

**ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
SEPTEMBER 21, 1989**

Members present: Dean Trefethen, Joyce Bowden, Chris Jacobs, Bill Colbath, David Paolini

Also Present: Steve Stancel and Thomas Clark

Meeting brought to order at 7:00.

NEW BUSINESS

Bill Colbath moved to accept the minutes.
David Paolini seconded.

VOTE U/A

Tom Clark stated that Darlene Colwell's ceiling problem has been corrected with no lost to herself. (Special Meeting of September 6, 1989.)

- 4 James & Ann Sexton, 37 Cataract Avenue, A/K/A Assessor's Map 14, Lot 26, zoned R-12, requests a motion for rehearing concerning ZBA Case H89-37. (Variance request regarding setbacks for an accessory building.)

Alan Krans, representing the Sextons, stated he would like a continuance until next month's meeting so he could bring in letters from abutters and present some new evidence.

Chris Jacobs made the motion to table this case to the next meeting, October 19, 1989.

Bill Colbath seconded.

James & Nancy Schulte, 2 Towle Avenue, A/K/A Assessor's Map 12, Lot 154, zoned R-12, request a Motion for Rehearing concerning ZBA Case #H89-39. (Appeal from an Administrative Decision.)

Joyce Bowden asked if the Board if there was any new evidence presented, then put the option on the floor to deny the motion for a rehearing.

Dean Trefethen seconded.

DENIED

VOTE U/A

OLD BUSINESS

H89-41 Philip & Bonnie Jennison, Tolend Road, A/K/A Assessor's Map E, Lots 42 & 44, Zoned R-40, request a Special Exception as provided by the terms of Article VII, Section 170-27.C(1) to construct a private right-of-way within the Conservation District. This item was tabled from the meeting of 8/17/89.

Dana Lynch said they have received the necessary permits for the crossing. The crossing will allow them to access 22 acres and a portion of that will be deeded to the City. Furthermore, the ADS Subdivision approval already states that there will be no further development of homes and they would have to go before the Planning Board again in order to put in tennis courts, swimming pools, etc.

Bill Colbath moved to grant the Special Exception.
David Paolini seconded.

GRANTED

VOTE U/A

H89-45 Ann Shine & Edmond Daigle, 419 Dover Point Road, A/K/A Assessor's Map E, Lot 8, zoned R-20, requests a Special Exception as provided by the terms of Article VII, Section 170.27.C(3) to construct a boat dock within the Conservation District.

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

VOTE U/A

Mr. Daigle made the point that it has taken two years of filling out papers between the State and Federal government to get to this point.

Chris Jacobs asked how many boats would be docked.

Mr. Daigle said between 2 to 3 small aluminum boats.

Close Public Hearing

When asked where the floats would be stored in the winter, Mr. Daigle stated that the floats will be tied along side the pier.

Chris Jacobs wanted to be sure that the floats would not be dragged onto the grass.

Discussion ensued regarding the conditions they would attach to the granting of the Special Exception.

Mr. Daigle stated that he is a lobsterman and if he is not allowed to load or unload on his property he is out of business.

Mr. Trefethen assured him that it is only the boat being hauled in and out of the water that is of concern.

Chris Jacobs made the motion to grant the Special Exception with the following conditions:

1. No storage of floats within the Conservation District - grassed area.
2. No loading and unloading of boats or equipment in the Conservation District.

Bill Colbath seconded.

VOTE U/A

GRANTED

H89-46 Cochecho River Cooperative (Applicant: John & Bonnie DePlanche), 417 Middle Road, Lot 12, A/K/A Assessor's Map M, Lot 62-A, requests a Variance from the terms of Chapter 126, Section 126.5 C & F, to decrease setbacks of a non-conforming structure (mobile home unit).

Tom Clark stated that the lots in the park are grandfathered and are small and that nothing can be done without a Variance.

John DePlanche said that his trailer is a 1965, 10 X 50 trailer. It is 24 years old and is falling apart. It must be resided, it needs a new bathroom and must be rewired. It doesn't meet the current safety standards and the size of the present trailer is no longer made.

Dave Paolini made a motion to accept the case.
Chris Jacobs seconded.

VOTE U/A

Steve Stancel said that the Planning Department is in favor of this Variance. He said that the President of the Co-operative should contact Kathy Cool as there are funds available to tie into the City sewer. The park is within 1000 feet of the City sewer.

Close Public Hearing.

5 CRITERIA

1. He does face an unnecessary hardship because the unit is 24 years old and is no longer manufactured. It is not at current safety standards and he is unable to replace the unit with the same size.
2. The Variance will deliver substantial justice and allow the applicant to enjoy full use of his property as his neighbors do.
3. The Variance will be in harmony with the spirit and intent of the zoning ordinance because the density is not increased. The park is grandfathered and this will not increase an existing non-conformaty.
4. The Variance will not result in a diminution in value of surrounding properties because there was no evidence presented to the contrary.
5. The variance will be of benefit to the public interest because it will increase safety in a very dense situation.

Bill Colbath made the motion to grant the Variance.
Chris Jacobs seconded.

GRANTED according to the plan presented.

VOTE U/A

H89-47 Webber Oil Co., 250 Central Ave., A/K/A Assessor's Map 9, Lot 104, Zoned B-2, requests a Variance from the terms of Article IV, Section 170-12, Table I, Part C, and Article X, Section 170-40.C, to re-establish a gasoline filling station.

Tom Clark said that the self-serve gas station has been closed in excess of two years. He also stated that it is a non-conforming use. When a non-conforming property has not been in that use for 12 consecutive months, it loses its grandfathered status.

Raymond Cota represented Webber Oil Co. He said the property is in very poor condition. He stated that they have the purchase option on the property conditional on all approvals. They are planning a small convenience store and two small gas islands and a canopy.

Tom Clark asked if he was representing the owner.

Raymond Cota answered that he was not. He showed the Board the purchase & sale agreement, signed by the owner. He stated that the lot is less than desirable for the Main Street of Dover. He stated that Webber sells integrity and

brought a picture of what the station should look like.

Bill Colbath made the motion to accept the case.
Dean Trefethen seconded.

VOTE U/A

Paul Connolly stated that when speaking of the coverage of the lot, it is the building and not the parking that is in question, therefore, the figures are OK.

Al Souther stated that the hardship has to be in the land, and the reason that only a short period of time has passed since the grandfathered use has lapsed, is not a hardship in the land. There are other uses for this lot. He stated that a gas station was responsible for leaving the lot unkept. Also, that a convenience store only employs one person, if it was an office it would employ more. He also stated that if the building were larger, it would mean more construction jobs.

Robert Foster, an abutter on the back side of the lot stated concern with water runoff.

Dennis Costas said that this lot is near an old Victorian house and a brick house and that a gas station is not an upgrade. It would also create traffic problems.

Tim Sheldon, owner of the Demambro Bldg., was against the use in a B-2 Zone and feels there is no hardship.

Steve Stancel said that the Planning Department is opposed. The idea of a non-conforming use is that it won't be carried on in perpetuity.

Raymond Cota stated that the lot is 8,000 or 9,000 sq ft, which is not a very big site. It will not be used for a garage, it is a gas station. The owner cannot expect a good return on his property if it has no use. He stated that parking would be a problem for the uses that are allowed. Gas and convenience stores are impulse items and do not generate traffic.

All Souther stated that economic hardship is irrelevant and may not add to traffic but will add to traffic jams.

Close Public Hearing.

5 CRITERIA

1. He does not face an unnecessary hardship because the owner has permitted uses and options and has failed to prove an unnecessary hardship.

2. The Variance will not deliver substantial justice because other uses exists, therefore, he is able to have full use of the property.
3. The Variance will not be in harmony with the spirit and intent of the zoning ordinance because it is the intent of the zoning ordinance to eventually eliminate all non-conforming uses.
4. The variance will not result in a diminution in value of surrounding properties because no evidence was presented to establish that diminution of value would occur.
5. The Variance will not be of benefit to the public interest because the public interest is best served by uses permitted under the ordinance.

Chris Jacobs made the motion to deny the Variance.
Bill Colbath seconded.

DENIED

VOTE U/A

H89-48 Richard Whitney, 153 Locust Street, A/K/A Assessor's Map 12, Lot 69, Zoned RM-10, requests a Variance from the terms of Article X, Section 170-41.A, to increase a non-conforming structure.

Richard Whitney stated that the building is an old horse barn. The walls have been eaten by horses, the roof leaks and it is not a usable structure. The new shed will be a two storey building. It will have a deck over the carport. The size is needed because of storage needs and hobbies such as woodworking and stained glass windows. The existing building is 16W X 18L and the new one will the 16W X 14L.

Chris Jacobs made the motion to accept the application.
Bill Colbath seconded.

VOTE U/A

Steve Stancel said that the Planning Department is in favor of the Variance because there is a hardship in that all abutters have accessory structures on their property lines. You cannot restrict a land owner from having the same rights as his neighbors.

Close Public Hearing.

Discussion ensued regarding duplex capabilities - conversion from storage to living space.

Mr. Whitney stated it will have some sort of space heater but

no plumbing.

5 CRITERIA

1. Mr. Whitney does face an unnecessary hardship because the applicant is unable to comply with the set back requirement in the conventional manner and the present structure needs to be replaced.
2. The Variance will deliver substantial justice in allowing him reasonable use of his land as the neighborhood lots have.
3. The Variance will be in harmony with the spirit and intent of the zoning ordinance because the spirit allows the use the applicant requested.
4. The Variance will not result in a diminution in value of surrounding properties because no evidence was presented to the contrary. One abutter indicated it will improve the value.
5. The Variance will be of benefit to the public interest because it will replace an unsafe structure.

David Paolini made the motion to grant the Variance with the condition that if any conversion from storage to permanent living area occurs, the applicant must come before the ZBA.

Dean Trefethen seconded.

GRANTED with the condition stated above.

VOTE U/A

H89-49 Robert & Therese Foster, 192 Dover Point Road, A/K/A Assessor's Map L, Lots 89B & 89I, zoned R-20, request a Special Exception as provided by the terms of Article VII, Section 170-27.C(1) to construct a private drive within the Conservation District.

Wayne Chick represented the Fosters and said he was asking for an after-the-fact Special Exception. He stated that the logging road had been there to service the trucks that were doing the logging 7 or 8 years ago.

Joyce Bowden read the letter received from the Conservation Commission.

Wayne Chick stated, in answer to the memo from the CC, that Mr. Foster has a great deal of concern for the community. His property could have been sold to a developer. Mr. Chick said that he has seen the Foster's home from the river and it looks very attractive. He also stated that Mr. Foster had spoken to Dean Peschel, the Soils Inspector, about planting

wild flowers.

Joyce Bowden read a letter received from Mr. & Mrs. D'Arcy stating that they are opposed to any change in the ordinance which protects the Conservation District.

Mr. Chick said that the cul-de-sac encroaches 20 feet into the Conservation area.

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

VOTE U/A

Steve Stancel stated that the Planning Department is in favor of the application even though it is not their policy to go against the Conservation Commission. He said that if Mr. Foster was to come in for a boat dock he would need access to the dock.

Chris Jacobs said the road was made of stones and liquid asphalt. He felt that they should remove the portion in the 75' buffer to the river. He stated that the damage has already been done and the Board should be standing behind the Conservation Commission.

Wayne Chick stated that the Fosters already have the paperwork under way for the boat dock. He stated that they have done as much good as they have bad.

Bill Colbath stated he would have liked someone from the Conservation Commission present to give some background on the memo. It was not dated or signed. He stated that there may be more damage done if they are made to take out the cul-de-sac.

Discussion ensued on whether the paving helped to prevent erosion or not and if the road was there before the 75' setback was in place.

The Fosters asked how the complaint came about.

Tom Clark said that the complaint came from the Conservation Commission and Dean Peschel acted on it.

Joyce asked the Fosters to address Section 170-27(C)1. She also said that someone from the Conservation Commission and Dean Peschel should be at the meeting next month so this could be cleared up.

Chris Jacobs made the motion to table the Special Exception to the October 19, 1989 meeting.

Bill Colbath seconded.

VOTE 4 - 1 IN FAVOR

Dean Trefethen opposed.

TABLED

H89-50 Robert Matchett, 47 Crosby Road (Fibrethane, Inc.) A/K/A Assessor's Map G, Lot 32-A, zoned I-1, requests a Variance from the terms of Article XI, Section 170-45.F, to provide seventy (70) on-site parking spaces where one hundred eleven (111) are required.

Dean Trefethen made the motion to suspend the bylaws to hear seven cases next month.

Bill Colbath seconded.

VOTE U/A

Mr. Matchett stated that Fibrethane is equipment intensive not people intensive. He has a problem with the 11 parking spaces when 40 is over what he needs for his business. He stated that the parking would have to be put on the west side of the land which is where his future expansion will go.

In answer to Joyce's inquiry, Mr. Matchett stated that he has a total of 57 employees. There are approximately 30 on the first shift and with the expansion, the first shift will still have less than 40. Mr. Matchett said that the parking ordinance must have been written before automation.

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

VOTE U/A

Discussion ensued on the ordinance.

Close Public Hearing.

5 CRITERIA

1. The applicant does face an unnecessary hardship because compliance with the ordinance would require the applicant to create something with no productive use.
2. The Variance will deliver substantial justice and allow adequate parking and still leave open areas.
3. The Variance will be in harmony with the spirit and intent of the zoning ordinance because the ordinance called for 1 1/2 spaces and adequate parking which is met with the applicant's plan.

4. The Variance will not result in a diminution in value of surrounding properties as there was no evidence presented.
5. The Variance will be of benefit to the public interest because the applicant has provided adequate parking.

David Paolini made the motion to grant the Variance as per the site plan submitted.

Bill Colbath seconded.

VOTE U/A

GRANTED as per the site plan submitted.

David Paolini made the motion to adjourn.
Bill Colbath seconded.

MEETING ADJOURNED 10:20 PM.