

DOVER ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING

Held: October 6, 1983
Council Chambers
Dover, NH

Members Present

Robert Keefe, Chairman
Peter Greenwood
Helen Wersosky
David Bertrand
Frances Menez

Alternates Present

Mardean Frazer
Bill Bickford
Alden Joy

PUBLIC HEARING

Called to order at 7:02 p.m.

H-83-32

McIntosh College Inc, 23 Cataract Avenue, Assessor's Map 13, Lot 23, petitions for a variance from Article XII, 170-53, Table of Use Regulations and/or Article X, 170-40 Non-conforming Uses of Land, to be able to construct 2 dormitories (housing a total of 24 students), a gymnasium and an administration building in a residential zone where the college presently operates.

Mr. Keefe explained the procedures of the meeting.

- Don Mitchell, attorney for McIntosh College, when asked to represent the case by Mr. Keefe stated it was his understanding that this rehearing was for any new evidence that was not available at the time of the rehearing and therefore he will reserve his right to respond on rebuttal.

- Mr. Keefe recognized Mr. Greenwood who stated that Mrs. Wersosky was not at the last hearing. Mr. Greenwood asked Mr. Keefe if this was a rehearing and Mr. Keefe state it was a rehearing but Mrs. Wersosky was not present at the last meeting, an alternate was.

- Mr. Mitchell raised the issue and preceded to present his case. McIntosh is seeking relief from Article 170:40, nonconforming uses and Article 170:11, Table E use and regulations. The first point raised by Mr. Mitchell was the fact that if McIntosh were a non-profit college they would not have to seek a variance but since they are a profit college, privately owned, they must seek a variance.

The school is bounded by the Spaulding Turnpike and they feel that property value to the surrounding area will not diminish but increase and no additional classrooms are being built.

Also granting a variance will benefit public interest. The City has formulated policies to strengthen education and the economic policy of the city includes this goal to be sought.

Granting the variance would rectify an unnecessary hardship because of the impact of the Spaulding Turnpike with its exit and on ramps and the increase impact on the use of this land. Single family dwellings in this area near the turnpike would not be feasible with the noise and traffic.

Granting this variance would do substantial justice. Limiting the college to one building on an eleven acre sight would be an injustice.

It would be an injustice because an approval was initial given. The intended use of this land would not be contrary to the spirit and intent of the zoning ordinance.

- Mr. Keefe recognized Helen Worsosky who asked the distance between the building and the property on Belknap Street.
- Mr. Mitchel stated it would be in excess of the present building.
- Mr. Keefe asked how may parking spaces will there be.
- Mr. Mitchell stated roughly 60 spaces and 48 of which will be there overnight.
- Mr. Keefe stated concern over additional parking for guests (basketball games, dances, etc).
- Mr. Greenwood asked Mr. Mitchel to elaborate on how he feels this proposal pertains to the spirit and intent of the ordinance.
- Mr. Mitchell stated the ordinance is to serve and facilitate public schools and have appropriate use of land. McIntosh's proposal meets these bounds. Zoning ordinances are not adopted every year. According to Belanger vs. City of Nashua, that in respect to the interpretation from the board it must consider the current character of the area. They therefore feel they are within the spirit.
- Mr. Jack Reager represented Maine Post and Beam, Co., who is currently working with McIntosh College on the plan gave a review of the plan and type of structure to the board.

Mr. Greenwood had questions for the Building Inspector, but Mr. Keefe stated he was on vacation.

- Ann Bonoyer, 59 Rutland Street, spoke in favor.
- Henry Tinker, 55 Rutland Street, spoke in favor.
- John Maglaras, 67 Cocheco Street, spoke in favor.
- Eric Plow, 53 Rutland Street, spoke in favor.

- Jack Mettee, 56 Rutland Street, spoke in opposition. He stated he was in opposition and spoke at the August 18, meeting. He stated there was no hardship in the land and no specific on sight characteristics. The Spaulding Turnpike in fact veers away from the site. Land across the turnpike are equally effected. Lots 10 and 12 on Silver Street and several other single family homes near the turnpike suffer the same as McIntosh, but that doesn't prove any hardship on McIntosh's land. Also property values have increased in that area so he can not see where McIntosh has suffered because of the turnpike.

Economic policy, he stated, is not particularly related to the zoning ordinance and therefore he doesn't see how that relates to the spirit and intent of the ordinance as McIntosh claims it does.

Since McIntosh isn't a non-profit school it therefore has nothing to do with the public safety and welfare. When colleges are built in the community that in fact there is a diminish in the property value; and the noise brought on by college students causes an impact.

No injustice since the college still enjoys all the rights as other property owners in the zone.

The issue here is whether or not the development can legally be granted a variance and he believes it cannot; as McIntosh cannot meet the four requirements.

If the board does grant a variance he feels they will set a court precedent and will allow other property owners in the same condition to do the same. This is not the intent of the zoning ordinance and there appears to be no reason to have ordinances if the board can grant a variance in this case.

He then went on to state what options the petitioner has, i.e. changing the ordinance. The zone can be created if McIntosh would go through the proper legal process.

He felt the board should state why or why not they grant a variance. If they had at the last meeting it would have saved alot of time for everyone.

- Thomas Clark, 58 Rutland Street, spoke in opposition.

- Mr. Mitchell spoke in rebuttal. He stated they believe these are the proper legal steps to receive a variance according to the ordinance.

He also stated that topography is not the only measure in determining hardship.

Surrounding McIntosh are not just family dwellings but Spaulding Turnpike and Woodman Park School. McIntosh is in the cradle of the Spaulding Turnpike and that in addition to the turnpike is there a hardship of the land.

In regard to comments about spirit and intent of ordinance, public welfare and appropriate use of land are important issues; even though it is a private institution as are hospital and clinics.

McIntosh College has complied with all procedures. They ask the board to find that the majority of abutters are in favor, and therefore they should find that not granting the variance would be an unnecessary hardship, and it is in the public interest, and it is not contrary to the spirit of the ordinance, and it would be an injustice.

- Jack Mette speaking on rebuttal stated that many areas have single family homes near the Spaulding turnpike and that he cannot distinguish between public interest and McIntosh College.

VARIANCE GRANTED: 3-2 (Greenwood and Wersosky dissenting)

Moved by Keefe, seconded by Bertrand, to adjourn.

Public Hearing adjourned at 8:52 p.m.