

**DOVER ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
NOVEMBER 20, 1997**

MEMBERS PRESENT: Dean Trefethen, Chairperson, Bill Colbath, Vice Chairperson, and John Murphy

STAFF PRESENT: Thomas Clark, Building Official, and Steve Bird, Planning Dept.

Dean Trefethen, Chairman, called the meeting to order and advised the applicants that there were only three (3) Board members present and the applicants may want to consider whether or not to be heard by the three members or postpone until the December meeting.

ITEM #1: NEW BUSINESS

- A. Approval of minutes for the workshop of October 6, 1997

MOTION:

John Murphy made the motion to accept the minutes of October 6, 1997.

Bill Colbath seconded the motion.

U/A

- B. Approval of minutes for the regular meeting of October 16, 1997

MOTION:

John Murphy made the motion to accept the minutes of October 16, 1997

Bill Colbath seconded the motion.

With the following corrections:

1. Pg. 3, 2nd. paragraph, correct "Mary Rousodo" to "Mary Rizzuto"
2. Pg. 6, last paragraph, change "fill was brought in" to "fill was removed" and eliminate "been widened and"

U/A

- C. Approval of minutes for the special meeting of October 21, 1997.

MOTION:

John Murphy made the motion to accept the minutes of October 21, 1997.

Bill Colbath seconded the motion.

U/A

Dean Trefethen - Asked the Board members if they had any corrections to the By-Laws as submitted in a draft form for the Board's consideration.

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Dean Trefethen - On page 3 of the By-Laws, last two items on the page (f) and (g), change "addressing only the original arguments" to read "addressing only the new arguments presented in the public hearing."

MOTION:

Dean Trefethen made the motion to make the above correction to the By-Laws.
John Murphy seconded the motion.
U/A

MOTION:

Dean Trefethen made the motion to have the first official reading of the By-Laws at the next regularly scheduled meeting.
John Murphy seconded the motion.
U/A

Dean Trefethen advised the Board that Mr. & Mrs. McConnell submitted a request for a rehearing concerning the Our House case heard in October. The request had been received after the 20 day limit and therefore their request for a rehearing has been denied.

John Murphy asked what was the accurate number of children that would be allowed in the Our House case. The approval was for 9 children but the newspaper had reported up to 12 children. If they do go for 12 children, what recourse does the Board have?

Tom Clark also noted this and checked with the Planning Office and placed a call in to Ms. Rizzuto for clarification. Tom has not heard from her as of this date.

ITEM #2: OLD BUSINESS

- A. Consideration of a Motion for Rehearing request submitted by Advanced Systems in Measurement and Evaluation, Inc. concerning Zoning Board of Adjustment case #Z 97-25, Bank of N.H. (Applicant: Civilworks Inc.), Watson Rd., a/k/a Assessor's Map E, Lot 32-1, Zoned ETP.

Atty. Danford Wensley - Advised the Board that he does not have the authority from Advanced Systems to make the decision as to whether or not to be considered by the Board this evening with 3 members or to request postponement till the next meeting.

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MOTION:

Dean Trefethen - Made the motion to have a special meeting on December 1, or December 4th. at 6:30 p.m. to consider whether or not to grant or deny this request for a rehearing.

John Murphy seconded the motion.

U/A

ITEM #3.

Z 97-26 DRP Realty Trust, Hubbard Rd., Lot 45, a/k/a Assessor's Map K, Lot 14-45 Zoned R-40, requests an Equitable Waiver of Dimensional Requirements from the provisions of Chapter 155, Article IV, Section 155-22.F to maintain a single family dwelling within approximately eighteen (18) feet from a side property line where a minimum of twenty (20) feet is required.

Dave Paolini - Part of the lot is in the R-12 and part is R-40. When the lot was pined in June it was staked out with the fifteen (15) foot sideyard. When the foundation was poured, they felt that it was within the guidelines because it was under the assumption that it was R-12. He was not aware that it was an R-40 and that it was an A.D.S plan. Kevin McEnaney did the certified plot plan and that everything was all set. A week later Kevin contacted Dave telling him that there is a problem, that the lot is in an R-40 zone and that he may have to get a variance for the frontage and the sideyards, because in an R-40, a fifty (50) foot setback is required. But in the A.D.S. requirement is a thirty-five (35) foot frontage and twenty (20) on the side. There are 6 houses that are in the A.D.S. plan. The side that is in question has a garage and the garage cannot be decreased in size.

PUBLIC HEARING OPENED

Steve Bird - One of the criteria for the granting the Equitable Waiver is that the violation was not an outcome of the ignorance of the law or ordinance. This case could be construed as ignorance of the ordinance in terms of which zoning district they are in. For that reason the Planning Dept. could not support this request.

PUBLIC HEARING CLOSED

Dave Paolini - When he filled out the Building Permit application he did fill in R-12. It was his mistake. Does not see where the Planning Dept. feels that it was in ignorance. He does not feel that it was in ignorance.

John Murphy - Asked Tom if a Building Permit would have to be presented in order for a foundation to be poured and if the City checks it out for zoning.

Tom Clark - Yes. The problem with this is that the application had lot 25 on it and that lot is in an R-12 zone. And the original plot plan indicated sufficient setback. However, the application should have stated lot 45. It was not until the permit was issued that Dave noticed that it read lot 25 and should have read lot 45.

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Dean Trefethen - Asked for clarification from the Planning Dept. of their reason for nonsupport being "construed as ignorance of the ordinance."

Steve Bird - In reviewing the application, the Planning Department wants clarification as to whether or not this was a mistake due to not checking what zoning district they were in, or was this due to ignorance. It certainly would not be a wilful mistake. This was compounded because the application indicated the wrong lot.

John Murphy, Bill Colbath and Dean Trefethen agree that it is a legitimate mistake and not due to ignorance of the law.

FOUR CRITERIA

1. It is the Board's conclusion that the request does involve a dimensional requirement.
2. It is the Board's conclusion that the nonconformity was discovered after the structure was substantially completed or after a vacant lot in violation had been transferred to a bona fide purchaser, AND the violation was not an outcome of ignorance of the law or bad faith but resulted from a legitimate mistake.
3. It is the Board's conclusion that the nonconformity does not constitute a nuisance nor diminish the value or interfere with future uses of other property in the area.
4. It is the Board's conclusion that the cost of correction does outweigh any public benefit to be gained.

MOTION:

John Murphy made the motion to grant the Equitable Waiver of Dimensional Requirements

Bill Colbath seconded the motion.

U/A

ITEM #4

Z 97-27, Theodore S. Hackett, 309 Middle Rd., a/k/a Assessor's Map M, Lot 89-D, Zoned R-40, requests an Equitable Waiver of Dimensional Requirements from the provisions of Article V, Section 170-17 to maintain an accessory structure (in-ground swimming pool) within approximately eight (8) feet of a side property line where a minimum of ten (10) feet is required.

Theodore Hackett - When the pool was about 90% installed, it was brought to his attention that it was too close to an abutter, Mr. Chenevert's property. He asked another abutter, Mr. Guay, the one most effected, if he would be willing to sell him some of his property but he declined. Mr. Guay also said that it didn't matter to him that it was so close to his property. It is 13-1/2 inches too close to the abutter's property. When

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Mr. Hackett bought the property about one and a half years ago, the owner and he walked the boundaries, and the owner referred to a tree stump with barbed wire wrapped around it and that it was the property line. When Theodore had figured his dimensions and applied for his permit for the pool, that was what he went by.

PUBLIC HEARING OPENED

Tom Clark - The abutter that lodged the complaint, Mr. Chenevert, said that the pool encroached on his lot. However, the plan that we had showed that there was plenty of room between Mr Chenevert and Mr. Hackett and he informed Mr. Chenevert that he would have to present some kind of documentation that this was not the case. That is why he did the survey. The Building Permit was issued based on the plan that was presented.

Steve Bird - Due to the incorrect lot line information presented by the previous owner, The Planning Department supports this request for an Equitable Waiver.

PUBLIC HEARING CLOSED

The Board and Tom discussed the possibility of requesting a certified plot plan for pools in the future.

FOUR CRITERIA

1. It is the Board's conclusion that the request does involve a dimensional requirement.
2. It is the Board's conclusion that the nonconformity was discovered after the structure was substantially completed or after a vacant lot in violation had been transferred to a bona fide purchaser, AND the violation was not an outcome of ignorance of the law or bad faith but resulted from a legitimate mistake.
3. It is the Board's conclusion that the nonconformity does not constitute a nuisance nor diminish the value or interfere with future uses of other property in the area.
4. It is the Board's conclusion that the cost of correction does outweigh any public benefit to be gained.

MOTION

John Murphy made the motion to grant the request for Equitable Waiver of Dimensional Requirement

Bill Colbath seconded the motion.

U/A

MOTION

John Murphy made the motion to adjourn.

Bill Colbath 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