

ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
SEPTEMBER 15, 1988

Members Present: Joyce Bowden, William Colbath, Randy Turner, Dave Anderson, David Paolini

Also Present: Tom Clark, Steve Stancel

Meeting called to order at 7:08

Joyce introduced the Board

NEW BUSINESS

Bill Colbath made a motion to accept the minutes.
Randy Turner seconded.
VOTE N/A

OLD BUSINESS

Malcolm McNeill filed a motion for a rehearing for Seacoast Savings Bank, Rowell & Watson, David & Pamela Rosania in regard to Case #H88-50. Brian & Nancy Whitworth.

Mr. Dunnington filed an objection to the motion for a rehearing.

Joyce stated she would like things mailed rather than handed out at the meetings. She also stated that she felt Mr. McNeill has not brought up any new issues. Bill Colbath and David Anderson did not feel that Mr. McNeill had any new evidence either.

Randy Turner made the motion to deny the rehearing.
William Colbath seconded.

VOTE 4 - 1 to deny the rehearing David Anderson
voted in favor of a rehearing

DENIED because of lack of new evidence.

Discussion ensued on the mix-up of the Motion for Rehearing from Mr. Donahue's office that was supposed to be left at the Planning office on Friday, the 9th of September and was mailed to Joyce Bowden's home address instead.

Joyce Bowden made the motion to discuss Case #H88-52, McQuade Realty, Inc.
Dave Anderson seconded
VOTE N/A

David Anderson made the motion to deny any rehearing because

of no new evidence.
Randy Turner seconded.

VOTE 3 - 1 to deny the rehearing
William Colbath voted in favor of a rehearing
David Paolini abstained

DENIED

Tom Clark brought up an issue concerning case #88-44 in regard to the Wilson trailer. There was 1 requirement that their oil tank has to be underground. Lord & Keenan is reluctant to do it and the Fire Dept doesn't like the idea. The question was raised if that requirement can be waived?

Dave Anderson made the motion to waive the requirement.
Randy Turner second.

VOTE U/A

H88-47 Weathervane Seafoods, Inc., (Applicant: Alan Golic)
4 Dover Point Road, A/K/A Map K, Lot 30L, zoned B-3, request
an appeal from an administrative decision concerning a non-
conforming use (Article X, Section 170-40).

Don Mitchell, Attorney, represented A.G. Ice Cream, Inc. He felt that the ice cream trucks are an accessory use which is permitted. He noted that the ice cream business is seasonal, 5 - 6 months per year.

He pointed out the letter received from two men with similar ice cream businesses in RI and MA. He also submitted a letter from Ramona G. Woods, of Dover Travel Inc. saying she has no objection to the variance.

It was determined that there were approximately 10 trucks and they do not as a rule park overnight. Also the drivers are not employees of Mr. Golic; they lease the trucks from Mr. Golic.

Mr. Mitchell pointed out that the fleet doesn't all come in and load & leave at the same time. They come in intermittently.

Mr. Golic said the trucks were gone by noon and the restaurant is not open when the trucks return. He said he leases trucks from International Corporation and sub-leases them. There is a 18' freezer truck on the premises where he stores his product.

The question came up on whether they were wholesaling or warehousing and if everything on the truck could be purchased at the A-frame.

Mr. Golic responded that separate items were sold in the

trucks and his ice cream business.

Mr. Mitchell pointed out that it is hard to judge if it is a customary use or not since there are so few in NH.

Public Hearing Opened.

Steve Stancel reiterated what Scott Woodman found that it is a wholesale business and there are already serious traffic conditions in that area.

Bob Fisher who works at Byrnes Chevrolet stated that he rarely sees the trucks. The parking lot is usually empty and he sees no hazards with the traffic.

Close Public hearing.

Discussion ensued.

Anderson made the motion to uphold the Administrative Decision.

Bill Colbath seconded.

VOTE U/A To uphold the administrative decision.

H88-48 Weathervane Seafoods, Inc., (Applicant: Alan Golic) 4 Dover Point Road, A/K/A Map K, Lot 30L, zoned B-3, request variances from (1) the terms of Article II Section 170-6 definition of lot to have two (2) principal uses on one (1) lot; and (2) the terms of Article IV, Section 170-12, Table 1, Part C, to allow a Wholesale Use in a B-3 Zone.

Mr. Mitchel said he was here for two principal uses on one lot. He said he understands they are wholesaling and it is the best use of the property.

1. There would be no diminution of value of the adjoining property.
2. It would be to the public benefit, because the ice cream trucks are at the Little League games, therefore, eliminating pedestrian traffic and children may have ice cream in the safety of their own cul-d-sacs. It adds value to the tax base. It serves the need of the community.
3. It is a hardship whereas he cannot expand his business to the rear of his lot because of the wetlands.
4. The uniqueness of the property lies in the fact that it was grandfathered in as a non conforming use.

Dave Anderson made the motion to accept the case.
Bill Colbath seconded

VOTE U/A

Public Hearing Opened

Steve Stancel stated that the Planning Department is against the wholesaling business. Mr. Golic has reasonable use of his property and therefore, there is no hardship. For years it sold ice cream alone, and it is not until two years ago that the wholesale business started. Mr. Golic can find another location for his wholesaling business. The site was grandfathered for ice cream and should continue. It will set a dangerous precedence should the Board allow a wholesaling use on the lot.

Joyce felt that he already has more use than most people in that area because it is a non-conforming use.

Mr. Mitchell stated that the Planning Department is against granting any variance in general. He went on to say that the Planning Board approved expansion of Tuttle and Ed Byrnes why is there a sudden concern over traffic in the area

Steve Stancel responded that the Planning Department was not against any variance request which meets the standard five point criteria. He stated that Tuttle and Ed Byrnes met the needed requirements of the city prior to receiving their approvals.

Randy Turner made a motion to close the public hearing.
Dave Anderson seconded.

Public Hearing Closed.

5 Criteria

1. He does not face an unnecessary hardship.

Does - Randy Turner

Does not - D. Anderson
William Colbath
Dave Paolini
Joyce Bowden

This conclusion is based on the findings that he has reasonable use of his land. He has more use of his land than his neighbors.

2. If granted, the variance will not deliver substantial justice.

Will - Randy Turner

Will not - David Anderson
William Colbath
David Paolini
Joyce Bowden

This conclusion is based on the findings that the applicant has more use of his land than is allowed under the zoning. There was no evidence present to prove injustice.

3. The variance will not be in harmony with the spirit and intent of the zoning ordinance because this type of occupation is not allowed under this zone.

VOTE U/A

4. If granted, the variance will not result in a diminution in value of the surrounding properties.

VOTE U/A

5. If granted the variance will not be of benefit to the public interest.

Will - David Anderson
Randy Turner
David Paolini

Will Not - William Colbath
Joyce Bowden

This conclusion is based on the finding that it will enhance the quality of life and it delivers a very demanded service to the public.

Final Vote to approve the application:

granted - Randy Turner

denied - David Anderson
William Collins
Dave Paolini
Joyce Bowden

DENIED

Joyce stated that Tuttle's Farm has been here for 300 years and Mr. Golic has been here for 2 years.

Mr. Mitchel wanted Joyce's statement to be noted in the minutes.

H88-53 R.B.R. Realty Trust, Sixth Street & Reyners Brook

Drive, A/K/A Assessor's Map A, Lot 47, zoned R-40 request a variance from the terms of Article IX, Section D(1) and E to install a seven (7) sq. ft. freestanding sign where none is permitted.

Mr. Ranta stated he is a developer of top quality subdivisions. He had a sign designed and made up and placed at the entrance of his subdivision. He didn't know that the sign was in violation of the ordinance. He stated it dressed up the entrance and made the subdivision easily identifiable to the public. It was not his intention to circumvent the ordinance of the town.

Dave Anderson made a motion to accept.
Randy Turner seconded.

VOTE U/A

Public Hearing opened.

Mr. Ranta stated the Homeowner's Association would maintain the sign.

Martha Connolly who lives across the street was opposed. She stated that no other subdivision has a sign. The road comes up quickly and anything that detracts your attention is unsafe. She feels it would set a bad precedence.

Steve Stancel said the Planning Board is not against this. It is something we should allow to subdivisions since multifamily housing and condos can have these signs.

Close public Hearing.

5 Criteria

1. He does not face an unnecessary hardship based on the fact that the applicant did not address or present evidence to prove a hardship.

VOTE U/A

2. The variance will not deliver substantial justice because there is adequate signage allowed under the existing ordinance.

VOTE U/A

3. The variance will not be in harmony with the spirit and intent of the zoning ordinance because signs are not permitted in this zone.

VOTE U/A

4. The variance will not result in a diminution in value of surrounding properties because no evidence was presented.

VOTE U/A

5. The variance will not be of benefit to the public because excess signage is a detriment to the public interest.

Will - David Paolini

Will not - William Colbath
David Anderson
Randy Turner
Joyce Bowden

Final Vote:

DENIED: with the following condition:

The present sign may replace all other For Sale signs at the entrance of the subdivision (a lots for sale sign will be attached).

The present sign will be completely removed when the last lot is conveyed from the applicant, (first time sales) only or the road is accepted by the City of Dover, whichever comes first.

Mr. Ranta was agreeable.

H88-54 William & Evelyn Byron and Carl & Karen Angelini, (owner: Fresh Creek Assoc.) 368 Washington Street, A/K/A Assessor's Map G, Lot 18, zoned R-12 request an appeal from an administrative decision concerning the definition of "family". (Article II, Section 170-6 B)

Attorney Chris Wyskiel represented the neighbors on Washington St. He said the homeless people would not be permanent dwellers. He defined family and claims that this sounds more like a rooming house and that is not permitted in an R-12 Zone. He submitted a petition signed by over 80 people.

There was some discussion by the Board on whether to accept the case until some information received from My Friend's Place was clarified.

Malcolm McNeill said he was not notified of the need of new information. Many people had arrived for this case and it should be heard.

Mr. Wyskiel would like the meeting to be delayed to get more information.

Mr. McNeill stated that the Building Inspector wrote asking for more information on My Friend's Place and the return letter may have posed more questions and maybe they could be clarified tonight.

He stated that the Building Inspector is in charge of zoning and control of the building not who lives there. There are no complaints on the shape of the building. What people are concerned with is the perception of an inappropriate occupancy.

Mr. McNeill stated that My Friend's Place is a non-profit organization dealing with problems that require concern and compassion of the neighborhood.

The contributions received for this project are:
175,000 Federal funds.
35,000 State funds.
30,000 Private donation.

The people who will be living there will be families who are separated by divorce - single women and people who can't afford housing. The occupancy time will vary, not just one night. There is one kitchen and there are no plans for modification at this time. It is one housekeeping unit and funding will come from the government and contributions. He understands the concerns of the neighborhood, but the community and the neighborhood has to face up to the issues.

Mrs. Massey stated that Developmental Services may come into the house to tutor people 1 on 1 for GED. She said she tried to convey to the neighbors that the building will be maintained.

Tom Clark said we have asked for the square footage of the building so they can determine the number of people who will be allowed to live in the building but have not received an answer.

Joyce asked if there was going to be one kitchen, one area for children, and one office & conference room (which is just a small area to manage business or speak to residents in confidence).

Mrs. Masse said at least 1 staff person will be there 24 hrs. a day and living space will be added in the basement.

Dave Anderson made a motion to accept the case.
Dana Turner seconded.
VOTE U/A

5 Minute recess 10:45

Public Hearing Opened.

Malcolm McNeill spoke in favor of the project.

Mike Taylor of 373 Washington Street spoke against. He stated that he has never called his family a facility. He would like them to be charitable to his neighborhood. He was concerned that they do not know who will be living there. Why not buy St. Thomas Aquinas since it's for sale? Single families do not live together with staff members.

Glen McBaine, 374 Washington Street stated that in their neighborhood there already is a building where they take care of alcoholics and drug abusers. He wants to keep part of the neighborhood as they've worked to keep it all these years. He said they could buy a more suitable building somewhere else.

Alicia McBain is concerned about the traffic. She calls it Washington Speedway. She said that the stop signs are not obeyed. She said the comings and goings in the driveway will be constant motion. There are no adequate sidewalks in this area.

Austin Nickerson 371 Washington Street said that the house now housed UNH students and that's a rooming house. He said he had to call the police several times. He said if he could get answers to questions from My Friend's Place, he might support it. He wants assurances that this won't deteriorate into a warehouse. To oppose it legally it would cost a fortune.

Evelyn Byron, 361 Washington Street said it has hurt the resale value of her house. It was appraised at \$126,000. before My Friends Place was brought up. She was told by the Real Estate Office that she must tell potential buyers of the facility or she could be sued. She said she would be lucky to get \$100,000. for it now.

Ross Maranda, 372 Washington St. asked if the Building Inspector is responsible for monitoring and asked if they would need a variance to do anything with the barn to add more people.

Tom Clark said they could convert the barn into office space but could not convert to living space without a variance.

Mrs. Massey speaking on behalf of my Friends Place said that the largest growing group is the homeless. Housing is not available and the issue must be addressed before it gets more prominent than it is. She made an effort to stress to neighbors that these individuals will not pose any threat to them but there are no guaranties to your neighbors behavior. There is no other homeless shelter in Strafford County and the state recognizes the need here. The idea of the program

is to work together to provide the homeless with more secure living conditions when they leave.

Mrs. Massey said people would be accepted by referral only, welfare, churches, etc. No walk-ins. The funding is for 3 year periods.

She went on to say that the house is in excellent condition but they will be putting in a new heating system and a new stairway leading to the basement. She said they chose Washington Street because it is an ideal building and the space is large enough to start their program.

Mrs. Roland Tibbets an abutter asked why they don't go to Silver Street or the County Farm. She said they have their share of alcoholics. If they accept federal funds they will have to follow their rules.

Carl Angelini 359 Washington St. asked if any home can be used as a group home?

Tom Clark answered yes if they comply with the ordinance.

Mr. Tibbets asked about the 300 sq ft of habitable floor space per person. He spoke against the decision

Alycia McBain stated that there will be people coming from all over, Massachusetts etc. She was against the decision.

Chris Wyskiel said cars can't be regulated and will devalue the homes. There will be traffic and safety problems.

Malcolm McNeill stated that anyone in any home may have as many cars as they would like.

Close Public hearing

Discussion ensued.

David Anderson made a motion that they uphold the Administrative Decision

Bill Colbath seconded

VOTE U/A

H88-55 Normand & Nancy Boisvert, 14 Cranbrook Lane, A/K/A Assessor's Map D. Lot 8-P, zoned R-12, request a variance from the terms of (1) Article V, Section 170-H, to construct an addition approximately twenty-two (22) feet from a front property line as it abuts a street where thirty (30) feet is required; and (2) from the term of Article X, Section 170-41A to increase a non-conforming structure.

Mr. Bosivert wants to remove front porch and put in a porch that is the length of the house. The house was built in 1955. He also would like to put a roof overhang on front of house. Anything he does requires a variance. He bought the house in 1976.

David Anderson made the motion to accept.
Bill Colbath seconded.

VOTE U/A

Public hearing opened.

Public hearing closed.

5 CRITERIA

1. He does face an unnecessary hardship because the ordinance does not allow him to update and improve his home in keeping with the surrounding area.

Does - D. Anderson
W. Colbath
D. Paolini

Does not - Randy Turner
J. Bowden

2. The variance will deliver substantial justice because it allows him a use consistent with the surrounding properties.

Will - D. Anderson
W. Colbath
D. Paolini

Will not - Randy Turner
Joyce Bowden

3. The variance will not be in harmony with the spirit and intent of the Zoning Ordinance to maintain a single family identity.

Will - David Anderson
William Colbath
David Paolini

Will Not - Randy Turner
Joyce Bowden

4. If granted the variance will not result in a diminution in value of the surrounding properties because no evidence was given.

VOTE U/A

5. The variance will be of benefit to the public interest based on the following findings of fact. It will not be of detriment to the public interest.

VOTE U/A

Therefore based upon the forgoing, it is ordered that the application for the variance be granted/denied.

Granted - David Anderson
William Colbath
David Paolini

Deny - Randy Turner
Joyce Bowden

GRANTED

*P88-56 Timothy Pearson, 65 Silver Street, A/K/A Assessor's Map 9, Lot 40, zoned office, request a variance from the terms of Article IX, Section 170-32I (3) (a) to erect a freestanding sign where the principal building is set back fifteen (15) feet from the property line where twenty (20) feet is required.

Tim Pearson feels his sign is in keeping with the neighborhood. It is hand carved and externally lit by a flood light.

David Anderson made the motion to hear the case.
Randy Turner seconded.

VOTE U/A

Public Hearing Opened.

Public Hearing Closed.

Discussion ensued.

5 CRITERIA

1. He does face unnecessary hardship because of the age and uniqueness of the property.

VOTE U/A

2. The variance will deliver substantial justice because it will allow him the appropriate signage necessary without detracting from the character of the neighborhood.

VOTE U/A

3. The variance will be in harmony with the spirit and intent of the zoning ordinance because it meets the size requirement of the ordinance.

VOTE U/A

4. The variance will not result in a diminution of value of the surrounding properties because no evidence was presented.

VOTE U/A

5. The variance will be of benefit to the public interest because of the identification of the business and is in keeping with the historical character of the neighborhood.

VOTE U/A

GRANTED

*H88-57 A. Matthew Wirth, 8 Everett Street A/K/A Assessor's Map 27, Lot 85, zoned RM-8, request a variance from the terms of (1) Article V, Section 170-17 to enlarge an accessory building with a three (3) foot side setback where ten (10) feet is required; and (2) from the terms of Article X, Section 170-41A to increase a non-conforming structure.

Matthew Wirth stated he is not increasing density in the neighborhood. He is getting rid of fire hazard. He will be adding 4 feet to a garage.

William Colbath made the motion to accept the case.
David Anderson seconded.

VOTE U/A

Public Hearing Opened.

John Barry spoke in favor. He lives 1/2 block from Mr. Wirth. He said it will encourage off-street parking.

Close public hearing.

Steve Stancel stated that he feels Mr. Wirth has a hardship.

5 CRITERIA

1. He does face an unnecessary hardship because of the constricting nature of the lot size.

VOTE U/A

2. The variance will deliver substantial justice because it will allow him the use of his property that his neighbors have.

VOTE U/A

3. The variance will be in harmony with the spirit and intent of the zoning ordinance because it doesn't change the nature and character of the dwelling.

VOTE U/A

4. it will not result in a diminution in value of the surrounding properties because no evidence was presented.

VOTE U/A

5. If granted the variance will be of benefit to the public interest because of the off street parking and will eliminate a substandard building.

VOTE U/A

GRANTED - According to the submitted plan.

H88-58 Cullen Bay Dockowners Association, Cullen Bay Road, A/K/A Assessor's Map M, Lot 93-A-4, request a special exception as provided by the terms of Article VII, Section 170-27 C(3) and Article XII Section 170-52 C(3) to construct a boat dock.

Hollis Adams represents Cullen Bay Dockowners, Assn. He said the name of the application should be changed from Cullen Bay Homeowners to Cullen Bay Dockowners Association.

He stated the following:

It would be a timber pier.

There will be an attached floating dock.

It will dock the boats of the 7 homeowners of Cullen Bay.

They will be double loaded slips.

The floats will be deployed in the spring and retrieved in the fall.

Utilities will be provided to the site.

No vehicles will be parked within the 100' setback.

Hollis Adams wanted to know the conditions to State Approval. He said all his applications were filled out at the same time and he has not received them yet.

David Anderson made the motion to accept.

Dana Turner seconded.

VOTE U/A

Public Hearing Opened.

Steve Stancel stated that all State and Federal permits must be received prior to approval. The applicant must also go before the Planning Board.

Public Hearing Closed.

Mrs. Reed ask if Steve could clarify the rules.

Joyce made a motion to table until he received State

Approval.
David Anderson seconded.

VOTE U/A

TABLED

Meeting adjourned 1:00 AM