

ZONING BOARD OF ADJUSTMENT  
MINUTES OF MEETING  
MAY 19, 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

- A. Dean Trefethen received a memo from Scott Woodman, City Attorney, in regards to the Right-to-Know law and offered to come to the Board to go over the law if the Board deems it necessary. Dean feels that they are in complete compliance with the law. The meetings are posted publicly and open to the public. However if the members feel that they would like to have Scott Woodman come then he is in agreement. No decision was made this evening.
- B. Dean Trefethen received a copy of the State Planning Newsletter which has planning and zoning information that he feels would be of benefit to the Board. He has asked that copies be made for each member when it is received in the Building Inspection Office.
- C. Dave Paolini made a correction to the April minutes: Page 4, third paragraph down, change "Bob Paolini" to "David Paolini".

John Murphy made the motion to accept the minutes of the April 21, 1994 meeting with the above correction.  
Dave Paolini seconded the motion.

U/A

ITEM #2: Old Business

- A. A letter was received from Robert O'Connor notifying the Zoning Board that he is withdrawing his request for a Special Exception to build a home for the elderly because he will not have more than six bedrooms, which will be in compliance with the zoning code.

Tom Clark - Because the ordinance applies to more than 6 bedrooms, a Special Exception is not required in this case. Robert O'Connor's application originally had six or eight bedrooms. It is now just six. It still will go to the Technical Review Committee and the Building Permit process. He understands that he will have to apply for a Special Exception if he would like to increase it to seven bedrooms.

Dean Trefethen - Does the six include their bedroom.

Tom Clark - They are not going to live there. It will be basically a single family home in which people will live there as a family. They will be self-sufficient.

Dean Trefethen - Due to the concerns the abutters had of the roadway, would the public be notified when this goes before the Technical Review Committee.

Tom Clark - Typically not. The TRC can make recommendations but it is difficult for them to require changes to the road. They are looking at the on-site data. They can ask a sign be posted.

Ann Kalway - At the previous meeting, questioned granting a variance due to the visibility.

Tom Clark - The request was not for a variance but for a Special Exception. Due to the change in number of bedrooms from 6 - 8 to only 6, a Special Exception is no longer required. So Mr. O'Connor can proceed because it is a permitted use, as though he were applying for a personal dwelling.

Ann Kalway - Then this would be like putting in an apartment building with 6 tenants. And that is allowed?

Tom Clark - This is similar to an apartment building. And yes it is allowed. The City realized the need for this type of facility but the ordinance did not address this so in 1992 the City made a zoning change to allow it in the residential zones.

Ann Kalway - But you still have the impact of vehicles coming in and out of that driveway.

Tom Clark - As you would have with a single family dwelling, that is correct.

Ann Kalway - But there would be more traffic and bad visibility.

Dean Trefethen - As far as the City is concerned, it is a single family dwelling. In a single family dwelling you could still have six people of driving age and it would be no different than for elderly housing.

(B) Z 94-9 Dean Trefethen asked Charles Sheehan if he had any objections allowing the two new applications to proceed before his request and Mr. Sheehan had no objections.

ITEM #3: Z 94-10, Joseph and Madeleine Tostado, (applicant Timothy Noonan), 8 Toftree Ln., a/k/a Assessor's Map M, Lot 141, zoned R-40 requests a variance from the terms of (1) Article V, Section 170-16 to construct an addition connecting a single family dwelling and a detached garage within thirty-five (35) feet from a front property line as it abuts a street where fifty (50) feet is required; and (2) Article X, Section 170-41A to increase a non-conforming structure.

Tim Noonan - In 1979 the zoning changed from R-12 to R-40 for this property and the setback requirement changed to 50 feet. There are streets abutting this property on two sides. To build behind the house would place the addition behind the two bedrooms so there is no alternative but to put the addition in this location.

Dean Trefethen - Asked if the garage was there before the zoning change in 1979.

Mrs. Tostado - The garage was there when she bought the house in 1982.

Tom Clark - The garage was built after the house but prior to the expiration of the four year exemption to the zoning change.

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

There was no opposition to the request.

Steve Stancel - The Planning Dept. is in favor of the request. Few of the houses in that area meet the standards and therefore you would be giving the applicant the same rights as the neighbors.

5 CRITERIA

1. Applicant does face an unnecessary hardship. Rezoning made existing structures non-conforming and restricted its use. Also would allow similar use as neighbors.
2. If granted, the variance will deliver substantial justice. It will allow the same use as neighbors.
3. If granted, the variance will be in harmony with the spirit and intent of the zoning ordinance because it conforms to setbacks required in other zones appropriate to this neighborhood.
4. If granted, the variance will not result in a diminution in value of surrounding properties but probably will increase it.
5. If granted, the variance will be of benefit to the public interest. It will keep the neighborhood consistent.

Bill Colbath made the motion to grant the variance.

Rick Callaghan seconded the motion.

U/A

ITEM #4, Lois McBride, 26 Hillcrest Dr., a/k/a Assessor's Map 35, Lot 56-S, zoned R-12 requests a variance from the terms of (1) Article V, Section 170-16 to construct an addition to an attached garage within twenty-six (26) feet of a front property line as it abuts a street where thirty (30) feet is required and within approximately six (6) feet of a side property line where fifteen (15) feet is required; and (2) Article X, Section 170-41A to increase a non-conforming structure.

Jim McBride - They have two vehicles and would like to expand a single car garage to a two-car garage. The proposed garage would not meet the required setback from the front and side. They are both elderly and have health problems. The additional garage would prevent vandalism and keep both cars out of the inclement weather. In surveying the neighborhood he found that 17 of the 26 homes have double garages.

Dean Trefethen - Is it to be a garage with two doors or one large door.

Jim McBride - Prefer to have two doors but if garage to be smaller it would have one big door. A breezeway also connects the garage to the house. It is insulated and heated and used in the winter time. Mr. McBride submitted pictures of the property.

Rick Callaghan - Was there a zoning change in this neighborhood since the building was constructed?

Steve Stancel - When it was first constructed it was general residential and the setbacks were 25 feet from the front and 12 feet from the side. This change took place in 1974.

Dave Paolini - Asked if the breezeway was a garage at one time or always a breezeway.

Mrs. McBride - The breezeway was built as a breezeway when the house was built. It was built in 1962.

John Murphy - Asked what the setback is on the other side of the house.

Mr. McBride - No measurement was taken of that side.

Dave Paolini made the motion to accept the case.

Bill Colbath seconded the motion.

U/A

Bruce Novak - Son of the abutter spoke in opposition to the request due to the closeness to their property. Some years prior Mr. Novak allowed his abutter six feet of his property due to the trees he had on Novak's property. Given this the McBride's have less of the required setback. It would cause a hardship on the Novak's property because the neighborhood properties have plenty of land around their properties. If this garage were to be built it would infringe on the Novak property. If granted this variance would set a precedent. Bruce helped Mr. McBride take the measurement and it was taken from the back of the property. With the addition there will be only 6 feet 6 in. There is no hardship.

Dean Trefethen - Questioned the line adjustment due to the trees.

Bruce Novak - Property originally had 128 feet of frontage and this was decreased by 6 feet to allow the abutters to keep their ornamental trees. At this point the trees are gone.

Steve Stancel - The Planning Dept. is opposed to this variance due to the fact that there is no hardship. Surveying the neighboring houses, they all meet with previous zoning ordinance. And the majority of them meet with the existing ordinance particularly with the side setback. In that case if the variance were granted it would be giving the applicant more use of their land than the neighbors.

PUBLIC HEARING CLOSED

#### 5 CRITERIA

1. The applicant does not face an unnecessary hardship. He currently has equal use to his property as neighbors and alternative sites for a larger garage exist that would meet the setbacks.
2. The variance will not deliver substantial justice in that if granted it would allow greater use than neighbors.
3. The variance will not be in harmony with the spirit and intent of the zoning ordinance. The spirit and intent is to have adequate side setbacks for appearance and safety, and proposed expansion of garage would violate that.
4. The variance will result in a diminution in value of surrounding properties. (3 voted will and 2 will not). If approved it would limit options of neighboring property. Would also make a now wide open neighborhood appear more dense in that area.
5. The variance will not be of benefit to the public interest due to unnecessarily decreasing setbacks.

Bill Colbath made the motion to deny the variance.

Rick Callaghan seconded the motion.

U/A

Z 94-9, 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). This item was tabled from the meeting of April 21, 1994).

A site plan showing the property lines and zoning demarcation lines involved was distributed to the Board members and Tom Clark reviewed it.

Charles Sheehan - Distributed a site plan to each Board member showing the recommendations made by the Technical Review Committee.

- (1) Elimination of the first parking space towards Central Ave., leaving 4 parking spaces in that area.
- (2) Moving the dumpster from the opposite side of the building and making 2 parking spaces there.
- (3) Extend the center island 26 feet for a 45 foot opening due to a shared driveway.
- (4) Signage

Steve Stancel - The plan shows the extended 26 foot center island northward and it should be southward due to the turning of traffic.

Steve Stancel and the Board members discussed the traffic turns; traffic at the stop light, and trailer truck maneuvering. Also discussed the section of property between the pump and curbing. Bringing the curbing right up to the property line then it becomes a sidewalk and not a parking area.

Steve Stancel - The Planning Office still opposes the variance because there is no hardship, particularly to the owner of the property as oppose to the lessee. Another issue to address, should the variance be granted, is the hours of operation.

Bill Colbath - Questioned whether a traffic study was made.

Charles Sheehan - Yes. The count for a convenience store and service station would be very similar. Our traffic count and the City's traffic count concur.

ZBA 5/19/94

-8-

Steve Stancel - We had no problem with the traffic count.

Dave Paolini - Did the TRC address landscaping.

Charles Sheehan - A guardrail. Some shrubbery exists and more can be put in.

Tom Clark - Dennis Burns asked the TRC consider a fence to be placed between the Burns property and the gas station to eliminate trash blowing.

Discussion on hours of operation and lighted sign.

Gas station now open from 5 a.m. to 10 p.m.

Applicant would like to be open 5 a.m. to 1 a.m.

Lighted sign in a residential area has to be out at 9 p.m. This does not include the canopy or eaves.

Rick Callaghan - Concerned with the parking and delivery trucks and trucks taking care of the dumpster. There is no specified delivery area.

Dave Paolini - Did TRC determine that there were adequate amount of parking spaces?

Tom Clark - Parking is determined by size and retail requires 1 space for 250 sq. ft. of floor area.

Dave Paolini - Concerned with what the TRC required. No report was made on the results.

Steve Stancel - There were concerns expressed by the members on the traffic but other than that everything else that was brought up was addressed.

Dean Trefethen - Suggests that the Board members move into an Executive Session.

Dean Trefethen made the motion to move to Executive Session.  
John Murphy seconded the motion.

Roll call vote:

John Murphy - for Executive Session

Rick Callaghan - for Executive Session

Bill Colbath - for Executive Session

Dean Trefethen - for Executive Session

Dave Paolini - for Executive Session

The Board members moved to a separate room for an Executive Session.

When the members returned, Dean Trefethen advised the applicant that John Murphy was called out due to a family emergency and would the applicant like to postpone the vote or go with the 4 remaining members.

Charles Sheehan - Agreed to go with the 4 members.

Dean Trefethen - The discussion in the Executive Session was on each member solidifying in their own mind the reason for their vote. Votes were taken in the past and there were difficulties with giving concrete reasons.

Bill Colbath - Questioned the lighting situation. The ordinance addresses strictly the sign illumination. The illumination of the canopy itself is significant with the operation of the business. No name on canopy

Steve Stancel - Feels that the intent of the ordinance is to protect the residential area.

Dean Trefethen - Need lighted canopy for operation of gas pumps.

Discussion was held on what the zoning was for this property when it became a gas station and the hardship. It could not be determined when the gas station was built but it has been there many years.

Dave Paolini has a difficult time with the hardship in that he feels that the City, in changing the zones after the gas station was established, created the hardship.

Bill Colbath - Issue is operation of a convenience store in conjunction with a service station. The service station is there. The argument is, is there a hardship as to why that has to become a convenience store also. The economic concerns cannot enter into the hardship.

Dean Trefethen also is having a difficult time with the hardship. He feels that the gas station/convenience store is less intensive than the gas station/service station. It will be more quiet and cleaner.

Rick Callaghan and Bill Colbath disagree. Basically because a gas/service station is a 10 to 12 hour a day operation whereas a gas station/convenience store is a 24 hr. a day operation. More cars and longer stops per car.

5 CRITERIA

1. The applicant does not face an unnecessary hardship. The applicant already has greater use than nearby RM-10 properties. Proposed use would be a change from grandfathered use. Only evidence presented by applicant (lessee of property) suggests only a financial hardship which is invalid in New Hampshire.
2. The variance will not deliver substantial justice. (2 voted will and 2 voted will not). If granted, applicant would have far greater use of property than surrounding properties, and ZBA cannot grant change of use.
3. The variance will not be in harmony with the spirit and intent of the zoning ordinance. (3 voted will not, Callaghan voted will). Service stations/convenience stores are not intended to be in RM-10 zones. Further expansion of property uses would not be in the spirit and intent of zoning laws.
4. The variance will not result in a diminution in value of surrounding properties. (3 voted will not, Colbath voted will). Existing non-contiguous nature of surrounding neighborhood means that proposed use would not adversely effect property values.
5. The variance will be of benefit to the public interest. (3 voted will, Colbath voted will not). It would allow continued use of property, hopefully avoiding having property fall into state of disrepair. Plus improvements proposed as a result of TRC review would have improved public safety.

Bill Colbath made the motion to deny the request.  
Rick Callaghan seconded the motion  
U/A

Meeting Adjourned

ZBA 5/19/94

-11-

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