

DOVER ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING

Held: February 21, 1985
Council Chambers
Municipal Building
Dover, NH

Members Present: Chair Peter Greenwood; Vice-Chair Alden Joy;
Dennis Ciotti; Geri Weisman; David Bertrand

Also Present: Dick Selleck, Building Inspector

BUSINESS MEETING

Mr. Joy called the meeting to order at 7:10 PM.

Moved by Mr. Ciotti and seconded by Ms. Weisman, the minutes of the previous meeting were unanimously approved.

Discussion of the cases followed.

REGULAR MEETING WITH PUBLIC HEARINGS

Mr. Greenwood called the meeting to order at 7:35 PM. Mr. Greenwood then introduced members of the Board and explained procedures of the public hearing.

H85-01 David & Patsy Schweickart, 55 Cataract Ave., known as Assessor's Map 14, Lot 6, zoned R-12, petition for a variance from Article X, Section 170-39, for relief from frontage and lot area requirements.

Patsy Schweickart explained the request to the Board, stating she is asking for a variance on the same piece of property for the second time, however this second request involved the purchase of 2,000 square feet extra land. She stated this would give her a total of 21,000 square feet. She would divide the property into two lots - Lot A (12,000 square feet of area 100 feet frontage) and Lot B (9,000 square feet). They would build a new home on Lot A and Lot B would contain the little house that is there now. She stated her belief that this new property would be closer to complying to the requirements of the ordinance.

Mrs. Schweickart stated her reasons for feeling the request is justifiable: Hardship - not based on personal or financial hardship but on the fact that they have a small house sitting on a large lot and this house would stay with the property in its present state. She feels that the present configuration of the structure and land presents uniqueness. She believes it was originally intended that another house would be built in that location since the street numbers go from 51 to 55. Intent and spirit of the ordinance: many lots in the neighborhood do not conform to frontage and area requirements. She

(over)

also stated that her proposal would have no adverse effect on the district and there would be no overcrowding in immediate vicinity of their home. She stated that the small house would remain but the lot would be more in conformance with revised proposal. The house they plan to build would be in keeping with other houses in the neighborhood. She also stated she felt it would be an injustice not to grant the request since the burden would just be passed on to someone else if it were sold. She also did not feel that this plan would jeopardize her neighbor's property values. She feels that it is unfair that they are unable to use property that they maintain and pay taxes on.

Ray Proulx of 54 Cataract Ave. spoke in favor of the request. He felt that Mrs. Schweickart stated her reasons very well to the Board and he has no opposition to her request.

Arthur Jordan of 3 Sunset Drive also spoke in favor of the request.

Mrs. Gagnon of 52 Cataract Ave. stated her opposition to the request because there is no hardship involved and the spirit and intent of the ordinance would be broken. There would be no injustice to anyone if variance is not granted.

Bonnie McDevitt of 47 Cataract Ave. spoke in opposition to the request and presented a petition to the Board of people in the neighborhood who are also opposed. Ms. McDevitt felt that the creation of sub-standard house lots could affect property values in the neighborhood and could result in more sub-standard house lots being created in the future. She also stated there is no hardship inherent in the land and no uniqueness since there are several other properties on Cataract Ave. that have very large land area compared to the size of their homes. She feels that Mrs. Schweickart is asking for special privileges. She did not feel the request is in the spirit and intent of the ordinance since granting the request would create two sub-standard because the Schweickarts do not as yet own the additional 2,000 square feet of land. Minimum lot size requirements not only protect the neighborhood but also the city since it allows them to plan for future city services. Ms. McDevitt also quoted an article from 1/24 issue of Foster's where City Manager Robert Steele stated there were sewer problems in this particular area of Dover. Ms. McDevitt stated that there are 64 homes in the neighborhood and if all the individual land were to be subdivided into sub-standard lots the population of the neighborhood would increase by 30%. She submitted that granting this variance would be an injustice to the neighbors and to the City of Dover.

Mrs. Schweickart stated that she had spoken to many neighbors who had signed the original petition who felt that her present plan would be acceptable. Her most immediate neighbors favored her request and those opposed were in the minority. She also stated that she has submitted a sales agreement to

to Mr. Jordan for the purchase of the additional land contingent upon approval of the request.

Ray Proulx, 54 Cataract Ave. felt that when the area was rezoned to R-12 they never specifically covered Cataract Ave. and other roads in the area. He also felt that it would be an injustice to deny the request and that the new home would blend in very well in the neighborhood.

Mrs. McDevitt - There is no documentation of what Mrs. Schweickart stated about the majority of the neighbors being in favor of the plan.

In response to a question from Mr. Ciotti, Mrs. Schweickart stated they had purchased their home in 1980.

At this point, Mr. Greenwood declared the public hearing closed and Board discussion of the case followed.

Ms. Weisman made a motion that this request be denied based primarily on the fact that there is no hardship in this property.

Mr. Ciotti seconded the motion.

Request for variance denied 3-2 (Weisman, Ciotti, Greenwood)

H85-02 McManus and Johnson, 52 Old Rochester Rd. (Applicant: Ernest Carrier), known as Assessor's Map 40, Lot 25, zoned B-3, petitions for a special exception as provided in Article VI, Section 170-19, to construct 28 multi-family units at 52 Old Rochester Rd.

Mr. Greenwood stated that Mr. Ciotti is associated with the real estate company dealing with this property and for this reason, if someone objects to his hearing this case, Mr. Ciotti would step down.

Terrence Dunn, 15 Lakewood Drive, wondered if Mr. Ciotti could make impartial decision on this case and suggested that for this reason he should step down.

Attorney Peter Loughlin of Portsmouth, representing Ernest Carrier, explained the petition to the Board. He passed out copies of the plans to Board members and also submitted an article about the architect who designed this project that appeared in the Boston Globe approximately three weeks ago. Mr. Loughlin explained that they were originally planning to build 28 units, but now only plan to build 21 units. Mr. Loughlin feels that this request meets the requirements for a special exception to be granted. Given the status of the neighborhood, given that there is a mixture on the Old Rochester Road, multi-family units would be considered appropriate use. One of the major concerns of people in this area was

traffic and that is why we had a traffic study done. The study was done by Kimball/Chase and there is a representative here to answer any questions the Board might have. Based on projections in the study, there would be 5.2 "trip ins" per unit per day (21 x 5.2). Over a 24 hour period there would be 110 trip ins (coming and going). This would be a 1.8% increase in traffic on Old Rochester Rd. which does not constitute a nuisance. Mr. Loughlin submitted some pictures to the Board which show some of the mixed uses in this area.

Mr. Greenwood stated that the Board did not have a chance to review the traffic study and would like the person who conducted the study to go through it.

The Representative from Kimball/Chase explained that the study was conducted to project the traffic that would be entering and leaving and its impact on the Old Rochester Rd. traffic. They took traffic counts at the proposed driveway location on the Old Rochester Rd. and also at the intersection of the Somersworth Road. The trip generation would be 5.2 vehicles per day per unit. It was projected that the increase in traffic on the Old Rochester Road would be somewhat less than 2%. The existing traffic on Old Rochester Road is approximately 4,000 vehicles per day. Level of service calculation (how long it takes to get from driveway of sub-division to intersection) was projected as "A" in the study (A - little or no delay). The recommendations of the study are that the proposed location of the driveway is the best in terms of safety and delay.

Mr. Bertrand questioned whether the study took into consideration the traffic going south onto the Spaulding Turnpike.

The Rep. replied that there was a count done by Vanasse/Hagen and we did do a percent increase at that intersection which showed there would be less than 1% increase during peak hours. He stated that the count by Vanasse/Hagen was done in July, 1983.

In response to a question from Mr. Joy the Rep. explained that "Stopping Sight Distance" is the distance that a person going at a certain speed needs to recognize an obstruction to come to a complete stop.

In response to a question from Ms. Weisman, the Rep. stated that the speed limit along this road is 35 mph.

In response to a question from Mr. Joy, the Rep. stated he did not know the definition of decision sight distance.

Ms. Weisman stated that this area of Dover is certainly likely to grow and there are many permitted uses for this area that would not need a variance. She suggested that he illustrate the number of vehicle trips would be for some of the other uses. Some examples of other uses for this property were car dealership, offices, or other such as Grossman's or Happy Days.

Ms. Weisman questioned if it would be safe to say that if the property were developed into offices or used car sales, for

example, that the average trips generated would be more than a typical 21 unit residential.

Mr. Loughlin stated that many businesses that could go in there would generate more traffic than the 21 units would.

In response to a question from Mr. Bertrand, Mr. Loughlin stated that the building presently on the lot will be used for office space.

Mr. Greenwood asked if it would be correct to say that the traffic impact has been assessed on Old Rochester Rd. and there would be no undue congestion arising from trip ins generated from this project.

The Rep. from Kimball/Chase replied that this is correct.

Mr. Greenwood stated his concern about the intersection on Route 16 near Strafford Farms.

The Rep. explained that the existing traffic conditions would change very little. There are approximately 4,000 vehicles per day that travel this road.

Mr. Greenwood asked if it is also his opinion that there is adequate line of sight to stop for people coming around the corner.

The response was yes.

Mr. Joy stated that that wasn't stated in the study. What was presented is a projection and analysis of traffic which is only traffic loading onto two-lane highway.

Anthony McManus, 249 Washington St., spoke in favor of the request stating that he and Attorney Johnson prefer that the property be maintained as residential rather than business use. This being a B-3 zone, he stated that a wide variety of uses are allowed without requiring a variance. He said that over a ten year period they never encountered any problems getting in and out on that road. He also feels that the 21 units are appropriate and would have no adverse effect on the neighborhood.

Terrence Dunn, 15 Lakewood Drive, spoke in opposition to the request. Mr. Dunn had objection to some of the figures stated in the traffic study. He did not agree with all of them. He also disagreed with some of the property measurements on the map. He thinks that a request to construct something with such high density is unreasonable. The property lends itself to multiple family dwelling, however 21 units are too many for the area.

Mr. Greenwood stated that a petition was presented to the Board before the meeting stating that because of traffic and inadequate water pressure the undersigned property owners and tax

payers of the City of Dover request the denial of a special exception to construct 28 multi-family units on Old Rochester Rd. The petition was signed by three pages of names.

Dave Bennett, 1 Strafford Rd., spoke in opposition to the request stating that he walks along the road everyday and feels the traffic along this road is very dangerous. He feels that putting these units in on Old Rochester Road would create a hazard.

Andy Galt, Central Ave., had a question as to whether certification by City Engineer and Public Works Director for the water and sewerage in the area had been received. Also, Mr. Galt had a question about how many cars would be travelling this road during peak hours. Mr. Galt also expressed reservations regarding the traffic situation. Regarding the study that was done in 1983 at the intersection of Rochester and Somersworth Roads, Mr. Galt expressed reservations since the study was done before the construction and completion of Shaw's and Shop 'n Save, also pre-Cranberries Restaurant. Also it was prior to Somersworth's approval of the DeMoulas project and prior to City of Rochester's approval of apartment units on Route 16B. Mr. Galt felt that this project might cause hardship to the general neighborhood and in his opinion it is not in the best interest of the public.

Aldo Fantini, 7 Strafford Rd., spoke in opposition to the request because there is already a high rate of traffic in the area.

Joyce Dunn, 54 Old Rochester Rd., spoke in opposition to the request because of traffic problems and she feels it would be obnoxious to the people in the neighborhood.

Andy Galt, Central Ave., added that if there still is going to be an office at that location, it would have to be figured into the figures in the traffic study.

Mr. Greenwood asked what dimensional requirements would be applicable in a B-3 zone regarding density, size of space, etc.

Mr. Selleck replied there is nothing applicable to density in a B-3 zone for a special exception.

Mr. Loughlin added that this is not an uncommon density in any large municipality and he feels that it is desirable and in the best interest of the City of Dover for it to be used for 21 multi-family units. He also stated that the traffic study shows that increase in traffic would be minimal and respectfully suggested that all the requirements for a special exception had been met.

At this point, Mr. Greenwood declared the public hearing closed. Board discussion of the case followed.

Ms. Weisman moved that special exception be granted once site plan conditions are met stating she feels all criteria that they have to consider have been met.

David Bertrand seconded the motion.

The Board failed to grant the special exception 2-2 (Bertrand, Joy).

H85-03 Mary M. White and James J. & Evelyn Mulligan, Henry Law Ave. and Back Road (Applicant: Charles B. Mutrie), known as Assessor's Map 21, Lot 26, zoned R-12, petitions for a variance from Article IV, Section 170-11, to construct 72 multi-family units in an R-12 zone.

Charles Mutrie explained that he is requesting this variance as part of a purchase and sales agreement. The property consists of 30 acres and the proposal is for twelve 6-unit clusters on a single lot (72 residential units). There would also be a recreational area for residents of 72 units and surrounding neighbors. The units would encompass approximately 16% of the site. Mr. Mutrie presented the following reasons in support of the application: Hardship exists in the sense that a sub-division completed in adherence to the minimum specifications in an R-12 zone would have a deliterious effect on the property since 38% of the land would be impacted by road construction and building site preparation. There is a sloping terrain and if the land were sub-divided it would be much more detrimental than my proposal. Mr. Mutrie also stated he feels it is keeping with the spirit and intent of the ordinance. There would be no dimunition of property values. Also, principal abutters do not object to this proposal.

A petition was submitted that was signed by 17 abutters who approve topography of site and feel it would enhance property values.

Mr. Greenwood asked Mr. Selleck if there is a provision in the zoning code for clustering. Mr. Selleck replied that we have considered clustering before. What is being requested here is a variance for clustering in an R-12 zone.

James Mulligan of Natick, MA spoke in favor of the request. He feels that Mr. Mutrie's ideas for this property are very good.

Mary White, 136 Court St., spoke in favor of the request and stated that these plans meet her approval and there would be very little impact on any of the present houses in the area.

Edward Mulligan, Mt. Pleasant St., spoke in favor of the request stating that he goes along with the clusters because they preserve the environment.

Frank Mulligan, Back Rd., also spoke in favor of the request because he likes the idea of clusters.

Stan Wilson, 29 Tennyson Ave., spoke in opposition to the request and presented a petition that 40 people had signed. He stated that they would like a couple of studies to be done first.

He stated that there is a drainage problem in the area and they have lakes in their backyards 7 months out of the year. This is a hardship in this area. They would like studies to be done on sewer impact and on traffic. He stated that they are not for or against the plan at this time, but simply would want some studies done and to have a chance to talk about it.

Richard Routhier spoke in opposition. His mother lives in the area. He stated that the added traffic would make her life impossible and also that there has always been a drainage problem in the area. He also said he fails to see any hardship in this case.

Pat Berry, whose mother is an abuttor, asked Mr. Mutrie what the prices of these homes would be. He replied the price range would be between \$65,000 and \$75,000.

Stan Wilson, 29 Tennyson Ave., request that this not be voted on tonight. They would like to meet with the developer, discuss concerns and stipulations, etc.

Doria Burns, 20 Hanson Ave., spoke in opposition because of drainage problems.

Kevin Mone, 12 Hanson Ave., stated he had received many calls from people in the area who are opposed. They are not in favor of density because they cannot get in and out of Henry Law Ave. now. Also, they feel a one-mouth entrance could be a bad idea for safety reasons. He does not feel the variance for cluster housing should be granted.

Helen Routhier, Back Rd., spoke in opposition to the request because of traffic and water and drainage problems.

James O'Neil, Henry Law Ave., spoke in opposition to the request because of traffic problems on Henry Law Ave. stating that the roads must be corrected before any more traffic is added.

Jacqueline Taylor, 16 Hanson Ave., spoke in opposition because of drainage problems.

Mrs. Berry asked Mr. Mutrie how close to scale his drawing is. Mr. Mutrie replied that it is on scale.

Mr. Mutrie stated that the issue tonight is just whether we can use the cluster concept. If it is approved, we would have to go through all sorts of sub-division studies, etc. Mr. Mutrie stated that they wish to develop the property properly and if variance is granted they would have to have Fire Chief's approval.

Stan Wilson, 29 Tennyson Ave., stated he did not feel maps were true to scale. He stated that if variance is approved and they made changes afterward, the abuttors might never get to see them.

Kevin Mone, Hanson Ave., stated that when City rezoned this area in 1977 they would have zoned it multi-family if they felt it was appropriate.

Gerry Chasse, 27 Tennyson Ave., spoke in opposition because of water problems in the area.

Mr. Greenwood declared the public hearing closed at this point and Board discussion followed.

David Bertrand made a motion to deny this variance because it is not in the spirit and intent of the ordinance and there is no hardship involved.

Mr. Joy seconded the motion.

Variance denied 5-0.

H85-04 Roman Catholic Bishop of Manchester (Dover Catholic School), 120-130 Central Ave. (Applicant: Strafford Guidance Center, Inc.), known as Assessor's Map 15, Lot 105, zoned RM-10, petitions for a variance from Article 170, Section 16-C, to allow office use in an RM-10 zone.

Attorney William Shaheen of Dover, representing Strafford Guidance Center, Inc., explained the request to the Board. He stated that the building was originally built to house nuns who taught at the school. Because of the size of the building, there is a hardship involved. It could only be used for a dormitory or offices. It would be impossible to convert to a 1-4 family dwelling.

In reply to a question of Mr. Bertrand, Mr. Shaheen replied the staff would consist of administrative staff, and groups of people would come in during the day for therapy, etc. but noone would be staying in the building overnight.

Raymond Bilodeau, 134 Central Ave., spoke in favor of the request. He did not feel this would affect traffic at all and that office space would be the best solution for the use of this building.

Dan Gabriel, realtor handling the property, spoke in favor of the request.

Tom Maynard, Executive Director of Strafford Guidance, spoke in favor of the request.

No one spoke in opposition to the request.

Dennis Ciotti made a motion to grant the request because of hardship and because the request is in the spirit and intent of the ordinance.

Ms. Weisman seconded the motion.

Variance granted - 5-0.

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