

ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
JANUARY 20, 1994

MEMBERS PRESENT: William Colbath, Dean Trefethen, Robert Callan, Dave Paolini, John Murphy Jr., and Brenda Whitmore

ALSO PRESENT: Steve Stancel and Thomas Clark

William Colbath, Vice-Chairman, called meeting to order.

ITEM #1: New Business

John Murphy made the motion to accept the minutes of the December 30, 1993 meeting.

Bob Callan seconded the motion.

U/A

Bob Callan made the motion to hold the nominations and elections at the end of the meeting.

Brenda Whitmore seconded the motion.

U/A

ITEM #2: Old Business - None

Bill Colbath stepped down from hearing the first application and Dean Trefethen acted as Chairman.

ITEM #3: Z94-1, George and Anastasia Savramis (Applicant: Karen Debellis representing Homedco), 652-C Central Ave., a/k/a Assessor's Map 30, Lot 135, zoned Office, requests a variance from the terms of Article X, Section 170-40.A. & B. to increase a non-conforming use (Retail).

Ivan Bliven - Represented Homedco. Reason for variance request is because the bulk oxygen tank increases the non-conforming use. The installation of the bulk tank would eliminate truck trips to Portland and Sanford, Maine to refill their oxygen supply. The oxygen would be delivered to the Dover site. The product will be maintained better and insure improved availability to public.

Reid - From Macomber Cryogenics - Explained the oxygen storage and its use. The bulk tank will give longer lasting oxygen and supply to the public. It will also increase the tax base to the town and will be hidden behind the building.

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Dave Paolini made the motion to accept the case.
Bob Callan seconded the motion
U/A

John Murphy - Asked how long supply lasted on the trucks.

Reid - Trucks had to make a trip to Portland and Sanford once a week to refill.

Bob Callan - Asked if they are renting the office space and if there is a show room.

Ivan Bliven - Yes, renting and yes, small show room and office.

Bob Callan and Reid - Discussed the type of bulk tank and its design in relation to a horizontal vs. vertical tank and its size.

Brenda Whitmore - Type of retail.

Reid - Medical supplies.

Dave Paolini - Questioned fence and accessibility to tanks in relation to vandalism and was the Fire Dept. contacted.

Reid - Fence will be locked and there are 12 valves and it is possible to put locks on the valves. This was discussed with Asst. Chief Clymer of the Fire Dept. and there are some life safety issues that will have to be resolved.

Steve Stancel - Asked if there will be ice build-up during the summertime.

Reid - The only time that there will be ice build-up is during the refilling time.

Steve Stancel - Asked if hospitals will be supplied and also information regarding the other 5 tanks.

Ivan Bliven - Do not supply hospitals but patients upon leaving the hospitals. There are 5 different districts and 3 of them have the bulk tanks.

John Murphy - Asked about the savings between current tanks and the bulk tanks.

Ivan Bliven - Savings would be in buying product in bulk and saving truck trips to Sanford and Portland.

Dave Paolini, Tom Clark & Reid discussed the cement slab (drip pad), its location and amount of room for deliveries.

Steve Stancel - Asked how they arrived at the choice of location.

Reid - Taking the other tenants into consideration, this is the less intrusive location and the less amount of parking area lost.

Brenda Whitmore - Concerned with the storage area being used for other products upon Homedco's vacating the premises. Condition should be placed if variance were to be granted that storage area use be terminated.

Bob Callan - Concerned with the height of the tank and the use of a lateral tank vs. vertical, also the location of the tank. There is 30 feet between the building and the tank site, could the tank be moved closer to the building?

Reid - Need to maintain a certain distance from the building and would require additional expense to the owner to place the cement pad in another location.

Tom Clark - Discussed the location with the Fire Dept. and they have no problem with the proposed location.

Dean Trefethen - Asked if anyone from the public wished to speak in favor or against the variance request.

No response from the general public.

Steve Stancel - The City cannot speak in favor of the variance request due to the proximity of the backyard of a resident to a fifteen foot structure. This is an Office zone and the purpose of that zone is that it is a transitional zone between residential and office. Also, cannot look at finances as a hardship.

Dean Trefethen - Not certain that it is within this Board's realm to suggest where the tank is to be located. We need to discuss this case on how it is presented and deny or grant on this basis. However, what is the opinion of the City if the location of the tank would be along the elbow of the building.

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Steve Stancel - It would be better if relocated or well screened.

PUBLIC HEARING CLOSED

Dave Paolini - Against variance request as presented. Should consider relocating tank.

Bob Callan - Would like to see a successful business continue to operate in Dover. Should consider relocating the tank. Board should consider the business as well as the site.

John Murphy - Concerned with the location also.

Reid - The tank can be moved but it will be more expensive for the owner. The tank must be a certain distance from the building and the building will need a fire wall.

Dean Trefethen - Three options - deny, grant or table to come in with a new site plan. It appears to be that the Board has a problem accepting the proposed location of the tank given its size and proximity to abutter's backyard. If the tank were located in the elbow of the building it would be less obtrusive and less apt to dwarf other buildings.

George Savramis - Sited surrounding businesses and the fact that there is a mixture of retail and office use. Also, there were no opposition from the public or abutters.

Dean Trefethen -The issue is not the setback but expanding the non-conforming use. Has this been to the Technical Review Committee yet?

Tom Clark - The only Department concerned would be the Fire Dept.

5 CRITERIA

1. Applicant does face an unnecessary hardship. The variance will allow continued use of the existing building and increase efficiency.
2. If granted, the variance will deliver substantial justice in that it will be able to continue offering the service from present location with increased efficiency.

3. If granted, the variance will be in harmony with the spirit and intent of the zoning ordinance which is to promote and increase safety and allow continuation of present use.
4. If granted, the variance will not result in a diminution in value of surrounding properties. No evidence presented except the applicant's statement that he was not aware of any at other company locations.
5. If granted, the variance will be of benefit to the public interest. It will allow a larger supply for business use and increase efficiency in transportation.

Dave Paolini made the motion that the variance be granted with the following conditions:

CONDITIONS:

1. Proposed location of tank to be moved to the alcove at rear of the building
2. Material stored only as applied for (oxygen)
3. Installation meets City Life Safety Code and N.F.P.A. regulations
4. Tank for use of Homedco only and to be removed when Homedco vacates
5. Board approval of a revised site plan at the next meeting

John Murphy seconded the motion.
4 in favor and 1 opposed

Dave Paolini stepped down from hearing the next case.

Bill Colbath returned as Vice-Chairman

ITEM #4: Z94-2, Margaret M. Nickerson, (Applicant: William Nickerson), 150 Long Hill Rd., a/k/a Assessor's Map A, Lot 18-P, zoned R-12, requests an Appeal from an Administrative Decision concerning the interpretation of the definition for Customary Home Occupation as it relates to small engine repair.

William Nickerson - Feels that the item in the Customary Home Occupation relating to traffic, emission of odor, gas, smoke, dust, noise etc. does not apply to this property because of the highway which is behind this property. Mr. Nickerson also stated that his neighbors expressed that they do not object to this business.

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Tom Clark - Due to several requests made for small engine repairs, the ordinance was set up to protect the more densely populated areas from the noise, exhaust and odors. Since this was applied generically throughout the City in the past, Tom felt uncomfortable in making an exception in this case. So a Certificate of Occupancy was denied for this Customary Home Occupation.

Bob Callan made the motion to accept the case.
Brenda Whitmore seconded the motion.
U/A

Bob Callan - Asked if William resides at the property.

William Nickerson - Yes

Dean Trefethen - Asked exactly what the business was.

William Nickerson - Repair, tune-ups and test of strictly small engines -lawn mowers etc.

Steve Stancel - Asked if there would be any sales of used equipment.

William Nickerson - No. Only repair. No display of equipment. There will be limited traffic to the house because he will pick up and deliver equipment. He will work only during the daytime.

Bob Callan - Concerned with the size of garage, door at the rear of garage to bring in equipment and storage of equipment outdoors.

William Nickerson - There is a rear door and the equipment will be kept in back of the garage, out of sight.

Brenda Whitmore - Questioned the percentage of building to be used for Customary Home Occupation.

Tom Clark - Calculating the house and garage, the area used cannot exceed 25% of that total area.

PUBLIC HEARING CLOSED

Dean Trefethen made the motion to uphold the Administrative decision.

Brenda Whitmore seconded the motion.
1 opposed and 4 in favor

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ITEM #5: Z94-3, Margaret Nickerson (Applicant: William Nickerson), 150 Long Hill Rd., a/k/a Assessor's Map A, Lot 18-P, zoned R-12, requests a variance from the terms of Article II, Section 170-6 (definition of Customary Home Occupation) to operate a small equipment repair as a Customary Home Occupation.

Wm. Nickerson - Reviewed the 5 criteria of his application. He also submitted a letter from his abutters stating that they do not object to this business.

John Murphy made the motion to accept the case.

Dean Trefethen seconded the motion.

U/A

Steve Stancel - The Planning Office has no problem with granting this variance with some conditions. (1) The business should be limited to the hours of 8:00 a.m. to 6:00 p.m. and (2) should the business become bothersome to the neighborhood, the variance may be withdrawn.

Dean Trefethen - Will there be other employees and has any other property been explored for this business.

William Nickerson - No other employees. Due to its being a new business and finances, cannot afford to do it anywhere else.

Bob Callan - Will there be any auto repairs.

William Nickerson - None other than personal vehicle.

Brenda Whitmore - Questioned the use of the screened porch for storage as part of the business and whether or not it is considered in determining the 25% of business area.

Tom Clark - The storage/work area cannot exceed 25% of the total area.

PUBLIC HEARING CLOSED

The Board discussed the noise and fumes from the business. Due to the noise and fumes from the highway directly behind the property, this is not an issue. The area is much more sparsely developed than other residential areas. The kind of

business he proposes should not be readily apparent to the neighborhood. Long Hill Rd. has some other Customary Home Occupations. There are other Customary Home Occupations in Dover that are more obtrusive than this one would be. By limiting the square footage for the business, the size will be kept down.

Dean Trefethen questioned the hardship.

Bill Colbath - Hardship is in the use - it is not a Customary Home Occupation.

Steve Stancel - The proximity of this property to the highway is the hardship in that it makes this lot less conducive to residential.

5 CRITERIA

1. The applicant does face an unnecessary hardship in that the definition of Customary Home Occupation is exclusive of the circumstances of the location of the house. The turnpike has already given significant noise and fumes to the area. The applicant will not significantly raise the levels now present.
2. The variance will deliver substantial justice in that it allows full intended use of Customary Home Occupation without significant impact on neighbors.
3. The variance will be in harmony with the spirit and intent of the zoning ordinance. The spirit and intent is to allow small business use without effecting neighbors. This applicant seems able to do that.
4. The variance will not result in a diminution in value of surrounding properties. If applicant adheres to conditions set forth no change in value should occur.
5. The variance will be of benefit to the public interest. It gives the public an alternative service of repairs and has no negative impact on area.

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Brenda Whitmore made the motion to grant the variance with the following conditions.

CONDITIONS:

1. Machinery test runs be limited to Monday thru Friday, 8:00 a.m. to 6:00 p.m.
2. All storage to be inside
3. Variance is specific only to William Nickerson operating the business and the variance will terminate if Mr. Nickerson moves from the property
4. Upon receipt of written complaints from two different property owners within a one year period, the variance application will be reopened and reviewed for possible revocation at that time

John Murphy seconded the motion.

4 in favor and 1 opposed

Elections of Officers:

Nominated and elected - Chairman - Dean Trefethen
Vice-Chairman - Bill Colbath

U/A

MEETING ADJOURNED

List of members with expiration dates

	<u>Term Starts</u>	<u>Term Exp.</u>
Robert Callan	3/13/91	3/13/94
William Colbath	10/23/91	10/23/94
David Paolini	10/23/91	10/23/94
Dean Trefethen	12/31/91	12/31/94
Brenda Whitmore	12/31/91	12/31/94
John Murphy Jr.	12/31/92	12/31/95