

**DOVER ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
SEPTEMBER 19, 1996**

MEMBERS PRESENT: Dean Trefethen, Chairman, Bill Colbath, Vice Chairman, John Murphy, Bob Callan, Robert Mullan, and Rick Callaghan

STAFF PRESENT: Thomas Clark, Building Official and Bruce Woodruff, City Planner

Dean Trefethen called the meeting to order.

ITEM #1: NEW BUSINESS

Approval of the August 15 and August 26, 1996 minutes.

MOTIONS:

John Murphy made the motion to accept the minutes of August 15 with the following changes:

Page 2, first and second paragraphs, change the word "appeal" to "case".

Bill Colbath seconded the motion.

U/A

John Murphy made the motion to accept the minutes of August 26, 1996 with the following additional comment on page one, prior to ITEM #1:

"The applicant was informed that there were only four members present and asked if he would still want to be heard this evening. The applicant consented to be heard this evening."

Dean Trefethen seconded the motion.

U/A

after item 3
Rick Callaghan is on this case and Robert Mullan stepped down.

ITEM #2: OLD BUSINESS:

ZBA
9/19/96
Pg. 2

ITEM #3:

Z 96-15 Lisha and Denis Boucher, 4 Center Dr., a/k/a Assessor's Map L, Lot 57-H, Zoned R-20 requests a variance from the terms of Article V, Section 170-17 to maintain an accessory structure (12' X 12' storage shed) with a sideyard setback and a rear yard setback of three (3) feet each where ten (10) feet each is required.

Lisha Boucher - Felt that this is the only place for the shed because the property is densely wooded. She is ready to answer any questions from the Board

When shed was placed on lot.
MOTION:

John Murphy made the motion to accept the case.
Bill Colbath seconded the motion.
U/A

John Murphy - Asked what the purpose is for the setback requirements for buildings such as sheds.

Tom Clark - Primarily to avoid overcrowding on any lot and to avoid any intrusion on the abutters and their use of their property. It is primarily for public safety.

Bruce Woodruff - It is also to provide a clear lane for public safety equipment. If a fire truck needs to get to the back they will be able to.

PUBLIC HEARING OPENED

Bruce Woodruff - The Planning Dept. is not in favor of granting the variance. It does not see a hardship because the shed could be placed behind the garage and it would meet the setback requirements.

PUBLIC HEARING CLOSED

ZBA

9/19/96

Pg. 3

Bob Callan - The footings are sono tubes and could be removed and placed elsewhere.

John Murphy - Agrees the shed could be moved but sees nothing gained by moving it. However, he does have difficulty in finding a hardship.

Dean Trefethen read a letter received from an abutter, John Curth, who does not oppose the request for a variance. However, he is concerned about how it would effect the future development of his property

FIVE CRITERIA

1. It is the Board's conclusion that the applicant does not face an unnecessary hardship. (John Murphy voted does) Because there are alternative places to place the shed that will conform to setbacks.
2. It is the Board's conclusion that the variance will not deliver substantial justice. (John Murphy voted will) Because of alternative site possibilities, there is no reason to infringe on setbacks and possibly impact abutters.
3. It is the Board's conclusion that the variance will not be in harmony with the spirit and intent of the zoning ordinance. The intent and spirit is to provide minimal setbacks and this shed could be sited and maintain setbacks in the ordinance.
4. It is the Board's conclusion that the variance will result in a diminution in value of surrounding properties. (John Murphy and Bob Mullen voted will not) It could infringe on surrounding properties.
5. It is the Board's conclusion the variance will not be of benefit to the public interest. Public interest is to provide safety lanes and present siting of the shed does not provide that.

ZBA
9/19/96
Pg. 4

MOTION:

Bill Colbath made the motion to deny the variance.

Bob Callan seconded the motion.

Condition - The shed must be moved to a conforming site by May 1, 1997.

omit → John Murphy - Disagrees with the diminution in value. Previous variances have been granted for garages that had less setback.

4 in favor of denying the variance and 1 opposed. (John Murphy opposed)

Bob Mullan stepped down and Rick Callaghan sat on the next case

ITEM #4

Z 96-16-A Lisha and Denis Boucher, 4 Center Dr. a/k/a Assessor's Map L, Lot 57-H, Zoned R-20 requests an appeal from an Administrative Decision regarding the interpretation of wall height from Article V, Section 170-15-B, to maintain an accessory structure (24' X 36' detached garage) within seven (7) feet eight (8) inches of the main building (Single Family Dwelling) where approximately ten (10) feet is required.

→ Lisha Boucher - Showed the Board members pictures of the garage and house. There was miscommunication or misunderstanding between the applicant and the Building Inspection office in regards to the interpretation of the height of the rear ^{side} wall of the garage, which is the required distance between the main structure and the accessory structure.. The applicant interpreted the wall to mean what they bolted to the foundation. Instead of a slab they put in a two (2) foot foundation wall and did not include this as part of the wall measurement.

Tom Clark - A Building Permit was issued in March for the garage. The applicant made a comment on their site plan that the garage walls were 8 feet high, allowing for a separation of 8 feet between the garage and the house. The site plan also showed 8 feet between the two buildings. There were no drawings of the elevation. A routine inspection was made in August on the framing and the garage appeared to be closer to the house than the height of the wall. In

ZBA
9/19/96
Pg. 5

measuring it was approximately 7-1/2 feet and a 9-1/2 foot garage wall, measuring from grade. He mentioned to the applicant that the construction material was irrelevant. The applicant related the conversations they had with both the Secretary and the Electrical Inspector (as stated in their ZBA application). Because the conversation was some time ago, the Secretary could not recall specifically what was said. The Electrical Inspector recalled the conversation but couldn't remember the 2 foot concrete wall coming up. In one conversation, the applicant said that they had poured concrete closer to the house than they had anticipated and the Electrical Inspector told them that if they would cut the walls down accordingly that would be fine. There is no question that there was subject for misinterpretation. In regards to measuring the wall, we do not have a specific definition of wall height in our ordinance, but the definition of the height of a building is measured from grade level. Based on this, we request that the appeal be denied.

The Board members discussed wall measurements..

MOTION:

Bill Colbath made the motion to uphold the Administrative Decision and deny the appeal.
Bob Callan seconded the motion
U/A

Rick Callaghan sat on the next case.

ITEM #5:

Z 96-16-B Lisha and Denis Boucher, 4 Center Dr., a/k/a Assessor's Map L, Lot 57-H, Zoned R-20 requests a variance from the terms of Article V, Section 170-15-B, to maintain an accessory structure (24' X 36' detached garage) within seven (7) feet eight (8) inches of the main building (single family dwelling) where approximately ten (10) feet is required.

Lisha Boucher - Expained how they interpreted the measurement of the wall.

ZBA

9/19/96

Pg. 6

MOTION:

John Murphy made the motion to accept the case.
Bill Colbath seconded the motion.
U/A

The Board and Tom Clark discussed the inspections of the footings, frost wall and building.

PUBLIC HEARING OPENED

Alice Briggs - 10 Cote Dr. - Expressed her concerns for the market value of her house. She is concerned with the possibility of a future owner using the large garage for a business.

Bruce Woodruff - The Planning Dept. does support granting the variance. The spirit of the ordinance is public health and safety. By not granting the variance would be subjecting the applicant to needless and unnecessary restriction.

PUBLIC HEARING CLOSED

Rick Callaghan - Agrees with the Planning Dept.

The Board discussed who was responsible for complying with the building code in applying for and issuing a Building Permit. Both the applicant and the Inspection Division felt they were each following the required codes. But due to some miscommunication and misunderstanding a code violation occurred.

Bob Callan - Asked if the sole purpose of the building was for a garage.

Lisha Boucher - It will be used for a garage and maintenance of vehicles. It will not be used for child care because it is not built for it, it does not have any windows. A breezeway would not be feasible due to the house being a split level and due to finances.

ZBA

9/19/96

Pg. 7

FIVE CRITERIA

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. It would be a needless or unnecessary restriction to enforce the strict letter of the ordinance and nothing would be gained.
2. It is the Board's conclusion that the variance will deliver substantial justice. It would not impose a needless or unnecessary restriction, it still allows for public safety, and would grant the applicant similar use as neighbors.
3. It is the Board's conclusion that the variance will be in harmony with the spirit and intent of the zoning ordinance. Still allows an adequate fire separation, also, it doesn't encroach on setbacks to abutter's property.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. (Dean Trefethen voted will). Would make the applicant's property similar to surrounding properties so diminution is unlikely.
5. It is the Board's conclusion that the variance will be of benefit to the public interest. (Robert Callan voted will not). It would not be a detriment to the public.

MOTION:

John Murphy made the motion to grant the variance.

Rick Callaghan seconded the motion.

U/A

The Board took a five minute break.

Bob Mullan sat on the next case and Rick Callaghan stepped down.

ZBA
9/19/96
Pg. 8

ITEM #6:

***Z 96-17 Prime Cir. LLC, corner of Central Ave. and Sixth St. Connector, a/k/a Assessor's Map D, Lot 2-A, Zoned B-3 requests a variance from the terms of Article V, Section 170-16 to construct a one-story addition onto a commercial building within twenty (20) feet of a front property line as it abuts a street where fifty (50) feet is required.**

Malcolm McNeill - Attorney for Prime Circle - They are requesting relief from the setback requirements. Mr. McNeill reviewed the site plan and its connected business, the road that makes the back lots accessible, and the changes due to the Weeks reconfiguration. Mr. McNeill reviewed the application. This expansion would be subject to Site Review. The applicant should have reasonable access to and use of this site.

Mr. McNeill, Bruce Woodruff and the Board discussed the site plan and the State's role in the reconfiguration of the lots and the access to the surrounding property.

MOTION:

John Murphy made the motion to accept the case.
Bill Colbath seconded the motion.
U/A

PUBLIC HEARING OPENED

Bruce Woodruff - Th Planning Department is in favor of granting the variance. The hardship is due to the unique characteristics of the property. It would be a needless restriction holding the applicant to the setback.

PUBLIC HEARING CLOSED

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. (Bill Colbath voted does not). There is a unique situation caused by the continual change of roadways and access over the years. If part of this property had not been taken by eminent domain and a new frontage created, they would conform to the previous side setback. The Board feels the 50' setback is intended for thoroughfares, not access roads.

ZBA

9/19/96

Pg. 9

2. It is the Board's conclusion that the variance will deliver substantial justice. (Bill Colbath voted will not). It allows for an expansion that would have been conforming if the eminent domain had not occurred.
3. It is the Board's conclusion that the variance will be in harmony with the spirit and intent of the zoning ordinance. (Bill Colbath voted will not). The intent is for setback from thoroughfares, which this expansion would be, and not from access roads.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. The proposed expansion is conforming in all other aspects and is a permitted and compatible use.
5. It is the Board's conclusion that the variance will be of benefit to the public interest. It allows expansion of a commercial property.

MOTION:

John Murphy made the motion to grant the variance.
Bob Callan seconded the motion.
4 in favor and 1 opposed (Bill Colbath opposed)

MOTION:

John Murphy made the motion to adjourn.
Bill Colbath seconded the motion.
U/A

John Murphy comments:

1. Name plates for each member
2. Discussing the case while visiting the site.
3. Have list of members starting date.

ZBA

9/19/96

Pg. 10

List of members and expiration dates:

| | <u>Term Starts</u> | <u>Term Exp.</u> |
|-------------------|--------------------|------------------|
| 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 |
| John Murphy Jr. | 12/31/95 | 12/31/98 |