

ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
MARCH 17, 1994

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

ALSO PRESENT: Steve Stancel and Thomas Clark

Dean Trefethen, Chairman, called meeting to order.

ITEM #1: New Business

John Murphy made the motion to accept the minutes of the
February 17, 1994 meeting.

Bill Colbath seconded the motion.

U/A

ITEM #2: Old Business - None

ITEM #3: Z94-4, Leigh and Raymond Estes, Durham Rd., a/k/a
Assessor's Map H, Lot 6-3, zoned R-20, requests a variance
from the terms of Article V, Section 170-16 to subdivide a
non-conforming lot to create two (2) lots, each with
approximately twenty-five (25) feet of frontage on a public
right-of-way where one hundred twenty-five (125) feet per lot
is required.

Bruce Pohopek represented Leigh and Raymond Estes. Explained
the site plan and various abutting lots from a visual aid.

Bob Callan made the motion to accept the case.

John Murphy seconded the motion

U/A

Bill Colbath - Asked for details of abutting parcel.

Bruce Pohopek - Submitted detailed site plan.

Dean Trefethen - Do not find any hardship given on the 5
points of the application.

Bob Callan and Bruce Pohopek discussed the location of
various lots and water and sewer to the applicant's property.
There is water and sewer to the applicant's property.

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Dave Paolini, Tom Clark and Bruce Pohopek discussed how the land became subdivided. The one parcel of land was subdivided in 1985 by a variance. In 1987 there was a lot line adjustment changing some of the land and in 1990 a further lot line adjustment split some more land and added it to the fifty ft. right-of-way.

Steve Stancel - The Planning Dept. is opposed to the application because 25 feet, or less, frontage on a private way is totally unacceptable.

Dean Trefethen - Asked Steve Stancel if the proposed lot line that goes down the center of the right-of-way is considered the side lot line or the front lot line.

Steve Stancel - It is the side lot line.

Bruce Pohopek - The right-of-way would be a common access for both lots.

Dean Trefethen - In regards to the T area being created to both lots, are there any intentions for future sub-division?

Bruce Pohopek - No intentions for further sub-division.

Dave Paolini - Questions frontage requirement if property abuts 2 streets.

Steve Stancel - This is a private drive so this does not apply. In sub-division regs there is a provision that allows up to 4 lots on a private drive, but road frontage is still required on the private right-of-way. This is why he was sent to the ZBA.

PUBLIC HEARING CLOSED

Bill Colbath - Asked for the original plot plan recorded with the County and Bruce produced it. The plot plan was examined.

5 CRITERIA

1. Applicant does not face an unnecessary hardship. The applicant has adequate or greater use of land as adjacent lots and therefore no hardship.

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2. If granted, the variance will not deliver substantial justice. The lot already has a variance applied to it and use is now available.
3. If granted, the variance will not be in harmony with the spirit and intent of the zoning ordinance. The spirit is to regulate density by controlling frontage.
4. If granted, the variance will not result in a diminution in value of surrounding properties. No evidence presented to the contrary. (4 voted will not and 1 voted will).
5. If granted, the variance will not be of benefit to the public interest. The public interest is served by having frontage for easy identification of property for safety.

John Murphy made the motion to deny the variance.
Bob Callan seconded the motion.
U/A

Dave Paolini stepped down from hearing the next case.

Dean Trefethen advised Robert O'Connor that there will be only 4 members voting and he has the option to postpone his appeal until the next meeting. Mr. O'Connor decided to go ahead with the members present.

ITEM #4: Z94-5, Robert and Nong Chrang O'Connor, Columbus Ave., a/k/a Assessor's Map F, Lot 1, zoned R-40 requests a Special Exception as provided for under the terms of Article VI, Section 170-25.3 and Article XII, Section 170-52.C(3) to establish an Elderly Assisted Care Home.

Robert O'Connor - Reviewed the criteria for Special Exception. The property has a well and septic system, and the use will be for elderly assisted care, which will be a benefit for Dover. The six residents will have a van to use for scheduled runs. It is basically a single family dwelling.

Bob Callan and Robert O'Connor discussed the traffic and visibility for that area, driveway permit and access to

property from other lots. There has been no traffic count done by the applicant. The driveway permit was issued to a single family dwelling use. The applicant feels that there is 100 feet of visibility. Bob Callan visited the site and found that there is very limited visibility to oncoming traffic. The driveway is at the crest of a hill and traffic moves at a great speed coming over the hill.

John Murphy made the motion to accept the case.
Bob Callan seconded the motion.
U/A

Abutter Ann Kalway - Expressed the hazards due to lack of visibility in coming out of her driveway which is at the crest of the hill and just before the applicants. In regards to the van and ambulance service and other employees, Ann is against the Special Exception due to the traffic hazards. She is not against the type of facility.

Steve Stancel - Due to this being the first request for elderly housing to come before the Board as a Special Exception, the application, in his opinion, does not give enough information in regards to the number of bedrooms, number of employees, traffic in regards to public safety, and how this facility will be run. We need a better plan. The Board does have the option of sending this to the Technical Review Committee first and have the comments from them to consider.

Robert O'Connor - The woods create a natural screening and building will not be seen by abutters. Housing will be for 6 residents with someone on staff 24 hours a day. Also, he has a 50 foot visibility advantage due to the location of his driveway whereas the Kalway's do not.

Dean Trefethen and Robert O'Connor discussed the number of residents, resident owned vehicles, and traffic from property. The van will have scheduled runs.

Board discussed the need of more detailed site plan, number of residents, traffic report during the peak hours, and what the visibility distance would be.

John Murphy made the motion to table this case for the May 19, 1994 meeting to allow applicant time to submit more information.
Bill Colbath seconded the motion.
U/A

Abutter William Young suggested that, due to the hazardous conditions, the road be widened for safety if there will be a commercial use there.

ITEM #5: Z94-6, Joyce & Sam Bowden, 374 Middle Rd., a/k/a Assessor's Map M, Lot 80, zoned R-40 requests a variance from the provision of Article IV, Section 170-12, table I, Part B, note [1] to construct a shelter for horses approximately eighty-six (86) feet from a side property line where one hundred (100) feet is required.

Joyce Bowden - Wish to have their 3 show horses on their property during the summertime. Advised that having horses is a permitted use in this zone, however any shelter cannot be any closer than 100 feet to any property line. The pens used to contain the horses are not subject to any property line and can be placed any where on the property. Joyce checked with the Humane Society and there is no requirement to provide shelter for horses in the summertime but since the horses are expensive she would like to have a shelter for them. So the variance is just for the shelter. A run-in shed will be placed under the overhang behind the garage for portable stalls. The horses will not be there all the time and the manure will be removed daily when horses are present.

Dave Paolini made the motion to accept the case.

Bob Callan seconded the motion.

U/A

Dean Trefethen - Asked Joyce to define season.

Joyce Bowden - From April to October

Dean Trefethen - Suggested to conditions to the variance as to months for usage and compliance with Humane Society.

Dean Trefethen asked if anyone wished to speak in favor or oppose to this variance.

Fred Cantor - Questioned the interpretation of the ordinance as to horses being considered as livestock. The interpretation of livestock and definition of farm was discussed by the Board and Mr. Cantor. Horses have come under the category of livestock, recreational use and/or farm

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use, and have not be objected to in the past. If Mr. Cantor wishes, he may go before the Board and challenge the Administration Decision in this interpretation.

Fred Cantor - Feels that this use may diminish the value of his property.

John Murphy - Horses are a permitted use in this zone, regardless of whether or not some residents may object.

Fred Cantor - Questioned the length of time the horse will be on the property.

Joyce Bowden - The horses will be often gone to horse shows. They will be home for short periods of time throughout the summer.

PUBLIC HEARING CLOSED

Bob Callan - Reasonable conditions be placed on the structure, not on the horses.

Dean Trefethen - Conditions can be attached related to the uses of structure.

Dave Paolini - Condition that shelter goes with the horses.

5 CRITERIA

1. The applicant does face an unnecessary hardship in that there is no other place on the property to put a shelter that would be used for a permitted use.
2. The variance will deliver substantial justice in that it allows full use of property with permitted uses and as neighbors.
3. The variance will be in harmony with the spirit and intent of the zoning ordinance. The horses are permitted in this zone. The shelter allows more control of the animals.
4. The variance will not result in a diminution in value of surrounding properties. (4 - will not and 1 will) This permitted use has historically not reduced property values.

5. The variance will be of benefit to the public interest. It keeps the horses buffered from the public and neighbors.

Dave Paolini made the motion to grant the variance with the following conditions:

- (1) The structure will be used to house horses only and only as long as the current owners own the property.
- (2) A maximum of 3 horses to be kept on the property.
- (3) No boarding of horses owned by others.
- (4) The manure shall be removed from the property daily when the horses are present.
- (5) use of shelter only April through October of each year.

Bob Callan seconded the motion.
U/A

ITEM #6. Z94-7, Mark and Donna Smith, 44 Toftree Ln. a/k/a Assessor's Map M, Lot 161, zoned R-40, requests a variance from the terms of (1) Article V, Section 170-16 to construct an addition (entryway and attached garage with living area above) to a single family dwelling approximately thirty-two (32) feet from a front property line where fifty (50) feet is required, and (2) Article X, Section 170-41.A to increase a non-conforming structure.

Tom Clark - Correction to agenda item. The garage exists by a variance in 1990. This application is to build a second floor to the garage for additional living area.

Mark Smith - Would like to add a bedroom and bathroom over the garage, within the existing footprint of the building. No addition to the garage. The stairway will be actually within the garage. Think it is reasonable use of his land. When the development was built it created a drainage problem for the neighborhood, so cannot build further back. House built according to zoning at the time, but does not comply to current zoning. The whole neighborhood is the same.

Dave Paolini - Concerned with the entryway to the garage and how it is being used.

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Mark Smith - Breezeway will be used for the entryway to the second floor above the garage and the stairway will be in the garage. The present garage will remain as a garage.

Dave Paolini made the motion to accept the case.
John Murphy seconded the motion.
U/A

Steve Stancel - Concerned with having to leave the house to go to a bedroom and bath above the garage. Questioned as to this being part of the house and not a new unit.

Mark Smith - It is part of the house. It will be a master bedroom.

Dean Trefethen - Asked for a description of the entryway.

Mark Smith - The entryway is part of the main house. It is open to the house with an archway and heated. The access to the bedroom above the garage will be from the entryway.

5 CRITERIA

1. The applicant does face an unnecessary hardship because of drainage conditions. There is no other place to construct living space. Plus the entire building is non conforming due to the zoning imposed after construction of the subdivision.
2. The variance will deliver substantial justice. It will allow full use similar to neighboring properties.
3. The variance will be in harmony with the spirit and intent of the zoning ordinance. Present zoning makes current building non-conforming, but would conform under its original zoning or another present zoning classification.
4. The variance will not result in a diminution in value of surrounding properties. No evidence to the contrary.
5. The variance will be of benefit to the public interest. No detriment was shown.

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

The Board discussed the members expiration dates.
Tom Clark - When Bob Callan went in recently it was to

appoint him officially as a regular member not to extend the term. Tom was notified by Michael Landry, City Council, that they will reconvene and, at the same time as they appoint alternates, they will re-interview Bob for an additional 3 years. There is a provision that allows a Board member to continue serving so that there will not be more vacancies.

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

A discussion was also held on meeting attendance by Board members.

Even though it is stated in the By-Laws that members who fail to attend four consecutive meetings without due cause may be recommended for replacement by the Board, Dean Trefethen, Chairman, emphasized the importance of regular attendance. Being present and acting in each case will enable each member to make well informed future decisions. However, if an emergency should arise, please inform the secretary at 743-6038.

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