

**DOVER ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
DECEMBER 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 Steve Stancel, Planning Director.

Dean Trefethen called the meeting to order.

ITEM #1: NEW BUSINESS

Approval of the November 21, 1996 minutes.

MOTION:

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

Bill Colbath seconded the motion.

With the following corrections:

- (1) First page, 9th. line down, change from "Bill Colbath seconded the motion with the following corrections:" to read "Bill Colbath seconded the motion." There were no corrections.
- (2) Page 8, under FIVE CRITERIA: should read "It is the Board's conclusion that the applicant does face an unnecessary hardship. (John Murphy and William Colbath voted does not)."

U/A

Dean Trefethen advised the Board that a letter had been received from David Paolini in which he resigned his position on the Board of Adjustments. Richard Callaghan will be requested to be approved from Alternate to Regular membership beginning January 1997.

ITEM #2: OLD BUSINESS

ITEM #3:

Z 96-28 Annette Cockburn, 137 Portland Ave., a/k/a Assessor's Map 25, Lot 48, Zoned B-3, requests a Variance from: (1) the provisions of Article IV, Section 170-12 to maintain a front deck addition within ten (10) feet from a front property line as it

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abuts a street where fifty (50) feet is required, and the provisions of Article X, Section 170-41.A to increase a non-conforming structure; (2) the provisions of Article V, Section 170-17 to maintain an accessory structure (above-ground swimming pool) within twenty (20) feet from a front property line as it abuts a street where (50) feet is required; and (3) the provisions of Article IX, Section 170-33.B(1) to maintain a fence with the finished side facing inward onto the property on which it is located.

Tom Clark advised the board that the error in the setback for the pool, item #2, was partially his responsibility. When he issued the Building Permit, he looked at the zoning map and it appeared as if the property was in the RM-10 zone, and in following conversations with the applicant, and examining the map further he found that the property was in the B-3 zone which has a different setback requirements. By the time this was discovered, the pool was already installed.

Annette Cockburn - Believes the hardship is that this residential property is located in the B-3 zone. She had stated that everything was in her application and she was ready for questions.

Bill Colbath asked if there were Building Permits.

Annette Cockburn - She has a permit for the pool but did not realize she needed one for the deck. Thomas Clark had called it to her attention. Her two sons built the deck while she was away and did not realize she had no permit.

Dean Trefethen asked about the fence.

Annette Cockburn - She was not aware of the fence ordinance. GM Fence installed the fence correctly, with the good side out, and she asked them to turn it around and they did. There is shrubbery on the abutter's side of the fence that will conceal the fence.

Steve Stancel asked when the State took some of her property.

Annette Cockburn - Sometime between 1957 and 1959.

MOTION:

John Murphy made the motion to accept the case.

Rick Callaghan seconded the motion.

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Robert Mullan stepped down and Rick Callaghan sat on this case.

PUBLIC HEARING OPENED

Steve Stancel - The Planning Department has no problem with any part of the request. The State did take a portion of the land and there would be no advantage to the abutter if the fence were turned around. No substantial justice in having the fence turned around. The shrubbery will in time conceal the fence.

PUBLIC HEARING CLOSED

John Murphy - Feels that a letter should go to fence companies in regards to the fence ordinance.

The Board discussed the fence.

- 1) The hardship being the topography
- 2) The applicant's shrubbery would conceal some of the fence when it grows taller
- 3) The applicant's awareness of the ordinance.

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. (Dean Trefethen & Wm. Colbath voted does not for the deck and pool.) ~~→~~ *fence*
Due to changes to zoning and taking of land to widen the road, the lot has no options available to it. Plus the terrain behind the fence negates the need for the finished side out.
2. It is the Boards conclusion that the variance will deliver substantial justice. (Dean Trefethen voted will not on the fence.) The pool was put up with a permit but a mistake was made by the City on the setbacks requirement. The deck replaces an older structure, and although larger, accomplishes the same thing, and takes good advantage of the limited space available on the lot. The terrain and the vegetation behind the fence negates the reason for having the finished side of the fence facing out.

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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. (Bill Colbath voted will not on the fence, Dean Trefethen voted will not on the fence and the deck.) It does not impose any negative impact on adjoining properties. Plus the terrain and vegetation negates having the finished side out. No additional negligible encroachment has occurred.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. Abutting properties are incompatible uses with a single family house, so these requests would not impact them.
5. It is the Board's conclusion that the variance will be of benefit to the public interest. (Bill Colbath voted will not on the fence, Dean Trefethen voted will not on the deck and fence.) It enhances the property attractiveness for possible sale.

MOTION:

John Murphy made the motion to grant the variance for the pool.
Rick Callaghan seconded the motion
U/A

John Murphy made the motion to grant the variance for the deck.
Rick Callaghan seconded the motion.
4 in favor and 1 opposed (Dean Trefethen opposed)

John Murphy made the motion to grant the variance for the fence.
Bob Callan seconded the motion.
Condition: The hedge be allowed to grow to a minimum of the center rail of the fence.
3 in favor and 2 opposed (Bill Colbath & Dean Trefethen opposed)

ITEM #4.

Z 96-29 Cricklewood on the Bellamy Trust (Joseph Sawtelle, Trustee), Clearwater Dr., a/k/a Assessor's Map L, Lot 49-A Zoned RM-12 requests a variance from the provisions of Article IX, Section 170-32.E(8) to maintain an approximate twenty-seven (27) square foot free-standing sign in connection with a multi-family residential complex where a maximum of twenty (20) square feet is allowed.

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Bob Mullan sat in on this case and Rick Callaghan stepped down.

There was no one present to represent the applicant.

The Board discussed whether or not there was enough information to hear the case.

MOTION:

John Murphy made the motion to accept the case.

Bob Mullan seconded the motion.

4 in favor and 1 opposed (Bob Callan opposed)

The Board discussed the size of the sign and its construction with the stone base.

PUBLIC HEARING OPENED

Steve Stancel - The Planning Dept is against the proposal because we cannot see a hardship.

PUBLIC HEARING CLOSED

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does not face an unnecessary hardship. A sign that met the ordinance would accomplish everything the non-conforming sign does.
2. It is the Board's conclusion that the variance will not deliver substantial justice. There is no evidence to show any reason why this property should be given more rights than 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 spirit and intent is to control sign sizes in residential areas and this sign violates that spirit and intent.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. (Bill Colbath & Robert Mullan voted will). No evidence to the contrary. Plus it is an attractive sign.
5. It is the Board's conclusion that the variance will not be of benefit to the public interest. A larger sized sign does not accomplish anything a properly sized sign would.

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MOTION:

Bob Mullan made the motion to deny the variance.

Bill Colbath seconded the motion.

U/A

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

ITEM #5:

Z 96-30 Strafford Guidance Center Inc., 130 Central Ave., a/k/a Assessor's Map 15, Lot 105, Zoned RM-10 requests a variance from the provisions of Article IV, Section 170-12, Table 1, Part E, to establish a hospital-type facility in a section of the building.

Atty. Ed. Ford represented the applicant - Representing the applicant are Cathy Becallo, Executive Director of the Guidance Center, Judy Williams, Director of Acute Care Services, and David Garbacz, Manager of Psychiatric Care. They are seeking a use variance. There will be no exterior changes. There will only be changes to the interior of one floor. Mr. Ford displayed an enlarged floor plan showing the proposed change. The property at 576 Central Ave. can no longer be used for acute care without significant changes, due to the changes made in the State regulations.

Cathy Becallo - Distributed material on the services of the center to the Board and she explained the Center's services. They serve patients who are in psychiatric crisis. Those who have a history of violence will not be admitted but routed to hospitals.

Ed Ford - Reviewed the application.

John Murphy - Asked why the State would not allow the program to continue at 576 Central Ave.

Ed Ford - It does not meet the structural regulations.

John Murphy asked who would pick up the services if this facility were closed.

Cathy Becallo - No one. They would have to go to hospitals or not be served. These are people without insurance coverage.

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The Board and applicant discussed the Center's services, procedures, client intake and transportation. There are approximately 50 - 100 clients per day. There will be 10 beds with around the clock medical staff. The average stay for patients is 7 - 9 days and the patients have direct supervision and the doors are locked.

Bill Colbath - The original request for a variance in 1985 was granted with the condition that there would be no over-night stays. He is concerned with the nighttime ambulance and police at 130 Central Ave.

MOTION:

Bob Callan made the motion to accept the case.

Bill Colbath seconded the motion.

U/A

PUBLIC HEARING OPENED:

City Councilor Howard Williams - Although he believes this type of facility is needed, he is not sure that it belongs in this neighborhood. The condition in the 1985 variance was no over-night stays and now they want to change it to over-night stays.

Steve Stancel - The Planning Dept. opposes this request. Although this type of facility is needed it should not be in a residential area. Can not see a hardship. There is reasonable use of this property now. It is contrary to the spirit and intent of the ordinance. It would be disruptive to the neighbors.

Ed Ford - The services to this community will be affected if this facility were to shut down. This structure was designed for overnight stays.

Steve Stancel - Agrees it would be a loss to this community and the Planning Dept. is willing to help find a better location.

Steve Ryan - Board of Director, Strafford Guidance Center - Attempts are being made to keep this facility open. The State has said to do more with less money. Strafford County does not own any other property that can be used for this program so they have no alternatives.

PUBLIC HEARING CLOSED:

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The Board discussed the following concerns:

1. Possibility of security being broken and patients wandering out.
2. Explore alternatives in a less populated area.
3. Is there a hardship inherent to this property?
4. The ordinance definition of hospital and institution

Bob Callan feels that there is a hardship. This ^{was} is a residential building and the request is to convert part of it back to residential. He feels that 130 Central Ave. would be a better acute care facility than 576 Central Ave. The State regulation changes have caused the facility to make changes.

Bill Colbath does not see a hardship.

Dean Trefethen does not see a hardship.

Rick Callaghan feels that the hardship could be the zoning ordinance. The definition of hospital and institution is not clear.

John Murphy feels that time should be given the applicant and the City to investigate alternatives because some of the Board members cannot see a hardship. This type of service is an important need for the community.

Dean Trefethen - Asked if applicant is willing to table the request and look at alternatives.

Ed Ford - The applicant agrees to table.

MOTION:

John Murphy made the motion to table the request.

Rick Callaghan seconded the motion.

John Murphy withdrew his motion. The Board still could not see a hardship. The decision was made to go to the five criteria.

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FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. (Bill Colbath and Dean Trefethen voted does not) Strict enforcement of the zoning ordinance in this case would be a needless or unnecessary restriction on this property.
2. It is the Board's conclusion that the variance will deliver substantial justice. (Bill Colbath and Dean Trefethen voted will not.) Based on the information provided, this proposal will allow the continuation of an acute psychiatric care facility in Strafford County.
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 and Dean Trefethen voted will not.) The proposal will not adversely affect adjoining properties.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. (Bill Colbath and Rick Callaghan voted will.) No evidence presented to the contrary. Most neighbors would not be aware of its operation.
5. It is the Board's conclusion that the variance will be of benefit to the public interest. (Bill Colbath voted will not.) This proposal will allow the continuation of an acute psychiatric care facility to continue serving Strafford County. The proposal over-all benefits the public far greater than any possible impact on abutters.

MOTION:

Bob Callan made the motion to grant the variance.

Rick Callaghan seconded the motion.

Conditions: (1) Limited to a maximum of 10 overnight residents, (2) Variance is null and void if Strafford Guidance vacates the structure.

3 voted in favor and 2 opposed (Dean Trefethen and Bill Colbath opposed)

Nominations of ZBA Board members will take place in January

MOTION:

John Murphy made the motion to adjourn.

Rick Callaghan seconded the motion.

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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