

ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
OCTOBER 20, 1988

Members Present: Joyce Bowden, William Colbath, Randy Turner, Dave Anderson, Barry Hager, Chris Jacobs Dean Trefethen, David Paolini

Meeting called to order at 7:05

OLD BUSINESS

Bill Colbath made a motion to accept minutes.
Chris Jacobs seconded.

VOTE U/A

H88-66 My Friends Place - Reconsideration for a Rehearing.
Mr. Paolini and Mr. Trefethen, as alternates, asked not to sit on it.

Randy Turner arrived.

Board members sitting in on this case were:
Chris Jacobs, William Colbath, David Anderson, Joyce Bowden and Randy Turner.

Discussion ensued on how the definition of "Family" is very clear in the ordinance. The Board felt that it was not their place to go into the intent of the Ordinance. It was discussed at the last meeting and they did not receive any new evidence.

David Anderson made the motion to deny the Request for a Rehearing.

William Colbath seconded.

VOTE - U/A

H88-58 Cullen Bay Homeowners 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.

A letter from Mr. Richard Wasson was received saying that he does not oppose the original application but is concerned with the part that says additional common land to be acquired. He was never contacted about that land and he does not intend to sell or let anyone drive across his land. The plan also has the dock almost on his property line. The letter states the dock will be infringing on his property

line and will constitute a nuisance to him.

Barry Hager arrived at 7:35.

Mr. Stancel said that Cullen Bay was not notified that this was going to be discussed.

It was determined to put it on under "Old Business" on the November Meeting. All agreed.

Joyce Bowden asked Tom to write a letter to Cullen Bay and Mr. Wasson of the upcoming meeting.

The contractor for Mr. Hennessey dropped off plans for the new building.

Joyce Bowden asked Tom Clark to draft a letter with Joyce's signature, and to set up a meeting with Scott Woodman regarding the Hennessey case.

Item #2 H88-39B William & Lucille Merrill, 350 Dover Point Road, A/K/A Assessor's Map L, Lot 57-A, zoned R-20, requests a Special Exception as provided by the terms of Article VII, Section 170-27.C(2) to erect a structure within the Conservation District.

The application was tabled again due to lack of State approvals.

H88-61 Chas-Ann Realty Trust, 8 Union St. A/K/A Assessor's Map 20, Lot 67, zoned RM-10, requests a variance from the terms of Article IX, Section 170-11 (Table I, Part A, Footnote 3) to convert an existing dwelling into a two-family dwelling on a lot with approximately 4,981 sq ft where 5,000 sq ft is required.

Sitting on the case: B. Hagar, R. Turner, D. Anderson, B. Colbath and Chris Jacobs.

Joyce Bowden stepped down.

Barry Hager takes over the meeting.

James Caliendo spoke on how many processes he had to go through so far; the off-street parking he has for the apartments; and the asphalt driveway. He went on to say that most of the houses on the street are duplexes.

PUBLIC HEARING OPENED

Steve Stancel stated that the Planning Department was opposed. He went on to say that because the lot is less than 5,000 sq ft only a single family home should be placed on the it. The zoning ordinance is there to assure that adequate

density is maintained. A single family home is more than adequate on that lot.

Mr. Secone of 8 Union Street was in favor of the apartments. He said there was plenty of parking, doesn't degrade the street and there were many multi-family dwellings on the street.

Chris Jacobs thought that a survey would be more accurate. Mr. Caliendo felt the cost of having it surveyed would be a burden.

Barry Hagar felt that if Mr. Caliendo had it surveyed he might pick up the extra footage needed.

CLOSE PUBLIC HEARING

David Anderson didn't think the square footage was off by too much.

Randy Turner said it was such a small number it is hardly enough to notice and he had no objections.

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

VOTE U/A

5 CRITERIA

1. They do face an unnecessary hardship in that the measurement requirements to meet the 5,000 sq ft are very small.
2. The variance will deliver substantial justice because it is in keeping with the existing neighborhood.
3. The variance will be in harmony because the discrepancy is so small.
4. The variance will not result in a diminution in value of surrounding properties because there is no evidence.
5. The variance will be of benefit to the public interest because he is offering additional off-street parking.

GRANTED

1 CONDITION - THAT MR. CALIENDO LIMIT IT TO ONE-BEDROOM UNITS.

VOTE U/A

H88-59 Mark & Denley Rafferty, 191 Henry Law Avenue, A/K/A

Assessor's Map 21, Lot 26-11, zoned R-12, requests a variance from the terms of Article V, Section 170-17, to construct an accessory building (detached garage) approximately three (3) feet from a rear lot line where ten (10) feet is required.

Mark Rafferty said the 3 feet noted on the agenda is Clark's error and should be 1 foot. He said that if they put the garage forward the only place to back up would be in front of the house and it wouldn't work.

Members on the case: Joyce Bowden, Randy Turner, Barry Hager, William Colbath and Chris Jacobs.

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

VOTE U/A

Randy Turner felt he may be able to turn the garage around and reduce the size of it may not need to come before the Board.

Mr. Rafferty said that he would not be able to turn out to go down the hill and 24 X 24 is the size they want.

Mr. Rafferty said that the lay of the land drops off and many loads of fill were brought in to made the land buildable.

Barry Hagar suggested they get a detailed drawing to justify the points he was making.

Mrs. Rafferty said if they kept the 10 ft set back it wouldn't allow them the turn around space they need before entering the road. It would be a hazard to them and to other drivers. She also said that most of the abutters are mostly agreeable. They have owned the land a little over year and then realized with the set backs it was not easy.

Joyce felt that this would set a bad precedence in a new neighborhood, and suggested that they table the case and bring it up under old business when they bring in a plot plan.

Mr. Rafferty preferred to table the case.

Randy Turner made the motion to table the case
Chris Jacobs seconded

VOTE U/A

Tom Clark stated that he would need the new information in 15 days if they wanted to be put on next ZBA meeting.

H88-60 White Enterprises, Inc., 12 Roberta Drive, A/K/A

Assessor's Map L, Lot 69E, zoned R-20, requests a variance from the terms of Article IX, Section 170-33 A. and B(1) to maintain a fence eight (8) feet in height where six (6) feet is permitted and to have the finished side of the fence facing inward to the property on which it is located where facing outward is required.

Board Members voting on this case: Joyce Bowden, Randy Turner, Barry Hager, William Colbath and Dean Trefethen

Mr. Doug Mellon stated that he put the fence up not knowing that the Dover regulations do not allow 8' fences and that the fence had to face the abutter. He said that in this case the abutter is the Spaulding Turnpike and the fence is to enhance the lot and to cut down the noise from the turnpike. He said that the highway creates an unusual condition and diminishes the enjoyment of the property because of the noise. The ordinance in this case doesn't give protection like it should. He feels that special conditions exist due to the proximity of the turnpike. The 8' fence is necessary to hide the visibility and for noise protection. He submitted a letter signed by Paul Levesque and Connie M. Liks of 13 Roberta Drive stating that, as neighbors, they support the granting a variance.

Bill Colbath made the motion to accept the case.
Barry Hager seconded.

VOTE U/A

PUBLIC HEARING OPENED

Mr. Albert Belanger stated he is in favor of C. I. White.

Jack MacLatchy of 245 Dover Pt. Rd. had no objections to the fence but finds it hard to believe that Mellon didn't know the ordinance.

Mr McLatchy asked if the State has any rules along the turnpike

Steve Stancel said the fence is not there just for one house but for the neighborhood. That he put up the fence first is a problem but he would hate to see it rejected on that matter alone.

CLOSE PUBLIC HEARING

Randy Turner agreed that Mr. Mellon should not have put the fence up first but did not feel that he should be punished for that.

Joyce stated she had a problem with it. She asked how a

hardship could be proven for a man who has created his own hardship.

Bill Colbath said it is fairly obvious that the fence was put up because he wanted it there.

5 CRITERIA

1. He does not face an unnecessary hardship because the hardship presented by the applicant was self created.

DOES - Barry Hager
Randy Turner

DOES NOT - Bill Colbath
Dean Trefethen
Joyce Bowden

2. The variance will not deliver substantial justice because the ordinance requirements were not unjust and well written and well within the applicant's ability to comply.

WILL - Barry Hager
Randy Turner

WILL NOT - Bill Collins
Dean Trefethen
Joyce Bowden

3. The variance will be in harmony with the spirit and intent of the zoning ordinance because the idea of a fence itself would be within the intent to protect and screen.

WILL - Barry Hager
Joyce Bowden
Randy Turner
Dean Trefethen

WILL NOT - Bill Colbath

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

WILL NOT

VOTE - U/A

5. The variance will be of benefit to the public interest because the idea of a fence in that area is to the public interest as long as it is constructed within the requirement of the ordinance.

WILL - Barry Hager
Randy Turner
Bill Colbath
Dean Trefethen
Joyce Bowden

GRANTED - Barry Hager
Randy Turner

DENIED - Dean Trefethen
Bill Colbath
Joyce Bowden

DENIED-Note in the follow-up letter that it is to be done immediately.

H88-62 Jade Realty Corp., Tideview Drive A/K/A Assessor's Map I, Lots 2-I and 2-J-1, zoned RM-12 requests a variance from the terms of Article V, Section 170-16 (Footnote 14) to maintain a side setback of 74.05 ft where 75 ft is required.

Members on the case:

Joyce Bowden, Randy Turner, Barry Hager, William Colbath and David Paolini.

Mr. Frank Gannon from Durgin Scofield said it would not result in a diminution of surrounding property and would benefit the public interest. The Planning Board has approved the site plan and it meets all other requirements.

Barry Hager asked if just 1 corner of the building was approximately 1 foot off.

Randy Turner made a motion to accept the case.
David Paolini seconded.

PUBLIC HEARING OPENED

Mr. Gannon said he had the intent to clear all the setbacks and this is just inadvertent.

Mark Lehoulier of Jade Realty is in favor of the variance.

Steve Stancel stated that the Planning Department was against. He explained that all similar situations have been resolved by a lot line adjustment.

Harold Preston of the Planning Board said that Lot Line Adjustments have all been for single family residents.

Mr. Gannon said to acquire 1 foot and keep a uniform lot line would be difficult. It was a violation but they have come in good faith. He stated the line was 800 feet long.

Chris Jacobs said a small balloon line would be enough and he would not have to move the 800 foot line.

Mark Lehoulier stated it is within their right to approach the Board for a variance. He also asked what would happen if Sweatt wouldn't sell.

Barry Hager answered he would then have a hardship.

There was more discussion on what was considered an effort to contact the Sweatts.

Mr. Lehoulier requested to table his case until he could contact the Sweatts about a Lot Line Adjustment.

VOTE TO TABLE - U/A

5 Minute recess

H88-63 Northern Utilities, Inc., Middle Road, A//A Assessor's Map K, Lots 6 & 6A, zoned R-40, requests a special exception as provided by the terms of Article VII, Section 170-27 C.(1) and Article XII, Section 170-52.C.(3) to install a utility line in an easement across a conservation district.

Board Members: J. Bowden, Randy Turner, Barry Hager, William Colbath and David Anderson

Mr. Gil Wilbur stated that a section of pipeline goes across Canney Brook and by ordinance he is required to get a Special Exception.

Tom Clark said that he needed to come before the Board because the ordinance requires it for development within the Conservation District. There is nothing to exempt a public utility.

Barry Hager made a motion to accept.
William Colbath seconded.

VOTE - U/A

PUBLIC HEARING OPENED

Harold Preston spoke in favor. He said there is no Federal or State easements required, just local permission.

Gill Wilbur said that the backhoe will be on double 1 inch plywood as he digs the trench and the pipe will be welded in the field. He stated that time is in the essence. He said there is water there now but in May you couldn't get your feet wet. The trench will be 16 feet by 3 1/2 feet deep.

Joyce Bowden as if it can be restored to its original condition. She asked the Board if it feels it should go to the Conservation Committee.

They did not feel it had to.

CLOSE PUBLIC HEARING

Discussion ensued on the equipment that would be used.

Barry Hager made a motion to grant the special Exception.

Randy Turner seconded.

VOTE = U/A

GRANTED

H88-64 Garry & Elizabeth Pelletier, 23 Cranbrook Ln., A/K/A Assessor's Map D. Lot 85, zoned R-12, requests a variance from the terms of (1) Article V, Section 170-16, to construct an addition twenty-two (22) ft from a front property line where thirty (30) ft is required; and (2) Article X, Section 170-41.A to increase a non-conforming structure.

Members sitting on this case: Joyce Bowden, Randy Turner, Barry Hager, William Colbath and Chris Jacobs.

Mr. Garry Pelletier stated that one of his hardships was that he had a dog of a houselot. It was a very low spot and he had a 20 foot drainage easement in the back of his property. The addition would allow him to retain a larger amount of usable property. It would be no closer to neighbors, would not diminish the surrounding property, in fact, it will enhance it.

Barry Hager made a motion to accept the case.
Bill Colbath seconded.

PUBLIC HEARING OPENED

Chris Jacobs said that if we waive this front set back we will have more coming up.

Mr. Pelletier said that every house is 20 feet from the property line.

Steve Stancel said he was searching hard for hardship.

CLOSE PUBLIC HEARING

5 CRITERIA

1. He does face an unnecessary hardship due to the unique configuration and drainage problem connected with this property.
2. The variance will deliver substantial justice because it will allow use of the home in accordance with normal usage afforded in this zone.
3. The variance will be in harmony with the spirit and

intent of the zoning ordinance because single family climate of the neighborhood is retained.

4. The variance will not result in a diminution in value of surrounding properties based on the following finds of fact: No evidence presented.
5. The variance will be of benefit to the public interest because it wasn't shown to be a detriment.

VOTE - U/A

GRANTED

Meeting adjourned 10:30