

**DOVER ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
AUGUST 21, 1997**

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

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 minutes of July 17, 1997

MOTION:

Parks Christenbury made the motion to accept the minutes of July 17, 1997

Rick Callaghan seconded the motion.

With the following changes:

1. Page 3, line 13, change "deteriorate the are by putting up just anything." to read "deteriorate the area by putting up just anything."
1. Page 5, second paragraph from the bottom, sixth line down, change "He stating the are not enlarging" to read "He stated they are not enlarging."
2. Page 7, Item #2 at the bottom of the page, change "Was the nonconformity was" to read "The nonconformity was."
3. Page 8, "MOTION: Christenbury moved to grant the equitable waiver, Mullan seconded the motion. U/A" should be deleted. The Board discussed how a decision is made on an Equitable Waiver of Dimensional Requirements and according to the 1997 ZBA Handbook, it does not require a motion but a simple statement as to whether or not the waiver is granted or denied, based on the responses to the Equitable Waiver questions.

U/A

ITEM # 2 OLD BUSINESS

- B. Z 97-13, Jean Darling & Bruce Tibbetts, 20 Sunnybrooke Dr., a/k/a Assessor's Map L, Lot 30-B, 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.**

NOTE: This item is being heard as a result of a Motion for Rehearing granted on July 17, 1997.

David Smith, who is not employed by Federal Savings Bank but is representing them, was reporting only on the marketability of the property. Upon inspecting this property, in his opinion it has no marketability as the building stands now because it is in nonconformance. with the ordinance.. He also does not feel that it effects the marketability of the abutting property.

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PUBLIC HEARING OPENED

Richard Lucier - The abutter at 18 Sunnybrooke Dr. - Still opposes the request. He still feels that the applicant should have to comply with the required setback just as others in the park. Also for the safety factor.

David Smith - Stated that the garage enhances the area and would not detract or hurt the surrounding properties.

Bruce Woodruff - The Planning Dept. still supports the request based on the new evidence that it will not result in a diminution in value of surrounding properties.

PUBLIC HEARING CLOSED

Parks Christenbury - Originally it was determined that the setback was met but a new survey showed that the plot plan was not accurate. The abutter feels that the garage devalues his property but does it and would this infringe upon the abutter. It appears that the garage does not effect the abutter because he can still do what he wants to with his property.

* ① Rick Callaghan - The abutter does not have the ability to use his property in the same manner as the applicant because a similar building could not be built on his property.

The Board discussed the construction of a similar building on the abutting lot and the distance between them in regards to the fire code.

Tom Clark - There is nothing that regulates the distance between two buildings on two separate lots

Bruce Woodruff - There could be a condition put in place that would require a fire wall for protection.

Bill Colbath - Feels that it does effect the property value of the abutter and the use of his land. This is not a zone that allows building right on the property line. There is also an issue with the meters and power line. The maintenance of the garage will effect the abutters property.

Parks Christenbury - The applicant thought they were following all applicable rules and were building in conformance.

* ② Rick Callaghan - Agrees there is a problem and is not in agreement ^{Totally} with the law's intent. He questions the appraisor's document. A structure built right on the property line does have some impact on the dollar value.

The Board discussed the law.

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Bruce Woodruff - Expressed concern that the Board may not be interpreting the law correctly and suggested an opinion be obtained from the City Attorney.

Bill Colbath - Thinks the Board is interpreting the law correctly, but may not agree with the assessment about the impact on property values.

Dean Trefethen - Agrees with Bill Colbath.

CRITERIA:

1. Does the request involve a dimensional requirement, not a use restriction? Five yes responses.
2. 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, and was the violation not an outcome of ignorance of the law or bad faith but as the result of a legitimate mistake? Five responded yes.
3. Does the nonconformity not constitute a nuisance or diminish the value or interfere with future uses of other property in the area? Two responded yes, 3 responded no.
4. Would the cost of correction far outweigh any public benefit to be gained? Five responded yes.

The Equitable Waiver of Dimensional Requirements was denied.

The applicant was advised they have thirty days to appeal.

ITEM # 2.

C. Consideration of a Motion for Rehearing request submitted by Joseph Allis, Washington St., a/k/a Assessor's Map 23, Lot 13, Zoned CWD concerning ZBA Case #Z 97-18.

Joseph Allis - Feels that a building would look better than cement posts to keep out illegal parking. He presented a picture of the proposed building. He stated that they would not be tin boxes as Beth Thompson, Economic Development Director, stated in her letter.

Dean Trefethen - Asked if the applicant knew that new information is required for a rehearing. That financial consideration is not acceptable.

Joe Allis - Yes he was aware of it.

Bill Colbath - He does not see any new information.

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Parks Christenbury - Agrees. There is no new evidence. Parks corrected the applicants statement that Beth Thompson refered to the storage units as "tin boxes". She referred to them as "sheet metal storage units."

Robert Mullan - Could see no new evidence.

Rick Callaghan - No new evidence.

MOTION

Parks Christenbury made the motion to deny the request for a rehearing.

Rick Callaghan seconded the motion

4 voted to deny, Dean Trefethen abstained because he was not at the first hearing.

Dean Trefethen - Reminded the Board Members, that because it would put a member in the position to be in conflict of interest, the cases should not be discussed with an applicant or fellow Board Members prior to the hearing.

MOTION

Rick Callaghan made the motion to postpone the discussion of the By-Laws.

Parks Christenbury seconded the motion.

U/A

The Board discussed the possibility of having a special meeting for three purposes. The first, to discuss revision to the By-Laws. The second, to discuss the wording of the form for an Equitable Waiver of Dimensional Requirements. The third, for a discussion with the City Attorney on the new Equitable Waiver of Dimensional Requirements law, if the Board felt this was necessary. Board members should bring their calendars with them to the September meeting so that the Board can schedule a special meeting if the Board so desires.

These minutes were taken without the benefit of a tape recording because the sound system was not in use due to renovations.

MOTION

Bob Mullan made the motion to adjourn.

Bill Colbath seconded the motion.

U/A

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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