jurisdiction.

**MOTION:**

Parks Christenbury made the motion to adjourn.  
John Murphy seconded the motion.  
U/A

**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