

**DOVER ZONING BOARD OF ADJUSTMENT  
MINUTES OF MEETING  
NOVEMBER 21, 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, Planning Dept.

Dean Trefethen called the meeting to order.

**ITEM #1: NEW BUSINESS**


Approval of the October 17, 1996 minutes.

**MOTION:**

John Murphy made the motion to accept the minutes of October 17, 1996.

Bill Colbath seconded the motion ~~with the following corrections:~~

U/A

 The members of the Board discussed Tom Clark's memo in regards to the new RSA law.

Since there were 6 members present, Dean Trefethen asked if one of the alternates would like to be dismissed. Rick Callaghan asked if he could be dismissed and it was agreed.

**ITEM #2: OLD BUSINESS**

**ITEM #3:**

Z 96-22, Dover Industrial Development Authority, City of Dover, (Applicants: Conproco & Opechee Constr. Management Corp.), Sixth St., a/k/a Assessor's Map D, Lot 13, Zoned I-4, requests a Special Exception under the provisions of Article VI, Section 170-25.2 and Article XII, Section 170-52.C(3) to construct a silo sixty-eight (68) feet in height in connection with an Industrial Use.

Bill Woglom - Opechee Construction. He described the site plan and the location of the silo. He presented a drawing of the building and how the silo would be partially concealed by the building.

ZBA

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**MOTION:**

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

**PUBLIC HEARING OPENED**

Beth Thompson - Economic Development Director. Reviewed this project thoroughly and visited their other site and viewed the silo there. Should Conproco leave at some future date, the silo will also be removed. It is Conproco's intent to purchase the building.

Bruce Woodruff - The applicant has been to the Planning Board and received a favorable review at that time. The Department feels strongly that they meet all of the provisions.

**PUBLIC HEARING CLOSED**

**MOTION:**

Bill Colbath made the motion to grant the Special Exception.  
John Murphy seconded the motion.  
U/A

**ITEM #4:**

Z 96-23, James Varney, 935 Central Ave., a/k/a Assessor's Map 39, Lot 4, Zoned B-1, requests a Variance from the provisions of Article IX, Section 170-32.H(3)(b) to increase a non-conforming sign from approximately twenty-eight (28) square feet to approximately forty-two (42) square feet where twelve (12) square feet in area is allowed.

James Varney - The current sign belonged to the bank and Varney currently uses part of the sign and would like to use more of it which will change the time area to a reader board. He reviewed the site plan showing the change in visibility due to the change in the traffic circle. He reviewed his application.

ZBA

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**MOTION:**

Bob Callan made the motion to accept the case.

Robert Mullan seconded the motion.

U/A

Dean Trefethen and Bruce Woodruff discussed why this piece of property was zoned B-1 and the potential future rezoning.

**PUBLIC HEARING OPENED**

Bruce Woodruff - The reader board will not change the square footage of the sign and in the Planning Department's view, will not increase the non-conformity of the sign. The hardship lies in the needless or unnecessary restriction to the applicant and therefore the Planning Dept. supports the request.

Tom Clark - Believes it will increase non-conformity, but not the physical size of the structure.

**PUBLIC HEARING CLOSED**

Bill Colbath - The reader board does not present a problem. It has a lesser impact than the temperature sign.

**FIVE CRITERIA:**

1. It is the Board's conclusion that the applicant does face an unnecessary hardship (John Murphy voted does not). It would be a needless or unnecessary restriction to prevent the conversion of the time & temperature sign to a letter board. There is a hardship in that surrounding businesses are in a B-3 zone and are allowed similar or larger signs than proposed. Also, traffic patterns have changed dramatically in front of the business recently.
2. It is the Board's conclusion that the variance will deliver substantial justice. The proposed sign would be similar or smaller than signs of adjacent businesses.
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 allow reasonable signage and to reduce clutter and the proposal conforms with those desires.

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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 sign has been in existence for many years with no apparent impact on surrounding properties and the proposal will not change that.
5. It is the Board's conclusion that the variance will be of benefit to the public interest. It allows a reasonably sized sign for what is now a busy street and intersection.

**MOTION:**

Bill Colbath made the motion to grant the variance.

Bob Callan seconded the motion.

U/A

**ITEM #5:**

**Z 96-24, William & Andra Welch, 25 Boston Harbor Rd., a/k/a Assessor's Map 7, Lot 12-A, Zoned R-20 requests a Variance from the provisions of (1) Article V, Section 170-16 to construct a screen porch addition onto a single family dwelling within six (6) feet of a side property line where ten (10) feet is required; and (2) Article X, Section 170-41.A to increase a non-conforming structure.**

Andra Welch - An addition was placed on the house last year. It is a non-conforming lot. There is more road frontage than rear so any addition to the house would require a variance. Andra read a letter from abutters Caroline French and Gordon Miller who have no objection to the proposed addition. Approval has been received from the Conservation Commission.

Dean Trefethen - Asked for the reason for the addition being on that side of the house rather than over the deck.

Andra Welch - They had not thought of that. Just would like to have an addition to step down from on that side of the house.

Dean Trefethen - Asked if a variance would be required to put the porch on a part of the deck.

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Tom Clark - (After discussing with Andra Welch where the deck is located, which did not appear on the plot plan) a portion of the deck could be enclosed without requiring a variance.

**MOTION:**

John Murphy made the motion to accept the case.

Bob Mullan seconded the motion.

U/A

Dean Trefethen - Advised the applicant that the Board looks at whatever alternatives there are which will allow construction without a variance.

**PUBLIC HEARING OPENED**

Bruce Woodruff - The Planning Dept. does feel the request to expand a non-conforming structure to be reasonable however, cannot support the request to encroach into the setback.

**PUBLIC HEARING CLOSED**

The Board discussed the possibility of placing the addition on a portion of the deck on the other side of the building which will maintain the required setback and not require a variance.

**FIVE CRITERIA:**

1. It is the Board's conclusion that the applicant does not face an unnecessary hardship. There are alternatives to constructing a porch that will conform to setbacks.
2. It is the Board's conclusion that the variance will not deliver substantial justice. Future owners of abutting property could be adversely affected.
3. It is the Board's conclusion that the variance will not be in harmony with the spirit and intent of the zoning ordinance. Reasonable setbacks need to be maintained for safety and density reasons.
4. It is the Board's conclusion that the variance will (John Murphy & Dean Trefethen voted will not) result in a diminution in value of surrounding properties. A six foot setback could adversely affect adjacent properties.

ZBA

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5. It is the Board's conclusion that the variance will not be of benefit to the public interest. Safety issues would be compromised by granting this proposal.

**MOTION:**

Bob Callan made the motion to deny the request for a variance.

Bill Colbath seconded the motion.

U/A

The applicant was advised that she has 20 days to appeal the decision.

**ITEM #6:**

Z 96-25, Hilda & Richard Carroll, 28 Tuttle Ln., a/k/a Assessor's Map M, Lot 83-C, Zoned R-40 requests a variance from the provisions of Article V, Section 170-16 to subdivide a lot into two (2) parcels, of which one lot would have one hundred forty-two (142) feet of frontage along a public right-of-way where one hundred fifty (150) feet is required.

Bob Stowell - Engineer - During a survey, it was determined that there would be insufficient frontage for one lot if the parcel were subdivided into two lots. He presented a sketch showing the 2 lots and the location of the house.

Richard Carroll - He is retired and does not need a large lot and so would like to subdivide.

**MOTION:**

John Murphy made the motion to accept the case.

Bob Callan seconded the motion.

U/A

The Board members discussed the size of the lot, the right-of-way, and when a portion of the lot was taken away when the road went in.

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**PUBLIC HEARING OPENED**

Bruce Woodruff - The Planning Dept. does support granting the variance. The hardship is in the unique shape of the lot.

**PUBLIC HEARING CLOSED.**

**FIVE CRITERIA:**

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. The unique configuration of the lot is caused by a radius that was meant to be frontage. This constitutes a hardship because if the corner was squared off there would be adequate frontage.
2. It is the Board's conclusion that the variance will deliver substantial justice. It allows subdivision of land that otherwise could support two houses.
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 in this zone is for 150 feet frontage and for all intents and purposes the proposal has that requirement.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. Proposed lots are consistent with the neighborhood.
5. It is the Board's conclusion that the variance will be of benefit to the public interest. It allows a reasonable subdivision which will lead to an increased tax base.

**MOTION:**

Bill Colbath made the motion to grant the variance.

Bob Mullan seconded the motion.

U/A

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ITEM #7:

Z 96-26, Roger Rivers Living Trust, 436-446 Central Ave., a/k/a Assessor's Map 6, Lot 21, zoned B-2 requests a Variance from the provisions of Article V, Section 170-16 to subdivide an existing parcel with building thereon into three (3) lots, creating three (3) non-conforming buildings: (1) with approximately ten (10) feet rear setback and 90% of lot coverage; (2) with approximately ten (10) feet rear setback and 84% of lot coverage and (3) with 76% of lot coverage; all where a minimum of twelve (12) feet is required for the rear setback and a maximum of 70% of lot coverage is allowed.

Atty. McNeill - Represented the applicant and submitted photographs of the building to the Board. The lot is to be divided along the lines of each building section to allow Mr. Rivers to sell the buildings separately. There are separate roof lines and each of the buildings are structurally independent. There will be no change to the buildings. A variance is necessary because of the setback and lot coverage. Relief is being sought for 2 of the 3 buildings for 2 feet of setback. Mr. McNeill reviewed the application.

MOTION:

John Murphy made the motion to accept the case.

Bob Callan seconded the motion.

U/A

PUBLIC HEARING OPENED

Bruce Woodruff - The Planning Dept. is in favor of the variance request. The hardship is the age of the buildings, the zoning at the time, and the land coverage.

PUBLIC HEARING CLOSED

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. The buildings exist now and constitute a lawful use of the property and are uniquely designed to allow logical subdivision.

*Bill Colbath opposed*

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2. It is the Board's conclusion that the variance will (Bill Colbath voted will not) deliver substantial justice. The proposal will allow for a similar condition as the abutting property.
3. It is the Board's conclusion that the variance will (Bill Colbath voted will not) be in harmony with the spirit and intent of the zoning ordinance. There will be no changes in the existing situation and the ordinance treats the downtown area with lenience.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. There is no evidence to the contrary, plus the proposal represents no change to the appearance of the structures.
5. It is the Board's conclusion that the variance will (Bill Colbath voted will not) be of benefit to the public interest. The ability to convey the buildings separately could lead to increased commercial activity and would probably increase the chances of proper maintenance to be done on the structures.

**MOTION:**

Bob Callan made the motion to grant the variance.

John Murphy seconded the motion.

4 in favor and 1 opposed (Bill Colbath opposed)

**ITEM # 8:**

**Z 96-27, W.D.C., Inc., (Applicant, Gary Merrill), 17 New Rochester Rd., a/k/a Assessor's Map 39, Lot 16, zoned B-5 requests a Variance from the provisions of Article IX, Section 170-33.A to erect an eight (8) foot high stockade fence when the maximum of six (6) feet high is allowed.**

Gary Merrill - Due to the reconstruction of the traffic circle, and the subsequent re-location of Willand Pond Rd., an abutter is requesting an 8 foot stockade fence for privacy of residence and Gary Merrill approves the increase from 6 feet to 8 feet.

**MOTION:**

John Murphy made the motion to accept the case.

Bill Colbath seconded the motion.

U/A

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#### **PUBLIC HEARING OPENED**

Bruce Woodruff - 1) There is a proposed rezoning which will allow 8 foot fences in the B zones, 2) the State took some of the applicant's land for the road reconfiguration and the residents were affected by zoning and the State's acquisition of land, 3) the hardship is that the shape and use of the land has changed since the traffic circle was changed.

#### **PUBLIC HEARING CLOSED**

A letter was received from Mr. Peter Russell, an abutter, who is in favor of the request.

#### **FIVE CRITERIA:**

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. Because the neighborhood is in transition from residential to commercial, unique measures to be taken to protect abutters. Only a 6 foot fence would be permitted and this constitutes the hardship.
2. It is the Board's conclusion that the variance will deliver substantial justice. It allows needed screening of appropriate height to protect residential abutters.
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 was for fences to give reasonable screening and an eight foot fence in this case is needed.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. The proposal would in fact help maintain the value of surrounding properties.
5. It is the Board's conclusion that the variance will be of benefit to the public interest. It allows proper screening and security for the neighborhood.

#### **MOTION:**

Bill Colbath made the motion to grant the variance.

John Murphy seconded the motion.

U/A

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The Board discussed the amount of times Dave Paolini had been absent from meetings. Dean Trefethen stated that he would call Dave in regards to his intentions.

Bob Callan - Reported that he will be absent from meetings in January, February and March of 1997.

**MOTION:**

Bill Colbath 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>
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