

ZONING BOARD OF ADJUSTMENT  
DOVER, N. H.

H78-14 - Ursula R. Morin & Lynne S. Brandon  
H78-15 - Algred W. Ramaika  
H78-16 - Mr. & Mrs. James L. Dunn

DATE: Thursday, August 3, 1978

TIME: 7:30 p.m.  
Dover District Courtroom

PRESENT: Anthony S. Hartnett, Chairman  
Raymond Proulx  
Helen Smith  
Deborah McLean (Alternate)  
Gerard Lamoureaux (Alternate)  
Anita Munroe, Clerk

The Zoning Board of Adjustment met in the Building Inspectors office prior to the Public Hearing for a brief business meeting. It was recommended by the chairman that a notation be added to the proposed minutes that approval was made and accepted at a subsequent meeting. It was so moved and accepted by those Board members present.

The minutes of the Public Hearing held July 20, 1978, were read and the following changes were made relative to H78-12, Dover Realty Trust a/k/a Value House. Paragraph 1, third sentence should be changed to read as follows: "It proposes to construct an addition about 110 feet square on the back of the present building to be used as warehousing space."

Paragraph 2, sentence number 2, should be changed to read as follows: "According to Mr. Hallisey, in 1966, Mr. Pindrus had applied for a building permit to locate two residences on this back lot." (Underlining added for emphasis)

Upon motion made by Mr. Proulx and seconded by Mrs. Smith, those changes relative to H78-12 will be made accordingly.

H78-14 - Ursula R. Morin and Lynn R. Brandon - Ursula R. Morin appeared on behalf of herself and Lynne S. Brandon. It was read into the record that the property in question was located in an R-3 Zone and not an R-1 Zone as it was incorrectly noted on the public notice. The affected property is located at 76 Central Avenue and consists of a two apartment house with one apartment on each of the first and second floors. The proposal was to convert the entire first floor into an area to be used in connection with a counseling business carried on by both applicants. The business consists

of meeting with clients either individually and occasionally in small groups to listen to and discuss problems with interpersonal relationships and group dynamics. Typical clients might include professional and business persons seeking to improve public relations or personnel management techniques. Mrs. Morin stated that the only persons working there would be the two applicants and that Mrs. Morin herself would live in the upstairs apartment. She said that including spaces in an adjacent barn, parking would be available for nine cars, although average parking during business was expected to be less than that. She could foresee no problem with increased traffic. She stated that granting the variance would reduce noise and that if granted the applicants would secure a bank loan and improve the property. Her interpretation of the hardship in this case was the alleged fact that unless the variance were granted the applicants would not have enough room to carry on a business which they thought would otherwise be allowable as a customary home occupation.

The property is located in an R-3 Use District. According to Mrs. Morin, the proposed business use would be classified as a Profit Educational Institution or possibly Offices under Section 21:3.1 of the ordinances. Assuming that to be the case, they would be entitled to carry on the business as a customary home occupation under footnote 5 of the table of use regulations provided that the conditions of Section 21:15.2 (11) are complied with. She represented that a variance was needed from Section 21:15.2 (11)(d) since use of the entire bottom floor would constitute more than 25% of the existing net floor area of the principal and accessory buildings to be used in the business. The Board has some doubt as to whether the proposed use could be categorized as a profit educational institution or office space, thereby qualifying for customary home occupation at all or whether such use is rather a personal service establishment under the table of Use Regulations and Section 21:15.2 (42) of the ordinances, thereby necessitating a general variance as opposed merely to the relaxation of Section 21:15.2 (11)(d). Since the Board is unaware that the Building Inspector made a definite ruling on this issue nor was any evidence or argument addressed to this precise issue, the majority of the Board does not rule on it, since it is unnecessary for its present decision. Assuming that the proposed use would be a profit educational institution or office, there is insufficient evidence to

warrant a finding that the "25% rule" of Section 21:15,2(11)(d) imposes a true hardship in this case. The first floor of the building may well be suited to other, conforming uses and, in fact, is at present used as an apartment. There was evidence that the business could be conducted so as to conform with the 25% rule. However, the Board wishes to point out that the floor area involved may conform to Section 21:15.2 (11)(d) but that the precise measurements of the building and accessory building was insufficiently developed to permit the Board to make the determination. The Board voted unanimously to deny the variance with Gerard Lamoureux basing his vote on a finding that the proposed use would be a personal service establishment and not a customary home occupation.

H78-15 - Alfred W. Ramaika. Mr. Ramaika was represented by Armand DiMambro. The affected property consists of two residential structures located at 420 Dover Point Road about 1/4 or 1/2 mile from the General Sullivan Bridge. The buildings are located on the northeastern side of Dover Point Road as it approaches the southbound bridge. They are situated on a single lot with frontage of about 150'. The building closer to Dover is a 4 room ranch type house where the applicant currently resides and the building closer to Newington is a 5 room ranch type house where the applicant carries on a veterinary practice and in which is located a small apartment in which his mother used to reside. The applicant desires to subdivide the lot to enable him to sell the 4 room ranch and move into the building housing his practice. According to Mr. DiMambro, both houses were built prior to passage of the zoning ordinance and both houses have driveway accesses to Dover Point Road which have been in use since before the State took certain land for the limited access highway in 1955. No new curb cuts would be required. Mr. DiMambro pointed out that if the variance were denied, the only options for the applicant would be to lease the building he wants to sell or to sell both buildings to a single purchaser. In the case of a lease, the traffic in and out of the driveways would be no less than if the property is subdivided. The applicants ability even to sell both buildings as a unit is problematic. If subdivided, both lots would have about 75' frontage and depth of 200' for a 15,000 square foot area approximately. Sewerage is and will continue to be disposed of through separate septic systems in both lots. There was evidence that the lots would be subdivided in such a way as to make the side lots consistent with the bulk regulations and that many other

houses in the area are similarly situated with undersized lots.

Speaking in favor of the variance, Howard Davis stated that to lease the house instead of selling it would be inconsistent with the entire neighborhood and confirmed the existence of many other substandard lots in the area.

C. H. Mullins, spokesman for the State of New Hampshire Department of Public Works and Highways, cautioned the Board that the State might not approve any new driveways or curb cuts entering this section of Dover Point Road which is designated as a limited access highway at that point. Mr. DiMambro responded by pointing out that both driveways were in use since before the highway and that no new curb cuts would be needed.

The Board unanimously voted to grant the variance so as to permit the applicant to subdivide and sell one residence having resolved that all the conditions for granting a variance had been satisfied on the facts presented.

H78-16 - Mr. & Mrs. James Dunn. The Dunns appeared on their own behalf. The affected property is located at 32 Morningside Drive at the intersection of Morningside Drive and Garrison Road. They desire to install a 24' diameter round pool 4' deep in their back yard which is roughly triangular in shape. They desire a variance from the terms of the bulk regulations to permit them to put one side of their pool 6' from their rear lot line. However, the applicants admitted that a 20' diameter pool would fit in the back yard with no variance necessary, but that the sole prohibition was that they could not find one in their price range and that they wanted a larger size pool. They also admitted that a 17' diameter pool of the same make as the proposed 24' pool was available and would fit. Their major objection to locating it closer to their house was that it would intrude into and break up the middle of their back yard.

The Board voted 3 to 2 to deny the variance having resolved that to require the Dunns to obtain a pool of slightly smaller size or to locate the pool somewhat closer to the house, such that the installation would not violate but would conform with the lot line bulk regulations, would not so restrict their use of their property as to constitute a hardship. The reasons for desiring such a variance in this case are not sufficiently compelling, given the facts of this case and the circumstances surrounding the land to warrant the relief requested.