

ZONING BOARD OF ADJUSTMENT  
MINUTES OF MEETING  
JULY 21, 1994

MEMBERS PRESENT: Dean Trefethen, Bill Colbath, Bob Callan,  
and Rick Callaghan

ALSO PRESENT: Thomas Clark and Steve Stancel

Dean Trefethen, Chairman, called meeting to order.

ITEM #1: New Business

Bill Colbath made the motion to accept the minutes of the  
June 16, 1994 meeting.

Rick Callaghan seconded the motion.

U/A

ITEM #2: Old Business

Prior to the start of the Public Hearing, Dean Trefethen  
advised the applicants that they have the option to postpone  
their request to another meeting due to the fact that only  
four (4) members were present.

ITEM #3: Z 94-13 Robert & Janice Becker, 93 Spruce Ln.,  
a/k/a Assessor's Map I, Lot 81-F, zoned R-40,  
requests a variance from: 1) the terms of Article V,  
Section 170-16, to maintain a side addition  
constructed within thirty-six (36) feet of a front  
property line as it abuts a street where fifty (50)  
feet is required; and 2) the terms of Article X,  
Section 170-41.A, for the increase of a non-  
conforming structure.

Robert Becker - Due to the lack of knowledge of the code and  
procedure, an addition was built prior to a Building Permit  
application.

Bob Callan - Asked if the addition was built to code.

Ton Clark - That has not been determined yet because no  
Building Permit had been applied for. It would have to be  
addressed pending tonight's decision.

Dean Trefethen - If it were not built to code then where do  
we stand.

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Tom Clark - It would have to be fixed to meet code.

Bill Colbath - Why was a Building Permit not applied for.

Robert Becker - The first contract submitted had the Building Permit listed. This contract was rejected. The second contract submitted, which was accepted did not include the Building Permit application. No Building Permit was applied for in the confusion.

Bill Colbath - Asked if there was wiring in the addition.

Robert Becker - Yes

Bill Colbath - Then there were two permits not applied for and no inspections made.

Robert Becker - Admitted to the ignorance of the lack of permits and inspections. There was no intent on his part to get away with anything.

Bob Callan - Asked if it was a local builder.

Robert Becker - Yes. Mike Landry was the contractor.

Rick Callaghan - We should not be looking at how the structure got there but what to do now if he were seeking relief to build the structure. Now that the structure is in existence, we need to determine who needs to see if it is built to code.

Bob Callan made the motion to accept the case.

Bill Colbath seconded the motion.

U/A

Dean Trefethen - Can a determination be made now if the structure was built to code?

Tom Clark - Fairly confident that a determination can be made. It is a small addition. If something is found that is in violation, it will have to be corrected. Building and Electrical permits will still have to be applied for.

Dean Trefethen - Across the street is R-12 zone where he would conform. He will not be getting more than his neighbors do.

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Steve Stancel - Have no problem with this request. Addition is ~~no~~ further back from the road than the house is.

No public opposition.

#### 5 CRITERIA

1. The applicant does face an unnecessary hardship. Since the original house was built zoning has changed the setbacks and since the original house and new addition are similar to surrounding property.
2. The variance will deliver substantial justice. Giving applicant parity as the surrounding property.
3. The variance will be in harmony with the spirit and intent of the zoning ordinance. The spirit and intent is to allow reasonable setbacks and the applicant has not violated them.
4. The variance will not result in a diminution in value of surrounding properties. No evidence presented to the contrary and would probably increase due to uniformity with adjacent properties.
5. The variance will be of benefit to the public interest. It allows reasonable use of the property and increases the City's tax base.

Bob Callan made the motion to grant the request subject to the following conditions: (1) All necessary permits be applied for and, (2) inspections be made to the satisfaction of the Building Inspector.

Rick Callaghan seconded the motion.

U/A

ITEM #4 Z 94-14, David & Linda Dorris, 7 Partridge Ln., a/k/a Assessor's Map I, lot 36-E, zoned R-12, requests a variance from: (1) the terms of Article V, Section 170-16, to construct an attached garage to a single family dwelling within twenty-one (21) feet of a front property line as it abuts a street where thirty (30) feet is required and within thirteen (13) feet of a side property line where fifteen (15) feet is required; and (2) the terms of Article X, Section 170-41.A, to increase a non-conforming structure.

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Dave Dorris - The existing detached garage sets back 7 feet from the front of the house. When the house was originally built, it complied with the front setback. Would like to demolish the detached garage and build an attached 2-car garage level with the front of the house. Would like two more feet on the side to allow more room to open car doors in the garage and have a small breezeway between the house and garage. This is consistent with the neighborhood. The second floor will be finished for an additional room and an office.

Dean Trefethen - the addition will be a two-story addition?

Dave Dorris - Yes. Office and bedroom on second floor.

Dean Trefethen - A full two-story addition?

Dave Dorris - Property slopes down. The garage level will be between the basement and first floor. The roof line will be just lower than the existing roof line.

Dean Trefethen - Has applicant considered having a 24 foot wide garage rather than a 26 foot?

Dave Dorris - Yes but prefer to have width to allow opening car doors in the garage.

Dean Trefethen and Dave Dorris discussed the size of the breezeway and the stairs leading down to the next level. Breezeway is the means of egress.

Bob Callan - Agenda states only a garage and nothing was said about an office and bedroom above. An abutter may have had an objection to this. Questions as to whether or not the case should be postponed due to the lack of information to abutters.

Dean Trefethen - Were we aware of the bedroom and office at the time of the agenda.

Tom Clark - Not aware at the time. Information is taken off the application.

Dave Dorris - Properties at 2, 4 and 18 Partridge Ln. have finished living area above the garage.

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Bob Callan - Not questioning what neighborhood has but that the abutters have not been notified that a request was made for also a finished second floor.

Rick Callaghan - No problem with front setback but problem with side setback. Option to perhaps build a stairway to the back of the property and eliminate the breezeway.

Bill Colbath - If a variance were granted to build as requested, and finish the second floor, then an abutter may request a stop to the work because he was not aware of the finished second floor. Then it would come back to the City.

Bob Callan made the motion to accept the case, proceed with the public hearing and determination, renotify the abutters of the complete intent of the applicant, allowing them 20 days to appeal. No permits will be issued until the appeal period has been completed and abutters do not oppose.

Rick Callaghan seconded the motion.  
U/A

Steve Stancel - No problem with front setback but with the side setback. The zoning for the front setback has changed since the house was built but the side setback requirements have not. Neighboring houses with garages meet the side setback requirements. The one house that does not had to get a variance.

PUBLIC HEARING CLOSED

Bob Callan, Dean Trefethen and Dave Dorris discussed the size of the garage and options to meet the side setback.

Dean Trefethen - Has no problem with the front setback but he does have a problem with the side setback.

Bill Colbath - Agrees with the front setback but he also has a problem with the side setback.

#### 5 CRITERIA

1. The applicant does face an unnecessary hardship in meeting the front setback. Due to zoning changes, the front setback changed and the proposal is still reasonable. The applicant does not face an unnecessary hardship in the side setback. There is ample space on the property for additional space if needed and there are alternative designs that would allow the fifteen (15) foot setback.

2. The variance will deliver substantial justice in the front setback in that it allows equivalent use to adjacent properties. It will not deliver substantial justice in the side setback because alternative designs would still allow addition and keep the fifteen (15) foot setback.
3. The variance will be in harmony with the spirit and intent of the zoning ordinance for the front setback because there is no further encroachment on what was deemed adequate on the original structure. However it will not be in harmony with the spirit and intent of the zoning ordinance in the side setback because it would not maintain adequate safety egress.
4. The variance for the front setback will not result in a diminution in value of surrounding properties because it would be similar to surrounding properties. The side setback however will result in a diminution in value of surrounding properties because the rest of the neighborhood has side setback maintained.
5. The variance for the front setback will be of benefit to the public interest because it promotes continuity with the surrounding properties and does not encroach further. The side setback will not be of benefit to the public interest because it encroaches on safety setback (egress impaired) and may set precedence for neighborhood.

Bob Callan made the motion to grant the variance for the front setback with condition that abutters be renotified by certified letter that the variance was granted, but with complete description included and that they have 20 days to appeal the variance.

Bill Colbath seconded the motion.

U/A

Bill Colbath made the motion to deny the request for a variance for the side setback.

Rick Callaghan seconded the motion.

U/A

5. Z 94-15, Parkstone Properties, Inc. (applicant: John Diamond of RE/MAX Realty Centre), 828 Central Ave., a/k/a Assessor's Map 37, Lot 37, zoned Office, requests a variance from: 1) the terms of Article IX, Section 170-32.I(3)(a) to erect a second freestanding sign on a lot where one (1) is allowed; and 2) the terms of Article IX, Section 170-32.I(3)(b) to erect a freestanding sign with an area of thirty-two (32) square feet where four (4) sq. ft. per tenant and twelve (12) sq. ft. total area is allowed.

John Diamond - Is moving his business and this particular location needs more signage to be noticed. He reviewed his application. This property has adequate amount of frontage for the sign but other surrounding properties that have signs do not have required frontage.

Steve Stancel - Will the sign be illuminated.

John Diamond - It does not have to be.

Steve Stancel - Is there screening between properties.

John Diamond - Row of trees.

Tom Clark - The size of Liberty Mutual's sign came at the time the Durham Bank owned the property and a variance was granted.

Bill Colbath - How much signage would be allowed if this were in a B-3 zone?

Tom Clark - 80 sq. ft. sign would be allowed.

Dean Trefethen - Originally the building was occupied by one tenant. How many tenants now?

John Diamond - Liberty Mutual is one tenant, RE/MAX will be occupying one-half of the lower level. There is room for one more tenant.

Dean Trefethen - Where would the third tenant put a sign. No room for more signage.

Bill Colbath made the motion to accept the case.  
Bob Callan seconded the motion.

U/A

Steve Stancel - Asked for the number of parking spaces.

John Diamond - Between the front and back approximately 30 spaces.

Dean Trefethen - Concerned with the available signage for the entire building is taken up by Liberty Mutual and now an application for another tenant and the potential for another tenant.

Bob Callan - Should be concerned with this application and not future tenants. Feel that distances of signs will not present an obstruction.

Bill Colbath - Concerned with the fact that this property already was granted a relief for signage when the building was first built. How can you justify the hardship when someone has already received a sign that is larger than what is allowed.

John Diamond - Perhaps because this property is surrounded by B-3 and their signage takes over.

Rick Callaghan - agrees with this. This property is so adjacent to a central thorough-fare and surrounded by B-3 which is entitled to greater signage. Feels that this is the hardship. Also feels that it is not fair to exceed the rights of those in the other district.

Discussion was held by Board members of the zones, existing signage in the districts and visibility of sign.

Steve Stancel - Feels that there is hardship due to the intersection. The variance goes to the property and the owner will have to provide room for sign for the third tenant.

The future third tenant could have a 4 sq. ft. wall sign.

#### 5 CRITERIA

1. The applicant does not face an unnecessary hardship. There already is a variance for increased signage. The property owner has already been given relief.
2. The variance will deliver substantial justice. To identify tenants increased signage is necessary. Rick Callaghan said will not.

3. The variance will not be in harmony with the spirit and intent of the zoning ordinance. Existing signage already exceeds allowed size. Robert Callan said will.
4. The variance will not result in a diminution in value of surrounding properties. Proposed sign would not affect neighbors.
5. The variance will be of benefit to the public interest. It would properly identify property and allow income to the property. Rick Callaghan said will.

Bill Colbath made the motion to deny the request.  
Rick Callaghan seconded the motion.  
3 voted to deny and 1 voted to grant.

6. Z 94-16, Berr Par, Inc., (applicant: The Housing Partnership), Wentworth St., a/k/a Assessor's Map 20, lots 55 & 55-A, zoned RM-10, requests a Special Exception as provided by the terms of Article VI, Section 170-25.1 and Article XII, Section 170-52.C(3), to construct one (1) four-family dwelling on each lot.

Tom Clark - A Special Exception is a permitted use provided there are conditions over which a typical permitted use has to meet and those conditions are listed in 170-25.1 and the general special exception conditions in 170-52.C(3).

Dana Lynch of Housing Partnership - Propose to build 4 unit building on each lot equalling 8 units. The setback will be met given the size of the lots. There will be garages under the units. These will be low-income housing bldgs. The applicant reviewed his application.

Tom Clark - Reason for two plans is plan 1 shows parking next to the lot line which does not meet the criteria. Parking lot must be at least 5 feet from a side property line and 10 feet from the front. Plan 2 shows parking meeting the criteria.

Tom Clark - This does not have to go to the Planning Board but needs to go to the Technical Review Committee.

Bob Callan - Plan 2 provides more parking due to the garages but there is a problem with the snow. There is no place to put it.

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Rick Callaghan - What is distinction between a parking lot versus a driveway.

Tom Clark - Intent is 5 feet from property line for parking lot or driveway.

Dana Lynch - Another alternative is to have a shared driveway.

Bill Colbath made the motion to accept the case.

Bob Callan seconded the motion.

U/A

Anyone to speak in opposition

Charles Boyle - 9 Wentworth St. Problem with traffic in and out now on this street. This will be increased. There are no sidewalks for pedestrians. Does not meet the required setback requirements. Any parking area has to be fenced or screened and there is no fire lane on Wentworth St. If there is a car parked on Wentworth St. any truck, including the fire trucks, would have a great deal of difficulty to come down the street. The intersection of Court Street is terrible. At the end of the street there is wetlands and a cemetery. Cannot dig within 100 feet of a cemetery.

John Palmer - The street is too narrow, Trucks will have difficulty and the traffic gets congested. There already is an apartment building on the street and anything more than a single family dwelling would congest the area more.

William Tolend - Would be congested with traffic and unsafe for children due to no sidewalks. Should be no more than single family dwellings.

Dana Lynch - The concept plans shows that the setback is met and also exceeds the parking requirements.

Steve Stancel - Difficult time justifying holding this lot owner to single family dwellings when there are other apartment buildings on the street.

Bob Callan - The parking on either plan is very well done. Approves of the concept of garages under.

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Steve Stancel - Has no problem as long as the setback is met. Recommends that the case be tabled and the Board take a site walk to address all concerns given. Also for applicant to submit a more clear plot plan.

PUBLIC HEARING CLOSED

Bob Callan - Recommends the Board take a site walk.

Bill Colbath - Needs a more concrete plot plan. Cannot make a decision based on a conceptual plan.

Bill Colbath made the motion to table the case and do a site walk.

Rick Callaghan seconded the motion.

U/A

The site walk is scheduled by the Board to take place August 18, 1994 at 6:15 p.m. and applicant will submit a concrete plot plan for the August meeting.

It was reported that a letter was sent to Brenda Whitmore in regards to her absence and requesting her resignation. The Board has not received a response from Brenda.

MEETING ADJOURNED

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
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