

ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
FEBRUARY 16, 1995

MEMBERS PRESENT: Dean Trefethen, Bill Colbath, John Murphy
Robert Callan and Robert Mullan

ALSO PRESENT: Thomas Clark and Steve Stancel

Dean Trefethen, Chairman, called meeting to order.

ITEM #1: New Business

John Murphy made the motion to accept the minutes of the
January 19, 1995 meeting.

Bill Colbath seconded the motion.

U/A

Dean Trefethen - Received the newsletter from the State
Planning Office and notified the Board members of Planning
Workshops available.

ITEM #2: No Old Business

ITEM #3. Z 95-2, Joseph Peperato (Applicant: WDC, Inc./Gary
Merrill), 19 New Rochester Rd., a/k/a Assessor's
Map 39, Lot 17, Zoned R-12, requests a variance
from the terms of Article IV, Section 170-12, Table
I, Part C-2 and from the terms of Article X,
Section 170-40. A. and B. to expand a non-
conforming Retail/Service use (Western Auto) within
an R-12 Zoning District.

Philip Desfosses, Attorney for Western Auto - Presented an
aerial photograph of the property in question to the Board
members. The need of a variance is due to the Weeks Traffic
Circle reconstruction. There was no need of a variance
before the State took over some of the front parking area.
Mr. Desfosses reviewed the 5 criteria on the application.
The variance would allow a safer means of egress from the
property. The line of trees & shrubbery will remain for the
protection of the abutters.

Dean Trefethen - Asked if the conversion of this lot into a
parking lot would also help in the delivery of goods?

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Phil Desfosses - That is correct. It would benefit the ability of trucks delivering boats to get in and out. The existing State plan may make it impossible for trucks to get in and out. These deliveries will not be late at night.

Dean Trefethen - Asked if there would be any expansion of the existing building or an addition of a shipping dock.

Phil Desfosses - No expansion proposed. Existing to be used as is.

Dean Trefethen - Asked how many parking spaces will be lost; whether or not # of parking spaces will be increased; what is the required number of spaces for that business?

Phil Desfosses - Before the State took some of the frontage, both cars and boats could be parked out front. Now only cars or boats can park. No additional parking spaces. Only wish to regain what was lost. This is a mixed use and it requires more parking spaces. 63 parking spaces are required. Due to the road reconstruction, 20 front parking spaces will be lost.

John Murphy - Asked for an explanation of the color code on the site plan.

Phil Desfosses - The green area is the area taken by the State. The yellow area is the temporary construction easement.

John Murphy - Asked amount of footage lost.

Phil Desfosses - The State is purchasing .09 of an acre plus a 750 sq. ft. slope easement, a 50 sq. ft. drainage easement and an 800 sq. ft. temporary construction easement which is the yellow area.

.09 of an acre = 3,900 sq. ft. +/-

John Murphy - Asked what is being lost for frontage and why is it creating a traffic safety problem.

Phil Desfosses - By the State taking some of the front area, there is no longer the flexibility with cars and boats as in the past. The State's plan allows only a small entrance to the property and cars will have to use an exit onto Willand Pond Rd.

John Murphy - Asked again what the safety problem is.

Gary Merrill (WDC) - The safety problem is that cars with boats and tractor trailer trucks will have difficulty in maneuvering around and leaving the property.

John Murphy - Asked if the City or State compensated WDC either in money or land.

Phil Desfosses - Many negotiations were held in an attempt to get the City to swap land. As of this point, the City has not been able to come up with land to replace the parking.

Bob Callan - WDC is looking to replace what is lost; what is the size of lot 17?

Gary Merrill - 1/3 of an acre.

Phil Desfosses - It is larger than needed but that is what is for sale.

Bob Callan - Asked if intent is to use portion of property as a display area as well as parking.

Gary Merrill - Yes.

Bob Callan - Questions the number of parking spaces actually lost.

Gary Merrill - Explained that parallel parking will be necessary instead of what was allowed, side by side.

Bob Callan - Questioned the use of the area behind the building for additional parking and display.

Phil Desfosses - That area is already fully utilized.

Bob Callan - Feels that there is more random parking, and cars driving in towing boats are driving to the back and not leaving boats in the front. Main concern is the encroachment of the business zone toward the residential zone.

Bill Colbath made the motion to accept the case.

Bob Mullan seconded the motion

4 in favor and 1 opposed (Bob Callan - feels that there is not enough information submitted with the application.

Dean Trefethen - Asked (1) if applicant proposes to abandon the property line and make it one parcel or maintain the two parcels; (2) what other means of a buffer will be used besides the line of trees; (3) what the business hours are; (4) what will the lighting be for the proposed parking area

Phil Desfosses - Responded (1) Legally maintain as two properties but used as one property; (2) The existing tree line is heavy enough for a buffer, however, willing to discuss other means; (3) business hours are 9:00 to 6:00 p.m. 6 days a week, holiday hours are 9:00 to 8:00 p.m.; (4) there will be new lighting for the proposed parking area, concentrated away from the abutters and will be on only during business hours.

John Murphy - Asked (1) where the existing driveway in the State's plan would be; (2) what the impact would be if the variance were granted.

Phil Desfosses - (1) Opening to property would be in the extreme open end of the property; (2) There would be a much wider entrance.

John Murphy, Phil Desfosses and Gary Merrill discussed the entrance and exiting of trucks.

Thomas Clark - Asked if the access to Willand Pond Rd. would be closed off if the variance were granted.

Phil Desfosses - It would not be closed off but not used as much.

PUBLIC HEARING OPENED

Mike Landry - 45 Basil's Place, Member of the Dover City Council - The Council did grant an easement to Western Auto which is where the bulk of the traffic will go. Deliveries will be made off Willand Pond Rd. so that there will be no maneuvering. One of the scenarios before the Council is to move the Willand Pond Rd. a little south to help with the parking and display of boats. Believe that there is no loss of parking in the front area. Feels that more information is needed before a decision can be made. Recommends the case be tabled. The concerns of the abutters will need to be considered.

John Hall - 6 Newton St. - Opposed to the variance because it lacks a site plan showing what the proposed improvements are. Mr. Hall gave hand-outs to the Board in regards to the N. H. Land Use Law outlining the standards that must be met before a variance can be granted. He reviewed the 5 criteria of the application. In addressing the hardship criteria, the subject property is located in an R-12 residential zone, it is a residence, it is being used as a residence, and it can continue to be used as a residence, therefore there is no hardship. He summarized a Supreme Court case that was denied due to no hardship to the land. No plan exists as of this date for any rezoning in this area. Feels that a parking lot would result in a diminution of surrounding properties. Feels that the buffer of trees may be adequate if it remains residential but if it is converted to commercial the trees would not be a sufficient. Also an increase to traffic hazards if the entrance is widened and also Willand Pd. Rd. used.

Larry Gould - 2 Newton St. - Pointed out that the back area is not being utilized or being taken of; the noise is disturbing; feels that the square footage loss in the front is less than claimed. Also questioned when the green area used for construction is returned in 1998, what will happen to the trees.

Thomas Burke - Mother lives at 5 Newton St. - When expanded from auto to boats, trees were taken down in the back to make more room. Observed what seemed to be gas being poured down the well at Mr. Peperato's. Sought the City's assistance regarding these issues but nothing was done.

Beth Thompson - Economic Development Director for the City of Dover speaking in favor, is concerned with the vitality of Dover's business. Western Auto has been part of Dover for over 40 years and concerned with Western Auto moving out of Dover due to the loss of parking space.

Ed McCabe - Dover City Council - More complicated issue than presented tonight. There are other options available to Western Auto and the City Council is looking into these. Recommends that this application be tabled and time taken for a site walk and more information.

Henry Pike - 1 Newton St. - Problem with Western Auto for years in having boats parked in his back yard. Concerned with parking lot and noise. This lot should remain as a residential lot.

Timothy Dargan - 5 Hawthorne Rd. - Supports Western Auto's request.

Adrien Pike - 1 Newton Rd. - Objects to the variance.

Dorothy Gould - Newton St. - opposes the request.

Steve Stancel - The wide front now allows easy access for customers. Delivery trucks do have difficulty - they must use Willand Pond Rd. The City and State are trying to help both the residents and Western Auto in various ways. There is a possibility of moving Willand Pond Rd. allowing Western Auto more space. There is a concern that Western Auto may be hurt by the project. However, there is not enough information presented to make a decision. Urges the Board to table the application.

Dean Trefethen - Asked if this would have to go to Technical Review Committee and Planning Board.

Steve Stancel - Yes.

John Hall - Reiterated his concern with the lack of hardship to the property.

Phil Desfosses - Only trying to recoup and survive with what they have now. They are willing to do fencing and submit detailed parking lot plan. The yellow easement area will be returned to Western Auto in 1998. The tree area will not be cut down. Because of the scope and complexity of the reconstruction the City has been unable to provide other property and, Western Auto was unable to purchase any property other than Mr. Peperato's. The City Council has tried to find other options for Western Auto.

Dean Trefethen - Read a letter from Paul Girard 21 New Rochester Rd., opposing the variance.

PUBLIC HEARING CLOSED

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Dean Trefethen - Asked Steven Stancel if the City has any plans to rezone this area.

Steve Stancel - Nothing on paper at this time as to where or when the rezoning might take place.

Dean Trefethen - Concerned with the operation of a non-conforming use and whether they are in compliance now in regards to the use of the parking area for display and parking - which is not entitled to the same types of uses that a regular commercial property has.

Tom Clark - Outside storage has been there for a number of years therefore protected by the Grandfather clause.

Dean Trefethen - If variance granted would boat display be allowed on the property.

Tom Clark - This would be up to the Board. Conditions can be placed by the Board.

John Murphy - Asked where property ends and where the parking area is.

Phil Desfosses - Showed parking area on the aerial photograph.

John Murphy - Asked how the business has been affected by the loss of property the State has taken.

Phil Desfosses - No impact so far. The State owns the property but has not as yet taken it. Only loss of sign so far.

Bob Callan - Asked if Western Auto will have access off Willand Pond Rd.

Steve Stancel - There will be access off Willand Pond Rd. after reconstruction.

The Board members discussed the hardship:

Dean Trefethen - Questions whether it is a use hardship or an economic hardship for the applicant.

John Murphy - If the State is taking land and eliminating parking spaces, and if the minimum space requirement is not met, then is this possibly a hardship?

Bob Callan - The property in question is residential and it fulfills every requirement that it is presently zoned for. Feels that there is no hardship to the property in question.

Bill Colbath - Feels that the hardship has not been proven by the applicant. Bill does not see a hardship. In favor to table, however needs more information from applicant and the City.

Bob Mullan - Does not see a hardship.

John Murphy - Possibility of a hardship however, questions whether or not this would benefit the public interest.

Bob Callan made the motion to vote on the application as presented.

Dean Trefethen seconded the motion.

Vote 4 in favor and 1 opposed (John Murphy)

5 CRITERIA

1. It is the Board's conclusion that the applicant does not face an unnecessary hardship. (John Murphy voted does). Currently has use of property and use can continue. The non-conforming use is greater use than abutters have.
2. If granted, the variance will deliver substantial justice. (Dean Trefethen & Robert Callan voted will not). It would allow equal and similar use now enjoyed).
3. If granted, the variance will not be in harmony with the spirit and intent of the zoning ordinance. (John Murphy and Bill Colbath voted will). Not the intent of the Ordinance to increase non-conforming uses.
4. If granted, the variance will result in a diminution in value of surrounding properties. Subjects abutters to increased commercial use in an otherwise residential area.

- 5. If granted, the variance will not be of benefit to the public interest. Not in the public interest to increase commercial use in a residential area without proper buffer zones, and none were adequately proposed.

Bill Colbath made the motion to deny the variance.

Bob Mullan seconded the motion.

U/A

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

Tom Clark - Advised the Board members that they would be receiving a letter in regards to the Building Code Board of Appeals. Now waiting for a response from the applicant's attorney as to whether or not they want to proceed with the appeal. If the State Fire Marshall's office imposes regulations that the Building Code Board of Appeals would have no authority over, the application may not be heard. However the Board has been appointed.

Bob Callan made the motion to adjourn.

John Murphy seconded the motion.

U/A

List of members with expiration dates

	<u>Term Starts</u>	<u>Term Exp.</u>
John Murphy Jr.	12/31/92	12/31/95
Robert Callan	4/13/94	4/13/97
Richard Callaghan	4/13/94	4/13/97
William Colbath	10/23/94	10/23/97
Dean Trefethen	12/31/94	12/31/97
Robert Mullan	12/31/94	12/31/97
David Paolini	10/23/94	12/31/97