

DOVER ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
DECEMBER 18, 1997

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

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

Dean Trefethen, Chairman, called the meeting to order.

ITEM #1: NEW BUSINESS

- A. Approval of minutes for the regular meeting of November 29, 1997

MOTION:

John Murphy made the motion to accept the minutes of November 29, 1997 with the following correction.
Page 3, third paragraph down, first line should read "When the lot was pinned in June".
Rick Callaghan seconded the motion.

U/A

- B. Approval of minutes for the special meeting of December 1, 1997

MOTION:

John Murphy made the motion to accept the minutes of December 1, 1997 with the following corrections:

1. Pg. 1, last paragraph, first line should read, "he found that it was primarily a rehash of what has"
2. Pg. 2, fourth paragraph from bottom, 2nd. line should read "that there would not be a diminution of value to the gentleman's property of #18 Sunnybrooke Dr.,"

Rick Callaghan seconded the motion.

U/A

- C. First reading of proposed amendments to the By-Laws

MOTION:

Dean Trefethen made the motion to waive the actual reading of the amendments to the By-Laws.
Bill Colbath seconded the motion.

U/A

ZBA

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MOTION:

John Murphy made the motion to accept the amendments to the By-Laws with the following correction:
Page 2, first paragraph, second line should read, "conflict of interest, then the Board shall elect from its rank a Chairperson for that particular case or meeting."

Rick Callaghan seconded the motion.

U/A

Dean Trefethen - Advised the Board that the case of 20 Sunnybrooke Dr. (Z 97-13) has been remanded back to the Board and it will be reheard at the January 1998 regular meeting.

ITEM #3.

Z 97-28, Edward, Mary & Catherine O'Brien, c/o Katherine Valente (Applicant: Gene Schragger), off Spur Rd., a/k/a Assessor's Map M, Lot 15, Zoned R-20 requests a variance from the provisions of Article V, Section 170-16 to demolish an existing building and construct a single family dwelling within twenty (20) feet of a front property line as it abutts a street where a minimum of thirty-five (35) feet is required.

Gene Schragger - This is a summer camp in poor condition and he would like to demolish it and rebuild.

Bill Colbath - Questioned Tom Clark regarding Katherine Valente's authority to sign the application as owner.

Tom Clark - The names as indicated on the application and in the agenda item are as listed on the deed, tax records and plot plan.

Dean Trefethen - Questioned Tom about the rear set back as it approaches the river. Is this in the Conservation District?

Tom Clark - Does not feel that it applies in this case because there is a provision in the Zoning ordinance under the Conservation District that exempts pre-existing lots up to 75 feet from mean high water as opposed to 100 feet. So should the variance be denied and the building be moved back, at this point does not appear that it would encroach in the Conservation District that would require Planning Board approval. However, the State has their designation of wetlands as 100 feet from the highest visible tide, so possibly, if it were moved back they would have to petition the Wet Lands Board of the State of New Hampshire for a dredge and fill permit.

Dean Trefethen - So the provision of 20% grade does apply here because it is an existing lot?

Tom Clark - Correct. The 20% was an amendment.

Gene Schragger - It drops off rather quickly at the back of the present structure.

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MOTION:

John Murphy made the motion to accept the case.
Rick Callaghan seconded the motion.
4 in favor and Bill Colbath opposed.

PUBLIC HEARING OPENED

Steve Bird - asked Gene Schragger where the existing septic system is and if thought had been given to replacing it.

Gene Schragger - There is an existing septic system and most likely a new septic system will be installed.

Steve Bird - Asked if there is any reason why he could not relocate the building and comply with the setbacks.

Gene Schragger - The only setback is on the front which is 20 and his request is to keep that. If he were to move the building back to 35 feet he doesn't know what the situation would be with the high water mark and it is very steep right at the back of the building.

Steve Bird - Asked the applicant what he felt was the hardship on this piece of land.

Gene Schragger - Feels that moving the house back another 15 feet and having the set back of 35 feet would bring it to a slope that is too steep.

Steve Bird - The Planning Dept. opposes the request because the building can be relocated so that it does meet the setback and ~~doe not~~ feel there is a hardship.

does
PUBLIC HEARING CLOSED

Parks Christenbury - Does agree with the Planning Dept. He does not see a hardship.

John Murphy - Agrees that there is ample room to put the home on the property but disagrees with the Planning Dept staff. The applicant would not have a very usable backyard because the slope is too steep and feels this is the hardship.

Rick Callaghan - Feels that it is feasible to build with the slope. Believes that there is not a hardship.

FIVE CRITERIA

1. It is the Board's conclusion that the applicant does not face an unnecessary hardship. (John Murphy voted *does*). It is feasible to build a new structure and comply to all setbacks so there is no hardship.

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2. It is the Board's conclusion that the variance will not deliver substantial justice. (John Murphy voted it will). The opportunity exists to bring the lot into compliance which is in the best long-term interest of the abutters and the City.
3. It is the Board's conclusion that the variance will not be in harmony with the spirit and intent of the zoning ordinance. (John Murphy voted will). There is enough land to allow a reasonable sized building and meet all setbacks.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. A modern structure would probably enhance the neighborhood.
5. It is the Board's conclusion that the variance will not be of benefit to the public interest. The public's interest is best served in meeting all setbacks when possible.

MOTION

Parks Christenbury made the motion to deny the variance.

Bill Colbath seconded the motion.

4 in favor and 1 opposed (John Murphy opposed)

Dean Trefethen advised the applicant that he has 20 days to appeal.

ITEM #4.

Z 97-29, Anna Demopoulos (Applicant: Robert Stowell), 20 Kirkland Street, a/k/a Assessor's Map 9, Lots 94 & 95, Zoned Office, requests a variance from the provisions of Article V, Section 170-16 to maintain two (2) lots which are non-conforming with minimum lot sizes, minimum frontage and side setback regulations.

Robert Stowell - Trittech Engineering and representing the property owner, Anna Demopoulos. When the propeties were in the process of being sold to two seperate buyers, it was discovered that the properties, although have been recognized by the City as two lots and taxed as two lots, have a deed that still treated them as one lot. According to the Attorney, this is still one lot and needed to be subdivided into two parcels. But it cannot be subdivided because it does not meet the dimensional requirements according to the current zoning. That is why this case is before the Board.

MOTION

Parks Christenbury made the motion to accept the case.

Bill Colbath seconded the motion.

U/A

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series of events that had to do with testing as 2 lot + deed as one lot

→ Rick Callaghan - Asked which occurred first, the two lots or single lot.

Tom Clark - In talking to the Title Attorney, the question came up of how it became two lots on the tax map if there were not two deeds. The maps in the Planning Office go back to 1925 and it clearly shows two separate lots then. Perhaps there was a subdivision but it was just not recorded but it was brought into the Assessor's Office years past and it was put on there. There is no way of knowing for sure what happened.

Rick Callaghan - The tax map is calling it two lots and the deed is calling it one. Which one is legal.

Tom Clark - From the civil side they need two deeds to call it two lots.

PUBLIC HEARING OPENED

Dave Francoeur - Remax Realty - Involved with the sale of this property. The Attorney wants it to go through this process so that it can become legally two lots.

Steve Bird - It is a unique situation. The office feels that they do not have to apply for a subdivision because it is already two lots. However, the Title Attorney feels that they need to and while we do not feel that it is necessary to go through this, we will not oppose the request.

Dean Trefethen - Asked the Planning Dept. if they feel that an adjustment in the lot line to include the driveway is appropriate.

Steve Bird - Yes. In viewing the site plan and the lot line, the driveway would be on the other person's property.

PUBLIC HEARING CLOSED

Rick Callaghan - Feels that it is an appropriate request.

Parks Christenbury - agrees that it is an appropriate request.

→ FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. It would be a needless and unnecessary restriction to require the land to revert to a singular lot.
2. It is the Board's conclusion that the variance will deliver substantial justice. It allows two primary structures to remain on individual lots.
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 is to have a single primary structure on a lot.

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4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. Since the applicant had two individual buyers for the separate structures, it is evident there would be no diminution in value to each property.
5. It is the Board's conclusion that the variance will be of benefit to the public interest. It allows two primary structures to continue in existence and be on their own lot.

MOTION

Bill Colbath made the motion to grant the variance.
Rick Callaghan seconded the motion.
U/A

ITEM #5.

Z 97-30, Lawrence & Susan Holman, 27 Spruce Dr., a/k/a Assessor's Map I, Lot 27-J, Zoned R-40, requests an Equitable Waiver of Dimensional Requirements from the provisions of Article V, Section 170-16 to maintain a rear addition on a single family dwelling with no rear setback where a minimum of fifteen (15) feet is required.

Lawrence Holman - He has lived in this house approximately 32 years. There is a clearing behind the house and there is approximately 15 feet from the addition to the woods. They have always kept this area cleared. When the addition was built, his wife obtained a drawing from the tax map and she measured the area from the house to what she thought was the boundary line. This plot plan was accepted by the City and the addition was built last September (1996). In May the City sent them a letter stating that they were in violation of the setback and that the addition rested right on the rear property line. They had always thought that their property line went to the woods. It was an honest mistake. No intention of encroaching on someone's land.

John Murphy - Asked why Kevin McEneaney made the survey.

Tom Clark - We were contacted by Atty. Schultz's office in May asking what was going on. We do not know why it was surveyed but that is how it came to our attention. Upon receipt of Kevin's plan, the owners were notified and we discussed what options were available.

PUBLIC HEARING OPENED

Steve Bird - Feels that the applicant made an honest mistake. The Planning Dept. supports this request.

PUBLIC HEARING CLOSED

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Dean Trefethen - Feels that development of the land behind the applicant is highly unlikely due to the nature of the land and the location of the power lines.

Parks Christenbury - Feels this should be granted. The addition will not affect anyone's property value.

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.

Based on the above responses, the Equitable Waiver of Dimensional Requirements was granted.

The Board extended its thanks to Parks Christenbury for his participation on the Board this past year. Parks will not be reapplying for membership in 1998.

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 |