

DOVER ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING

HELD: Thursday, November 19, 1981
Council Chambers
Dover, New Hampshire

Members Present: Chairperson Proulx, A. MacVane, R. Keefe, G. Lamoureux, R. Shortill, H. Wersosky
Also present was Building Inspector R. Selleck.

Business meeting opened: Discussion ensued on the proposed eighteen months budget submitted by Chairman Proulx.

Financial report as of 10/31/81 was discussed. Moved by Shortill, seconded by MacVane to accept report as submitted. U.A.

Moved by MacVane, seconded by Wersosky, to recess business meeting. U.A.

PUBLIC HEARINGS

Re-opening of case H81-22, Pauline Calderwood, 202 Dover Point Road, Assessor's Map L, Lot 98G for the purpose of providing Abuttor George D'Arcy the opportunity to be heard.

-Attorney Robert Shea, representing Mr. D'Arcy, questioned who voted for and against the request for a variance by Calderwood at the 10/22/81 meeting. He objected to the proceedings of this hearing and stated that the hearing of 10/22/81 was invalid as Mr. D'Arcy had not been legally notified at that time. He noted a court case in support of his objection. Attorney Shea stated that Mr. D'Arcy had reviewed the tapes of the 10/22/81 (as provided by the ZBA) but found them to be poor quality. He questioned the case before them, asking if it were a subdivision with one lot having no frontage as required. He stated that to grant this type of variance would set a precedent. He further questioned the amount of people who had access to the right-of-way. Several other questions, such as was the proposed purchaser of Lot 2 going to hook into the city sewer system, easements to Lot 2 going across the right-of-way owned by Smussen, would the right-of-way become a public way. He noted that it would change the entire structure of the land and living conditions, decreasing the property value of the surrounding properties if this request was granted. Said decrease in property value to be presented by real estate broker Ms. Bear from Rye, N.H.

-Attorney Ouellette, representing Pauline Calderwood, objected to presentation by Ms. Bear, and requested if there was to be any additional witnesses, including Ms. Bear, that he have rebuttal rights.

Ernestine Bear, Rye, N.H., real estate broker, handed out copies of multiple listing showing price differences in keeping lots in one piece instead of subdividing.

Attorney Shea again referred to the setting of a precedent and noted that further subdividing and development could occur. He noted that the increase use of the right-of-way would be detrimental to all the abuttors.

-George D'Arcy questioned whether or not he was notified of this meeting as he did not receive a certified letter. He was informed that the ZBA sent a certified letter to him at the Dover Point Address but said letter was returned by the Post Office stamped with notation "NO MAIL RECEPTACLE". Said letter was shown to Mr. D'Arcy. Further, as soon as the certified letter was returned by the Post Office, Mr. D'Arcy's attorney was notified by telephone of the receipt of said letter and a letter was sent confirming the date and the Post Office's refusal to deliver the certified letter.

-Attorney Shea noted that in the original deeds, the right-of-way was actually for foot and vehicular traffic to the water and not to be used as a driveway. A driveway would be a misuse of the right-of-way as intended in the deeds.

Discussion ensued as to the City making test pits for a water source on the Calderwood land. D'Arcy presented a map that he claimed was in existence since prior the hearing of 10/22/81.

Attorney Ouellette noted that the right-of-way was used by two common landowners. Then one

of the landowners then subdivided his parcel and gave the purchaser of the subdivided lot a use over the right-of-way. This third party is not burdened by the right-of-way but has the use of such. The three property owners presently having use of the right-of-way are the Moxley's (not burdened by right-of-way), the Rasmussen's and the Calderwoods. It was stated that the Calderwoods would relinquish their right to the purchaser of Lot 2. He noted that further subdivision would not be allowed within Lot 2 as it would be deed restricted to one residential lot only. He stated that privacy cannot ever be guaranteed, that Lot 2 will be serviced by a private septic system, not by public sewer so easements across the 25 foot right-of-way will not be necessary and that the City did in fact have tests for water taken in the northern 5+ acre section of the Calderwood's property (and that the water tests was brought out at the 10/22/81 meeting).

-Mr. D'Arcy showed a map of the test pait area that was dated two days prior the 10/22/81 meeting.

-Attorney Shea gave copies of original deeds with reference to the type of right-of-way across the Rasmussen and Calderwoods property to the water.

It was noted that Attorney Shea did not make an attempt to listen to the available tapes of the 10/22/81 meeting.

-Attorney Ouellette stated that due to the size of the entire parcel, the deeded right-of-way was not restricting the parcel from subdivision, in that it both pedestrian and vehicular traffic would be allowed.

The Zoning Board recessed to deliberate on case H81-22.

Moved by Keefe, seconded by Wersosky, to reaffirm vote on case H81-22, Calderwood, made on 10/22/81. (VARIANCE GRANTED)

REQUESTS FOR REHEARING H81-22 were presented to the Board for their action.

Petition on behalf of C. PETER and MARGARET RASMUSSEN.

-Moved by Lamoureux, seconded by Keefe, to deny request by the Rasmussens for rehearing.

Vote: 5-0 to DENY REQUEST FOR REHEARING OF CASE H81-22, CALDERWOOD.

Petition on behalf of CLEAVELAND and JULIE HORTON.

-Moved by Wersosky, seconded by MacVane to deny request by the Horton's for rehearing.

Vote: 5-0 to DENY REQUEST FOR REHEARING OF CASE H81-22, CALDERWOOD.

H81-27 COSTAS and DESPINA JANAKOPOULOS, 29 Nelson Street, Assessor's Map 9, Lot 70, zoned RM-10, petitions for a variance from Article 4.8 (Use Regulations) and Article 21:5.4 (Dimensional Regulations) to convert an existing three apartment dwelling situated on a non-conforming lot to a four apartment dwelling.

-Mr. Janakopoulos stated his intentions and noted that he thought he had enough room for a one bedroom apartment in the existing dwelling. He also felt there was sufficient space behind the dwelling for the required additional parking.

Square footage was questioned by the Board as to play or green area for use by tenants. Also questioned was the size of the paved area.

-Mr. Janakopoulos stated that there would be enough parking space if angle parking was put in. He further stated that it was not necessary to have green/space area as the dwelling is in a mostly senior citizen type location and that they did not need room to go outside to sit.

-No one spoke in favor or in opposition.

-Chairperson read letter from abuttor Lokiec in favor of variance.

VARIANCE DENIED: 5-0 (Applicant present at time of decision) Members voting: Proulx, Keefe, Wersosky, Lamoureux.

H81-28 WILLARD MERRILL, 21 Roberts Road, Assessor's Map L, Lot 95R, zoned R-20, petitions for a variance from Article 21:5.4 to construct a garage with insufficient sideyard setback.

Clerk read list of abutters, no additions or deletions.

-Mr. Merrill stated his intentions and noted the letter from direct abuttor in favor of the variance.

Chairperson read letter from abuttor John Veinott in favor of variance.

It was noted that the garage is to be an extension of the present existing garage. The trees located beside the garage are the abutters.

No one spoke in favor or in opposition.

VARIANCE GRANTED: 5-0 as plan presented. (Applicant present at time of decision). Members voting: Proulx, Keefe, Wersosky, Lamoureux, MacVane.

H81-29 ROBERT B. SHAW, 16-18 Hough Street, Assessor's Map 30, Lot 105, zoned RM-10, petitions for a variance from Article 21:5.4 to convert an existing two family dwelling situated on a non-conforming lot to a four apartment dwelling.

Clerk read list of abutters, no additions or deletions.

Mr. Shaw stated his intentions to expand the existing duplex into a 4 unit apartment complex. He noted that the barn now standing will be removed to allow parking for nine cars (only eight cars are designated in the plan presented to the Board). The fence is to be removed to allow access to the green space/play area. He stated that the present duplex had two front porches and two rear porches. The proposed two upstairs apartments would be serviced by a constructed back and from the front porches (each having a front and back accessway). The use and square footage of this parcel conforms with the ordinance, with insufficient frontage being the reason for the non-conformity.

-No one spoke in favor or in opposition.

VARIANCE GRANTED: 5-0 as plan presented with the following stipulations: (Applicant present at time of decision - Members voting: Proulx, Keefe, Wersosky, Lamoureux, MacVane.)

1. That the barn be removed, and
2. That the parking lot be permanently delineated prior to the issuance of a building permit.

Moved by Wersosky, seconded by Keefe to adjourn. U.A.