

ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
JANUARY 16, 1991

MEMBERS PRESENT: Chris Jacobs, Joyce Bowden, Dean Trefethen,
Bob Callan, Randy Turner, Bill Colbath

ALSO PRESENT: Steve Stancel, Tom Clark

Meeting brought to order at 7:10 PM.

Chris Jacobs made the motion to approve the minutes.

Randy Turner seconded.

VOTE U/A

Bob Callan did not sit on the next case.

H91-17 Mt. Pleasant Trust, Hanson Ave. A/K/A Assessor's Map 21, Lots 26-27, 26-29, 26-31, 26-32, 26-34, 26-35 & 27-37, zoned R-12, requests variances from the terms of Article V, Section 170-16, for relief from the front setback requirements as shown on the plans submitted.

Peter Whitman represented the case and gave a history of the surrounding subdivision. He stated that the developer of Mt. Pleasant Estates, Charles Mutrie, came before the ZBA to do an ADS subdivision and was denied. Mr. Whitman stated that an ADS is now allowed in the R-12 zoning district. He said that they purchased 21 lots and are now building houses. He is asking for relief because of the contours of the property. With the street layout as it is, if the houses were built according the setbacks that are in place, you would be looking at a roof line or into the second story windows of the homes. A safety issue would be the relatively steep driveways that would be required. He stated that he would like to put the houses forward where the soil has already been shifted around and the back yards can be left in a natural state. Substantial justice would be served by moving the houses away from existing structures. Mr. Whitman feels it would be in the spirit and intent of the ordinance by allowing them to make a nicer subdivision which would have a positive affect on nature. It would also make for a better design. Peter Whitman stated that they are trying to build a high quality building.

Joyce Bowden asked why the application was not signed.

Peter Whitman stated that he is not a trustee and could not sign it. He stated that he will bring in a letter with the proper signature.

Dean Trefethen made the motion to accept the case.
Randy Turner seconded.

VOTE U/A

Dean Trefethen stated that putting in the road to cause an embankment is not inherent in the land.

Peter Whitman stated that his interpretation is that inherent is what is there now.

Joyce Bowden stated that Peter was aware of the zone and knew the setbacks before buying.

Bob Callan asked if cost was an issue in this case.

Peter Whitman stated that cost is not the issue. He stated that he has come in and cleared up other things in Dover and is trying to create a reputation in Dover.

Bob Callan stated that he would be forced to use substantial fill and stronger foundations if he built the houses with the proper setback. He felt that if he were to build the houses closer to the road he would be creating a greater problem for abutters further down the road.

Chris Jacobs asked if cost is not a factor, why is cost mentioned twice on the application.

Doug Dodd, who owns land in Dover, stated that if a variance is granted, it would be a less costly subdivision and cost should not be a criteria.

William Schirmer - 199 Henry Law Ave., Lot 30 of Mt. Pleasant Estates stated he is not opposed to building but it should be done properly and within the guidelines. He is concerned with lot #31 as it has huge boulders and, if loosened, they could come down into his living room. Drainage is also a concern. He stated he went to much expense to have drainage put in around his house. He also stated that there is a lot of erosion on that spot and he would like to make sure that there would be 30 feet in the back of the house.

Peter Rouseau felt that if the setbacks were made closer to the road the developer would try to make more lots.

Basil Adams, 183 Henry Law Ave., spoke on the covenants. He is concerned about ulterior motives. He stated that he is not against building homes.

Mr. Schirmer stated that she just wants assurances and is not against building.

Peter Whitman stated that the assurances are a series of inspections that take place and if things are not done right, Tom Clark can put a Cease & Desist order on the property.

Steve Stancel stated that it was a tough decision for the Planning Department because there were arguments on both sides. There would be nothing gained by administering the ordinance. It would be a benefit to the City and the neighbors to have the houses built closer to the road and whatever front set backs were given up would be moved to the rear setback. Steve stated the lots are unique, there is a safety issue and if the subdivision were to come before the Planning Board today, it would not be approved.

Bob Callan stated that it would not help the side yard or the backyard problem.

Close Public Hearing

Chris Jacobs stated he is against the variance, he feels it is more to save cost rather than help the City. He stated that the lots should be brought in individually.

Bill Colbath stated that he asked for a full plan (blueprint) at the last meeting and is not satisfied with the plans submitted.

Dean Trefethen stated that if the variance was granted owners would have to get a variance for every garage or porch they wanted to add.

Joyce Bowden stated that it is not the ZBA's place to help a builder out of a jam and this would be creating a headache later.

When asked about drainage, Peter Whitman stated that he was not aware that it was the Board's jurisdiction to get into drainage criteria and how the buildings were going to be built on the lot but he would be pleased to provide drainage plans to the Building Inspector.

5 CRITERIA

1. The applicant does not face an unnecessary hardship because the applicant has failed to prove an inherent hardship in the land as per the definition and as presented by the applicant.
VOTE U/A
2. The variance will not deliver substantial justice because the applicant did not prove any, only addressed cost issues.

VOTE Will not - Dean, Chris, Bill, Joyce
Will - Randy
3. The variance will not be in harmony with the spirit and intent of the zoning ordinance because the 30' setback is

the spirit and intent.

4. The variance will not result in a diminution in value of surrounding properties because no evidence presented to support that it will.
5. The variance will not be of benefit to the public interest because by keeping the houses back 30' from the front line, the public will be served and by allowing them within the 30' set back, the public would not be served.

VOTE Will not - Dean, Chris, Bill, Joyce
Will - Randy

Chris Jacobs made the motion to deny the variance.
Dean Trefethen seconded.

VOTE U/A DENIED

Steve Stancel stated that it is his recommendation that the Board does not accept the case if they are not happy with the application.

H91-19 Leo Schwartz, (Applicant: Tom Dunnington), 749 Central Ave., A/K/A Assessor's Map 28, Lot 11, zoned R-12, requests a variance from the terms of Article IV, Section 170-12, Table I, Part C-2, to establish an office use in an R-12 zoning district.

Atty. Tom Dunnington represented Dr. Schwartz. He stated that Dr. Schwartz has had an office in his home for over 30 years. The property is close to the edge of the road and is a small lot in a busy area. There is no market for a single family home but there is a market for a Doctor's office. If used as a medical building, it would not be a change of use, the only difference would be that the person would not also be living in the building.

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

VOTE U/A

Tom Dunnington stated that the driveway is shared and some agreement with the neighbors would have to be dealt with.

Steve Stancel stated that the Planning Department did not have a problem with this as three other lots have received variances. The area has not been rezoned because of the condition of Central Avenue.

Tom Dunnington stated that the abutters are in support with what they are doing.

Tom Clark stated that the Building Permit would require it to go to TRC.

Close Public Hearing

5 CRITERIA

1. The applicant does face an unnecessary hardship because changing the use of the surrounding area and the use as a medical office for 31 years has created a hardship.
2. The variance will deliver substantial justice and will allow the building to be used as it has been used for 31 years and a similar use to surrounding properties.
3. The variance will be in harmony with the spirit and intent of the zoning ordinance as this building has been used as a medical office for 31 years.
4. The variance will not result in a diminution in value of surrounding properties as no evidence was presented.
5. The variance will be of benefit to the public interest because it is in the public interest to continue using this as an office building.

Randy Turner made the motion to grant the variance with the condition that the parking is reviewed by TRC.

Bob Callan seconded.

VOTE U/A

New Business - Elections of officers

Randy Turner made the motion to leave as is.

Dean Trefethen made a motion to elect Joyce Bowden as Chairman.

Randy Turner seconded.

VOTE U/A CHAIRMAN - JOYCE BOWDEN

Chris Jacobs nominated Chris Jacobs for Vice Chairman.

Randy Turner nominated Bill Colbath.

Votes for Bill Colbath for Vice Chairman

VOTES - 3 Randy Turner, Bob Callan and Bill Colbath

Votes for Chris Jacobs for Vice Chairman

VOTES - 2 Chris Jacobs, Dean Trefethen

VICE CHAIRMAN - BILL COLBATH

Randy Turner made the motion to adjourn.

Chris Jacobs seconded.

VOTE U/A