

**DOVER ZONING BOARD OF ADJUSTMENT**  
**MINUTES OF MEETING**  
**JULY 17, 1997**

**MEMBERS PRESENT:** Bill Colbath, Vice Chairman, Rick Callaghan, Parks Christenbury and Robert Mullan.

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

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

**ITEM #1: NEW BUSINESS**

Approval of the minutes of June 2, 1997 and June 19, 1997.

**MOTION:**

Callaghan made the motion to accept the minutes of June 2, 1997 and June 19, 1997. Christenbury seconded the motion.  
U/A

**ITEM #2: OLD BUSINESS**

**Item A**, Z97-17, moved to end of agenda at request of petitioner in anticipation of the arrival of 5<sup>th</sup> zoning board member, John Murphy.

**Item B**, Consideration of a Motion for Rehearing request by Scott Picard was withdrawn at petitioners request.

**C. Consideration of a Motion for Rehearing request submitted by Jean Darling and Bruce Tibbetts, 20 Sunnybrooke Dr., a/k/a Assessor's Map I, Lot 30-B-15, Zoned R-40 concerning ZBA Case #Z97-13.**

Tom Clark stated the Board needs to decide if they want to rehear this case in August. Colbath stated that there is only a piece of paper and no one hear to speak. Christenbury stated that he has spoken to the individuals and feels that they may have missed some valid points when speaking before the board and that emotions may have been involved. He stated that he is still not clear on the new law and would like to speak to George Wattendorf in the Legal Division for clarification. Callaghan concurs that the board needs clarification and to hear more information.

**MOTION:**

Christenbury moved to rehear Case #Z97-13 in August. Callaghan seconded the motion.  
U/A

- D. **Withdrawal of a Motion for Rehearing filed in connection with ZBA Case #A96-30; Strafford Guidance Center, 130 Central Avenue., a/k/a Assessor's Map 15, Lot 105, Zoned RM-10.**

Steve Stancel stated he is requesting the withdrawal based on a notice of decision from the State Supreme Court citing State RSA 135C(3) which requires communities to allow facilities that treat mentally impaired individuals. He stated the City tried to argue that this was an acute care facility, but the judge didn't agree.

Clark stated that this decision was only in relation to zoning, not site review.

**MOTION:**

Callaghan moved to accept withdrawal motion.

Christenbury seconded the motion.

U/A

3. **97-18, Joseph Allis, Washington St., a/k/a Assessor's Map 23, Lot 13, Zoned CWD requests a variance from the provisions of Article IV, Section 170-12, Table 1, Part C-2 to establish a warehouse use (self-storage facility).**

Mr. Joseph Allis, resident of 2 Jan Lane, Newmarket, NH stated he owns the property on Water Street and is requesting a variance as it is not being used for anything. He stated he has offered to both the City and One Washington Center, the use of the property for parking but has been declined. He stated he has to put cables and cement blocks around the perimeter to prevent illegal parking, but people still park there anyway and he has to have them towed. He then presented a picture of the proposed structure to the board for review. He stated that he feels that this use of the property would not be a problem for the area as it will be located in the back, will be on concrete slabs and can be disassembled easily if necessary.

**MOTION:**

Christenbury moved to hear the case.

Motion was seconded by Callaghan.

U/A

**PUBLIC HEARING OPENED**

Colbath explained that there are 5 criteria that must be met to grant the variance.

Mr. Allis stated he tried to answer those questions to the best of his ability.

Callaghan stated he would like the hardship criteria explained in more detail.

Mr. Allis stated he can't use the land and feels he is too old to start building condos.

Steve Stancel asked if this property has it been in a broker's hands in the past 3 years?

Mr. Allis stated yes, a broker has been trying to rent the property for him which includes another vacant building which he also can't rent out, but does not want to sell the property as he wants to keep it for his children.

Steve Stancel explained that the property was not utilized by the city for parking because there was a difference of opinion in the value.

Mr. Allis stated he offered the property for \$20.00 per spot.

Christenbury stated that it is not considered hardship because a financial deal cannot be struck.

Colbath clarified that the State of New Hampshire does not allow lack of financial resource as a hardship and asked if there is any reason that the property cannot be built on?

Mr. Allis stated he doesn't have the financial resources to build but also doesn't want to deteriorate the area by putting up just anything. He stated he can't rent the building already there and doesn't want to have to keep policing the property for illegally parked vehicles.

Stancel stated that the Planning Department is opposed to this request as well as the Economic Development Assistant, Beth Thompson, who submitted a letter of opposition for the record. He stated that there is no hardship involved as the property is allowed for many uses. He stated it is a prime piece of waterfront district land. Secondly, he stated that it would not be in the public interest to use the land for a storage area as there has been an extensive push to upgrade the waterfront at the federal, state and local levels with \$200,000 being spent on the Pedestrian Bridge adjacent to the property. He concluded by stating that a storage facility is not a good use of that property.

Mr. Allis reiterated his previous statements and stated that since his structure can be removed easily, it wouldn't be hard to use the property for something else in the future when the development actually begins to happen.

### **PUBLIC HEARING CLOSED**

Christenbury asked the Planning and Economic Development Departments to continue to work with Mr. Allis to find a better usage of his land. He stated there is no hardship in this case, it violates the spirit and intent of the waterfront development project and it may impact negatively on the abutters.

Callaghan concurs stating that he understands that there may be a tax burden, but this doesn't constitute a hardship.

### **FIVE CRITERIA:**

1. It is the Board's conclusion that this applicant does not face an unnecessary hardship. No demonstration of other than financial presented and other permitted uses are available.
2. It is the Board's conclusion that the variance will not deliver substantial justice. This variance is not in accordance with the Waterfront Development Plan as well as the Zoning Ordinance.

3. It is the Board's conclusion that the variance will not be in harmony with the spirit and intent of the zoning. The ordinance specifies a wide variety of uses suitable for the area and this use is excluded.
4. It is the Board's conclusion that the variance will result in a diminution in value of surrounding properties. (Christenbury voted will not). This variance does not fit in with current or future plan for waterfront area.
5. It is the Board's conclusion that the variance will not be of benefit to the public interest. This variance does not fit in with current or future plan for waterfront area and this use is unnecessary at this time.

**MOTION:**

Mullan made the motion to deny the variance.

Motion was seconded by Callaghan.

U/A

4. 97-19, Sylvio & Laura Ramsey, 9 Meridian Dr., a/k/a Assessor's Map I, Lot 75-U, Zoned R-12 requests a variance from: (1) the provision of Article V, Section 170-16 to construct an attached garage onto a single family dwelling within approximately twenty-one and one-half (21.5) feet of a front property line as it abuts a street where a minimum of thirty (30) feet is required and within approximately fourteen and one-half (14.5) feet of a side property line where a minimum of fifteen (15) feet is required; and (2) the provisions of Article V Section 170-41.A to enlarge a non-conforming structure.

Mr. Ramsey, 9 Meridian Dr. explained that his property is angled thereby making it impossible to meet the set back requirements and that he is a disabled vet and would like to have a garage to avoid shoveling in the winter.

Tom Clark clarified for the Board where the garage would be located and explained that it is barely going over the lines.

**MOTION:**

Christenbury moved to accept the case.

Mullan seconded the motion.

U/A

**PUBLIC HEARING OPENED**

Stancel stated that as long as there are no abutters here to speak against this, then the Planning Department does support the variance. He stated the entire project was built under more lenient allowances and the houses were set at angles, but if they were street, they would meet the set backs. He stated many of the properties already have garages or other structures and feels this would be fair.

**PUBLIC HEARING CLOSED**

**FIVE CRITERIA:**

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. The unique layout of house on land, built under a previous ordinance, requires a variance for any addition similar to what surrounding homes now have.
2. It is the Board's conclusion that the variance will deliver substantial justice. This allows equal use enjoyed by abutters.
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 was to allow reasonable setbacks. This will allow the setbacks to remain reasonable.
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.
5. It is the Board's conclusion that the variance will be of benefit to the public interest. The enhancement of applicants property will enhance surrounding properties as well.

**MOTION:**

Christenbury moved to grant with no conditions.

Callaghan seconded the motion.

U/A

5. **Z97-20, Annunciation Greek Orthodox Church, 93 Locust Street, (Applicant: Airing and Associates, Architects), requests a variance from: (1) The provisions of Article V, Section 170-16 to construct a two-story side addition onto a church within three (3) feet of a rear property line where a minimum of fifteen (15) feet is required; and (2) the provisions of Article V Section 170-41.A to enlarge a non-conforming structure.**

Matt Wirth, Architect with Airing and Assoc., explained the background of the church building which was built in 1958 and has 0 setbacks in the rear of the building. He explained that they are proposing an addition which will hold 5 classrooms and storage space. He stated they will also be able to create another entrance to the function facility which will allow elderly and disabled members to gain access as currently the entrance is narrow and up steep stairs. He stating the are not enlarging the seating capacity of the church. He stated that there is one parcel of land that goes along the back which contains 3 springs and is unbuildable. He stated the other part of the request is for enlarging an existing non-conforming building as they do not meet the 40 space per patron requirement. He stated currently the city allows parking on both sides of Locust Street and in the Municipal Parking lot on Sundays.

Stancel stated the drainage on the property goes into the city parking lot and asked if that will be corrected with this project?

ZBA

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Wirth stated there is a city man-hole where they intend to direct the drainage to. Clark stated it was his understanding that they weren't asking for any changes in the parking requirements or additional parking. Wirth stated that is correct, this is for existing members only.

**MOTION:**

Christenbury moved to accept the application.

Mullan seconded the motion.

U/A

**PUBLIC HEARING OPENED**

Rev. Dean Panagos explained that the church was built in 1958 after a devastating fire which destroyed the Unitarian Church, was built with limited funds and in the present location because the parishioners like the downtown area. He stated they are able to build this much needed education facility and elderly access because of a generous gift from a parishioner. He stated the church is not expanding, but needs to meet current needs.

**PUBLIC HEARING CLOSED**

Callaghan discussed the parking issue asking if there is an agreement with the city and are there any future plans for the city lot.

Stancel stated that he hasn't researched if there is actually an agreement or not and feels that the Site Review and Planning Board will address this issue.

Callaghan stated there would only be a problem if they use the facility on other days beside Sunday.

Colbath asked what would be the parking requirements?

Clark stated that there should be 1 space for every 4 seats.

**FIVE CRITERIA:**

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. The unique layout of land and area creates hardship.
2. It is the Board's conclusion that the variance will deliver substantial justice. This will provide needed services in the community and will allow for ADA improvements for parishioners.
3. It is the Board's conclusion that the variance will be in harmony with the spirit and intent of the zoning ordinance. There is no adverse effect on abutting property and this building will not go into the setback as far as the existing structure.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. No evidence presented.

5. It is the Board's conclusion that the variance will be of benefit to the public interest.  
This will provide needed ADA access and allow for educational facilities for parishioners.

**MOTION:**

Callaghan moved to grant with the condition that the drainage issue be resolved to the satisfaction of the Planning staff.

Christenbury seconded the motion.

U/A

6. **Z97-21, Christopher and Lisa Nash, 382 Blackwater Rd., a/k/a Assessor's Map A, Lot 26-5, Zoned R-40 requests an Equitable Waiver of Dimensional Requirements from the provisions of Article V, Section 170-16 to maintain a single family dwelling forty-five and six-tenths (45.6) feet from a front property line as it abuts a street where a minimum of fifty (50) feet is required.**

Art Nicholas of Norway Plain Assoc. stated that this is a clear cut example of what an equitable waiver is for. He reviewed the background of the purchase of the property and the various designs that were drawn up stating that the point of measuring the 50' setback was different in each one and that a building permit was issued in March of 1997 and construction began. He stated there was a good faith effort to meet the requirements but because the title company surveyor reported a 50' +/-, the plan was denied. He stated they used what they had to work with and are now asking for a waiver so as not to have to move the existing structure.

**MOTION:**

Christenbury moved to accept the case.

Callaghan seconded the motion.

U/A

**PUBLIC HEARING OPENED**

Stancel stated that the Planning Department supports this waiver request.

**PUBLIC HEARING CLOSED**

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
2. ~~Was the~~ nonconformity was discovered after the structure was substantially completed.  
Vote - yes  
Error interpreting the right of way caused problem.

- 3. Does the nonconformity constitute a nuisance or diminish the value or interfere with future uses of other property in the area.  
Vote - No  
No evidence of interference present or expected.
- 4. Does the cost of correction far out way any public benefit to be gained.  
Vote - yes  
Cost of relocation would be unreasonable.

**MOTION:**

Christenbury moved to grant the equitable waiver.

Mullan seconded the motion.

U/A

**2. OLD BUSINESS**

- A. **Z 97-17, Gerald Nash and S.A.T. Sr. Ltd. Partnership (Applicant: Ernest Carrier Trust), Northway Circle, a/k/a Assessor's Map D, Lots 81-A 1, 2, and 3, Zones R-12, requests a variance from the provisions of Article IV, Section 170-12, Table 1, Part A, to construct a two-family dwelling on each of three (3) lots in a R-12 Zoning District.**

Attorney Malcolm McNeill began by presenting the background of the property stating that Realtor Priscilla Smith, who is in attendance, tried for several years to sell the property as single family house lots without success. He stated the lots look out upon an 80 resident rehabilitation center as well as a large apartment complex.

**Board Member John Murphy is now in attendance (approx. 9:10 p.m.)**  
*(McNeill reviewed information previously discussed.)*

He explained that the developer is proposing a reasonable use for this property of 2 family dwellings on the 3 lots. He stated that a natural berm exists as a buffer and feels that the single family dwellings on Glenwood Avenue which abut the property will only be able to see roof tops. He stated that the neighbors are requesting a 10' fence as a part of this project but feels that the already existing natural vegetative barrier will serve the purpose and that the complaint of having children cutting through the property will likely be deterred by having building on the lots. He stated the uniqueness of this site is its location. He stated when this area was rezoned, these 3 lots were not included but he has no idea why. He stated the only interest in the properties have been for parking and storage space. He then passed around pictures showing the relationship between the properties on Glenwood Avenue and the proposed use property and the height of the berm. He then addressed the Five Criteria. He concluded by stating that the concern regarding parking is not an issue as there will be onsite parking and parking is not allowed on that side of Plaza Drive anyway.

Christenbury asked Mrs. Smith what seems to be the problem with selling this property as a single family lot?

*deleted statement*  
*motion granted w/out vote but by response to each*

ZBA

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Mrs. Smith stated there has basically been no interest for that use, but for parking and storage uses.

Christenbury asked what would the effect of putting duplexes on the property be on the surrounding properties?

Mrs. Smith stated the property values are good with duplexes.

Stancel asked what is the age of the surrounding houses?

Mrs. Smith stated she believes they were built in the early 50's.

Stancel stated that houses built prior to 1964 in that area are able to convert their properties to duplexes if they chose to do so.

Colbath asked if Mrs. Smith is a realtor or appraiser and how much the lots were being marketed for?

Mrs. Smith stated she is a licensed realtor and was selling the lots for \$30,000 each.

**MOTION:**

Christenbury moved to accept the case.

Murphy seconded the motion.

U/A

**PUBLIC HEARING OPENED**

Stancel stated that the Planning Board is in favor of the variance as it is a unique piece of property and feels this is a proper use of the property considering that the surrounding properties have that option as well. He stated they do recommend that the vegetation be maintained.

Christenbury addressed the traffic concern stating that he feels that 3 duplexes will have an insignificant impact on the traffic.

Mr. Wes Harrison??, speaking on behalf of Dorothy Perron, 51 Glenwood Ave, asked that the letter sent on June 16, 1997 by Mrs. Perron, be added to the record. He then explained that the berm being mentioned significantly drops behind her property. He stated there is a problem with children cutting through the yards and feels that if the variance is granted then a privacy fence should be erected by the developer. He stated that the vegetation loses its leaves in the winter and is not a deterrent to children cutting through the yards.

McNeill stated that he has frequently supported putting up fences for certain projects, but feels that it is unnecessary this time because of the natural barrier that already exists. He stated he would agree to adding more trees. He stated he also feels that the existence of people living there will deter the children from cutting through yards.

**PUBLIC HEARING CLOSED**

Callaghan stated he feels that there should be a fence and trees combination as a compromise.

Christenbury stated that he would rather see vegetative border but feels that the Planning Department should work out the details. He stated he feels that there is a hardship when a lot in that location cannot be sold for \$30,000.

Discussion ensued regarding fencing vs. vegetative border.

**FIVE CRITERIA:**

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. The layout and location and present zoning are not conducive to single family development. Allowing similar possibilities for development as enjoyed by Glenwood Avenue residents.
2. It is the Board's conclusion that the variance will deliver substantial justice. This allows an appropriate use of land given location and surrounding uses.
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 zoning in areas was to not overload services and this use is similar to all surrounding uses.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. Testimony provided supports no diminution.
5. It is the Board's conclusion that the variance will be of benefit to the public interest. There is no detriment to public interest and allows residential use in a residential zone.

**MOTION:**

Christenbury moved to grant with the condition that natural berm be maintained and sufficient vegetative screening be maintained or added as determined by Planning Department.

Mullan seconded the motion.

Motion passed 3-2, Colbath and Callaghan opposed.

**ADDENDUM to June 2, 1997 Minutes**

Callaghan moved to accept the addendum.

Mullan seconded the motion.

U/A

Christenbury moved to adjourn.

Mullan 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