

ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
APRIL 21, 1994

MEMBERS PRESENT: Dean Trefethen, Bill Colbath, Dave Paolini,
John Murphy Jr., and Rick Callaghan

ALSO PRESENT: Steve Stancel and Thomas Clark

Dean Trefethen, Chairman, called meeting to order.

ITEM #1: New Business

Dean Trefethen made the following corrections for clarification to the March minutes: (1) Page 5, at the end of the 3rd paragraph, last line is changed from "and the manure will be removed daily." to "and the manure will be removed daily when the horses are present." (2) Page 6, 5th paragraph down, "continually" is replaced with "often" and the last sentence is changed from, "They will be home for a short period of time.." to, "They will be home for short periods of time..."

John Murphy made the motion to accept the minutes of the March 17, 1994 meeting with the above corrections.
Bill Colbath seconded the motion.

U/A

ITEM #2: Old Business - None

ITEM #3: Z94-8, Mary J. Fosher, 93 Sixth St., a/k/a Assessor's Map 35, Lot 10, Zoned R-12 requests a variance from the terms of (1) Article V, Section 170-16, to construct a second floor addition on a single family dwelling approximately eighteen feet from a front property line where thirty feet is required, and (2) Article X, Section 170-41.A to increase a non-conforming structure.

Mary Fosher - Restated her request to put a second floor on to increase the square footage of the building because it is too small. Cannot expand out to the side due to a drop and in the rear there is a hill. The only direction to increase the size is to go up. The number of bedrooms will not increase.

The floor plan of the proposed addition was reviewed by the Board members.

ZBA 4/21/94

-2-

Dean Trefethen - Asked if the applicant proposes to raise the roof or will there be full walls.

Mary Fosher - Contractor advised Mary that the roof would have to be raised even for a dormer so she thought it best to have full walls. It will be a full second story addition.

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

U/A

Dave Paolini - Asked if Mary was on City sewer or septic sys.

Mary Fosher - On City sewer.

PUBLIC HEARING CLOSED

No further discussion

5 CRITERIA

1. Applicant does face an unnecessary hardship. Increasing the footprint of the existing house would not be possible because of the topographical features of the land.
2. If granted, the variance will deliver substantial justice. It will allow the house to become similar in size to surrounding properties.
3. If granted, the variance will be in harmony with the spirit and intent of the zoning ordinance. The proposal does not change the current building's footprint or the number of bedrooms.
4. If granted, the variance will not result in a diminution in value of surrounding properties. Proposal would probably enhance property values.
5. If granted, the variance will be of benefit to the public interest. Additional tax base, improved appearance of house and more conformance to surrounding property.

Bill Colbath made the motion to grant the variance.
Rick Callaghan seconded the motion.

U/A

ITEM #4: Z94-9, Kenmore Real Estate, (Applicant, C.N. Brown Co.) 104 Central Ave., a/k/a Assessor's Map 15, Lot 80, zoned RM-10 requests a variance from the terms of Article IV, Section 170-12, Table I, Part C-2, to establish a retail use (convenience store) in place of the auto service use. (The gas pumps will remain.)

Charles Sheehan - C.N. Brown Co. holds a lease on this property till the year 2019 - In 1989 the gas tanks were replaced. Propose to eliminate the service bays and put in a convenience store with gas service. Charles restated the 5 criteria on his application.

Steve Stancel - What will be the proposed hours of operation and will there be an increase in number of gas pumps?

Charles Sheehan - To be opened 24 hrs. a day and no increase in the number of pumps.

Rick Callaghan - Asked when the tanks were replaced.

Charles Sheehan - In 1989.

Dean Trefethen - Asked the life expectancy of the tanks.

Charles Sheehan - About 30 years.

Dean Trefethen - Asked about dumpster and location.

Charles Sheehan - Normally have an enclosure for the dumpster to eliminate trash blowing around.

Bill Colbath - Will C.N. Brown be operating this business.

Charles Sheehan - Yes.

Rick Callaghan - Any plans to change the parking lot.

Charles Sheehan - Only cosmetics, striping etc.

Dean Trefethen - Does this have to go to the Technical Review Committee?

Tom Clark - Based on the sq. footage it is not required to but you have the option to send it to TRC on something that may have an impact on the area. If approved by this Board the applicant would then go to the TRC.

ZBA 4/21/94

-4-

Dave Paolini - Concerned with items such as the dumpster, which, in its present location is obvious and hideous.

Steve Stancel - Observed the potential need of guardrails on one side due to the sudden drop off, which is where the parking would be. Also, curbing would be needed on the front to channel the entrance and exit of vehicles. The dumpster would need screening because of the residential building next door.

David
Bob Paolini - Will the gas station still be primary use and the store secondary use?

Tom Clark - Still consider the gas station as principle use and retail as accessory. Also, in reference to the 24 hour operation, there is a provision in the ordinance where you cannot have a lighted sign in a residential zone after 9:00 p.m.

Bill Colbath made the motion to accept the case.
Dave Paolini seconded the motion.

U/A

Dennis Burns - Abutter - Submitted a letter of concerns to the Board members. He discussed how the change to convenience store would greatly increase the amount of traffic and his concern over the time the store will be open. The plot plan does not show the intersection or the island directly in front of the gas station. There is also a set of traffic lights which the cars coming out of the gas station cannot see. There is no directional signs for cars coming out as to the direction they can go in. He can see some traffic and liability problems.

Charles Sheehan - Cannot dispute the existing problems. However the gas station does exist and will continue to do so. There are some things that can be done, such as guardrails and signs, But the gas station will remain.

Steve Stancel - This can go to the Technical Review Committee and they will be addressing the issues of parking, screening, dumpster, traffic, guardrails and curbing. Also, even though the TRC addresses these concerns, this Board still needs to see if the applicant meets the 5 criteria and hardship for the variance. The Planning office does not feel that the applicant has a hardship inherent in the land that is affecting the use of this property. The owner has reasonable

use of this property, therefore there is no hardship. Also as to whether or not it will be of benefit to the public interest and can see no benefit having a convenience store at this particular location given the potential traffic concerns.

Charles Sheehan - Due to the economic situation, a small repair service cannot compete with the larger companies so we need to convert from repair to convenience store to make this a viable business.

Steve Stancel - Advised financial hardship cannot be used.

John Murphy, Steve Stancel, Dennis Burns and Tom Clark discussed the zones each lots are located in and the permitted uses.

CLOSED PUBLIC HEARING

Dave Paolini - Need to address several questions before he can approve or disapprove the variance. Dave is against the 24 hour service. He feels it should be limited to 9:00 p.m. due to the residential building right next to it.

Rick Callaghan - Feels the same as Dave Paolini. There already is a service station in the area. A store is not allowed in this zone but this conversion could be a improvement to the area. However the noise and traffic could be disruptive to the residential bldg. Need more plans showing screening, traffic etc.

Bill Colbath - Asked what the average traffic count would be.

Charles Sheehan - Average 200 - 300 cars a day now. Anticipate walk in traffic to increase and vehicle traffic to decrease.

Steve Stancel - Disagrees - when switch to self-serve and quick grocery, the traffic will increase.

Tom Clark - Asked if there would be beer sales.

Charles Sheehan - There will be beer and cigaret sales.

ZBA 4/21/94

-6-

Bill Colbath - Concerned with (1) hours of operation, (2) total number of parking spaces and, (3) number of cars to frequent this facility. A store is not a permitted use in this zone. The gas station is a use that is grandfathered. Need to consider residential abutters. This will bring an increased number of cars at the intersection at peak hours.

John Murphy - Agrees that this should go to TRC. However, feels that due to the current permitted uses in this area, believes that the applicant has a hardship.

Bill Colbath - The applicant already has more use of his property than the abutters.

Dean Trefethen - This is a difficult case due to several points. There are 3 zoning districts affected. The hours of operation would be a concern and do not feel that 24 hours is appropriate for the residential area. The traffic situation is terrible but it could be a situation where some improvements could be made. Agree that the number of cars could increase, and whether some additional curbing and restrictions on where the cars can turn, which direction they can turn, will help the situation and help the increase in traffic is unknown. We have an opportunity to make a bad situation better. Before we make a final approval, this should go before the TRC and see what they come up with and approve or disapprove on that basis.

Tom Clark - Asked if they could still proceed if they were not permitted to operate on a 24 hrs. basis.

Charles Sheehan - No. One of the reasons for being open 24 hrs. is to also give restocking and cleaning opportunity.

Dave Paolini - Would like to see this go to TRC. Suggest we Table the case until it has gone to TRC. Then we would be more knowledgeable to grant or deny the variance.

The Board members discussed how the hours of the lighted signs and hours of operation would affect the residential area.

Bill Colbath - Cannot support operation of 24 hours a day in a residential zone.

ZBA 4/21/94

-7-

Reasonable hours of operation 6:00 a.m. to 9:00 p.m. - Bill Colbath, Rick Callaghan and Dave Paolini.
Reasonable hours of operation 24 hrs. - John Murphy.
Reasonable hours of operation 5:00 a.m. to 11:00 p.m. - Dean Trefethen.

The hardship issue was discussed by the Board members. It has to be inherent in the land and cannot be monetary.

Dean Trefethen can see the possibility of a hardship in saying it has got to be a service station.

John Murphy feels that the hardship is due to the limited permitted uses in the regs and the trend is going to convenience stores. The traffic condition already exists.

Dave Paolini feels that there is a hardship because the gas station existed before it was rezoned. Gas station is the primary use and convenience store as secondary use. The gas station will continue to be there and there is a possibility to make improvements now.

The Board members discussed the zoning districts involved and the primary and secondary uses of the gas station.

Steve Stancel - The zoning district is not the issue. Variances are granted to give the same rights to people as the surrounding area in that zone. Not to give more rights. The economy cannot be used.

Dave Paolini - If the traffic triples, he is against granting the variance. Not enough information available to make a decision.

Dean Trefethen, John Murphy and Dave Paolini finds that there is a hardship.

Bill Colbath and Rick Callaghan cannot see a hardship. Steve Stancel submits that there is no hardship due to the fact that the gas station can continue therefore there is reasonable use of the land.

Dave Paolini made the motion to table and advise the applicant to go to the Technical Review Committee. Dean Trefethen seconded the motion.

4 agreed to table the request and Bill Colbath opposed.

ZBA 4/21/94

-8-

Additional information needed on the following:

A plot plan showing (1) the parking, (2) traffic direction, (3) curbing, (4) dumpster location & screening, (5) guardrail.

John Murphy - Asked to have the calendar of attendance of the Zoning Board members submitted with the minutes to give each member a record of attendance.

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

List of members with expiration dates

	<u>Term Starts</u>	<u>Term Exp.</u>
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
Robert Callan	4/13/94	4/13/97
Richard Callaghan	4/13/94	4/13/97