

ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING

Held: Thursday, May 21, 1981
Dover Council Chambers

Members Present: Vice Chairperson Lamoureux, W. Peters, R. Keefe, H. Wersosky and R. Shortill.

Moved by Peters, seconded by Shortill to approve minutes of meeting held April 23, 1981, subject to change (as no member was present from the 4/23/81 meeting).

There were no objections to the Board members sitting on either cases. H81-8 was delayed by request from applicant; H81-10 heard first.

H81-10 Harold Moran, Trustee for the Estate of Robert Cassell, Corner of Glenwood and Central Avenues, Assessor's Map 38, Lot 33, zoned B-3, petitions for a variance from Article 21:5.4 (front and sideyard setback) to construct an office building having insufficient front and sideyard setbacks.

-Harold Moran, trustee of the estate of Robert Cassell, stated the history of the Cassell estate. He noted that the law firm of Ouellette, Hallisey and Dibble were interested in building on this parcel. He further noted that the 30' setback, as requested, was in line with the other dwellings in that area.

-Ouellette, from the above mentioned law firm, stated that their conceptual plan fulfilled the parking requirements, egress/access configurations and that the plan had been presented to the Planning Department for their input. He noted that there would further tree planting in addition to the original vegetation.

-G. Koutrelakos, abuttor, spoke in favor noting that the 30' setback was already in effect in that neighborhood.

-W. Robinson, abuttor, spoke in favor.

-Chair read letter from Abuttor Chase in favor of variance. Letter entered into the record.

VARIANCE GRANTED: 5-0 with the condition that the proposed plan be subject to site review.

H81-8 Dr. Kenneth O'Neil, 17 Summer Street, Assessor's Map 12, Lot 35, zoned RM-10, petitions for a variance from Article 21:4.8 (Use Regulations) to permit operation of a medical office in a residential zone (in reference to customary home occupation).

-Attorney William Tanguay, representing the applicant, requested the use of a court stenographer, Mr. Jordan. Board approved.

Attorney Tanguay stated the intentions of his client, Dr. O'Neil. He stated that Dr. O'Neil purchased the present dwelling, up-graded it, lived in it and operated his medical office from there under the home occupancy section of the Zoning Ordinance. After eight months, he purchased a house in Lee and moved his family there, but continued to operate his medical office from the Summer Street structure. He noted that it would be in the public interest to keep Dr. O'Neil in the vicinity as he was the only plastic surgeon in the area. He said that it was consistent with the ordinance, and that the practice was to stay the same, two afternoons a week. Mention was made that the applicant might, at some time in the future, enlarge his practice and have another doctor join him. Parking arrangements were discussed and left to the Board, if they so wanted, to have land in the rear of the property made available for parking. Attorney Tanguay noted that the applicant believed that it was better to have an office in that location than multi-family use. Hardship was

quoted as the unique characteristics of the property - locale, size, shape and topography; that the house was located on a busy intersection; the house being so large, that it would reduce the value of the property to sell it for single or multi family use or to another professional to preserve the unique characteristics of the house; That it would be an injustice to the Dover citizens not to grant the variance as Dr. O'Neil would no longer have his practice there. Discussion ensued as to the amount of outside help working for the doctor. Dr. O'Neil stated that he had only one outside person working for him. Attorney Tanguay noted that it was a option of the doctor's to move back into the house on Summer Street, leaving his family in Lee. Pictures were submitted to the Board for their review of before and after the upgrading to the property. Also, a newspaper article (1980 issue of New Hampshire Sunday News) with reference to the beautification of the property was reviewed by the Board. This newspaper article stated that Mrs. O'Neil was going to operate an interior decoration business from Summer Street.

The Chair read applicant O'Neils letter into the record.

-Dr. O'Neil spoke with reference to keeping his practice only to two days a week even if he hires another doctor.

-Mrs. O'Neil clarified the size of the house and noted that she was not operating an interior decorator business from either homes.

-Patsy Lynch, real estate broker, spoke of the value of the house and the problems involved in selling the structure.

-Kenneth Kincaid, 158 Central Avenue - read a prepared statement in favor. Statement was labeled Exhibit A and submitted into the record.

-Robert & Patricia Marston, 1 Elm Street, spoke in favor.

-Roy Ireland spoke in favor.

Discussion ensued with reference to the density of the zone "Multi-family."

Chair read letters of objection received by the Board into the record. Said letters were from the following and each made a part of the record:

#2. Hodges, Mrs. Luther Sr.; 32 Summer St.

#3. Dudley, Mary Jo; 38 Silver St.

#4. Moore, Gail Thurman; 30 Silver St.

#5. Bibberts, Helen and Al; 24 Silver St.

#6. Krans, Hamilton, Jr.; 16 Hamilton St.

#7. Tufts, Anne; 148 Locust St.

#8. Tufts, Anne; 148 Locust St.

#9. Doviak, Pamela; 145 Locust St.

When questioned, it was found that Dr. O'Neil did employ five outside persons, whether contract or full time for his medical business.

-Attorney Anothy McManus, representing Berrien Moore III, noted that customary home occupation is an exception of the zoning ordinance and therefore, any person applying under that category was to conform to the rules set forth that restricts the customary home occupation (ie. employees, percentage of area, parking requirements, etc.) He further stated that was no hardship except financial and that the applicant's hardship (financial) was self-imposed. He noted that the neighbors were against the variance so it would be adversely affecting the surrounding properties and that it would be an injustice to grant this variance. The main point he stated, is that it would set a precedent.

-Ed Dugal, abuttor, opposed and stated that the house, prior to the upgrading, was not in all that bad of shape.

-Tracy Greenwood spoke in opposition stating that the house was a multi-family unit prior to the O'Neils purchasing it and that it was not, at that time, a determinant to the neighborhood as such.

-Josephine Mitchell spoke in opposition stating that once the customary home occupation exception (to the Zoning Ordinance) was misused, it could be misused over again and again.

-Donald Harley stated that granting of this variance would set a precedent and that the hardship was self-imposed.

-Jim Dodge spoke in opposition.

-Pam Doviak - questioned the parking situation and the driveway access and egress.

-Gail Moore spoke of the free space between the O'Neils and her property and the use of this free space for a paved parking area.

-Mary Jo Dudley spoke in opposition due to the increase of traffic and available area for a proposed parking lot that granting of this variance would incur.

-Councilman Richard York spoke of maintaining the historic integrity of the area. He further noted what expansion of the medical office services could entail in the future.

-Rebuttal by Attorney Tanguay responding to the above that:

The parking arrangements were not made, referring also to the question of free space.

The area would be preserved if the variance was granted.

Noted that the applicant was aware that only four apartments, whether or not they were in the main or carriage house could be allowed.

Stated that there was not any expansion of business expected at this time.

In reference to setting a precedent - that each case was taken on its own merits.

VARIANCE DENIED: 5-0. Denial was based on the following criteria:

1. The Board found that there was no hardship in the use of the land and/or uniqueness of the building(s) thereon. If, in fact, there is any hardship, the Board claims that it was self-imposed;

2. The Board found that the granting of this variance was not in the spirit and intent of the Zoning Ordinance;

3. The granting of this variance would adversely affect the properties in the surrounding area; and,

4. That it would be an injustice to grant this variance.

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