

ZONING BOARD OF ADJUSTMENTS  
MINUTES OF MEETING  
JUNE 16, 1988  
COUNCIL CHAMBERS

MEMBERS PRESENT: Joyce Bowden, Chairman, William Colbath,  
Barry Hager, David Anderson and Mark Dellner

ALSO PRESENT: Steve Stancel and Tom Clark

Meeting called to order at 7:06.

Two corrections on May 19, 1988 minutes. Joyce Colbath needs  
to be changed to Joyce Bowden on Page 8 and Richard Gagnon  
changed to Mr. Andrews as speaker on page 3.

Minutes accepted  
VOTE U/A

NEW BUSINESS

Tom Clark brought out discussion to suspend the By-laws of  
the ZBA that allow 6 items on the agenda and have 7 items  
next month to accommodate Bill Dube. Mark Dellner motions  
not to accept and D. Anderson seconded.

VOTE U/A

Steve Stancel announced there will be a Workshop on July 7,  
1988.

In regard to the newspaper article concerning the ZBA giving  
too many variances, Mark Dellner made it clear and all agreed  
that they will not consider any kind of quota system. He  
does not feel that the ZBA should get into a quota system..

Barry Hager does not agree that they should work on quotas.  
He said he would have to step down if it ever went to that  
system.

Steve Stancel said that he didn't want to be put into a  
position to defend Bill Collins, but he felt that some of  
Bill's comments were taken out of context. He explained that  
Bill did not state that four out of five variances should be  
approved but instead stated that four out of five variances  
seem to be frontage variances and they shouldn't be granted.

REGARDING FOSTER'S ARTICLE

Joyce Bowden explained to audience what the ensuing  
discussion was about. She said that the Planning Department  
has opinions but the Zoning Board has the authority. The  
crux of the discussion is that the ZBA will not work on a

quota system but will determine each case as presented.

Mark Dellner said that the ZBA was set up for a layman and he was offended with the article quoting Bill Collins saying that the ZBA didn't know what they were doing. He feels that he should be trying to attract people to the board not repelling them.

Steve Stancel explained where the article was coming from. He said that Bill Collins made a statement to the City Budget Committee defending the ZBA's Training Funds, a reporter from Foster's talked to him and sensationalized his statements.

David Anderson said he has never seen Bill Collins at a Zoning Meeting. If he attended, he may be able to lend an opinion.

Motion for rehearing Case #H88-17 - Raymond Hennessey, Map 31, Lot 4-A, to restore a building destroyed by fire to more than its former bulk.

A letter was received from Skip Schultz of 11 Dover Station, Dover, NH 03820 stating that he has new evidence that proves the decision that was made on 5/19/88 regarding the definition of "bulk" was erroneous. According to his calculations the new building is an increase of 48,965 cubic feet.

A letter from Scott Woodman, City Attorney regarding the definition of bulk was read. He quoted Webster's Ninth New Collegiate Dictionary and the American Heritage Dictionary as to their definition of bulk and size. The letter also stated that bulk, as it is used in our Zoning Ordinance, specifically in Section 170-41 is inclusive of all of the physical dimensions as a building or structure. Under that section, if a non-conforming building is destroyed by fire, it may be rebuilt to its former bulk.

A letter from Dorothy Parker, Paralegal doing research for Mr. Schultz was also read. She states that the two-dimensional calculation ("Length times width") is not accurate because "bulk" is a three-dimensional measurement.

Tom Clark said that Mr. Dick Selleck did the calculations on the proposed new building and came up with a greater square footage.

Bill Colbath said Mr. Hennessey has submitted no plans or prints of his proposed new building.

Joyce Bowden stated that if Mr. Hennessey comes in with a plan that has more square footage than the old building, he will then need a variance. The Board will make a decision when he brings in the plans.

A motion was made by Joyce Bowden that nothing new was presented and to put it aside. It was seconded by David Anderson.

VOTE U/A

OLD BUSINESS

H88-18 Michael P. Rosholt, Watson Road brought in a copy of the deed to his property and a new plan.

Joyce Bowden stepped down and Mark Dellner took over meeting.

Public meeting temporarily closed.

Discussion ensued on the boundaries of the deed versus the boundaries on the plans and there was a discrepancy. The deed described only parcel A and did not establish ownership of the Right of Way.

William Colbath said it would take 3 deeds to establish ownership of the right-of-way.

Steve Stancel said in 1985 Mr. Rosholt came in for a variance to create 1 lot without road frontage. The Finding of Facts for that case quoted him as saying that the remainder of land would not be further subdivided.

The business part of the meeting is reopened.

Mark Dellner said this case is very complicated. A letter was sent to Mr. Rosholt in 1985 stating that his variance was granted with the conditions that there be no further subdivision.

Barry Hager suggested that he should get legal council because his statement is vague and can be taken two ways.

Barry Hager made a motion to table the application and have the applicant readdress his intent and bring in proof of ownership to the right-of-way and reappear before the board.

David Anderson Seconded

VOTE U/A

H88-29 Edward Plimpton - (Applicant: Bradgate Properties, Inc.) - Withdrew his application.

Joyce Bowden stepped down and Mark Dellner took over the meeting.

H88-30 Normand, Raymond & Robert Richard and Anita Coraine  
(D/B/A) D.F. Richard, Inc., 81 Broadway, A/K/A Assessor's Map  
26, Lot 12, zoned B-3/I-2, requests a variance from the terms  
of: 1) Article V, Section 170-16 to construct a second floor  
on an existing building with a ten (10) foot front setback  
where a fifty (50) foot setback is required; and 2) Article  
X, Section 170-41.A., to increase a non-conforming  
structure.

John Ryan spoke for D. F. Richard. He stated the existing  
building is a one story wood frame and it was built to handle  
a second story and the building was there long before the  
present zoning. He stated that the addition would not  
encroach on abutters. The 50 foot setback was put in after  
the building was erected. He stated that not granting this  
variance would deny the landowner the use of the back part of  
his property. He feels that it would have no effect on the  
abutters' property value. If the building was 50 feet from  
the line they would not even have to be before the Board. He  
feels they are before the Board because of an accident in  
timing.

Several letters from abutters were submitted stating that the  
proposed additions will not have an adverse effect upon their  
property.

Vote to accept the case.

W. Colbath makes a motion to accept the case.

D. Anderson second

**VOTE U/A**

Steve Stancel has a concern that Mr. Richard plans to more  
than double the size of his building. Given the existing  
zoning there is nothing unique about the lot.

Nick Skelsis, owner of property at 124 Broadway spoke in  
favor. He listed Coriveau Routhier, Red's Shoe Barn and  
Harris Graphics as neighborhood businesses that have more  
than doubled their size. There is only 1 building that  
conforms to the set back and that's the car wash. He claims  
they were all allowed to expanded their existing buildings.

Close Public Hearing.

David Anderson questioned whether there were any other  
options open to lessen the nonconformity, possibly by putting  
his addition on the back of his building.

Barry Hager spoke in favor saying that D.F. Richard has been  
there for a long time and he's adding on to his building  
because of the growth of his business. He should be allowed  
to properly operate his business.

Mr. Connally spoke in behalf of D. F. Richard. There was a topographical study made and they checked for different options. He needs the use of the open yard to accommodate the 18 wheel vehicles coming into the yard. Alternatives were considered but there was no feasible way of doing things.

#### Close Public Hearing

Discussion ensued on how everything on both sides of the street is two stories.

#### Finding of Facts.

1. He does face an unnecessary hardship based on the fact that the existing footprint was already in place.
2. The variance will deliver substantial justice because it will allow him reasonable use of his property.
3. The variance will be in harmony with the spirit and intent of the zoning ordinance because he is not further encroaching on the set back and is in character with the neighborhood.
4. The variance will not result in a diminution in value of surrounding properties because of the abutters letters presented.
5. The variance will be of benefit to the public interest because no evidence to the contrary was submitted.

**GRANTED**

**VOTE U/A**

H88-31 Liddy Connelly. Withdrew. She will change her plan and bring the garage forward 2 feet so she can get it done without a variance. After talking to her builder, if she should find out that it cannot be done she will be put on in the Old Business section of the next ZBA Meeting.

H88-32 Kevin Bernier and Clayton Randall, D/B/A K & R Realty, 1-5 Silver Street A/K/A Assessor's Map 9, Lot 82, zoned B-2, requests a variance from the terms of article IV, Section 170-32.D.(21) to have approximately twenty (20) square feet of signage on an awning where one (1) line of letters not exceeding nine (9) inches in height is permitted.

Joyce Bowden stepped down, Mark Dellner took over the meeting.

Nick Skelsis spoke saying he was responsible for the

lettering and the awning. He missed a word in the paragraph referring to size of lettering until Tom Clark brought it to his attention one month after installing the awning. Mr. Skelsis stated that a 65 foot long awning would look peculiar with a 4 foot long emblem. He feels that the building looks quite nice and is a major improvement to the corner.

Mark Dellner made a motion to accept the case.  
Barry Hager seconded.

VOTE U/A

Steve Stancel is in favor of the application and hopes to have the awning ordinances restructured.

Public hearing closed.

#### Finding of Facts

1. He does face an unnecessary hardship because the existing ordinance does not address signage on awnings in an updated manner consistent with the design and construction of modern awnings.
2. The variance will deliver substantial justice because it will allow for effective, safe advertising in a pleasing esthetic manner.
3. The variance will be in harmony with the spirit and intent of the zoning ordinance because the square footage of signage is decreasing and the ordinance itself is in the process of being updated.
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 it will allow effective, save advertising of their business.

GRANTED

VOTE U/A

H88-33 McQuade Realty, Inc., Knox Marsh Road & Progress Drive, A/K/A Assessor's Map H, Lot 35-C-2-A, zoned I-k, requests a Special Exception as provided by the terms of Article VI, Section 170-23 and Article XII, Section 170-52.C(3) to establish a gas station in an I-I Zone.

A letter was submitted by Michael Donahue, representing Progress Real Estate Investment Limited Partnership, the owner of some industrial property on Progress Drive. The letter requests that this matter should be either dismissed

or, at the very least, postponed without further action by the Board, until such time as the applicant has a full and complete application before the Board. Also, that no interest is served by proceeding with a public hearing on an incomplete or fragmented application.

Joyce asked Tom Clark if he had seen this case on the Planning Board agenda for lot to be approved. Tom answered that it was not on the agenda.

Steve Stancel said that the application was submitted yesterday.

Doug Gray spoke for Mr. McQuade. He said there was nothing unusual or irregular to hear the case tonight.

Tom Clark quoted the section on Special Exceptions on pages 5 & 7 in the 1985 edition of the handbook entitled "The Board of Adjustment in New Hampshire."

A motion was made by Mark Dellner that the application be rejected. Seconded by David Anderson.

#### APPLICATION REJECTED

#### VOTE U/A

H88-34 Brian & Nancy Whitworth, 11 Pierce Street, A/K/A Assessor's Map 4, Lot 16, zoned B-2, requests a variance from the terms of Article V, Section 170-16, to erect a structure four (4) feet from a rear property line where twelve (12) feet is required.

Tom Dunnington said that the Building Inspector suggested that he apply for a variance. The property, formerly Stony's Diner, has been used as a single piece of property since 1959. It was a single lot under the terms of the deed but on the assessor's map it is listed as 2 separate lots and a variance is needed. As far of the effect on abutters, the immediate abutter is the B & M Railroad. Mr. Dunnington submitted a copy of deed.

Mark Dellner made the motion to accept the case.  
Colbath seconded  
Vote U/A

Malcolm McNeil submitted a letter from John Guy, of Seacoast Savings, opposing the variance. He is also representing Rowell & Watson a competing facility and property owner further down the street from Seacoast Savings. He said that no building permit has been issued and this may be the time to see if the use is permitted. He claims that nothing in the ordinance permits a car wash. It is being called a personal service establishment. He said it is not like a

taylor shop or barber shop it is more like a gasoline station. Which is not permitted in this zone. If the use is not permitted then a variance cannot be granted. He feels that this land can be put to many uses so there is no hardship there. He asked, if a car wash is not for servicing of vehicles, then what is it for? His grounds are entirely economical.

The Governor's Island case was quoted. The applicant would like to have a car wash but he does not have to have this. He can also shrink the size of the building. He requests that the variance be denied.

Steve Stancel said that there was no hardship because one of the bays could be eliminated.

David Rosania who is not a direct abutter, his property is separated by one lot, said he does not believe it should be permitted. He feels that the adjacent property values will be adversely affected. He submitted a letter from a Real Estate Broker, Mr. Gerald Arnault stating that in his opinion, if a car wash should materialize, the value of his property would decrease substantially.

Mr. Donnahue stated that Mr. Whitworth attempted to work with the City and Building Inspector in the appropriate way. Mr. Whitworth is going thru all the appropriate steps for a project of this magnitude attempting to deal with every issue. In his discussion with the Building Inspector's Office he was told that this was a permitted use. There were very specific areas covered on other businesses but car washes were not included because they could not all be anticipated.

Malcolm McNeil wanted to address central issues like - why is there a hardship? Why would the car wash suffer by removing 1 bay? Why is it necessary to violate the ordinance?

Close Public hearing

Discussion ensued regarding combining the 2 lots.

#### Finding of Facts

1. He does not face an unnecessary hardship because he is able to combine the lots to satisfy the requirements and has reasonable use.
2. The variance will not deliver substantial justice because there is no substantial justice to deliver. He has reasonable use.
3. The variance will not be in harmony with the spirit and intent of the zoning ordinance because the set back

requirements will be violated.

4. The variance will not result in a diminution in value of surrounding properties because no conclusive evidence was presented.
5. The variance will not be of benefit to the public interest because the relaxation of set back requirements is not of benefit to the public.

A motion was made by William Colbath to deny the variance.  
Seconded by David Anderson.

**DENIED**

**VOTE U/A**

A motion to adjourn was made by William Colbath and David Anderson seconded.

Meeting adjourned at 10:15 PM