

PROPOSED MINUTES

ZONING BOARD OF ADJUSTMENT
DOVER, N. H.

DATE: April 13, 1978
Public Hearing - District Courtroom

TIME: 7:30 p.m. - Adjourned 11:00 p.m.

DATE: April 14, 1978
Executive Session - Building Inspector's Office

TIME: 6:30 p.m. - Adjourned 9:00 p.m.

DATE: April 17, 1978
Decisions Rendered - Council Chambers

TIME: 7:30 p.m. - Adjourned 7:55 p.m.

PRESENT: Anthony S. Hartnett, Chairman
John P. Gintautas
Helen Smith
Raymond Proulx
Gerard Lamoureaux (Alternate for Helen Wersosky)

H78-1 Richard L. Proulx, et al. Mr. Proulx was represented before the Board by Francis Fraiser, Esq. Atty. Frasier and Mr. Proulx spoke first and indicated that it was proposed to expand the existing "Sullivan Gravel Pit" into Lot 49. Lot 49 is located in an R-1 District and abutts Mast Road. The statement was made that because of the grade of the lot it is presently unsuitable for residential development. Mr. Proulx would gradually reduce the elevation of the lot in the process of removing sand, etc. to a point where the bottom of the pit would be level with Mast Road. Mr. Proulx stated that the banks would have a 2 to 1 slope, could come no closer than 20 feet from abutting property lines and that operations at the pit would be in compliance with Section 21:9.1 of the Code of Municipal Ordinances. He stated that it was his intention to leave Lot 49 in a condition suitable for potential residential construction by a developer.

Mr. Michael Cormier and Mr. Harlan Chadwick stated that their residences abutted Lot 49 on the same side of Mast Road and in effect stated that in their opinion the lot was usable for residential purposes. Mr. Cormier stated that his residence is 65 feet above the level of Mast Road and was worried about potential hazard of the pit adjoining his land and

possible drainage problems. Mr. Lucien Robidas stated that he was afraid of depreciation of the value of this property across the road from the pit. Following a rebuttal and re-rebuttal period with questions and answers, the hearing was closed.

Based on the evidence presented and the nature of the topography and character of the area, the Board voted to deny the variance by a unanimous decision. Reasons given were insufficient showing of hardship inherent in the land, violation of the spirit and intent of the ordinance and adverse affect on abutting properties.

H78-2 Joseph Keraghan. Mr. Keraghan of 17 Barry St., petitioned for a variance to the Bulk Regulations of the Zoning Ordinance. He requested permission to extend a porch to within 4 1/2 feet of the rear lot line of his property. The porch is presently approximately 7 1/2 feet from the lot line. He proposed to close in the porch and roof so that drainage from his roof would not interfere with the neighbors property.

The variance was denied by a 3 to 2 vote. Gintautas, Hartnett and Proulx voted to deny. Smith and Lamoureaux voted to grant the variance. It was resolved that hardship in the use of the land was not shown and that the spirit and intent of the ordinance would be violated as a non-conforming use already existed. Granting the variance would be an extension of a non-conforming use.

H78-3 C. P. R., Inc. was represented by Carroll Dudley. Mr. Dudley stated that the existing sign which is 8' high x 16' wide had been vandalized. It was sought to replace it, using the existing foundation with a sign 18' high x 10' wide. The new sign would be a rustic type of solid sign (as opposed to neon) illuminated by means of high intensity lights facing in toward the sign on both sides. The new sign would be 22' from the street to the top of the sign. The supports would be reconstructed to look like beams. A sign maker, apparently hired by C. P. R., Inc. to design the new sign, expressed the opinion that any reduction or scaling down of the dimensions of the sign would impair its aesthetic appeal and/or visibility of its letters.

Based on the evidence presented and the nature of the area, the Board voted 4 to 1 to deny the variance. Members Smith, Gintautas and Proulx found that to grant the variance would be a violation of the spirit and intent of the ordinance. Members Hartnett and Proulx found no hardship

inherent in this aspect of the land.

H78-4 Spinelli Corporation, petitioned for a variance to the Bulk Regulations of the Zoning Ordinance. The corporation wishes to build a 42 unit apartment complex on property zoned R-1. Mr. Spinelli described his plans and provided the board with a sketch.

Douglas C. Gray, Esq., representing the Spinelli Corp., presented the Board with a prepared statement. Atty. Gray stated the property was landlocked but withdrew this statement when the city map showed this to be not so. The prepared statement is on file and briefly presents the following views. The neighboring properties would not be adversely affected. The property, while zoned R-1, is not suitable for single residence use due to size, location and topography. The city would benefit tax wise and that several court cases parallel the needs of his client.

James Schulte, Esq., representing the residents of the area opposed to the variance, presented a list of his clients. He stated that this complex would be entirely in an R-1 zone and that the ordinance called for strict adherence to R-1 regulations. He pointed out areas in which some claim was made that the Spinelli Corporation was in violation. He stated that no hardship was inherent in the use of the land. He stated that abutting property values would depreciate. He stated that if a hardship exists it was self-made. He stated that water pressure was low in the area, and that the city would shortly be taking tests in the area.

Mr. Alden Joy, 12 Elmwood Ave., presented a prepared statement to the Board which was placed on file. In brief, it stated his past and present objections to the variance. It quoted from the zoning ordinance in reference to R-1 and R-2 zones. It stated that there would be a diminution in property values. It stated it would be an injustice to the entire neighborhood if the variance were granted.

Mr. John R. Adams, 6 Elmwood Ave., an immediate abutter presented a prepared statement opposing the variance to the Board. This statement provides the Zoning Board with his reasons for opposing further expansion of the apartment complex.

Lt. Berg of the N. H. National Guard spoke for the Adjutant General in opposition to the variance. It would abutt the Armory and present security problems with children in the neighborhood. Low water pressure already presents limited fire protection.

During the rebuttal period, Atty. Gray refuted the statements

made by the opponents of the variance. He refuted claims of low water pressure by providing a study by Camp-Dresser & McKee. The study shows a decrease in pressure. Atty. Gray stated this was the fault of the city and not his client. In answer to the question why Spinelli Corporation bought the lot in an R-1 zone, he stated, "to build an apartment complex there".

In rebuttal, Atty. Schulte summed up his previous arguments. No hardship in the use of the land, violation of spirit and intent of the ordinance and that neighbors rely on zoning for protection.

The variance was denied by a 3 to 2 vote. Gintautas, Smith, and Proulx voted to deny. Hartnett and Lamoureaux voted to grant the variance. It was resolved that no inherent hardship in the use of the land was shown. The spirit and intent of the ordinance would be violated by extending B-3 zoning into an R-1 zone. If any hardship does exist, it is self-made. The property being bought with the purpose of constructing an apartment complex in an R-1 zone.

Anthony S. Hartnett, Chairman
Zoning Board of Adjustment

Anita L. Munroe, Clerk
Zoning Board of Adjustment

April 19, 1978