

DOVER ZONING BOARD OF ADJUSTMENT

MINUTES OF MEETING

Held: Thursday, June 20, 1985
Municipal Building, Dover, NH

Present: Alden Joy, Vice Chairman; David Bertrand
Alternates Mardean Frazer; Ann Turner; Bill Hunt

Other: Dick Selleck, Building Inspector

BUSINESS MEETING

Meeting was called to order at 7:10 PM by David Bertrand.
Discussion of cases followed.

REGULAR MEETING WITH PUBLIC HEARINGS

The meeting was called to order at 7:35 by Vice Chairman Alden Joy. Mr. Joy explained the procedures of public hearing and introduced Board members.

H85-25 George P. Demosthenes, Drew Road, known as Assessor's Map I, Lot 25C, zoned R-40, petitions for a variance from Article V, Section 170-16, for relief from frontage requirements.

Attorney Anthony Hartnett, representing Mr. Demosthenes, explained the request to the Board. He stated they are asking for relief in two areas and would like them to be voted on separately. First they are asking for relief from the requirement of 150' frontage on a public right of way. Second, they are asking for relief from the requirement of 150' frontage on a private right of way since some of the lots in the development and undersized (lots 1, 3, 4, 5, 8, 10).

He stated that Mr. Demosthenes had bought the property in 1973 and it was undeveloped until 1983 when he petitioned the Planning Board to sub-divide into 4 lots. There is a total of 22 acres including the lots that were sub-divided in 1983.

Attorney Hartnett stated that R-40 zones are solely for single family residence, and this is what the property would be used for. There is hardship in the property because of the peculiar shape and location. Unless access is allowed on this road, only one or two more of the lots could be used. There would be a tremendous reduction in usefulness of the property. Also, when the economics of developing are such an oppressive burden financially, you have a hardship. Attorney Hartnett quoted a letter from Tilson Warren Paving Co. stating that if entire right of way is gravel with

(over)

granite curbing, the cost would be over a quarter of a million dollars.

The request is in the spirit and intent of the ordinance since an R-40 zone, as it applies to this piece of property, is to encourage single family house lots. Mr. Demosthenes would prefer to keep this property natural with it's rustic atmosphere rather than an asphalt road. The tax revenues generated would be a benefit to the City. The City would not be required to maintain this property - no sewer and water, snowplowing, etc. The owners would be responsible for this. The road would be up to city specifications in all other respects. It could be put in the property owner's deeds that they realize there would be no city services. If improvements are made in the future, it would be their responsibility financially.

Attorney Hartnett also stated there would be no diminution of property values, in fact it could keep the property values up.

David Bertrand questioned whether the existing 600' of driveway would be updated with crushed gravel.

Mr. Demosthenes replied that it would be and that he is also willing to work with the Planning Board regarding drainage requirements.

Ann Turner asked for clarification regarding the statement that these people would not have utilities.

Mr. Hartnett explained that what was meant by this were "city services", did not mean electricity.

James McAdams wished to make some remarks (cannot be construed as either pro or con). He stated that as a result of our zoning and zoning processes over the years we have had many changes made. The rules are always changing. We sometimes hear from people that they feel we are confiscating the use of their land and still expect them to pay taxes on it. Mr. McAdams suggested that perhaps the Zoning Board should address an inquiry to the Planning Board to see if they cannot relieve this problem.

Arnold Peters, stated that when they addressed this change of ordinance it was not his intent to cause any hardship to developers. It was to give our Boards the opportunity to address each situation as it comes before them.

George Maglaras stated that if the Zoning Board had any questions regarding the Planning Board's position on private roads to let him know.

Alden Joy read a letter from Gregory Koutrelakos of GK Realty to Attorney Hartnett which states that it is his opinion that granting this road waiver would cause no diminution of surrounding property values, but in fact would provide a more natural country atmosphere and may very well enhance property values.

Alden Joy also read a letter from Katherine Shea stating her strenuous objection to the proposed sub-division because of traffic problems, problems such as garbage, school buses, and future maintenance and also that the turnaround would not meet city specifications and could create future problems for fire trucks, plows, etc.

Attorney Hartnett rebutted that this would be a quality development and the homes would sell for approximately \$100,000. He stated that traffic would not change on this road whether it is gravel or asphalt.

Mrs. Johnson, Drew Road, stated her opposition to the request.

George Maglaras, Cocheco St., Chairman of the Planning Board, stated that over the past 6 months the Planning Board has discussed the inclusion in R-40 and R-20 zones of home owner's associations (single family lots off private driveways where owners control costs of snow removal, garbage disposal, etc.) where people in development are responsible for services. The Planning Board is concerned that the City, after a period of time, would have to accept the responsibility of the road, either to upgrade it, pave, collect garbage, etc. At present, state law allows home owner's associations. The Planning Board decided that it feels that home owner's associations are something the City would like to see, however they are concerned that if they are allowed the City would be overrun with developments. We have not done anything at the present time to allow them to exist. Mr. Maglaras stated that these are not his personal opinions, but those of the Planning Board.

Mardean Frazer asked if there is a law that says they cannot exist.

Mr. Maglaras stated that if they are granted their tax assessments should be lower.

David Bertrand questioned whether stating in the deed that owners do not receive city services would be binding.

Mr. Maglaras replied that if it were stated in the deed that owners do not receive city services, the City Council in the future would have to have the will power not to go back on it.

In reply to a question from Ann Turner, Mr. Maglaras replied that the Zoning Board should only be voting on frontage requirements. Sub-divisions and site review are handled through the Planning Board.

Mr. Hartnett stated that they could put in deed a condition that if the owners try to petition the City Council for services there would be some potential penalty.

Alden Joy closed the public hearing at this time. Board discussion of the case followed.

David Bertrand made a motion to grant the request for relief of frontage requirements for a public right of way because of hardship; within the spirit and intent of the ordinance; no diminution of property values; and it would be an injustice not to grant request.

Mardean Frazer seconded the motion.

First part of variance granted - 4-1 (Hunt).

Mardean Frazer made a motion to deny the request for relief from frontage requirements on a private right of way stating it is not in the spirit and intent of the ordinance and there is no hardship involved.

Ann Turner seconded the motion.

Second part of variance denied - 5-0.

H85-27 Wayne M. & Deirdre C. Estes, Rte. 108, Northerly Side, known as Assessor's Map H, Lot 6, zoned R-20, petition for a variance from Article V, Section 170-16 for relief from frontage requirements.

Robert Seaver, speaking for Mr. Estes, explained the petition to the Board. He stated the parcel of land is located on Rte. 108, consists of 7½ acres, 2 right of ways. He stated that there is a hardship because there is a very small amount of frontage for relatively large land area and it would be very hard to develop. He stated there would be no adverse effect on property values. He also stated he felt it would be an injustice not to grant the request.

Mr. Joy questioned whether there is a shared driveway in the plans.

Mr. Seaver stated the lot would be divided down the middle so that each lot would have frontage and the two lots would share a driveway and that the driveway would split about 150' back which would minimize the traffic.

Mr. Seaver clarified for the Board where the entrances to the property are. He stated they want to sub-divide into 4 lots, all being single family houses.

Paul Allen, 48 Bellamy Road, spoke in opposition to the request because the area is very swampy and he feels that water table could be affected.

Mr. Joy stated that if variance is granted, water problems would be the concern of the Planning Board when they do site review.

Deena Peschke, 62 Bellamy Road, spoke in opposition to the request on "selfish grounds". She stated that she bought her home because she likes the woods.

Alden Joy closed the public hearing at this time. Board discussion of the case followed.

Alden Joy made a motion to grant the request stating it is in the spirit and intent of the ordinance, there is hardship involved and he feels it would be an injustice not to grant the variance.

David Bertrand seconded the motion.

Variance granted - 5-0.

H85-28 Forbes & Parks, 49 Forest St., known as Assessor's Map 26, Lot 24, zoned RM-10, petition for a variance from Article II, Section 170-6, for relief from definition of a lot, one principle building per lot.

Joe Parks, Long Hill Road, explained the request to the Board. He stated that this zone does allow multiple unit dwellings but because of architecture of present building, they feel that aesthetically they feel it to be most desirable to have two buildings. He stated that the lot is approximately 125' wide and the existing house sits on a corner of the lot, approximately 25'. He stated they feel that to build a separate building would be of benefit to everyone concerned, and would be more of an asset to the neighborhood.

Alden Joy stated that the present house is a non-conforming structure because the sideyard setback does not meet the requirements and they would have to apply for an additional variance to add to a non-conforming structure.

Mr. Parks stated they were unaware of this.

No one spoke in favor of the request.

Frank Truman, 52 Forest Street, spoke in opposition to the request, stating he feels there would be a parking problem.

Maurice Turgeon, 59 Forest Street, spoke in opposition because it is a dead end street and there could be parking problems.

Thomas Haynes, 41 Forest Street, spoke in opposition for similar reasons.

Herb Norman, 53 Forest Street, also stated his opposition to the request.

Kerry Forbes, Long Hill Rd., stated the lot is 125' wide and there is room for 12 parking spaces.

Mr. Parks stated that the lot is 100' deep and there is adequate place for parking.

Mr. Joy closed the public hearing at this time. Board discussion of the request followed.

David Bertrand made a motion to deny the request because it is not in the spirit and intent of the ordinance.

Mardean Frazer seconded the motion.

Variance denied - 4-1 (Bertrand, Turner, Hunt, Frazer)

H85-29 Samuel & James Tamposi, 3 Plaza Drive (Applicant: Richard P. Millette and Associates), known as Assessor's Map D, Lot 2A (portion), zoned B-3, petitions for a variance from Article VII, Section 170-28.2 for relief from Growth Management Ordinance which prohibits increased vehicular loading at the Weeks Traffic Circle and for a special exception from Article VII, Section 170-27(3) to make improvements in the Conservation District.

Attorney Joseph Milimet of Manchester, representing Mr. Tamposi, explained the request to the Board. He stated that the lot consists of 24 to 25 acres of land, and this request deals only with one acre. He stated that this is a classic case for a variance since there is unreasonable hardship in the land. According to the traffic study that was done, there would only be an increase of .4 of 1% in traffic. He explained that granting variance would allow one of the tenants to occupy entire building instead of part of it, which would have no effect on traffic. The Department of Employment Security would occupy new building, along with another office.

The traffic study which was submitted with the request was explained at this time. Much discussion followed.

Alden Joy stated that the traffic study, which reflected figures from August, 1984, do not reflect Demoulas' opening next month.

Mr. Samuel Tamposi spoke in favor of the request as did Mr. James Tamposi.

Arnold Peters stated that traffic study being done by the state would be ready in about a year.

George Maglaras stated the position of the Planning Board regarding the request for a special exception to make improvements in the Conservation District is that they have no objection to the lot extending into the Conservation District. He also stated that the Growth Management Ordinance runs out in August and no decision has been made whether or not to continue with it.

Alden Joy asked whether the state has any plans for changing the access stipulations in the future.

George Maglaras stated that is what they're waiting to see.

Harold Preston, member of Planning Board and also on Conservation Commission stated that they feel that anything they would do regarding drainage would be an improvement.

Alden Joy closed the public hearing at this time.

Mardean Frazer made a motion to grant the request stating it would be an injustice not to and it is in the spirit and intent of the ordinance as originally intended.

Alden Joy seconded the motion.

Variance denied - 3-2 (Bertrand, Hunt, Turner)

H85-30 Helen C. Phipps, 374 Sixth Street (Applicant: George Gauthier), known as Assessor's Map E, Lot 26-A, zoned R-40, petitions for a variance from Article IV, Section 170-12 for relief from use regulations which prohibit a restaurant in an R-40 zone.

Attorney James Schulte of Dover, representing the petitioner, explained the request to the Board. He stated the hardship lies with the buildings - the property is too large and impractical for a family, yet too small for a working farm. He stated they intend to use the house and part of the addition for the restaurant and kitchen would be in adjoining building. Parking would be screened from the road. Would be in spirit and intent of the ordinance. There would be no adverse effect on neighboring property at all. He stated that this area of Sixth Street should be able to handle traffic flow (which could be about 150 cars per day).

David Bertrand asked if this house is on the Historical Register.

Attorney Schulte replied that it should qualify, but they have not applied for it yet.

Mrs. Priscilla Smith, realtor with Landmark Associates, stated she has been working with Mrs. Phipps for a long time trying to sell the house. It was also listed with Multiple Listing Service, which includes about 196 agencies. It has been shown 17 times. It was always either too big or too small. It has been difficult finding the right buyer for the property.

Helen Phipps, 374 Sixth Street, spoke in favor stating it is a beautiful piece of property, and these people wish to preserve it. She feels it would be an asset to the people of Dover.

Gary Phipps of York spoke in favor, stating this area is zoned for many other uses but this intended use would be more favorable than many other things that could go in here. Would add culture to Dover.

Earl Goodwin, 36 Arch Street, spoke in favor, stating it would be a betterment to the City.

Attorney Schulte read a letter written by Timothy Sheldon to George Gauthier stating his approval of the request, however informing Mr. Gauthier he must request a variance for proposed use.

Janice Stinglen, Sixth Street, spoke in opposition to the request. She lives right next door and has small children and is concerned about traffic. She also expressed concern about noise and stated if request is granted she would like to see shrubbery put in as a divider. Also concerned about future sale of their property.

Arnold Peters also spoke in favor of the request. He stated there is a legitimate hardship in this case. Also, proposed buyers would preserve the property.

Alden Joy asked if the 2 apartments in the house would continue to be used.

Attorney Schulte stated that one of the principals would be living there with his wife and child and the other apartment would be used by a maintenance person.

Alden Joy closed the public hearing at this time.

David Bertrand made a motion to grant the request with stipulation that no migrant residents be allowed to stay on property.

Ann Turner seconded the motion.

Mardean Frazer stated her approval of the request, although she was concerned about diminution of property values.

Variance granted - 5-0.

Meeting adjourned at 11:30 PM.