

**DOVER ZONING BOARD OF ADJUSTMENT  
MINUTES OF SPECIAL MEETING  
OCTOBER 21, 1997**

**MEMBERS PRESENT:** Dean Trefethen, Chairperson, Bill Colbath, Vice Chairperson, Rick Callaghan, Parks Christenbury, and John Murphy

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

Dean Trefethen called the meeting to order.

**ITEM #1**

**Z 97-25 Bank of New Hampshire, (applicant: Civilworks, Inc.), Watson Rd., a/k/a Assessor's Map E, Lot 32-1, Zoned ETP, requests a Variance from the provisions of Article V, Section 170-16 to establish twenty-five (25) foot side yard setbacks where a minimum of one hundred (100) feet is required.**

Dean Trefethen - Asked if a legal opinion on this case had been obtained.

Tom Clark - Not in writing but verbally City Attorney George Wattendorf's opinion was, based on the case Ouimette referenced and also the cases that were referenced in the Ouimette case, felt that the common thread that ran throughout was that as long as there are co-applicants, if the owner also signs the application, then they have equal standing.

John Murphy - There was a two part question.

Dean Trefethen - Yes. (1) Option holder and (2) diminution of value.

Tom Clark - City Attorney did not have enough time to review all the data to address the diminution of value.

Bruce Woodruff - The Board needs to weigh the information presented and make a decision.

Dean Trefethen - After reviewing the information presented, the following is a summary of his conclusion:

1. The history between the applicant and the abutter is of no concern to the ZBA. If one of these parties feels wronged by the timeline of events, or to each other, it would be a civil matter and of no concern to the Board.

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2. This lot was originally subdivided for residential use, and this use is no longer permitted.
3. It is a lot of record (nonconforming - just like the abutters).
4. The literal application of the present setbacks renders the lot unbuildable - a classic situation and the ZBA is designed to give relief.
5. The proposed use (office for professional services) is a permitted use. Size of business is not relevant - benefit vs. lot size is subjective.
6. Abutter's counsel raised issue that the applicant didn't prove any detriment to value - Abutter presented no evidence to show how they are effected.
7. The City legal staff opinion confirms long standing policy of the Board to allow the option holder to present the case for hardship and relief.

Dean feels that the hardship in this case is that the lot is unusable without relief from setbacks. It would deliver substantial justice in that it allows owner to sell a lot otherwise not usable. He believes the spirit and intent is upheld because the proposed use is one of the types exactly desired by the City when ETP zone created. Reasonable setbacks are maintained. In regards to the diminution of value, there is no proof to this Board either way, although an opportunity was afforded to both applicant and the abutter. The Board can derive their own conclusions. His is that there is no direct or quantifiable effect on the abutter. It is in the public interest in that it allows continued development of ETP. He will vote in favor for the variance.

John Murphy - He had two issues that he felt strongly about. One was where the hardship lies. He accepts the verbal opinion of the City Attorney and feels that he has received his answer. The other issue is diminution of value. He came to the same conclusion as Dean in regards to the diminution of value. It is more up to the abutter to prove diminution of value.

Rick Callaghan - He sited cases in the book in regards to the hardship. He feels comfortable that the option holder does have a hardship in that he represents the owner in this case. He has no problem with the diminution in value.

Bruce Woodruff - The Planning Dept. supports this request. The ETP Zone was created in 1987 in a time of boom and time where large companies were anticipated to come in requiring large pieces of property. However, today that is not the case. Master Plan revisions will indicate the discussion of changing the zone so that there will be two to three acre lots changing the setback requirements accommodating smaller companies.

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Parks Christenbury - Is all set.

Bill Colbath - Has no objection to granting the variance.

Dean Trefethen - Should the variance be granted for relief on the originally requested setback of 25 feet or the modified request of 40 and 70 feet.

The Board discussed which setback figure to grant the variance on and the amendment to the Master Plan in regards to the new setback requirements and it was the general consensus to go with the 40 foot setback.

#### FIVE CRITERIA

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. Without relief it is an unbuildable lot, which would be buildable otherwise but for the current setbacks.
2. It is the Board's conclusion that the variance will deliver substantial justice. It allows development of an otherwise unbuildable lot. The lot was a lot of record at the time of the creation of the ETP zone and the proposed use is allowed in the ETP.
3. It is the Board's conclusion that the variance will be in harmony with the spirit and intent of the zoning ordinance. The proposed use is a permitted use in the zone and reasonable setbacks are maintained. Also the proposed density agrees with the spirit and intent of the ordinance.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. There was no evidence presented by either party that there is quantifiable effect on property values of the abutters. A professional building constructed adjacent to another professional building will not effect either's property.
5. It is the board's conclusion that the variance will be of benefit to the public interest. It allows continued development of the ETP zone which should economically benefit the City as a whole.

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**MOTION:**

Bill Colbath made the motion to grant the variance with a forty (40) foot side setback per applicant's verbal request.

Rick Callaghan seconded the motion.

U/A

**MOTION:**

Rick Callaghan made the motion to adjourn.

John Murphy seconded the request.

U/A

**MOTION:**

Dean Trefethen made the motion to move into Executive Session

Parks Christenbury seconded the motion.

U/A

**ITEM: Suit against the City in the Strafford County Superior Court. Federal Savings Bank v. Dover Zoning Board of Adjustment. Re: 20 Sunnybrooke Dr., Dover, NH.**

George Wattendorf - City Attorney - Summary is it appears that the Board based its denial on the fact that the market value of the adjacent property to 20 Sunnybrooke Dr. is diminished. An analysis was presented to the Board of 20 Sunnybrooke Dr., Dover by Apple Appraisal.

Bill Colbath - It wasn't a market analysis. It was basically a statement that it should not affect neighboring properties. It was just a professional opinion.

George Wattendorf - If it is the Board's position that the market value is diminished because the garage is right next to his property line, then we need to have something to back it up. Propose that we hire someone ourselves to analyse this property and give us his determination. This will be needed if it goes to court. He suggests that we accept whatever he comes back with. There is always the risk that the analysis will show that the property value does not diminish. The funds for a suit such as this are not in the City budget so the case may need to be reconsidered by the Board and the request granted.

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Rick Callaghan - There was a second part to this issue . The abutter's use of his property.

The Board and the City Attorney discussed the diminution of the abutters property due to his not being able to use it completely because the garage is on his line. He cannot plant a garden or anything else and the owner of the garage cannot maintain it without trespassing on the abutter's property. There is also water run off from the garage to the abutter's property.

The Board agreed to hire an appraisor to analyse this property/

**MOTION:**

Parks Christenbury made the motion to adjourn

John Murphy seconded the motion

U/A