

ZONING BOARD OF ADJUSTMENTS
MINUTES OF MEETING
MAY 19, 1988
COUNCIL CHAMBERS

MEMBERS PRESENT: Bill Colbath, Randy Turner, Joyce Bowden,
Barry Hager, Dave Anderson

ALSO PRESENT: Steve Stancel and Dick Selleck

Meeting called to order at 7:06

Case #H88-27 was withdrawn by Mr. & Mrs. Trehub

1st order of business to approve the minutes of the April 21,
1988 meeting. A motion was made to accept by David Anderson
and seconded by William Colbath.

VOTE: U/A

Old Business - H88-20, Marc Blumenthal -

A site review was conducted on Friday, May 13, 1988 of the
Blumenthal property. The board members present were Randy
Turner, David Anderson and Bill Colbath.

It was determined that the barn did not have a kitchen or a
bathroom. The house has one kitchen and two baths. The
cottage has one kitchen and one bath. His addition will not
be adding any new bedrooms.

Joyce Bowden explained that if they were to proceed there
were only 4 members present and he would need to get 3 out of
4 votes. Mr. Blumenthal agreed to proceed.

There was discussion on the septic systems on the property of
which Mr. Blumenthal said there were two.

5 Points:

1. The Board felt he does face an unnecessary hardship
because of the existing configuration of the house and the
second residence which in itself is a legal non conforming
residence creates a hardship for this land area.
2. The variance will deliver substantial justice because it
will allow the owner the use of his property under the terms
of the existing ordinance.
3. The variance will be in harmony with the spirit and
intent of the zoning ordinance because it will allow the
owner to actually decrease the nonconformity.
4. The variance will not result in a diminution in value of
the surrounding properties because no evidence was presented.

5. The variance will be of benefit to the public interest because there was no evidence that it would be to the public detriment.

GRANTED U/A with the following conditions:

1. The main house and in-law apartment are to be reconnected according to the plan presented to the ZBA dated 2/88.
2. The applicant has to apply for a variance for the second home occupation being carried on at this address.
3. Have the Building Inspector's office inspect all prior work completed and insure the work is to the City code or is brought to the City codes.
4. Provide documentation that the existing septic system is adequate for the building's current uses of a main house, in-law apartment, separate dwelling and office.

H88024 Grover Tasker, 621 Central Ave., A/K/A Assessor's Map 27, Lots 146 & 147, Zoned Office, requests a variance from the terms of Article X, Section 170-41.A to increase a non-conforming structure which overlaps a property boundary line.

Barry Hager made the motion to hear the case
David Anderson Seconded

Open Public Hearing

Steve Morrison represented Mr. Tasker. He said the Mr. Tasker owns both parcels and the buildings. The parcel is unique whereas it is not the same as all the other properties in the area. It must be dealt with differently. He is looking for a side line setback of 10 feet. The buildings will be left further apart since he will be taking down a porch. It will not adversely be affecting abutters because he is the closest abutter. It will also allow more orderly use of the property.

Close Public Hearing

Mr. Tasker stated that David Dupuis made up the plans.

Discussion ensued regarding the distance between the buildings and about the porch which is to be torn down.

5 Points:

1. He does face an unnecessary hardship because this property is not similar to other properties in the area due to the building and lot configuration.
2. It will deliver substantial justice because it will allow

the applicant the same use of his property as others in the area.

3. It will be in harmony with the spirit and intent of the zoning ordinance based on the separation between the structures will actually increase to exceed the requirements.

4. It will not result in diminution in value of surrounding properties because there was no evidence presented.

5. It will be of benefit to the public interest because it will allow a more orderly plan of traffic and no further evidence was presented to indicate it would not be of benefit.

GRANTED U/A

H88-25 Richard Gagnon (Applicant: James Andrews D/B/A/ Communications Specialist Co.) 75 Broadway, A/K/A Assessor's Map 24, Lot 24I, Zoned B-3 requests a variance from the terms of Article IX, Section 170-32.G.(1) (a) to erect two (2) wall signs, the combined area of which will be ninety (90) sq.ft. where seventy-six (76) sq.ft. is permitted.

Joyce Bowden stepped down and Barry Hager took over the meeting.

William Colbath made the motion to hear case
Randy Turner seconded

Mr. Gagnon stated he needs to erect a sign which is a little larger than the ordinance allows because the public does not expect a business to be set in as his is. When people are not familiar with the local area they go right by and have to turn around and come back. He feels it will make the property look better and bring class and prosperity to the area.

Closed Public Hearing

5 Points:

1. He does face unnecessary hardship because of his position to the road.

2. It will grant substantial justice because it will give recognition of his business to the public.

3. It will be in harmony with the spirit and intent of the zoning ordinance because it will allow him recognition of his property.

4. It will not result in a diminution in value of the surrounding properties based on the lack of evidence.

5. It will be of benefit to the public interest because of the standpoint of safety.

GRANTED U/A

H88-26 Dennis Burns, 100 Central Ave, A/K/A Assessor's Map 15, Lot 79, Zoned RM-10, requests a variance from the terms of Article IX, Section 170-32 E(6) to erect two (2) wall signs where one (1) is permitted and to have approximately thirty-two (32) sq. ft. of sign area where twelve (12) sq. ft. is permitted.

A motion to accept the case was made by Barry Hager
Seconded by Dana Turner

Mr. Burns stated that the Junction of Stark Avenue and Central Avenue is congested. His sign would be on the face of the building and would not be a hazard as a free standing sign in that area would be. The sign would be in harmony with the other signs in the area and would not hinder drivers.

Public Hearing opened

Harold Upton spoke in favor of the sign. He stated it would add to the beauty of the neighborhood.

Steve Stancel questioned if the sign is to be lighted. Mr. Burns said there would be lights on the front lawn shining on the face of the sign. If it was a free standing sign it would be parallel to Central Avenue.

Mr. Stancel and Mr. Selleck discussed possible conditions where the sign must not affect residences in the area and must be shut off at 9:00 PM.

Close public hearing.

5 Points

1. He does face an unnecessary hardship because the signs required by the ordinance would not be accurate or effective due to the unusual location of the structure at the intersection of two heavily traveled roadways.
2. The variance will deliver substantial justice because it would allow the applicant to effectively and orderly advertise his business with minimum distraction.
3. The variance will be in harmony with the spirit and intent of the zoning ordinance because it would allow him reasonable, effective recognition of his business.
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 and enhance public safety and make recognition easier.

GRANTED U/A with the following condition:

The sign must conform to the remainder of the ordinance.

H88-17 Raymond & Shirley Hennessey, O/B/A Lipson's 63 Fourth Street, A//A Assessor's Map 31, Lot 4-A Zoned RM-8 requests variances from: (A) the terms of Article X, Section 170-41.B to restore a building destroyed by fire to more than its former bulk; and (B) the terms of Article X, Section 170-40.A to increase a non-conforming use. (This is a rehearing of a request denied during a meeting on 3/17/83.)

Mr. Malcolm McNeil represented Mr. Hennessey. He asked that the Planning File be available.

Joyce Bowden explained that Barry Hager was not at the original Zoning Board Meeting and Mr. Delner who was, could not make the meeting this evening. She explained that Mr. Hennessey would have to get 3 out of the 4 votes unless the applicant approved of Mr. Hager sitting in on the case. Mr. McNeil said that he had no problem with that.

Motion was made to accept the case

Mr. McNeil said it is important to note that the height of Mr. Hennessey's proposed building is 28' high where 40' is permitted. He stated that if Mr. Hennessey was seeking exactly as before there would not be a need to come before the Board. The only reason he is here is because he wants a complete 2nd story and add a small cooler to the rear of building. The old structure was very irregularly shaped like a cigar with a 25' frontage. The size of the previous building was 63' X 70' X 141'. The first 32' was 24' high, the next 100' was 14' high, and the cooler was 16' high. The new building will be straighter than before. The square footage used will be approximately the same. The cooler cannot be seen except by someone flying over the sight.

McNeil passed photos taken from the Dover Station Condominiums going from south to north showing oil tanks and warehouses. He said the Dover Station units were purchased because of affordability.

Mr. Larry Dubois, a Real Estate appraiser, who is involved in appraising and not selling was retained by Mr. McNeil to speak about the Real Estate values of the adjoining properties. He stated that the Dover Station Units sold for \$71,900 and have been resold for \$74,900, 76,900 and \$76,929. The trend was increased value of property even when the

original Lipson building was there and it was less appealing than the new structure will be. He said that no matter how many stories, it will not adversely affect property value and the value will continue to increase.

Opened Public Hearing.

Scott Pierce of Dover Station, Unit #1 spoke against the variance. He feels there is no hardship and the previous building was adequate and feels there is also no hardship in the use of the land. Zoning, he stated, is to protect and enhance the neighborhood. He feels the spirit and intent was to phase out non-conforming buildings. He also feels that granting this variance could set a precedent. He stated the height of the building would be unsightly, decreasing property value, and an eyesore in a residential area. He feels the height of the building was not there when the Units were built and it should not be built any higher.

Karen Harvey, Dover Station, stated that the original building was a nonconforming structure and Mr. Hennessey should not be allowed to build another nonconforming structure.

Tom McClure, Dover Station, Unit #14 quoted Renny Perry as saying "When a nonconforming structure is gone, it's gone".

Marge King, Dover Station, stated the new building will be different than what was there.

Skip Schult stated that not a single Unit has been sold since the variance has been pending. Prospective buyers ask what is going in on the burned down property. He said that they would be looking into the side of a metal building rather than looking at the top of the old building if the proposed structure is built. With the former building at least they could see blue sky and some trees.

Nicole Pierce said the Board is not considering the 24 unit owners, only 1 business man (Mr. Hennessey), and he can get anyone he wants to say it does not hurt the abutters. He feels that the City of Dover ordinance should be checked.

Wendy Shults stated the 5 points should be discussed. She believes the variance should not be granted because Mr. Hennessey does not face a hardship. He can do business in another location. If he wants to rebuild the same structure they will go along with that. She also said the Board should only be concerned with the Community it serves.

Bob Zircle of Hampton, licensed Real Estate appraiser and listing broker spoke in regard to a unit belonging to his friend that has been on the market since the 1st of the year. Five or 6 people have looked at it and will not buy because

they do not know what will happen to the vacant lot.

Mr. McNeil said since Bob Zircle is not an abutter and is not impartial that he should not be heard.

Joyce Bowden asked if anyone had retained him? The Board felt he should not be allowed to speak.

Mr. McNeil remarked that it should be quality not quantity of the opposition. He stated that Mr. Hennessey has been at that site for 30 years employing the public. The site was industrial until 1979. He feels Mr. Hennessey can rebuild because of the misfortune of his business burning down. He feels the Condo owners are not concerned with the building but the use because of the noise, traffic, kids, etc.

Skip Schults said they did not get a lawyer because they could not afford one. He also felt the board should have let Mr. Zircle speak.

Karen Harvey owner of a Dover Station unit said her unit has been shown 5 times. The people have been interested in the condo but had grave concerns with the commercial structure that may be going up on the empty lot.

Larry Dubois passed forms out that showed the increases in the values of the Dover Station Condos. He said that the Real Estate market is a "soft market" at the moment, probably because waterfront properties show larger increases and there may be too many competing units. It is also possible that the Condo owners may be asking too much money for their condos.

Nicole Pierce said she was upset because they bought knowing what was there but another 14 feet higher is a different story. She also thought Mr. Zircle should have been allowed to speak.

Tom McClure, stated when he bought the unit he could see sky and thought he would always see it. If the variance was granted all he would see is the flat side of the building.

Mr. Hennessey stated his new building would be a steel frame covered with stucco. He feels it makes a nice looking building. His old building was concrete block structure.

Joyce Bowden asked how much bigger the new building would be. She said that the size was determined by bulk. A discussion then ensued on the dimension of the new building.

Mr. McNeil stated that the ordinance states the building may be restored to its former bulk. The bulk, of the proposed building, as defined in the code, is the same or less than the previous structure. Mr. Hennessey was not using the basement because of the water problem that surfaced after the

Condos were built.

Barry Hager felt if bulk is interpreted as square footage then Mr. Hennessey is not increasing the size of his building.

Steve Stancel stated that going up with the building means it is being expanded and they should ask the City Attorney.

Randy Turner said if he built exactly as it was before he would not have to be here.

Joyce Colbath said the new building is physically smaller.

Steve Stancel said the building is increasing because it is going up.

Mr. McNeil wanted to act on the variance.

Sarah Levit questioned whether the cooler was included in the cubic footage.

Select answered the freezing unit is portable but is attached to the building. It is constructed so that it can be taken to another site if need be.

Scott Schult asked if there was a basement under the freezer unit and if it was included in the total square footage..

Larry Dubois said that the freezer is not included in the total square footage.

Close public hearing

Barry Hager stated the Board has the right to interpret its own books.

Steve Stancel stated the board can overrule an administrative decision and can take a vote deciding if Mr. Hennessey does need a variance after all.

Discussion ensued on the calculations of the dimensions of the building, if they felt he was bringing it to more or less than its former bulk and whether or not he needs a variance at all. The conclusion of the discussion was that based on the information that was presented, Mr. Hennessey does not need a variance if he rebuilds the building described to them.

Barry Hager, William Colbath and Randy Turner felt that he is not increasing his bulk.

VOTE was called that he does not need a variance.

FOR: Barry Hager
William Colbath
Joyce Bowden
Randy Turner

AGAINST: David Anderson

H88-28 Spinelli Companies, Inc., Old Rollinsford Road, A/K/A Assessors Map 28, Lot 37, Zoned R-12, requests a variance from the terms of Article V, Section 170-16 to construct a building with a height of approximately thirty-eight (38) feet where thirty (30) ft. is permitted.

Mr. Malcolm McNeil stated that the use of the building has gone to the Planning Board and has been approved. The design of the building is unique because of the uniqueness of the use of the building. For this reason it has to be higher. The track of land is near the hospital and the entryway is near Dr's Park. It is a difficult site with steep slopes and a pond.

In 1982 a 15,000 sq. ft. medical building got a variance with no discussion of height. In architect terms "fit up building" means unique. It is not known who the occupants will be but if an XRay Unit is put on the site it would affect the height of the building. The same with Cat Scan equipment, dental equipment, kidney dialyses, etc. To accommodate this equipment the structure needs a 9 foot allowance from floor to ceiling and above that, recessed lighting, duckwork or piping that may be needed, also a 3 inch concrete slab and steel. The hardship is the difficulty in determining the use of the building.

They would provide \$25,000 in contributions to traffic lights. And be a benefit to public because of the utilization of medical services and would be close to hospital. The impact would be beneficial and not detrimental

Motion made to accept the case

Public Hearing Opened
Public Hearing Closed

5 points

1. He does face an unnecessary hardship because this type of office building requires additional height in keeping with the allowable height of an office building in an office zone.
2. It will deliver substantial justice because it will allow reasonable use of the property given its natural uniqueness.
3. It will be in harmony with the spirit and intent off the zoning ordinance because the additional height of the

building will not adversely impact surrounding dwelling or safely services.

4. It will not result in a diminution in value of the surrounding properties because there was no evidence given.

5. It will be of benefit to the public interest and will provide needed health services and additional capital improvements.

GRANTED

U/A

Motion to adjourn at 11:15 PM