

**DOVER ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
OCTOBER 17, 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 Steve Stancel, Planning Director

Dean Trefethen called the meeting to order.

ITEM #1: NEW BUSINESS

Approval of the September 19, 1996 minutes.

MOTION:

John Murphy made the motion to accept the minutes of September 19, 1996.
Bill Colbath seconded the motion with the following corrections:

- (1) Pg. 1. Move the second line from bottom, "Rick Callaghan is on this case and Robert Mullan stepped down," to second page after Item #3:
- (2) Pg. 2. Second paragraph down, change to read, "Lisha Boucher - Felt that this was the only place for the shed because the property was densely wooded when the shed was placed on the lot."
- (3) Pg. 4. Delete "John Murphy - Disagrees with the diminution in value. Previous variances have been granted for garages that had less setback." in the first paragraph.
- (4) Pg. 4. Ninth line up from bottom, change rear wall to side wall.

U/A

Robert Mullan asked to be excused due to other commitments, and since there would be 5 members remaining this was granted.

ITEM #2: OLD BUSINESS:

A. Consideration of a Motion for Rehearing submitted by Lisha & Denis Boucher, 4 Center Dr., a/k/a Assessor's Map L, Lot 57-H, zoned R-20 concerning ZBA case #Z 96-15 (non-conforming side and rear setbacks for an accessory structure).

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Dean Trefethen - Asked if Lisha had anything to add to her written request.

Lisha Boucher answered that she had not.

Dean Trefethen asked the Board what they considered to be new evidence.

Rick Callaghan - Felt that all the new letters received warranted a rehearing.

Bob Callan - Felt that none of the new literature addressed the criteria of hardship. Where was the hardship. A rehearing would be just a rehash of the information given in the first hearing.

John Murphy stated he could not see anything gained by insisting the shed be moved.

Bill Colbath - Asked if a Building Permit had been issued for the Shed.

Tom Clark - No Building Permit was issued at the time the shed went in.

MOTION:

Rick Callaghan made the motion to accept the request for rehearing.

John Murphy seconded the motion.

3 Opposed and 2 in favor (Rick Callaghan & John Murphy)

The request for a rehearing was denied.

ITEM #3.

Z 96-18 Rocco & Gail Simone, 4 Hull Ave., a/k/a Assessor's Map 35, Lot 43, zoned R-12 requests a variance from: (1) the terms of Article V, Section 170-16 to construct a one-story side addition onto a single family dwelling within twenty three (23) feet of a front property line as it abuts a street where thirty (30) feet is required; and (2) the terms of Article X, Section 170-41.A to increase a non-conforming structure.

Rocco Simone - The house was built in 1939 so it does not meet the current setbacks. They would like to add onto the side of the house to expand the living area.

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Chris Annis - Contractor for Rocco Simone - At the time he applied for the Building Permit he measured the setback himself and at that time he thought the setback was 20 feet. He was advised by the Secretary of the Building Inspection office that he could do the preparation work. He interpreted prep. work as being able to do the footings, which he did. Tom Clark, during an inspection, advised him that the setback was 30 feet not 20 and he was told to stop construction. At this time there is only footings. It was clear that there was some misunderstanding on the setback.

Bill Colbath - Asked if he had his Building Permit for the construction.

Chris Annis - He had applied for the Building Permit and was informed that it would take approximately 2 weeks and he could do his prep work until he received his permit.

A discussion was held on the interpretation of prep. work.

MOTION:

John Murphy made the motion to accept the case.

Bill Colbath seconded the motion.

U/A

Dean Trefethen - Asked the applicant if he had considered abandoning the footing and moving the addition.

Rocco Simone - Yes he had considered it but decided against it.

Chris Annis - If the addition were set back it would not line up with the living room.

PUBLIC HEARING OPENED

Steve Stancel - The Planning Dept. is in favor of the variance because the applicant would not be encroaching into the front setback any more than the existing structure. Also it would be consistent with surrounding houses and there are plans to have a new zoning ordinance amendment that will allow this type of enlargement to non-conforming structures.

PUBLIC HEARING CLOSED

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FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. Zoning has changed since original structure was built and the proposal will not encroach any further than the existing structure. Also, the Planning Dept. is planning an ordinance change that would allow this proposal without a variance.
2. It is the Board's conclusion that the variance will deliver substantial justice. The proposal would make the residence similar to surrounding neighbors.
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 reasonable setbacks and that will be maintained.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. No evidence to the contrary. Proposal is similar to existing structures in the neighborhood.
5. It is the Board's conclusion that the variance will be of benefit to the public interest. It allows reasonable expansion of an existing structure that is consistent with the aesthetics of the neighborhood.

MOTION:

Bill Colbath made the motion to grant the variance.

Rick Callaghan seconded the motion.

U/A

ITEM #4

Z 96-19 Paul & Sandra Johnson, 3 Wedgewood Rd, a/k/a Assessor's Map 36, Lot 21-C, zoned R-12 requests a variance from: (1) the terms of Article V, Section 170-16 to construct a one-story rear addition onto a single family dwelling within eight and one-half (8-1/2) feet from a side property line where ten (10) feet is required; and (2) the terms of Article X, Section 170-41.A to increase a non-conforming structure.

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Paul Johnson - They propose to expand the living area and continue the existing line of the house. He reviewed his application.

Bill Colbath - Asked why the addition could not be moved to one side.

Paul Johnson - a bulkhead prevents moving the addition.

John Murphy - Questioned the site plan and the accuracy of the measurements.

Paul Johnson - stated that it was not a surveyed plot plan.

MOTION:

Bob Callan made the motion to accept the case.

Rick Callaghan seconded the motion.

U/A

PUBLIC HEARING OPENED

Steve Stancel - The Planning Dept. is in favor of granting this request for the same reasons as the last case. It would not be encroaching anymore into the setback than the existing house and because of anticipated change in ordinance.

PUBLIC HEARING CLOSED

FIVE CRITERIA

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. (John Murphy & Bill Colbath voted does not). The zoning setbacks have changed since originally constructed and the proposal does not encroach any further. Also, the Planning Dept. is proposing an ordinance change that would allow this addition without a variance.
2. It is the Board's conclusion that the variance will deliver substantial justice. It allows expanded use of the property and proposal is consistent with neighboring structures.

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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 reasonable setbacks and the proposal maintains the existing setback. Also, the Planning Dept. is proposing an ordinance change to allow this type of expansion without a variance.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. No evidence to the contrary. The proposal is similar to existing structures in neighborhood.
5. It is the Board's conclusion that the variance will be of benefit to the public interest. It allows expansion of an existing residence consistent with neighborhood.

MOTION:

Bob Callan made the motion to grant the variance.

Rick Callaghan seconded the motion.

Condition:

The addition cannot be any closer to the side property line than the current smallest setback of the current structure.

4 voted in favor and 1 opposed (Bill Colbath opposed)

ITEM #5

Z 96-20 Three Jay Realty, LLC, 896 Central Ave., a/k/a Assessor's Map 38, Lot 23-B, zoned B-3 requests a variance from the terms of Article IX, Section 170-32.G(2) and (3) to increase a free-standing sign to one hundred eight (108) square feet where a maximum of sixty (60) square feet is allowed.

Malcolm McNeill - Cited the Stroudwater case of 10/20/95. He presented pictures of signs to the Board. The proposal is for Planet Fitness to occupy the rear warehouse portion of the building that Stroudwater is in, for a fitness center. The entry to Planet Fitness will be in the rear of the building and will not be visible from the street. There will be a 4' X 5' sign on the building for Planet Fitness parking at the rear. The building has been in existence for 25 years and is capable of multiple uses. The hardship is the location of the building and the sign ordinance. He reviewed the minutes and the criteria of the Stroudwater case. He also cited other properties in Dover that had larger signage.

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Mr. McNeill and the Board discussed the Stroudwater case and transaction at the meeting of 10/20/95, the signage in the surrounding area, and that the variance is granted to the land and not to the tenant.

Bob Callan - Is in favor of the applicants request.

Rick Callaghan and Tom Clark discussed the Stroudwater sign.

MOTION:

John Murphy made the motion to accept the case.
Bob Callan seconded the motion.
U/A

The Board members discussed the signage variance granted to the Realty Company on the corner of Glenwood and Central Ave. and the variance granted to Stroudwater.

PUBLIC HEARING OPENED

John Kane - Representing 3-Jay Realty. Originally the rear space was to be leased for warehouse use but the Planning Dept. preferred to have it used for retail. The owner decided to attempt to get retail into it. After a period of time and unsuccessful attempts to get tenants into this space, the applicant, Planet Fitness, asked to use the space for a fitness center, however he needs signage.

Malcolm McNeill - Asked that the Board consider the uniqueness of the land, the uniqueness of the non-conforming building, the limitation of the number of reasonable tenants that can use the site, and the reasonableness of the signage that is being proposed.

Michael Grondahl - Owner of Planet Fitness. He does not have adequate space where he is and as of February 1997 he will have to leave the current location. Dover does not have very much available space for a fitness center.

Steve Stancel - The Planning Dept. is in favor of the variance. The space is more conducive to warehousing, shipping and receiving. However, since it is a retail zone a warehouse use is not permitted and we do not want to see tractor trailer trucks coming and going in a retail area for the warehouse. The Fitness Center is an ideal use for this space.

PUBLIC HEARING CLOSED

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Bill Colbath - Can see the need for a sign for this tenant. However he does oppose the method of obtaining signage. The first tenant is granted a larger sign and then the following tenants also need to apply for a variance.

Rick Callaghan - Is in favor of granting the variance.

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. (John Murphy voted does not). The uniqueness of the space proposed for the applicant is that there is no business frontage on this road.
2. It is the Board's conclusion that the variance will deliver substantial justice. It allows reasonable signage for a business use otherwise conforming.
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 limit signage to reduce blight and this proposal limits the signage but also allows a reasonable size sign.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. No evidence to the contrary.
5. It is the Board's conclusion that the variance will be of benefit to the public interest. The proposed sign will allow proper identification for motorists which will result in increased safety.

MOTION:

Bill Colbath made the motion to grant the variance.

Bob Callan seconded the motion.

U/A

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ITEM #6

Z 96-21 Carolyn Dupont (Applicant: Dupont's Citgo), 171 Silver St., a/k/a Assessor's Map 11, Lot 3, zoned B-3 requests a variance from: (1) the terms of Article V, Section 170-16 to construct a one-story side addition onto a gasoline service station within approximately eleven and one-half (11-1/2) feet of a rear property line where fifteen (15) feet is required; (2) the terms of Article X, Section 170-40.A,B & D to increase a non-conforming use (Gasoline Service Station); and (3) the terms of Article X, Section 170-41.A to increase a non-conforming structure.

Dave Dupont - due to zoning changes the property no longer is in conformance. He needs to expand the auto repair facility so that some of the work that is done outside can be done inside. The parking will remain the same.

Steve Stancel - Asked if the outdoor lift will be eliminated.

Dave Dupont - Yes

MOTION:

John Murphy made the motion to accept the case.

Bob Callan seconded the motion.

U/A

PUBLIC HEARING OPENED

Steve Stancel - The Planning Dept. has no problem with the variance request. He would like to see it go to the Technical Review Committee for parking and landscaping.

PUBLIC HEARING CLOSED

Bob Callan - feels that there should be no continual use of the outside lift.

Bill Colbath - Assumed that the lift would be moved inside.

Dave Dupont - Answered yes.

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FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. Zoning requirements have changed since original structure was built. The applicant faces a hardship due to the inability to expand and remain competitive with similar businesses in a similar zone.
2. It is the Board's conclusion that the variance will deliver substantial justice. It allows expansion of an existing business while not encroaching any further into the setbacks.
3. It is the Board's conclusion that the variance will be in harmony with the spirit and intent of the zoning ordinance. The intent was to control development of new service stations, not to apply to existing service stations.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. No evidence to the contrary.
5. It is the board's conclusion that the variance will be of benefit to the public interest. It allows expansion of an existing business that is now serving the public.

MOTION:

Bill Colbath made the motion to grant the variance.

Rick Callaghan seconded the motion.

Condition - The applicant must go thru the Technical Review Committee process.

U/A

MOTION:

Bill Colbath made the motion to adjourn.

Rick Callaghan seconded the motion.

U/A

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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