

ZONING BOARD OF ADJUSTMENT  
MINUTES OF MEETING  
JULY 20, 1995

**MEMBERS PRESENT:** Dean Trefethen, Chair., Bill Colbath, Vice  
Chair., Robert Callan, Richard Callaghan,  
Robert Mullan, and John Murphy

**STAFF PRESENT:** Thomas Clark, Building Insp., and Bruce  
Woodruff, City Planner

Dean Trefethen, Chairman, called meeting to order.

**ITEM #1: New Business**

(A) Approval of the June 22, 1995 minutes.

**CORRECTIONS:**

- (1) Robert Callan attended the June 22 Meeting. Add his name to Members Present.
- (2) Page 2, 5th paragraph down, "Richard Callaghan was not present at the last meeting.." should read, "John Murphy was not present..."
- (3) Add next sentence, "Richard Callaghan did not sit in on the initial hearing or the second hearing."
- (4) Page 6, 1st paragraph, eighth line down should read, "the applicant met the criteria, instead of having 30 feet for a proposed right-of-way, you". Last line of same paragraph should read, "have to have asphalt and the curbing..."
- (5) Page 6, third paragraph down, first line should read "Dean Trefethen asked Mr. Hartnett how they were..."
- (6) Page 6, last paragraph, fifth line down, should read "considered a public right-of-way, but the City has never construed land abutting it as frontage and..."
- (7) Page 7, 2nd. paragraph down, 1st line should read, "...it was seconded by Bob Callan."
- (8) Page 7, 4th paragraph from bottom, 5th line up, should read, "There will be a diminishing of Value due to the impact on the overcrowding"
- (9) Page 8, 2nd. paragraph from bottom, 2nd. line up, should read, "added that there is nothing precluding the applicants from putting a City street in,"
- (10) Page 8, 4th. paragraph up from the bottom, 2nd. line up, should read, "He also added that there could be future traffic problems..."

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(11) Page 8, after the 2nd. paragraph down, insert the following:

Bruce Woodruff - The City is grudgingly leaning towards supporting the granting of the variance to create lots without frontage on a City accepted street, first because the layout of Keating Ave. shows clearly that the intent was to develop the back parcels, not only of this parcel but the next parcel. The City feels that the shape of the lot is unique. Given that, you could put a City right-of-way in from Stark Ave., 50 feet wide, but then there would not be enough developable area. We recognize that the two parcels could be put together. The owner could build a City street to City specs along the Spaulding Turnpike and have many more lots. The Planning Director was leaning towards asking the Board, if they chose to grant the variance, to get the applicant to reserve a 50 ft. strip for a future City right-of-way adjacent to the Turnpike. The applicant would have to change the layouts of his lots and it would open future development on the next lot. It would make good planning for a street network, but there are other considerations.

Dean Trefethen - Are you saying extend Keating Ave. right-of-way to lot 39 and still maintain the private road for the proposed middle lot.

Bruce Woodruff - Yes.

Bruce Woodruff - The alternative to that would be to change where you bring the private 30 ft. wide right-of-way in from Stark and run along the opposite property line from the neighbors. If this were considered, you would not be making a non-conformity out of this because a 30 ft. wide easement would still be considered frontage. If this were considered, we would like the condition that the existing driveway to the existing house be abandoned, and that the 30 ft. wide driveway easement be utilized for all three lots. Atty. Hartnett did talk about the proposed 30 ft. private drive. The way it appears on the proposed plan, it is shown as a separate right-of-way. The City would not support the creation of a separate right-of-way. The City would support, wherever you would place, the creation of a right-of-way easement that would be part of both lots.

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(12) Page 9, 5th. paragraph from bottom, should read,  
"developed area with a right-of-way..."

**MOTION:** Bob Callan made the motion to accept the minutes with the corrections listed above.  
John Murphy seconded the motion.  
U/A

Dean Trefethen presented a letter from Mr. Downs concerning the case that was tabled in May. If this constitutes a plan, the case could be scheduled for the August meeting.

Tom Clark - Spoke to both Mr. Cressey and Mr. Downs. The packet also includes a letter from the owner giving Mr. Downs authority to make decisions on Mr. Cressey's behalf. Tom spoke with Mr. Downs and he is open to a site meeting prior to the Zoning meeting if the Board deems it necessary.

**MOTION:** Dean Trefethen made the motion to schedule this case for the August meeting without a site visit prior to the meeting.  
Bill Colbath seconded the motion.  
U/A

(B) Consideration of a Motion for Rehearing request by Clara Fisher, 89 Stark Ave., a/k/a Assessor's Map 17, Lot 28, Zoned R-12 concerning frontage requirements (ZBA Case #Z 95-14).

Dean Trefethen - The Board is to consider the information given in the brief, decide whether there is any new information to be considered, then decide whether to grant a rehearing in August. The alternative to this is if the Board feels that it erred, and/or with new information, whether the variance could be granted.

Tom Clark - Requests that Mr. Hartnett be allowed to address the Board. They may like to postpone their request for a rehearing pending a conversation with the Planning Director, who is on vacation at this time.

Atty. Hartnett - Would like to meet with the Planning Dept. to find out what the alternatives would be to the proposed project for this particular area.

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**MOTION:** John Murphy made the motion to table this case.  
Bob Callan seconded the motion.  
U/A

**ITEM #2:** No Old Business

**ITEM #3.** Z 95-15, Hannaford Bros. Co., (Applicant: Family Dollar Stores Inc.), 47 Chestnut St., a/k/a Assessor's Map 31, Lot 5, Zoned B-2, requests a variance from the terms of Article IX, Section 170-32.F(1)(a), to install a wall sign with an area of one-hundred sixty (160) square feet, where forty-five (45) square feet is allowed.

Steven Smith - Representing Family Dollar Stores Inc. Concerned that the 45 sq. ft. sign is too small for the distance from the road, approximately 150 to 200 feet away. It would be too small for the public to see. Their standard sign is a 5 ft. by 32, or 160 sq. ft. In viewing the site, it was found that most surrounding signs are of considerable size. Due to the landscape, it would not constrict any of the other businesses in that location.

Dean Trefethen - Asked if there would also be a sign out at the street.

Steven Smith - Not at this time. Only a wall sign.

Dean Trefethen - Asked how the size of this store compares with their other stores.

Steven Smith - This store will be larger than some of their other stores.

Bob Mullan stepped down from this case.

**MOTION:** Bob Callan made the motion to accept this case.  
John Murphy seconded the motion.  
U/A

John Murphy - Asked if there is a setback issue.

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Tom Clark - The building used to be in the I-1 zoning district and the ordinance used to allow a sign to be larger depending on the setback of the building. Unfortunately the zone changed to B-2 and the four year exemption expired so that provision no longer applies to this particular property. In response to the freestanding sign question, B-2 zones also allows freestanding signs, but regardless of the number of tenants, the maximum for a freestanding sign is 60 sq. ft., which is what is currently there for the Good Will and Rite Aid stores. So even if the Family Dollar Store would like to put a sign on the pole, they would have to petition the Board for a variance, or an option could be, Hannaford Bros., along with the current tenants, could reconfigure the sign to allow sufficient area per tenant, still keeping at the 60 sq. ft.

John Murphy - Asked how the sign requirements differ in the Industrial Zone.

Tom Clark - In that case, 1 sq. ft. sign for each foot of building setback.

#### PUBLIC HEARING OPENED

Bruce Woodruff - The Planning Dept. does not support this request mainly because the applicant can get together with Hannaford Bros. and the other tenants and rework the freestanding sign. It becomes more of an economic and partnership issue rather than a hardship issue. They would have a sign at the road to bring people in and also a 45 sq. ft. sign on the building.

#### PUBLIC HEARING CLOSED

John Murphy - asked the Board members for their opinion of the width of the store as it compares with others, for example Shaw's Plaza and it's small stores which are narrow in width and depth. This particular store is narrow but deep.

Tom Clark - Shaw's is in a B-3 District which allows wider signs.

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John Murphy - Was using these stores as examples of similar frontage.

Bob Callan - Questioned the Planning Dept's. position.

Bruce Woodruff - We see an alternative to the large wall sign by reworking the freestanding sign.

Dean Trefethen - Asked Bruce if the City would change its position if Hannaford Bros. ~~did not~~ have an agreement with the current tenants about the freestanding sign.

Bruce Woodruff - No.

Bill Colbath - Agrees with the Planning Dept. He does not see a need for a larger sign. A sign is to identify the structure, not become a billboard.

The Board discussed the following:

- (1) Agreement between Hannaford Bros. and current tenants as to whether or not the freestanding sign can be changed.
- (2) Discussed the size of the sign that other Family Dollar stores have.
- (3) Examples of other B-2 areas.
- (4) Size of freestanding sign.
- (5) Previous tenants of the building and signage.
- (6) Size of current tenant's signs.
- (7) The sign ordinance.

Dean Trefethen - Possibility of tabling the case to provide Family Dollar Store time to find out if Hannaford Bros. does have an agreement with tenants in regards to the freestanding sign.

Bill Colbath - Questions the hardship.

Rick Callaghan - Feels the hardship is due to the frontage of the building.

Bob Callan - Suggested that the Family Dollar Store present an alternate design for a smaller sq. footage sign. Based on the information presented, Bob feels that he would have to deny the request for a variance.

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John Murphy - Would support a sign similar to the other tenants. Would have to deny as presented tonight.

Tom Clark - Agrees with the Planning Dept's. suggestion. If the freestanding sign is reworked then a variance for the building is not required because a 45 sq. ft. sign would be sufficient.

MOTION: Bob Callan made the motion to table this case until the August meeting giving Hannaford Bros. time to restructure the freestanding sign to accommodate the 3 tenants, including Family Dollar Store.  
John Murphy seconded the motion.  
It is the Board's consensus that the request, as presented would be denied. It would benefit the applicant to table the request and have time to return with an alternative proposal.  
Four in favor and one opposed (Bill Colbath opposed).

4. Z 95-16, Judy Stewart, 55 New Rochester Rd., a/k/a Assessor's Map 40, Lot 19, Zoned B-3, requests a variance from (1) the terms of Article V, Section 170-12 to construct a one-story addition onto a beauty shop within approximately ten (10) 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.

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

Dana Lynch - Represented Judy Stewart. Owner proposes to remove a deck and replace it with a 12 by 22 ft. addition. The hardship is the fact that there is a 50 ft. setback requirement and due to the odd shape of the lot, does not meet this requirement. Dana reviewed the application and the site plan.

Dean Trefethen - Asked what the proposed use is for the addition.

Dana Lynch - The same as the beauty shop. Expansion of the area. Service will not change.

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**MOTION:** Bob Mullan made the motion to accept the case.  
John Murphy seconded the motion.  
U/A

John Murphy - Asked about the possibility of putting the addition at the end of the asphalt area.

Tom Noonan - Contractor - It would encroach on the parking area and some of the parking spaces would be lost.

#### **PUBLIC HEARING OPENED**

Bruce Woodruff - The Planning Dept. supports this variance request due to the unique shape of the lot. This lot was larger at one time until two major highways came in. The use does conform with the zone. The addition will not encroach any further into the setback than it does now. The ordinance will be changed in regards to that. The addition to the bulk of the structure is minimal. We would like to recommend the following conditions:

- (1) No use of the second floor of the addition.
- (2) Existing dry sump in the parking lot must be resized and rebuilt to handle the run-off from the roof to eliminate flooding. At the present, the dry sump is clogged.

The Planning Office would like to recommend that the Community Services be advised to take a look at and take some action to curtail the amount of drainage coming off the City street onto the applicant's property. Upon site inspection, it was found that there is no catch basin in the road system.

Judy Stewart - She has called the City many times to come and clean the drain out. But whenever it rains it clogs up again with mud.

#### **PUBLIC HEARING CLOSED**

Dean Trefethen - Asked Bruce how he would recommend that Community Services be approached in regards to the dry sump problem.

Bruce Woodruff - Suggests that it be made a condition.

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Bill Colbath - Does not feel that this Board can put a condition on that the City correct the drainage as part of the variance.

Tom Clark - The suggestion is that a request may be made to the Community Services Dept. to look at the problem.

Dana Lynch - The owner is willing to discuss the drainage problem with the Community Services Dept.

**CRITERIA:**

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. the unique shape of the lot leaves no allowable area for expansion of the structure. The proposed addition will not encroach further into the setback than the current structure.
2. It is the Board's conclusion that the variance will deliver substantial justice. It will allow continued use and a minor expansion of an allowed use.
3. It is the Board's conclusion that the variance will be in harmony with the spirit and intent of the zoning ordinance. This is an allowed use and the proposed addition does not encroach further into the setback than the current structure.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. There was no evidence to the contrary.
5. It is the Board's conclusion that the variance will be of benefit to the public interest. It will allow minor expansion of an existing business.

**MOTION:** John Murphy made the motion to grant the variance with the following conditions;

- (1) The dry sump in the parking lot is to be rebuilt to a larger size to accommodate the drainage from the applicant's property.
- (2) No use of the addition's second story.

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Bob Callan - In regards to the second floor, asked if the Board is stating that the owner cannot use the second floor for storage. Bob can envision a drop-down set of stairs to use this area for storage.

Tom Noonan - The proposed plan is intended to also enlarge the second floor office. The second floor of the addition will be enclosed to make it weather tight and a skylight for the private office. It is used as the owner's office and an employee lounge. It is not intended to be used by the general public. Would not want it to go on record that the second floor space cannot be used. No problem if wording is used that the space cannot be used for retail.

**MOTION:** John Murphy made the motion to grant the variance with these conditions:

- (1) The second floor is not to be used for retail purposes.
- (2) The dry sump in the parking lot is to be rebuilt to a larger size to accommodate the drainage from the applicant's property.

Bob Callan seconded the motion.  
U/A

**MOTION:** Dean Trefethen made the motion to make a recommendation to the Community Services Dept. to take a look at the drainage problem at this property that is caused by the City's street. Memo to be addressed to Mr. Bobinsky.  
Bill Colbath seconded the motion.  
U/A

The Board members discussed Atty. Hartnett's memo in regards to the Fisher case. Atty. Hartnett cited past cases at the meeting to support Ms. Fisher's position. It was the general consensus of the Board that if any applicant wants the Board to consider past cases, then it is the applicant's responsibility to present the Board with all of the supportive documentation in regards to the cases, and the Board will also need time to consider this information. It was felt that presenting these cases at the time of the meeting was not enough time for the Board to consider them.

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MOTION: Bob Callan made the motion to adjourn.  
Dean Trefethen seconded the motion.  
U/A

List of members with expiration dates

|                   | <u>Term Starts</u> | <u>Term Exp.</u> |
|-------------------|--------------------|------------------|
| John Murphy Jr.   | 12/31/92           | 12/31/95         |
| 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         |