

DOVER ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
APRIL 18, 1996

MEMBERS PRESENT: Dean Trefethen, Chairman, William Colbath, Vice Chairman, Rick Callaghan, John Murphy Jr., Bob Callan and Bob Mullen

STAFF PRESENT: Thomas Clark, Building Official

Dean Trefethen called the meeting to order.

ITEM #1: NEW BUSINESS

A. Approval of minutes for the meeting of March 21, 1996.

MOTION:

John Murphy made the motion to accept the minutes of March 21, 1996.

Bill Colbath seconded the motion.

U/A

ITEM #2: Old Business

ITEM #3:

Z 96-5 Ralph Accinno, (Applicant: Portsmouth Indoor Climbing Gym, Inc.), 47 Broadway, a/k/a Assessor's Map 24, Lot 2-H, Zoned B-3, requests a variance from: 1) the terms of Article V, Section 170-16 to construct a second story addition onto a commercial building within forty-three (43) feet of a front property line as it abuts a street where fifty (50) feet is required; and 2) the terms of Article X, Section 170-41.A to increase a non-conforming structure.

Robert Mullen stepped down and Rick Callaghan sat in on this case.

Anthony McManus represented the applicant, Richard Shaffer. The proposal is to put a second story on the center section where additional building space is needed for an indoor climbing center. The hardship lies in the way the building is laid out and the structural integrity of the building. This is not an additional floor but raising the roof for additional height in

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the room. This is the only reasonable area because the back area cannot support this addition. Feels that it would benefit the public and not decrease the value of surrounding properties.

Dean Trefethen - For clarification, asked if this was within the same footprint and applicant wishes to just raise the roof in that section to have a higher ceiling and not a second floor.

Anthony McManus - There is no expansion to either side or to the front. The roof of the middle section will be raised for a higher ceiling.

John Murphy - Asked about (1) anticipated number of people, (2) parking spaces, and (3) whether or not the addition could go back further.

Richard Shaffer - (1) This would be for club members. Approximately 40 people at the max. (2) The owner is going to improve an existing lot for additional parking. We are required to have 11 spaces. (3) There are two steel I beams and it is structurally safer to place it in the center.

Dean Trefethen - Asked for hours of operation.

Richard Shaffer - From 8:00 a.m. to 10:00 p.m. and on rotating basis.

Bob Callan - Asked what the front area would be used for.

Richard Shaffer - A small retail shop for supplies, a sign-in counter, a storage area for shoes, and a small lounge for members.

MOTION

John Murphy made the motion to accept the case.

Rick Callaghan seconded the motion.

U/A

PUBLIC HEARING CLOSED

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Dean Trefethen - Submitted a letter from the Planning Department in favor of the request for a variance. (1) Due to the size of the lot, it would be almost impossible to add to the building and meet the required setbacks. (2) The proposed addition intrudes into the setback less than the existing building. (3) There are very few existing buildings in that zoning district that meet the required setbacks. Allowing this variance gives the applicant the same rights as many of the existing structures in this area.

PUBLIC HEARING CLOSED

The Board discussed the hardship. The building already doesn't meet the existing ordinance, and they would be going up not out.

John Murphy's concern is for the number of cars parking on the street.

There is a potential for 20 to 23 spaces on site.

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. Currently the building does not meet the setback requirements and the proposed is for an increase in height at one section only. This is a structurally logical place for an expansion.
2. It is the Board's conclusion that the variance will deliver substantial justice. It allows for minimal expansion of an existing structure and is consistent with surrounding structures.
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 allowed in the zone and the expansion will not further encroach on the setbacks.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. The proposed use is compatible with surrounding properties.

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5. It is the Board's conclusion that the variance will be of benefit to the public interest. It will allow for continued commercial use of a property, as intended in a B-3 zone. Also will allow proper maintenance of the building.

MOTION

Bill Colbath made the motion to grant the variance.

Rick Callaghan seconded the motion.

U/A

ITEM #4:

Z 96-6 Ernest Estes, (Applicant: Leigh Jerry), 65 Bellamy Rd., a/k/a Assessor's Map H, Lot 50, Zoned R-40, requests a variance from: 1) the terms of Article II, Section 170-6 B, definition of LOT to allow two (2) principle buildings on one parcel of land; and 2) the terms of Article IV, Section 170-12, Table 1, Part D, to establish a Light Inudstrial Use (assembly) in an R-40 zoning district.

Leigh Jerry - Requesting a variance to operate a small family business from her parents property. Mainly (90%) engineering and 10% assembly. They receive manufactured goods and assemble them to a panel and ship them out. Most of shipping is done by family members employed by the company, so there is no outside trucking. There is approximately 10 acres of property and a small amount of road frontage. There are 5 buildings on the property that set back from the road and they hope to occupy one of the buildings.

Dean Trefethen - There are two driveways, asked which would the applicant be using.

Leigh Jerry - The first driveway, heading towards Durham.

Bob Callan - Asked what the regular deliveries would be.

Leigh Jerry - 2 to 3 times a week. They do not anticipate any expansion so no increase in deliveries.

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MOTION

Bob Callan made the motion to accept the case.

Bob Mullen seconded the motion.

U/A

John Murphy - Questions the hardship.

Rick Callaghn - There is so much land that this business will be somewhat isolated.

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Gordon Moore - The original owner of the company. He continues to serve as a consultant. The business is more technical, the development of software, than manufacturing. The traffic is minimal. There will be no need for a sign.

George Dowaliby - Abutter - Has seen the operation of the business and is in favor of the request.

PUBLIC HEARING CLOSED

Dean Trefethen - Noted a memo from Steve Stancel, Planning Director. It is the Planning Dept's understanding that only one non-family member will be working at GMEC II. If it weren't for the size of the facility, this proposal could almost qualify as a Home Occupation. The intent of the ordinance is to make sure no obtrusive uses are allowed in residential areas that might disrupt the neighborhood. The Planning Dept. feels that this use will be unobtrusive and therefore recommends approval of the variance. This is based on the following: (1) There will be only 4 to 5 employees, all but one are family members. (2) Traffic will be minimal with the anticipated two to three UPS shipments weekly. (3) Noise and air pollution will not be generated by the use. (4) The use is in a building that sets back far from the road and cannot be seen by abutters to the North and South. (5) The lot is very large and does not allow subdivision without the placement of a City street into the property. This would be more disruptive to the neighborhood than the proposed use.

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Dean Trefethen - Believes that the hardship is, even though there is a lot of land, it could not be easily subdivided.

Rick Callaghan - It is a large lot and not sure of what else it could be used for, and the business would be isolated from the neighbors.

John Murphy - Asked about it's being a home based business.

Tom Clark - The problem is that, as a Customary Home Occupation, the principle use is supposed to be carried on by the occupant of the building and no more than one non-resident is allowed. Also the maximum allowable size is 600 sq. ft. and the building is about 1800 sq. ft.

Bob Callan - We also need to consider that this property has a history of being used by family members as contractors.

Bob Mullen - Noted that it would be decreasing the impact of the previous use.

The Board discussed: (1) the hardship, (2) less intrusive use, (3) history of business use, (4) other permitted uses (agriculture), (5) difficult to subdivide due to inadequate frontage.

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does face an unnecessary hardship (John Murphy voted does not). Previously allowed subdivisions of the original parcel have created a piece of land that have few other practical or desirable uses.
2. It is the Board's conclusion that the variance will deliver substantial justice. It allows reasonable use of existing structures and allows an historically family owned business to continue.
3. It is the Board's conclusion that the variance will be in harmony with the spirit and intent of the zoning ordinance (Dean Trefethen voted will not). The proposal does not impact or infringe on abutters. The proposal does not create any nuisances.

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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. The building is set away from any abutters, and the use will be unobtrusive.
5. It is the Board's conclusion that the variance will be of benefit to the public interest (John Murphy voted will not). It maintains a large lot, and there is adequate setback from abutters. It allows a family business to continue operation in the City.

MOTION

Bob Callan made the motion to grant the variance.

Bob Mullen seconded the motion.

4 voted in favor and 1 against (John Murphy voted against).

Conditions:

- (1) A maximum of 6 employees.
- (2) Owner of the property must be associated with the business.
- (3) GMEC II, or a direct successor, stops operation at the site, the variance is null and void.
- (4) If repeated complaints from various abutters are received, a further review by this Board will be held which could result in revocation of the variance.

MOTION

John Murphy made the motion to adjourn.

Bob Callan seconded the motion.

U/A