

ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
August 17, 1995

MEMBERS PRESENT: Dean Trefethen, Chairman, Bill Colbath, Vice-Chairman, Richard Callaghan, John Murphy, and David Paolini

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

Dean Trefethen called the meeting to order.

Dean Trefethen - Reminded the Board members of the Municipal Law Lecture Series, of which each received a registration form. The form must be completed and sent to NHMA. The fee is paid by the City.

Dean Trefethen - Read his letter to the Community Services Dept. in regards to the installation of a City storm drain near 55 Old Rochester Rd. to eliminate water run-off onto this property which is causing the dry sump to clog up.

Dean Trefethen - Also read a notice from the NH Municipal Association in regards to their eighth annual Municipal Volunteer Awards. If anyone wishes to nominate someone, he has the application.

ITEM #1: NEW BUSINESS

Approval of the July 20, 1995 minutes.

CORRECTION:

Page 6, fourth paragraph down, 2nd. line, should read:
"position if Hannaford Bros. have an agreement with..."

Bill Colbath made the motion to accept the minutes with the above correction.

Rick Callaghan seconded the motion.

U/A

ITEM #2: OLD BUSINESS

Tom Clark asked if the case for a request for Rehearing by Clara Fisher could be heard out of order because Mr. Hartnett was going to request the case to be tabled until the September meeting.

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The Board members agreed to allow this.

- 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). (This item was tabled at the meeting of July 20, 1995).

Mr. Hartnett - Asked that the request for a Rehearing by Clara Fisher be tabled a second time, until the September meeting.

MOTION:

John Murphy made the motion to table the case until September 21, 1995.

Bill Colbath seconded the motion.

U/A

- A. Z 95-9, Carl Cressey, Jr., 21-23 Rogers Street, a/k/a Assessor's Map 24, Lot 127-A, Zoned RM-10, requests a variance from (1) the terms of Article V, Section 170-12 to construct a side porch, walkway and stairway addition onto a two-family dwelling within less than one (1) foot of 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. (This item was tabled at the meeting of May 18, 1995).

Dean Trefethen - Since the last meeting, a letter was received from Carl Cressey giving James Downs permission to make decisions in regards to an addition on his property at 21-23 Rogers St. A plan for the addition, drawn on July 2, 1995, was also submitted.

James Downs - There will be a small stoop with stairs going down on both sides and a paved walkway. In regards to the bulkhead, the doors have been removed and the foundation will be cut down to ground level and capped. A recessed grate will be inside that. A storm drain will be placed inside the bulkhead.

Rick Callaghan - Asked about the direction of the roof.

James Downs - The pitch runs perpendicular to the street.

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Rick Callaghan - Concerned with the possibility that the storm drain in the bulkhead may be unable to handle the water run-off.

James Downs - a gutter along the house may be necessary.

David Paolini - Asked if the Board had to give him a porch to this door no matter what.

Tom Clark - This is a situation created by the former Planning and Zoning Boards. Because there is a door he doesn't know that there is an inherent right to build a platform and stairs that would be in violation to the Zoning Ordinance. What was there was fine until the subdivision came. So we can not allow a porch and stairs to be built of this size without a variance.

James Downs - The requested size is to allow enough turn-around room.

Bruce Woodruff - The City is on record as supporting this request because the lot configurations were created by previous Zoning and Planning Board actions, and it would also alleviate the safety problem with coming down the steps.

FIVE CRITERIA

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. This is due to the fact that it does not now have a safe and proper egress and this condition was created by previous ZBA and Planning Board actions.
2. It is the Board's conclusion that the variance will deliver substantial justice. This is due to the fact that it will allow proper and safe egress.
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 based on the fact that the proposed plan calls for minimum intrusion into the setback.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. This is based on the fact that there is no evidence to the contrary.

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5. It is the Board's conclusion that the variance will be of benefit to the public interest. This is based on the fact that it allows proper and safe egress.

MOTION:

John Murphy made the motion to grant the variance according to the July 2, 1995 plan submitted.
Rick Callaghan seconded the motion.
U/A

- C. Z 95-15, Hannaford Bros. Co., (Applicant: Family Dollar Store 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. (This item was tabled at the meeting of July 20, 1995).

Dennis Leddy - Representing Family Dollar Stores. Requests a variance for a 5 X 32 wall sign where a 45 square foot is allowed. The majority of their advertising is done by their sign, and because of this location, the visibility is not clear.

Dean Trefethen - Then you would prefer to stick with the original request.

Dennis Leddy - We would prefer to stick with the 5 X 32.

Dean Trefethen - We also asked the representative at the last meeting to go back to Hannaford Bros. to see if the street sign could be reconfigured.

Dennis Leddy - Hannaford Bros. are unwilling at this time to do anything with the street sign.

John Murphy - Asked if the representative from last month conveyed the Board's consensus to him.

Dennis Leddy - It was conveyed to the office which then conveyed it to him. An alternative to the 160 sq. ft. sign would be a 100 sq. ft. sign. If it is smaller than that the name cannot be seen because of the stroke of the letters.

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Bruce Woodruff - The City does not support this request because it does not see a hardship. The City still feels that there is an opportunity to use the freestanding sign.

Bill Colbath - Asked if Mr. Leddy realized that this was tabled to allow the applicant the opportunity to design a sign similar in size with the other signs.

Dennis Leddy - He was not. He was told that it was tabled because of the question of the street sign with Hannaford Bros.

Bill Colbath - That was part of the issue. The other part was that there are other signs on the structure that are considerably smaller than what the Dollar Store is asking for, that are clearly legible from the street.

Tom Clark - In regards to a question the Board had last month, the Rite Aid sign is 100 sq. ft. and the Good Will wall sign is 60 sq. ft., which are consistent with the frontage of each of those stores.

Bill Colbath - Asked if each of those signs are conforming.

Tom Clark - Yes, they concurrently are conforming. This is based on the frontage.

John Murphy - Recognized that the Dollar Store has a shortage of frontage and is deep. The consensus of the Board was that it would agree to a sign that was comparable to the Good Will sign and nothing more. The second part was the discussion with Hannaford Bros., to allow the reconfiguration of the street sign and allow a third sign.

Tom Clark - Asked if the applicant would want to request a revision down to a 60 sq. ft. sign.

Dennis Leddy - Agreed with this because he is scheduled to open the store soon and needs signage.

It was the consensus of the Board that a sign between 60 and 100 sq. feet be allowed.

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FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. (Dean Trefethen voted does not). This was based on the fact that because of the minimal setback, and large store square footage, plus the considerable setback "to code" sign would be a hardship.
2. It is the Board's conclusion that the variance will deliver substantial justice. (Dean Trefethen voted will not). This is based on the fact that it will allow reasonable recognizable signage commensurate with the square footage.
3. It is the Board's conclusion that the variance will be in harmony with the spirit and intent of the Zoning Ordinance. (Dean Trefethen voted will not). This was based on the fact that the spirit and intent was to allow reasonable size sign for each tenant and this proposed sign would be comparable to the other tenants.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. This was based on the fact that no evidence was submitted to the contrary.
5. It is the Board's conclusion that the variance will be of benefit to the public interest. (Dean Trefethen voted will not). This is based on the fact that a larger sign will allow proper and safe identification from the road.

MOTION:

Bill Colbath made the motion to grant the variance.
John Murphy seconded the motion.

Restriction: A 60 sq. ft. sign maximum, with no future consideration for a larger freestanding sign at the street unless the wall sign reverts back to a 45 sq. ft. sign.
4 in favor and 1 opposed (Dean Trefethen opposed).

A discussion was held by the board members on the responsibility of the owner to provide each of his tenants the signage for them that will be within the ordinance.

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ITEM #3:

Z 95-17, Andre Brunelle, 29 Arrowbrook Rd., requests an Appeal from an Administrative Decision in connection with the issuance of a Building Permit to Louella and Edward Schmidt, 31 Arrowbrook Rd., a/k/a Assessor's Map TI, Lot 22-94, Zoned R-40, for the construction of an addition onto a mobile home.

Dean Trefethen - On an Appeal from an Administrative Decision, both sides of the case are heard, there is a public hearing, and then it is a yes or no vote. A no vote upholds the Administration, a yes vote grants the Appeal to the applicant.

Andre Brunelle - 29 Arrowbrook Rd., abutter to Louella and Edward Schmidt. His appeal is based on a letter of July 25, 1995, which was submitted to the Board. The letter states three reasons why he feels that the Building Permit should not be issued. These reasons are:

- 1) Interpretation of the definitions of mobile home and building.
- 2) The possible legal repercussions that the City could face if the lease is terminated and the mobile home and addition is removed from the lot.
- 3) Has to do with the lot line.

These issues were never brought before the Board.

Tom Clark - Referenced his memo of August 3, 1995. There is a difference of opinion. Mr. Brunelle was correct in that the issue was never brought before the Board because it has never been an issue brought before us. There have been mobile homes as long as he has been in this position and Building Permits have been issued for additions to mobile homes. It has never been a problem before. It is his opinion that the mobile homes were excluded from the building definition so that modular and stick buildings could not be built in what was designed to be a mobile home park. Also believes that Mr. Brunelle's assertion that an addition onto the mobile home removes it from that definition is incorrect because anything that is built can be removed. Should the lease terminate and the mobile home and addition is removed,

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there are applicable State laws in regards to transporting these over any State highway so there would be no legal implications that would involve the City. The setback is inaccurate. The owner of the park informed Tom that the landscapers were told to place plantings on the lot line and when Tom went out to measure he felt that the issuance of a Building Permit was and is in compliance with the setback regulations laid out by the Mobile Home Park Ordinance. On non-conforming lots, frontage of 75 feet, a minimum of 6 feet is allowed for side setback. Also this decision will apply throughout the City of Dover whether a mobile home is in a park or not, and it may have some bearing on current additions that have been built. A Stop Work Order was issued when Mr. Brunelle's letter was received and work has stopped pending the Board's decision. Based on this, Tom requests that the appeal be denied.

Dean Trefethen - Asked Mr. Brunelle about the awning that he has on his mobile home. If he were to move his mobile home to another park, would it be his intention to move it with the awning attached to it.

Mr. Brunelle - The awning was built a number of years ago. He just has a small wooden enclosed deck. It is very light weight and can be removed readily. He feels that instead of building big massive structures, they should be just small and removable. If the mobile home does have to be moved it would be costly to take them off. His sets on blocks that are barely set into the ground. Another issue is the lot line. No defined lot line has been established.

Bill Colbath - Asked Mr. Brunelle if the setback is the issue or the structure. What is he appealing.

Mr. Brunelle - Since the lot lines are not defined, he questions whether they actually do meet the required setback.

Bill Colbath - Asked what the difference is between a building that sits on sono tubes and one that sits on concrete blocks.

Mr. Brunelle - The definition states that the building shall be permanently affixed to the land, so the mobile home is supposed to be movable.

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Bill Colbath - A mobile home has wheels but is tied to the ground, and although not on a permanent foundation it is still affixed to the ground.

John Murphy - Asked Mr. Brunelle if he would be here before them if the addition were on cement blocks as opposed to sono tubes.

Mr. Brunelle - No, he would not.

John Murphy - Asked Mr. Brunelle who he thought would bear the expense if the mobile home and addition had to be moved.

Mr. Brunelle - The owner of the mobile home.

David Paolini - Feels that the expense of moving a mobile home and addition is up to the owner. He does understand the problem with the setback but since a plot plan is not required in a mobile home park, the City does not have any regulations for it. So he is coming before the Board mainly for a building vs. a mobile home. Mobile home parks have their own set of regulations. Regardless of what you do to them, they are still mobile homes. If anyone would have a problem it would be the park owner, Jensens. Obviously they do not have a problem so he cannot see where this Board can do differently. Feels that the decision should be upheld.

Rick Callaghan - Asked if other mobile parks have additions on sono tubes?

Tom Clark - Typically they are on blocks. Some are on tubes and some on foundations. The mobile homes outside of parks are required to be on foundations. All mobile homes have to be affixed to the ground.

Bruce Woodruff - Once a mobile home, always a mobile home, regardless of what is added to it. It can still be moved. Asks that the appeal be denied.

Dean Trefethen - Read a letter from William Finenco, 33 Arrowbrook Rd., another abutter, who has no objection to the addition. Dean feels that regardless of how it is constructed, a mobile home can be moved just as a building can be jacked up and moved.

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MOTION:

Bill Colbath made the motion to deny the appeal.
David Paolini seconded the motion.
U/A

John Murphy - His reappointment to the Board is conditional upon the return of his oath of office form, and that is in the works. Also asked if each case is researched for past variances on a particular property.

Tom Clark - Yes. We have a card file and it is required to research for past activity on that property.

MOTION:

John Murphy made the motion to adjourn.
David Paolini seconded the motion.
U/A

List of members with expiration dates:

	<u>Term Starts</u>	<u>Term Exp.</u>
John Murphy	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