

DOVER ZONING BOARD OF ADJUSTMENT  
MINUTES OF MEETING

September 17, 1987  
Council Chambers

Members Present: Alden Joy - Chairman, Mark Dellner, Dave Bertrand, Joyce Bowden, William Colbath - Alternate, David Anderson - Alternate.

Also Present: Tom Clark - Assistant Building Inspector, Steve Stancel - Assistant Planner, and Patricia Unish - Recording Secretary.

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

Minutes were not complete from meeting of August 20, 1987, therefore the Board could not vote on the minutes.

FIRST ORDER OF NEW BUSINESS

Alden Joy read a letter for request for a rehearing from McQuade Realty.

Mark Dellner stated he has a problem with granting a rehearing. He felt that they will be submitting all new material.

Dave Anderson felt that the submitted information was new and would constitute a rehearing.

Dave Bertrand stated that McQuade Realty should apply for a new application because the new evidence would change the proposal.

Tom Clark stated the reason they were here for the variance was that they could not conform to the 60,000 sq. ft. now that they can. They do not need the variance only the special exception. Tom mentioned that they could reapply for a special exception.

Steve Stancel stated that the Zoning Board can handle it either way. Either rehear it or make them reapply. Steve also stated his feelings would be to have them reapply.

Alden Joy felt that new evidence was stated in the request for rehearing but nothing has been presented to prove the Developers have the necessary 60,000 sq. ft.

Alden Joy explained that the developer was talking about a completely new parcel of land.

Board decided to move to deny on the motion for rehearing  
On the basis that the new lot constitutes a new application

Dave Anderson requested that the Zoning Board of Adjustments packets be handed out sooner.

Alden Joy asks if there was any reason why Board packets could not be distributed three (3) days after the agenda is written.

Alden Joy asked for packets to be ready two (2) weeks prior to hearings.

Steve Stancel stated that prior to now the Board had the use of a part-time secretary. Now the office has a full time secretary, there should be no problem.

Tom Clark explained that the agends'a are now filled up until December. Within the rules a special meeting can be called. This would alleviate the problem.

Alden Joy recommended that the Board except nominations for officers the next meeting so that they maybe installed in January.

Business meeting closed 7:29 P.M.

Public Meeting Opens 7:30 P.M.

Alden Joy introduced all board members, and explained all procedures used by the Zoning Board for all the hearings.

Alden Joy asked for acceptance for all items on the agenda.

David Anderson - moves to except

Mark Dellner - seconds

Voted - 5-0

H87-35 (Tabled from meeting on 8-20-87)

Mr. & Mrs. Ralph Sanderson - 10 Hawthorne Road, also known as Assessor's Map 17, Lot 124A, Zoned R-12, requests a variance from terms of Article IX, Section 170-33A, to construct a fence eight (8) feet in height, where six (6) feet is allowed.

Mr. Sanderson stated that the main purpose for this variance was safety. This fence runs near a drainage pond and Mr. Sanderson stated that he went ahead and put the fence up. The reason the installed fence was eight (8) feet was because of the terrain, which has a high slope.

Alden Joy asked Mr. Sanderson if it would be possible to trim the fence into six (6) feet at the upper end near the Sawyer Estate.

Mr. Sanderson said he would discuss how this would be done with a fence company. Mr. Sanderson would like his fence to look neat.

Mrs. Sanderson stated she asked a professional fence installer and was told that if this trimming were to be done it would weaken the structure and support of the fence. They told her it would be best to leave it alone.

No Opposition

No Rebuttal

Public Hearing Closed

Alden Joy felt that the fence could be trimmed without any problems.

Variance was granted with a condition of tapering the fence. The eight (8) foot section adjoining the six (6) foot section must be tapered to the six (6) foot fence. This tapering must be done inside of 60 days.

Vote: 5-0

The conclusion was based on the following Findings of Facts:

1. Hardship due to irregular land contours.
2. Will deliver substantial justice the eight feet will be valid for safety.
3. Will deliver spirit and intent - screening and safety
4. Diminution in value of property - no adverse testimony
5. Benefit to public interest - will be safety

PUBLIC HEARING OPENED:

Joyce Bowden asks Alden Joy if she may step down for the fact that the Caliendo's are neighbors. Alden Joy agrees and David Anderson sat it.

H87-42 James & Proscilla Caliendo, Middle Road (Katie Lyn Lane) also known as Assessor's Map M, Lot 82E, Zoned R-40, request variance from terms of Article IX, Section 170-32.E.(4) to hang a sign with 6.25 sq. ft. in connection with a customary home occupation where two (2) sq. ft. are allowed.

James Caliendo explained that he has been self-employed in this area since 1969. He has already purchased the sign, and had a misunderstanding of the allowed size. Mr. Caliendo also stated he has received permission from the owner to put the sign up.

No Opposition  
No Rebuttal

Alden Joy read a letter from the owner of the property who agrees to the request for Mr. Caliendo putting up this sign.

Alden Joy asked if there are three businesses located at the site.

Mr. Caliendo replied yes but that they are all tied into each other.

Alden Joy asked Mr. Caliendo if there was any equipment on the property in connection with the three (3) businesses.

Mr Caliendo replied yes, a tractor, trailor, personal truck and other equipment.

Alden Joy asked if the non-conforming use is in question when Mr. Caliendo applied for this variance.

Tom Clark stated that when Mr. Caliendo applied for this variance, Dick Selleck visited the property and concluded the businesses were - customary home occupation.

PUBLIC HEARING CLOSED:

Variance was granted with no conditions.

The conclusion was based on the following Finding of Facts:

1. The sign is made and would not be necessary to remove.
2. Deliver substantial justice - no opposition to use.
3. Spirit and intent - allows variance
4. Diminution in value of surrounding property - no adverse testimony.
5. Benefit of public interest - business address

Vote: U/A

PUBLIC HEARING OPEN:

H87-43 Thomas J. and Joanne L. Boyle, 168 Littleworth Road, also known as Assessor's Map F, Lot 46, Zoned R-40, requests a variance from terms of Article V, Section 170-16 to construct an addition thirty-five (35) feet from the front property line where fifty (50) feet is required and from terms of Article X, Section 170-41.A. to increase a non-conforming structure.

Mr. Boyle stated that they are putting in a front entrance to reflect the wind and cold. It will also be an additional door for tenants on the second floor which would help with fire safety.

No Opposition  
No Rebuttal

Alden Joy questioned if the two car garage (on the right hand side) with the door next to it, was the same entrance the applicant uses?

Mrs. Boyle stated that it was a side entry door which leads into the kitchen. She would like very much to have a front door.

Closed Public Hearing

Mark Dellner stated that he had no problem with granting the variance. The house was built along time ago and there would be nothing they could do to their house if they complied with the ordinance.

David Bertrand felt that the hardship is in the size of the property.

Mark Dellner felt that the Hardship was location of the roads, and the age of the house.

Alden Joy felt that this was a case of imposition of a zoning ordinance on a 200 year old house.

The variance was granted with no conditions.

This conclusion was based on the following Findings of Facts:

1. Condition caused by time and circumstances.

Vote U/A

PUBLIC HEARING OPEN:

H87-44 E.R.W. Co. Inc., 63 Fourth Street, also known as Assessor's Map 31, Lot 2, Zoned RM-8, requests a variance from terms of Article X, Section 170.40.A. to increase a non-conforming use.

Alden Joy questioned why the applicant needed a variance?

Tom Clark stated that the use was non-conforming for that zone. He wants to add a second floor 170-40 states that you cannot increase a non-conforming use without a variance.

Alden Joy felt that the ordinance stipulated only a non-conforming use it uncompasses a greater area of land.

Joyce Bowden agreed with Alden.

Tom Clark we are not here for non-conforming structure we are here for non-conforming use. That particular use is not allowed in the zone. The way I read it that use shall not be enlarged without a variance.

Alden Joy felt that the ordinance talks about uses of land.

David Anderson - moves

Mark Dellner - seconds

Alden Joy did not want to get an opinion from the attorney. He felt that the statement in the back of this books stated that the Board will interput the whole ordinance.

Steve Stancel stated that he agreed with Tom. Depending on how you read the text. It could be interpreted two ways. He felt that the application should be tabled and an opinion received from the attorney.

Alden Joy felt that the Board has already voted. He would like to move to deny hearing on the basis that the Administrative decision was incorrect.

Alden Joy stated the Board will not hear H87-44 on the basis that the Administrative Interpretation of 170-40 was incorrect.

Vote: U/A

H87-45 Robert Parsons (applicant: Tim Kerwin) 120 Central Ave. also known as Assessor's Map 15, Lot 103, Zoned B-1, requests a variance from terms of Article IX, Section 170.32.H.(3), (b), and (c) to have freestanding signage equaling one hundred twenty (120) sq.ft. where twelve (12) sq. ft. is allowed and to have a accessory wall sign sixteen (16) sq, ft, where four (4) sq. ft. is allowed.

Tim Kerwin stated that he and his wife owned this business. They would like to put some kind of a sign on the sign post to let people know about their business, and where they are located. The location is hard to find.

Alden Joy stated the Brook's is in that area and they were granted a variance for their sign.

Tim Kerwin stated that the sign would be approx. six (6) ft. and would be 10 ft. off the ground.

No Opposition  
No Rebuttal

Closed Public Hearing

Alden Joy felt that Tim Kerwin was asking for quite abit of signage for that area. In this particular case all businesses should use the same sign. Brook's is in a much less excessable area. They were restricted to the size of their sign. Brook's was limited and the Board should be consistant.

William Colbath sat in on this hearing, and Dave Anderson stepped down.

Variance granted with condition                      Vote 5-0

Variance granted with the condition the freestanding signage on post will not exceed area of the Brook's sign.  
Canopy signage approved as presented.

This conclusion is based on the following Findings of Facts: Grandfather signage exceeds allowance must have room for notice.

PUBLIC HEARING OPENED:

Samuel Tamposi and Gerald Nash, 3 Plaza Drive, also known as Assessor's Map D, lot 2, Zoned B-3, requests a variance from terms of the Interim Growth Management Ordinance to construct a 140 unit multi-family housing project.

Dan Callahan - (Attorney from Manchester) representing Tamposi and Nash - We are not asking for a variance to do anything other than continue processing our application. To continue this process from the Planning Board, for the City Council to inact on the Growth Management. Which restricts all residential developments in the City of Dover for one year. Ten days after the Ordinance was first posted in the newspaper my application was accepted by the Planning Board. Because the ordinance by its terms specifically sets out any former acceptance by the Planning Board prior to there notice. We have payed our fees in excess of \$25,000 at the time based upon our request. The ordinance in question and the one we seek relief from is Article I, Section 7. This ordinance indicates it does not create its own variance. The primary purpose is to protect the essential need of the City of Dover. While at the same time restricting the expectation of property owners with the City of Dover. It is not in a residential zone. The Growth Management Ordinance only restricts commercial zones. My client has owned this property for approx. 20 years.

The location of the property is at the Week's traffic circle. The west side of the property is owned by the State of New Hampshire, residential property on the other, and on the third side the City Wells. The primary reason for this is traffic. The City of Dover does not want commercial traffic exiting through this neighborhood. This property is also restricted by the coverage it could have (30%). The reason we are seeking residential development is because of the lot. It has not been allowed to develop commercially. The primary reason for this is traffic. The City of Dover does not want commercial traffic exiting through this neighborhood. There was a prior application that was not approved.

If this project was allowed to go to its completion, it would carry this condition. That a deeded right and the only access point to the property on the Week's traffic circle. that right would be deeded to the City of Dover.

It is very difficult because we are seeking a variance from an Ordinance that stops the procedure. In this particular case our property is uniquely situated in the City of Dover. Therefore that established our hardship. The property is suitable for this type of development. This ordinance is prohibiting us from presenting some evidence on why we should be granted this special exception and that again is our hardship.

This application is consistent with the spirit and intent of your zoning ordinance. This particular ordinance was passed to give the City a chance to work on its natural plan and to develop the Master Plan. In relationship with housing and yet at the same time the overwhelming purpose was not to deny reasonable expectation of property. The reasonable expectation of these property owners was that they could develop this multi-family housing. The property owners spent significant amount of time and money into this development.

This variance would grant substantial justice. We missed because ten (10) days after the ordinance was first posted in the newspaper. My application was approved by the Planning Board. The property owner did not buy this land this year to develop it.

They have owned this property for twenty (20) years, and thought about the possibility of developing it. Substantial justice would be awarded my client by allowing them as a property owner of the City of Dover. Who has owned this undeveloped land for the past twenty years. And who has paid taxes on the land without demanding anything or expecting anything from the City.

Harold Preston stated yes this was approved by the Planning Board by a vote of 6-2. The State of New Hampshire stopped the DeMoulas project from being there. Because they would not sell the salt sheds. Therefore they could not put their entrance there.

Rebuttal:

Dan Callahan stated that he was surprised that the Planning Board stated that there were other commercial uses for this property. He wanted to know what they were. This project was on line in 1987. At that time the Planning Director and Planning Department were in the process of drafting this ordinance.

At that time someone should have told the developer don't give us the \$25,000. Stating that there maybe some problems coming up. In 1986 we received the insurance from the

Planning Director (Mr. Collins) that this project was worth following. The question is can we get a variance to continue this project. There is a hardship unique to that particular property. We cannot do what we proposed to do. I have not heard one suggestion of a possible commercial development. That we can do that is feasible, economical, and profitable. The Assisstant Planning Director must realize the findings of facts. That a project like ours will only generate .13 children per unit. That is 18 children.

If its stated that because we insisted on being heard June 9th is the only reason we are 10 days late. If we had taken our time and not been concerned about the Interim Growth Ordinance might be posted.

The statement about deficiency in the existing systems is not our fault. Thats because they have not been maintained. Each project must considered on its own. It is not fair to say justice is acheived when the majority is protected.

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Steve Stancel stated that it was untrue that the City of Dover is against any other commersial uses on this site. The City of Dover has approved the only commercial use application submitted for the site (DeMoulas). To my knowledge no one has said there can be no other commercial uses on this site or that the Planning Board would not support any other commercial uses on this site.

Alden Joy read the principal uses allowed in the area (B3). Allowed uses include auto services, barber shop, beauty shop, banks, eating and drinking establishments, hotel, motel, new car dealership, office, and retail stores.

Mark Dellner questions application deadline? Your application was going through normal pace, and normal process. Did you say you were under the impression the City Council was going to adopt this ordinance? Then you wanted to speed this process along and demanded this.

Dan Callahan stated that Mr. Preston can verify that the T.R.C. was discussing other ordinances that may have to be met. We were comcerned also that the acquifer ordinance as well as the Interim Growth Ordinance.

That was our concern. Our only concern was that our application not be delayed. First the T.R.C. we talked about the application and certain questions and comments were made at this meeting. The application was sent along and with a written request for this application to be taken up as soon as possible.

If we had not made this request it would have been more than 10 days. If the Planning Director or anybody in the Planning Department was aware of this ordinance and this procedure was going forward I think they should have said if the Interim Growth Ordinance is pasted you will be stopped. We recommend you look at other tyoes of developments.

Alden Joy - any other questions?

Hearing Closed:

Alden Joy I agree with Mr. Callahan that this ordinance must apply with justice for all. The majority is not necessarily the most important. I also must state that he is not the first to be turned down. This Board does recognize that people will be hurt. Also there was all kinds of public notice and knowledge of this ordinance. There were many public meetings. You must meet all five requirements to meet this ordinance. By an 8-1 vote this ordinance was approved in by the City Council. Who are the representatives of this community. There are committed uses by right with some adjustments. Those with special exception. It may be along way down the road but as far as planning is concerned the ordinance we are faced with was an acceptable one. The special exception case here might be looked on in the light of others coming before this Board on this ordinance. If this was excepted as a variance there is no possibility that any other one could be stopped at all. The part that the timing was inappropriate can be blamed one anyone. But it was public notice.

Joyce Bowden stated that it was publicized. I was very aware of this ordinance.

Mark Dellner stated everyone knew this ordinance was coming down. We are the Board of the City. We have to do what is best for the City. I have a real problem with granting this variance.

Alden Joy this variance will be denied.

This was denied on the conclusion of the findings of facts:  
There is reasonable use of this land.

H87-47 Durham Trust Company, 828 Central Ave, also known as Assessor's Map 37, Lot 37, Zoned Office, requests a variance from terms of Article IX, Section 170-32.I.(3)(b), to have two freestanding signs that exceed the maximum allowable sq. ft. requirement, one (1) sign to be eight (8) sq. ft. where four (4) sq. ft. is allowed and one (1) sign to be forty (40) sq. ft. where four (4) sq. ft. is allowed.

Jack Dolan from the Durham Trust Company explained that a four foot sign could not be seen. Liberty Mutual has been there for two weeks now. No one has been able to rely on the sign because it cannot be seen. This will prevent communication with the public. Two signs are being sought Liberty Mutual sign on Glenwood. Glenwood Ave. would be the better location. The sign will not get lost with all the other signs on Central Ave. The prime use of this building will be for the Durham Bank. The primary reason for the bank would be for loan processing. The area has many signs and the hills will also screen some of the property. The sign will be standard green and cream color.

Alden Joy stated that the eight foot clearance will have to be met. The sign may also have to be lighted. It will have to be whatever the ordinance requires. Also the Letter written to the Durham Trust Company stating that any variance(s) granted by the Zoning Board should not construed that the City of Dover has approved occupancy of the premises for banking purposes. Other City requirements for occupancy may have to be met.

Jack Dolan stated that he was fully aware of all the matters.

This variance was granted with the conclusions based on the following findings of facts:

The location is restrictive in the reference to other businesses in the area.

Vote U/A

Meeting closed at 10:30 P.M.