

ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
DECEMBER 15, 1988

Members Present: William Colbath, Mark Dellner, Joyce Bowden, Dean Trefethen, Chris Jacobs, David Paolini and Randy Turner (late).

Also Present: Tom Clark, Building Inspector and Steve Stancel, Planner.

Meeting called to order 7:00.

Joyce Bowden introduced the board.

NEW BUSINESS

Mark Dellner made the motion to accept the minutes of the last meeting.

Bill Colbath seconded.

VOTE U/A

Mark Dellner stated that he could not fulfill the Vice-Chairman position and would be stepping down to an alternate position.

Nominations for Chairman and Vice-Chairman of the Zoning Board began.

Bill Colbath nominated Joyce for the position of Chairman.

Mark Dellner seconded.

Mark Dellner nominated William Colbath for the position of Vice-Chairman.

Joyce Bowden seconded.

H88-70 Calvin & Margaret Beckey, 51 Applevale Drive, A/K/A Assessor's Map K, Lot 17-P-1, Zoned R-12, requests a variance from the terms of Article IX, Section 170-33A, to maintain a fence with a height of eight (8) feet where a maximum of six (6) feet is allowed.

Members sitting on this case were: Bill Colbath, Joyce Bowden, Chris Jacobs, Mark Delner and Dean Trefethen.

Mark Delner made a motion to suspend the rules and put the Beckey case last as no one stepped forward to represent the

Beckey's.
William Colbath seconded.

VOTE U/A

H88-71 Edward and Geraldine Joyce (Owner: Allan Krans) 23 Everett Street, A/K/A Assessor's Map 27, Lot 90-A, zoned RM-8, requests a variance from the terms of Article IV, Section 170-12 and Article X, Section 170-40, to establish a non-conforming use (Dance Studio) which differs from the existing one (Retail).

Chris Wyskiel represented the Joyce's. He referred to the letter that he submitted addressing the 5 criteria. He feels that the structure is not at all conducive to residential use for which it is zoned. One large room is used principally as warehousing and is accessed by two large garage doors. The land next to the structure closest to Ham Street is paved as a parking lot.

Mr. Wyskiel feels that the land and structure, as developed, is not conducive to any of the permitted uses and retrofitting the structure to a permitted use is impractical and not feasible, therefore he feels it is a hardship. He also added that the grandfathered use is commercial under Section 170-40.

Mr. Wyskiel feels that granting the variance will result in substantial justice because of the hardship with the land. Also, granting the variance will be consistent with the spirit and intent of the ordinance as the structure in question is uniquely different and not well suited for the permitted uses.

He does not feel that granting the variance will result in any diminution of the surrounding properties. He went on to say that the applicants intend to perform exterior renovations, in particular, removing the garage doors which will make the structure more in keeping with its surrounding properties.

Mr. Wyskiel stated the dance studio would be in operation on Mondays and Fridays after school until approximately 8:00 PM. Saturday lessons would be scheduled from 8:00 AM thru 5:00 PM.

Randy Turner arrived at 7:35.

Mark Dellner made a motion to accept the case.
Dave Paolini Seconded.

VOTE U/A

There was a question brought up by the Board on why the plot

plan only showed the building and not the garage.

Mr. Wyskiel answered that he did not want to go to the expense of a surveyor.

There was also a question on the easement for parking.

Mr. Krans stated that he owns both parcels and gives himself an easement.

Mr. John Barr, on Baker Street stated that he is familiar with the building and at one time there were hazardous waste trucks parked there. He feels that the dance studio is a positive use.

Mrs. Beth Thompson, Everett Street, stated she was against the variance because there will not be enough parking for 12 students and the music coming from the building would constitute a problem.

Steve Stancel stated that the Planning Department can't support the variance because there is no hardship. The property has more uses and rights than it's neighbors. He stated that the property could be use for multi-family or commercial use.

Tom Clark stated that you cannot transfer a non-conforming use to another nonconforming use. A dance studio would be allowed in the following zones: R-40, Office, B-2, Industrial Zone and UMUD.

5 Criteria

1. The applicant does not face an unnecessary hardship because he currently has more than reasonable use in the "grandfathered" provision.
2. The variance will not deliver substantial justice because no injustice exists. The applicant has more than reasonable use.
3. The variance will not be in harmony with the spirit and intent of the zoning ordinance because the property already has commercial/retail use grandfathered.
4. The variance will not result in a diminution in value of the surrounding properties because no evidence was presented.
5. The variance will not be of benefit to the public interest because of the concerns of the neighbors regarding the noise and traffic.

VOTE U/A

DENIED

H88-72 Richard Cabral, William Dube & Richard Lannon, Sixth Street, A/K/A Assessor's Map A, Lot 49, 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 construct a driveway within the Conservation District for Lot 6, Quail Run.

Malcolm McNeill reminded the board that, at the last meeting he stated that if they were in need of any other crossing they would be back. Mr. McNeill went on to say they were able to put in an additional lot. Where there were 12 originally there are now 13. He stated that to remove the impact on the wetland they are requesting one additional driveway. He feel it is essential to give his clients reasonable use of this large 3.2 acre lot, #6 on the plan. The driveway is at the narrowest point of crossing and will least impact the invironmentaly sensitive area.

It is desirable that a driveway service this lot. He stated that this plan has been thru TRC and will meet all state approval.

Mark Dellner made the motion to accept the case.

William Colbath seconded.

VOTE U/A

Steve Stancel stated that the Planning Department supports the Special Exception because it met all criteria.

CLOSE PUBLIC HEARING

Mark Dellner made the motion to grant the special exception.

Randy Turner seconded.

VOTE TO GRANT Joyce Bowden
 Mark Dellner
 Randy Turner
 Chris Jacobs

OPPOSED William Colbath

GRANTED

H88-73 Albert E. McFadden, 5 Birchwood Place, A/K/A Assessor's Map 17, Lots 71 & 72, zoned R-12, requests a variance from the terms of Article V, Section 170-16 and Article X, Section 170-39 to subdivide an existing lot into two lots, both of which would have insufficient frontage (75 feet and 60 feet, where 100 feet is required) and

insufficient are (9,000 sq ft and 7,200 sq ft where 12,000 sq ft is required).

Less Butler spoke for Mr. McFadden who was unable to attend. He stated that the parcel has been a lot of record for 50 years. He stated that Mr. McFadden was told by the City that if he wanted to keep it as a separate lot he would have to put it in another name. Now that he is retiring and has payed taxes on it since 1951 he would like to sell it.

Mr. Butler stated that the hardship is that he wants to utilize the lot for the purpose in which it was purchased. The utilities are there and in place and the neighborhood consists of 30 homes, 14 of which are the same size or smaller. Mr. Butler feels it would enhance the neighborhood and enhance the tax base. The structure would meet all the set back requirements.

Mr. Butler stated that if the variance is granted he is the contractor who will be building the structure.

Tom Clark stated that there are two separate tax bills for this parcel and it is assessed at 10% of what it would be if it were a lot. Two nonconforming lots in the same name would be considered contiguous.

Members sitting on the case are: Joyce Bowden, Mark Dellner, William Colbath, David Paolini and Chris Jacobs.

Joyce Bowden stated that they should not be accepting a piece of graph paper for a subdivision and that the City does not consider this two lots.

Joyce made the motion not to accept the case.

Mark Dellner seconded.

VOTE U/A

Mr. Butler asked if he should reapply with a surveyors plan.

Joyce informed him he would have to prove a hardship.

NOT ACCEPTED

H88-70 Calvin & Margaret Beckey

As the Beckey's were not there to represent themselves, Joyce Bowden read the applications and the letters received regarding the case.

Mr. White and attorney for the Dudley's spoke on the problems with the fence.

Pictures taken by the Building Inspector's office were reviewed.

Discussion ensued regarding the signs posted everywhere and the wrong side of the fence facing the abutter.

Steve Stancel stated that the Planning Department is against the variance.

5 Criteria

1. The applicant does not face an unnecessary hardship because no evidence was presented and a reasonable fence height is allowed.
2. The variance will not deliver substantial justice because the applicant did not prove the current fence was necessary.
3. The variance will not be in harmony with the spirit and intent of the zoning ordinance because a 6 foot height is allowed by the ordinance.
4. The variance will result in a diminution in value of surrounding properties because the evidence presented and general appearance will diminish property values.
5. The variance will not be of benefit to the public interest because the fence is offensive and unsightly.

VOTE U/A

DENIED

The fence must be removed by December 23, 1988.

William Colbath made the motion to reopen the nominations for Vice Chairman.

Mark Dellner seconded.

VOTE U/A

Mark Dellner nominated Randy Turner for the position of Vice-Chairman.

William Colbath seconded.

Mark Dellner made the motion to adjourn.

Dean Trefethen seconded.

Meeting adjourned 8:55