

ZONING BOARD OF ADJUSTMENTS
AUGUST 20, 1987
COUNCIL CHAMBERS

MEMBERS PRESENT: Alden Joy - chairman, Barry Hager - vice-chairman, Dave Betrand, Mark Dellner, Dave Anderson, Bill Colbath.

ALSO PRESENT: Steve Stancel - assistant planner, Dick Selleck - inspector, Patricia Unish - recording secretary

Alden Joy called the Business Meeting to order at 7:00 P.M.

Alden Joy - asked how the Growth Management Ordinance would affect H87-29 the Proulx application.

Steve Stancel - stated that the Board should not act upon H87-29 as the Growth Management Ordinance prohibits the Board from doing so.

Alden Joy - stated that the court upheld the decision on Jenson vs. City of Dover.

Board members were now asked to vote upon the acceptance of the applications on the evenings agenda. The agenda consisted of seven cases to be heard they were H87-35, H87-36, H87-37, H87-38, H87-39, H87-40, and H87-41. They voted U/A not to accept H87-29 due to the Growth Management Ordinance.

Business meeting closed at 7:30 P.M.

Public Meeting called to order at 7:30 P.M. by Chairman of the Board Alden Joy.

H87-9 and H87-10 (Both were tabled from 3-19-87)
McQuade Realty, Inc. - Knox Marsh Road, also known as Assessor's Map H, Lot 35C-2A, Zoned I-1, requests a variance from terms of Article VI, Section 170-23B, to construct a gas station on a lot with a size of 37,170 square feet where minimum lot size required is 60,000 square feet.
Also tabled from 3-19-87 McQuade Realty Inc. - Knox Marsh Road also requested a Special Exception as provided in terms of Article VI, Section 170-52C(3), to construct a gas service station in a I-1, zone.

Public Hearing Opened:

Douglas Gary - Attorney representing McQuade Realty stated that a convient store and gas station on Route 155 would be very desirable, also that they have done a complete traffic and pedestrian traffic study. He also mentioned that the land is already in a fuel storage area, and that most of the service stations in Dover were all built on undersized lots.

He stated that the use is critical and desirable for a convient store and gas station will be beneficial and desirable. There will be no undo affect on the traffic (A traffic impact study was submitted at this time) The findings on pages 6 and 7 show how the traffic will not be effected. Also show the rate of traffic in 1990 to have only increased by 1%.

Paul Begay stated that he supported this action.

Charles Tucker - Attorney for Eastern Air Devices an abutter to this property stated that Eastern Air Devices, strongly opposes this action. Stating that this area is in a modern industrial area, and by having a gas service station and convient store this would attract more people to this area (non-working) they will be just hanging around. It would increase the traffic and pedestrian traffic in the industrial area. Also stated was the fact that the drainage in this area could not handle all this. There is a serious drainage problem here.

Special Exception must meet all criteria. Ordinance does not allow small lots to be utilized independently. Hardship in size of the land was created by themselves. Property was divided by the applicant. He created it and he made his own problems by his own subdivision. The lot is to be used as zoned. The traffic is very heavy on working days and there is a traffic tie up also when the Meadows are completed there will be more traffic. Attorney Charles Tucker shows the Board pictures of this lot with large amounts of water on the property. Use is not essential, not desirable in this industrial area. This will be an injustice to grant this variance.

Paul McQuade stated that in 1977 prior to this variance being granted a driveway was permitted but he gave up this driveway to the City of Dover. A curb was also put in with as easement with full intentions of the lot being used. The Zoning Board of Adjustentas recognized this in 1977. McQuade stated that he cooperated fully with the City of Dover, and he had all the support of the abutters in 1977 even Eastern Air Devices. He had long term intentions to build this gas service station.

Charles Tucker (attorney for Eastern Air Devices) stated he had no quarrel with Mr. McQuade for helping to develop this Industrial Park and the variance of 1977. Expansion of the new conveyent store, lights, cars, will not be attractive to neighbors. Ordinances have changed since 1977. Lots with less than 60,000 sq.ft. should not be permitted.

Public Hearing Closed

Alden Joy asks McQuade Realty if there was anyone present to support the traffic study.

McQuade Realty answered that there were no technical people present to support any of the findings.

Alden Joy - refers to page 3 top paragraph of the traffic study questioning the peak growth rate. Alden Joy stted he has a problem with the 6% growth rate of New Hampshire Route 16.

Attorney Gary stated that the Planning Board and the Site Review excepted these figures.

Bill Colbath - questioned wheteher the lots should have been combined in 1979.

Dick Selleck explained that one lot is conforming and the other is not therefore 170-39 does not apply.

Mark Dellner - asked what the hours will be?

McQuade - this store will be opened from 7 A.M. to 11:00 P.M. approx.

Dave Anderson - felt that it would not be essential for the gas service station but it would be of some convience.

Alden Joy stated he does not understand the traffic survey, and feels there will be undue traffic problems.

Dave Betrand - traffic without control will cause problems.

Dave Anderson - felt that there would not be a traffic problem.

Alden Joy - questions if pictures showing flooded area were valid? If this is the way this property drains, it will cause serious problems.

Dave Anderson - stated he very seldom sees the area like, this, but its always wet. He travels this way to work every day.

Dave Betrand - motioned to deny the special exception based on the fact that the lot was too small needing 60,000 sq.ft.
Dave Anderson - second

Vote U/A motioned to deny the Special Exception based on the traffic congestion.
Bill Collbath - second

Vote 3-2, Anderson and Dellner dissented

Special Exception denied

Discussion ensued on H87-9 variance from terms of Article VI Section 170-23B.

Conclusions were made on the following finding of facts:

1. does not face unnecessary hardship - lot can be conforming
2. will not deliver substantial justice - not in conformance with ordinance, and not a justice to the abutters.
3. will not be in harmony with the spirit and intent of the zoning ordinance - 60,000 sq. ft. required in the ordinance.
4. will not result in diminution in value of surrounding properties - presentation of evidence to support congestion overrides the service aspect.
5. will not be of benefit to public interest - traffice congestion overrides the service aspect.

McQuade Realty asked the Board to voite the finding of facts. The Board voted -

- | | |
|-------------------------|----------|
| 1. unnecessary hardship | vote 5-0 |
| 2. substantial justice | vote 5-0 |
| 3. harmony and spirit | vote 5-0 |
| 4. diminution in value | vote 4-1 |
| 5. public interest | vote 3-2 |

Variance denied vote 5-0

H87-29 will not be reviewed at this time due to the Growth Management Ordinance.

H87-35 Mr. and Mrs. Ralph Sanderson - 10 Hawthorne Road, also known as Assessor's Map 17, Lot 124A, zoned R12, requesta a variance from terms of Article IX, Section 170-33A, to construct a fence eight feet in height where six feet is allowed.

Tabled fo~~r~~ August 20, 1987 - as nobody was present to discuss the case.

H87-36 Ernest J. Carrier - 122 Broadway, also known as Assessor's Map 27, Lot 291-C, zoned B3-R12, requests a variance from terms of Article III, Section 170-10.E, to apply the regulations for the less restricted district (B3), seventy-six (76) feet from the district boundary where fifty (50) feet is allowed and a variance from terms of Article XI, Section 170-46.B, to locate a loading bay twenty-one (21) feet from a residential district boundary where one hundred (100) feet is required.

Attorney M. McNeil stated that his client intends to demolish an old building and construct a new building which will improve area property values. The new building will be slightly larger than the existing one. The parking area now is gravel and it will be paved and will increase the parking by six more parking spaces.

Attorney M. McNeil - stated that the hardship was in the fact that the land was not deep enough to allow development in a B3 zone.

Dick Selleck stated that a loading dock less than 100 ft. cannot be permitted. Another variance will be needed.

Closed Public Hearing

This variance was granted on the conditions with the finding of facts:

1. hardship - does exist - use restriction of B-3 on allowed usage - area, boundary restrictions.
2. justice - will - full use of allowed use.
3. harmony - will - surrounding area improvement
4. diminuation - will - will improve the area
5. public interest - will improve area visual

This variance was granted by a vote 5-0

H87-37 Frwances Griffith, 40 Spruce Lane (applicant Kathleen White) also known as Assessor's Map 1, Lot 7, Zoned R-12, request a variance from terms of Article V, Section 170-16, to subdivide an existing lot and create three lots, two of which would have no frontage on the Public Right of Way.

Attorney Jack Dolan represtenting Kathy White asking for relief from frontage rights he stated that Lot 1, contains a single family dwelling. Parcel 2 and 3 total over 5 acres in property. lot 1 is a little less than 1/2 acre.

hardship is special condition of the land with a single family house lot 14 times larger than most lots, owner cannot put property to highest and best use. Lots 2 and 3 will have single family homes, inhancing property value. Two houses will be put at the beginning of the Public Right of Way. Public Interest and safety will be met.

John Bruster - abbutter - opposed explaining that there is a local problem with systems and drainage. Mr. Bruster questions the type of sewerage and water that would be obtained. And where on the property will the water and sewerage be located.

Charlene Cragler - abutter - asks how would they provide there own right of way/ She stated that her right of way already has four houses on it.

Fred Daniels - abutter - states the last two lots on the bottom of the hill, when snow melts and the spring rains they cannot go to the back of the property for a least 5 to 6 weeks. All the drainage runs down there. Mr. Daniels questions how septic system could be put in, the ground is all clay and there will be no drainage.

Alden Joy - stated that Court Street has sewerage within 100' may have to be sewerred.

Dick Selleck mentions that the State may require this.

Dick Selleck explains we can only give a variance then the Planning Board will be involved, questions of subdivision is down the road.

Steve Stancel - questioned how many lots were being served by the right of way.

Alden Joy - all subdivision will go to the Planning Board. Also asks how many lots served by this right of way? Map 21 is unclear on the number of people using this road. Lot #7 is the one in question Tenison Ave. it has no other access, the other lots have access from Hanson Ave. There is an easement for drainage. Lots were combined for mapping purpose. Three lots in addition have no other way but this right of way.

Charlene Cragler - stated the map dooes not indicate proper thru ways.

Mark Dellner questioned if the right of way is going to be widened.

Ed Mulligan stated that he owns the right of way, Ed Mulligan Road, and the adjoining lots 21-1, 26C-7 these are the properties that only have use of the right of way.

Steve Stancel - recommends legal advice (giving a variance on a private road) Once you go above four houses the road has to be brought up to standards.

Barry Hager suggested this be tabled. Allowing time to check into the right of way on whether it is a public or private right of way.

Dick Selleck stated this is for a variance for frontage not right of way, later all legal papers will be asked for.

Alden Joy perk test are very strict in this area, and why are they going to allow five homes on this right of way, when there are always four. The limit of four homes on a private right of way is for safety purposes.

Dave Anderson stated there must be a Home Owners Association.

Alden Joy reads a letter from an abutter, Mr. P. isenberg stating he could not make the hearing. Alden Joy reminds the people that we will not hold up this hearing as stated by the Attorney.

Barry Hager expressed concern over availability of utilities abutters must be protected with drainage.

Alden Joy claims subdivided lots have legal right to the right of way.

The Zoning Board of Adjustments denied this variance with the finding of facts to be:

- does not have frontage
- substantial justice - otherwise unuseable land
- spirit and intent - because of the size of the lots
- diminution in value - no adverse testimony
- benefit to the public - safety, access, limited use without city standards, turn arounds, etc.

This variance was denied with a vote of 5-0

H87-38 Thomas L. and Barbara R. Childs, 8 Rutland Street, also known as Assessor's Map 12, Lot 130, Zoned R-12, request a variance from terms of Article V, Section 170-16, to construct an attached garage ten feet from a side property line where fifteen feet is required.

Tom Childs - stated that by not allowing them to do this it may devalue other property in the area. Also by not having the set back trees will have to be taken out and the terrain will be changed also devaluing the properties in this area.

Charles W. Calprin was in agreement and there also was a letter of approval from Mr. David Earl. (abutter)

The Zoning Board of Adjustments granted this variance on the following findings of facts:

1. unnecessary hardship - yes - maintaining architecture
2. substantial justice - permit more esthetic use
3. harmony with spirit - minor revision - no monetary gain
4. diminution in value - no adverse testimony - abutters agree
5. public interest - character of building maintained

This variance was granted by a vote of 5-0

H87-39 Dover's Doctor's Park Inc. - Old Rollingsford Road, also known as Assessor's Map 28, Lot 1, Zoned R-12, requests a variance from terms of Article V, Section 170-16, to allow a building to have twenty-seven per cent floor ratio where twenty per cent is maximum.

Kevin McEneaney - stated that the Doctor's Park was before the Board in May the variance was then granted but the twenty-seven percent floor ratio was not considered.

The Zoning Board of Adjustments granted this variance on the following findings of facts:

1. unnecessary hardship - oversite
2. substantial justice - continue to build
3. harmony with spirit - consistent with current use
4. diminution in value - no adverse testimony
5. public interest - needed for service

This variance was granted with a vote 5-0

H87-40 Continental Cablevision - 79 Main Street (owner Wallace Ackerman Sr. 400 Sixth Street), also known as Assessor's Map E, lot 27A, Zoned R-40, requests a variance from terms of Article X, Section 170-40A & D, to add two satellite dishes.

Rick Genkinson (assistant Plant Manager) stated two (2), nine (9) feet satellite dishes will be installed approval for this variance will be in the best interest, satellite signals are now losing power, and programs are switching to different panels. By the summer these old satellite dishes will not be working. They will put nothing on the towers, dishes will be installed on the ground. They will all be fixed dishes, they will also be smaller than the ones that are there now.

Dick Selleck - are you considered a utility?

Rick Genkinson - stated no and we will not become a utility.

The Zoning Board of Adjustments came to this decision on the following finding of facts:

1. hardship - yes - emposition of new ordinance
2. justice - will - of existing services
3. harmony - will - minimum impact
4. diminution - will not
5. public interest - will services

This variance was granted by a vote of 5-0

H87-41 Marina Landing Corp. (Dan McGeary) Landings Way, also known as Assessor's Map L, Lots 94B and 95, Zoned R20, requests a special exception as provided by terms of Article VII, Section 170-27.C.(1), and Article XII, Section 170.52.C.(3), to construct a walk way in the Conservation District.

Dan McGeary - stated he would like to put up a walk way going across Marsh land, by building a bridge there> Will not be any damage to marsh grass.

Harold Preston - spoke in favor of the application stating there was approval two years ago and the Planning and Conservation Board's were both in favor. The retaining wall will protect the wetlands. Marina Landing has a two year approval limitation - ran out but the Planning Board extended it up to September 3, 1987. All erosion problems will be corrected.

The Zoning Board granted this special exception.

Vote U/A

Meeting closed 10:35 P.M.