

ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING

Held: Thursday, September 25, 1980
Dover Council Chambers

Business Meeting held at 7:00 p.m. Members present: Chairman Proulx, Lamoureux, Shortill, MacVane, Mersosky, Souther. Also present was Building Inspector Selleck.

Moved by Shortill, seconded by Lamoureux to approve minutes of meeting held 7/31/80 with the following change:

"H80-18 Lamoureux: Approval should state that the sideyard set back of 20' was approved for both lots A and B, and then request for subdivision of the parcel into two lots (carrying the setbacks straight through), one parcel being substandard was approved."

U.A.

Moved by Shortill, seconded by MacVane to accept minutes of meeting held 8/21/80 as written. U.A.

Moved by Shortill, seconded by MacVane, to accept financial report as submitted. U.A.

Proulx read letter from Attorney Morrison re: H79-19 Murray Vs City of Dover case. Discussion ensued in reference to inadequate information supplied by Morrison as to the out-come of the case. Proulx to correspond with Attorney Morrison.

Business meeting recessed at 7:30 p.m.

H80-17 Hail, Robert & Marcy, 12 Browning Drive, Assessor's Map 21, Lot 84, zoned R-12, petitions for a rehearing for a variance from Article 21:5.4 to construct a garage.

Hail restated his case, and entered new evidence of change in plan (by attaching garage instead of having it as an accessory building and stated that the hardship was in the land prior to the purchasing of the property.

Proulx entered into the record letter from abuttor McCallum opposing variance.

It was stated by Hail that the variance at the present time was for a 3' setback variance from the 10' allowed. It was further stated that there was a 8-10° slope behind the house making it infeasible to construct a garage in that location. It was noted that the bedrooms and a fireplaced livingroom were on the South (right) side and was impractical to place a garage in that location.

William McCallum, 10 Browning Drive, responded by referring to letter submitted to the ZBA on 9/24/80, and explained those objections and noted that he also had personal objections. When questioned about the distance between his home and the property line, Mr. McCallum answered 40'.

Sandra McCallum in opposing, stated that her house was reversed, with the kitchen on the south side and the garage on the end with the bedrooms and livingroom. When questioned, she did note that her house was a split and that the garage was "under" the bedrooms, not beside them.

Philip Read, 7 Browning Drive, spoke in opposition and referred to the covenants that each purchaser of property in that subdivision had to sign. He also objected to "spot" zoning.

Hail rebutted stating that his house would be a "freak" if a garage was attached to the South side. In response to the subject of covenants, he stated

that if the Board did grant his variance, he still had to collect the signatures of a majority of residents on Browning Drive to be able to change the covenants involved. This is being done with the help of the original contractor.

McCallum then stated that to the best of his knowledge, the curbstones, as they now set, had never been changed on the Hail property.

S. McCallum request that if the Board did grant the variance as requested, would the Board request that a fence be erected between the property lines.

VARIANCE GRANTED: 3-2 Granted: MacVane, Shortill, Lamoureux. Denied: Cowan, Proulx.

Variance Granted as applicant proved the following:

1. That there was a hardship in the peculiar characteristics of the location of the house.
2. To deny the variance would violate the spirit and intent of the Ordinance.
3. Granting the variance would not adversely effect the other properties.
4. That it would be an injustice not to grant the variance.

H80-22 Fridell, Charles, Jr., 24 Moore St., Kittery, Maine petitions for a variance from Article 21:5.2 for property located on Stark Avenue, Assessor's Map 17, Lot 76D, zoned RM-10, to convert a garage into a dwelling unit.

Fridell explained his intentions in converting the existing garage into a one family dwelling unit, with entryway being on the cemetery side, garage doors made into two bay windows and the driveway to stay as is.

Stephen Myerson, 57-59 Stark Ave., opposed stating that the area between the garage and property line was less than 8' and that to convert this garage into a dwelling unit was not consistent with the housing stock in the neighborhood.

Fridell explained that to convert the garage would up grade the present property and appearance of the existing building and that he would try to blend in with the neighboring properties.

Discussion ensued as to if the lot, even if it was non-conforming, would be considered under the grandfather clauses.

VARIANCE GRANTED: 3-2 For: MacVane, Shortill, Proulx. Against: Wersosky, Lamoureux.

Variance granted as applicant proved the following:

1. That there was a hardship in the peculiar characteristics of the land.
2. To deny the variance would violate the spirit and intent of the Ordinance.
3. Granting the variance would not adversely effect other properties.
4. That it would be an injustice not to grant the variance.

H80-23 DeMeritt, James, Sr., Drew Road, Assessor's Map I, Lot 25B, zoned R-40, petitions for a variance from Article 21:4.8 and Article 21:5.4 to have electrical power to a temporary mobile home unit while constructing a permanent dwelling unit.

DeMeritt stated his intentions of living in one mobile home (the other one would be removed before winter) while constructing a dwelling unit. He stated that he did not know before filing for a variance that mobile homes were not permitted in a R-40 zone. One trailer existed on the land when purchased - he then added another.

Discussion ensued as to the actual date of purchase of the property in question. It was stated by DeMeritt that the trailer presently located on the side lot line would be moved to the center of the property (where trailer to be removed is now located). A holding tank is now in use for the trailer located in the middle of the property while the other one has no plumbing facilities. It was further noted that DeMeritt was renting one of the trailers, but the tenant was expected to be moving shortly.

George Demosthenes, Durham Road, stated that there was a court action pending to remove both trailers from the property. He stated that he told DeMeritt during the summer of 1979 that trailers were not allowed in the R-40 zone (only one trailer was on the property at this time).

Robert Steele, City Manager, clarified the legal action. He stated there was an illegal use of land and that the City has been involved in court action for the past 2 years. He stated that all three parties (previous owners and DeMeritt) are presently named in the pending action. As of now, DeMeritt is in Contempt of Court, but due to an error, the case has been dismissed; however it will be reprocessed.

De Meritt stated he was under the impression that a trailer could be had in this zone if a permanent foundation was placed under it, when he purchased the property.

William DeMeritt, brother to the applicant, stated that he had spoke to the City Attorney approximately three weeks prior to the hearing of this case and that they, at that time, called the Registry of Deeds and was told that no deed had been filed by James DeMeritt for the property in question at that time - so that Court cases could not be directed against James DeMeritt as he was not listed as "owner".

Vote: For-Proulx, Lamoureux Against: Wersosky, MacVane Abstained: Shortill
Break Vote: Shortill voted "FOR".

Request by Lamoureux for a new vote. The vote was retaken and Lamoureux changed his vote.

VARIANCE DENIED: 3-2 For- Proulx, Shortill. Against: Wersosky, MacVane and Lamoureux.

Variance Denied as applicant failed to prove the requirements necessary to grant a variance.

H80-24 Souther, Albert, 225 Washington Street, Assessor's Map 10, Lot 36, zoned RM-10, petitions for a variance from Article 21:4.8 to allow an office in a RM-10 zone.

Souther explained his intentions to convert present structure into 3 apartments and would like to have in addition, one office (4 apartments are permitted).

Proulx read letter of opposition from abuttor Alfred Catalfo.

VARIANCE GRANTED: 3-2 For - Wersosky, MacVane, Lamoureux. Against: Proulx, Shortill.

Variance granted as applicant proved the following:

1. That there was a hardship in structural layout of land and buildings.
2. To deny the variance would violate the spirit and intent of the Ordinance.
3. Granting the variance would not adversely effect other properties.
4. That it would be an injustice not to grant the variance.

H80-25 Cormier, Francis, 53 Piscataqua Raod, Assessor's Map J, Lot 14, zoned R-40, petitions for a variance from Article 21:4.8, Definitions - Frontage, to construct a one family dwelling unit.

Francis Cormier explained his intentions and stated that he and his wife had 22.9 acres of land and that they wanted their children to have the acre they wanted.

Muriel Cummings, Piscataqua Road, spoke in favor.
John Moore, 52 Piscataqua Road, spoke in favor.
Patricia Curry, 49 Piscataqua Road, spoke in favor.

VARIANCE GRANTED: 5-0. For - Proulx, Shortill, MacVane, Wersosky, Lamoureux
The variance was Granted as applicant proved the following:

1. That there was a hardship because of the size of the land.
2. To deny the variance would violate the spirt and intent of the Ordinance.
3. Granting the variance would not adversely effect other properties.
4. That it would be an injustice not to grant the variance.

The business meeting resumed with continued discussion on the Murray case. The Board directed Proulx to correspond with Attorney Morrison for more specific information as to the Court decision.

Moved by Shortill, seconded by MacVane to adjourn. U.A.