

ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
MARCH 15, 1990

Members Present: Chris Jacobs, Dave Paolini, Joyce Bowden, Randy Turner, Dean Trefethen.

Also Present: Steve Stancel and Thomas Clark.

Meeting brought to order at 7:10.

NEW BUSINESS

Dean Trefethen moved to accept the minutes of the last meeting.

Randy Turner seconded.

VOTE U/A

OLD BUSINESS

Steve Stancel asked if anyone was interested in the training session being offered in Rochester on April 21 to call the Planning Department.

H90-03 Mark & Avis Bennett, 41 Summer Street, A/K/A Assessor's Map 12, Lot 85, zoned RM-10, requests a Variance from the terms of Article V, Section 170-17 to construct an accessory building (detached two-car garage) within one (1) foot of a side lot line where ten (10) feet is required.

Mark Bennett stated that the garage would be built 10 feet beyond the existing drive and showed a sketch of the proposed building. He brought in pictures of the house, yard and historically significant copper beech tree. He stated that there are no objections from the abutters and the Historic District Commission agreed that it is the most appropriate spot to put the garage.

Chris Jacobs moved to accept the case.

Dave Paolini seconded.

VOTE U/A

Tim Sheldon spoke in favor of the application saying that there was no zoning at the time the neighborhood was built, therefore, barns and houses were built right on the lines. A garage built on the line will be consistent with the existing neighborhood.

Steve Stancel stated that the Planning Department opposed the variance because there is no hardship. It appears there is place in the back yard for a two-car garage or in the side yard for a one-car garage. He stated that even though there are other garages placed on the line there are also others

that are not. He said it is important to keep the 10' setback because of fire apparatus, drainage, etc.

Joyce read a letter from Charles Cilley, an abutter, stating that Zoning Boards everywhere are too prone to grant variances and if a code is worth adopting, it ought to be enforced.

Dave Paolini stated that a garage with a 1' setback would allow water running off the roof to run off onto someone else's property and fire is also a problem.

Mr. Bennett stated that they want the garage where it is proposed because they like to look into their backyard which has a rock wall and many old perennials.

Chris Jacobs suggested the case could be tabled and the Bennett's could revise their plans to make it more palatable to the ZBA.

Mr. & Mrs. Bennett decided to table their application.

Dean Trefethen moved to table the application.
Chris Jacobs seconded.

VOTE U/A

TABLED

H90-4 Walter Fischer, Folsom Street, A/K/A Assessor's Map 10, Lot 103, zoned Rm-10, requests a Special Exception as provided by the terms of Article XI, Section 170-25.1 and Article XII, Section 170-52.C(3) to construct a four (4) unit apartment building.

Kevin McEneaney represented Mr. Fisher. He stated they would be taking a vacant, unkept lot and building an affordable two bedroom fourplex unit. He said traffic would not be a hazard to anyone. They will be providing 2 parking spaces per unit. The amount of open space will be 78%, which is well in the excess of the requirement. Drainage is not a problem, as all systems are available on Folsom Street and screening will be taken care of. Mr. McEneaney stated that all the requirements for the Special Exception have been met.

Chris Jacobs moved to accept the case.
David Paolini seconded.
VOTE U/A

Tom Clark said that he is satisfied that all the calculations are accurate.

Joyce Bowden read a letter of opposition from Mr. Jarrett, an abutter, stating a fourplex would create a serious parking problem, added traffic would be a safety hazard to the

children and would result in over crowding of the area.

Steve Stancel stated that the Planning Department reviewed the application and found it consistent with the requirements.

Joyce Bowden inquired about the type of screening that would be used in the parking area.

Public Hearing Closed.

It was determined that Mr. Clark should call Mr. Jarrett and see what his concerns might be regarding screening etc.

Chris Jacobs made the motion to approve the Special Exception.

Randy Turner seconded.

VOTE U/A

GRANTED (see note below)

NOTE: The Board wanted the following noted:
The Building Inspection office will be responsible to insure adequate screening is in place prior to the issuance of a Certificate of Occupancy.

H90-5 Scott Leighton, 79 Spruce Lane, A/K/A Assessor's Map I, Lot 99, zoned R-40, requests a Variance from the terms of Article V, Section 170-16 and 170-17, for adjustment of a lot line which would establish approximately one and one-half (1 1/2) foot side yard setback from an accessory structure where ten (10) feet is required.

Tom Clark gave a history of the property. He said that the lots were owned by the Bitetty family for years and when one property was sold a survey was done which resulted in finding out that Mr. Bitetty's porch and shed were not on his lot. Tom said that if Mr. Leighton gets a Variance, he will then have to go to the Planning Board for a lot line adjustment.

Joyce Bowden suggested that the shed could be moved.

Tom said that it could but the owners do not want to move the shed.

Paul Connolly spoke on behalf of Scott Leighton and Joseph Bitetty. He stated that until 1960 the parcel was owned by Mr. Bitetty. After selling to Mr. Leighton, the property was surveyed and the encroachment came to light. Mr. Leighton suggested that he deed a portion of his land to Mr. Bitetti so he can keep his shed and deck on his land. Paul stated that Mr. Leighton has been cleaning & maintaining the land for the last 2 years. He said that moving the shed was

considered but it would be a hardship because of the Public Service easement going through the property. It would not leave much yard to enjoy.

Steve Stancel stated that the Planning Department feels there is plenty of room to move the shed.

Joyce asked why Mr. Leighton is asking for a variance when the shed is on his land. She said that he is putting the cart before the horse. The shed must be brought into compliance with the ordinance. One option is to go to the Planning Board for a Lot Line Adjustment with the idea that the shed is to be moved.

Mr. Leighton asked if he can do a Lot Line Adjustment and then the shed would be Mr. Bitetti's problem?

Chris Jacobs made the motion not to accept the case. Randy Turner seconded.

VOTE U/A

CASE NOT ACCEPTED

H90-6 Richard & Ann Lak, Reyners Brook Drive, A/K/A Assessor's Map A, Lot 47-23 zoned R-40, request a Variance from the terms of Article V, Section 170-16, to allow a building with a height of approximately thirty-two (32) feet where a maximum of thirty (30) feet is permitted.

Tom Clark said that a Building Permit was issued and subsequent to inspection it was determined that it exceeded the 30' maximum height. After checking the plan, he found a note stating that the building did exceed the maximum height. Mr. Keesey was not notified at that time. Mr. Clark stated that there was an honest communication breakdown somewhere.

Richard Lak said that Tom Clark's information is correct, it was an honest mistake. He said that if the building was not structurally completed, he would have complied with the ordinance rather than seeking a variance.

Chris Jacobs asked why the applicant was Kevin Keesey and not Mr. Lak.

Tom Clark said it was because it was Mr. Keesey who was in contact with his office during the construction phase.

Tom Clark said that the new ordinance allowing 35' in height is going to a public hearing on the 27th of March. There, the Planning Board makes recommendations and then it goes to the City Council. The Council may or may not hold a public hearing. The process will take approximately two months.

David Paolini made the motion to accept the application.
Chris Jacobs seconded.
VOTE U/A

Steve Stancel stated that the Planning Department is not opposed to the application.

Kevin Keeseey said that he has built 5 or 6 houses in the City of Dover.

Joyce Bowden asked him if he knew the building height in the City?

Kevin Keeseey said that he did not, he submitted plans and they were approved.

CLOSE PUBLIC HEARING

5 CRITERIA

1. The applicant does face an unnecessary hardship because through a series of errors, which no one was at fault and due to the fact that the ordinance apparently will be change to accommodate a 35' height, the applicant has been placed in a hardship situation through no fault of his own.
2. The variance will deliver substantial justice and allow the applicant to complete his home.
3. The variance will be in harmony with the spirit and intent of the zoning ordinance because the current ordinance is for single family homes 30' in height but the intent of the zoning change is to accommodate 35' in height and this property fits into the ordinance.
4. The variance will not result in a diminution in value of surrounding properties because no evidence was presented.
5. The variance will be of benefit to the public interest because the public interest will not be served by the strict enforcement of this ordinance.

David Paolini made the motion to grant the Variance.
Randy Turner seconded.
VOTE U/A

GRANTED