

**DOVER ZONING BOARD OF ADJUSTMENT  
MINUTES OF MEETING**

Held: Thursday, September 19, 1985  
Municipal Building  
Council Chambers  
Dover, NH 03820

**MEMBERS PRESENT:** Alden Joy, - Chairman, William Hunt, David Bertrand, Dennis Ciotti, Mardean Frazer, Ann Turner - Alternate, John Torr - Alternate.

**OTHERS:** Richard Selleck, Zoning Officer and Berrie Donovan Recording Secretary.

**BUSINESS MEETING:**

Mr. Joy called the business meeting to order at 7:05 P.M.

Discussion centered on the Berthieaume item scheduled for the evening and the fact that Mr. Berthieaume has received permission from the City Council to relocate an easement on his property and the Conservation Commission has submitted a letter stating their consent for him to encroach in the Conservation District on his property.

**PUBLIC HEARINGS:**

Mr. Joy called the regular session of the Zoning Board of Adjustment meeting to order at 7:32 P.M.

**Rehearing on H-85-31: Eunice Tapscott, Middle Road, also known as Assessor's Map M, Lot 5, zoned R-40, requesting a variance from Article V, Section 170-16, for relief from frontage requirements.**

Mr. Mark Wentworth, Middle Road, explained the minor subdivision of land which would leave one lot with 21 feet of road frontage. He brought the plan up to the Board Members and discussion followed among them to clarify the applicant's position.

Jack Dolan, Attorney for Elliott Rose Company of Dover and Craig Williams explained his position and that of his client's to be one of requesting a rehearing based on the fact that the original application was incomplete and the Board's original decision was based solely on plans. He stated his position that the land in question is suitable for the uses the zone intends it to be used for and that hardship of the land owing to special conditions inherent in the land cannot be found. He paralleled this case to the Governor's Island case in which no hardship of the land was determined by New Hampshire Supreme Court.

Public hearing closed.

Discussion among the Board members followed.

Mr. Bertrand moved to grant the variance with the 21 feet of frontage as defined. Mr. Ciotti seconded.

Vote: 3-2 to deny the variance (Hunt, Frazer, Joy voted to deny; Ciotti Bertrand voted to grant)

Mr. Hunt mentioned that his reservation is that the non-conforming lot should conform as much as possible, perhaps to the point of decreasing the frontage of the conforming lot to decrease the non-conformity of the remaining lot.

Other Board members concurred.

Mr. Joy asked Mr. Ciotti if he would like to withdraw his second of the motion and stipulate that the second state that lot number one would be reduced to the minimum frontage allowed and the remaining land would go to lot number two.

Mr. Ciotti replied in the affirmative.

Vote: 4-1 to grant the variance (Joy denied)

**H85-40 Robert & Jeannine Crouch, Long Hill Road, also known as Assessor's map A, lot 43A, zoned R-40, request a variance from Article II, Section 170-6B, for relief from the requirements of a mobile hom sub-division.**

Stephen Dibble, Attorney for the Crouches, explained that in subdividing, one substandard lot would be created. He noted that an ordinance must not put unreasonable burden on the owner, and that in this case the real hardship is in the slope of the land.

**Opposed:** Chris Calivas, Attorney representing Norman and Wendy Brown who are abutters, stated that the ordinance was set up for the very reason of restricting mobile homes in new areas where they never were before. He further stated that the land can be properly utilized and no hardship prevails; that a conventional home would be suited for the property.

**Rebuttal:** Attorney Dibble stated that mobile home owners are being discriminated against, and that was not the intent of the City Council when they adopted the ordinance.

**Rebuttal:** Attorney Calivas stated that we are not here to second guess the City Council, that the land is just not large enough to subdivide, that surrounding property values decrease.

Public Hearing closed.

Discussion by the Board followed.

Mardean Frazer moved to deny based on no hardship of the land. Dave Bertrand seconded.

Vote: 5-0 to deny

**H85-48** Strafford Medical Associates, Ascension Ave., also known as Assessor's map 28, lot 37, zoned R-12, requests a variance from Article IV, Section 70-12 and Article V, Section 170-16 to construct 180 unit apartment complex for the elderly in an R-12 zone and relief from dimensional requirements.

Gerald Taube, Attorney for the applicant, presented to the Board two letters of support for the project, one from Dr. Vittands and the other from Wentworth Douglas Hospital. He stated that the hardship of the land exists in the slope, that the project is in the main-stream, is a benefit to the public and in keeping with the spirit and intent of the ordinance.

**In Favor:** Sam Carlo spoke in favor of the project.

Mrs. Carlo, Central Avenue, spoke in favor of the project.

**Opposed:** J. Andrew Galt, Central Avenue, spoke against the project for those who were not able to attend the meeting. He noted that the Board just denied a variance for a doctor's office in the same area, that the height of the building is imposing and detracts from the single family homes in the area, that the impact on the sewer would be devastating and that the increase in traffic would reflect on property values.

**Opposed:** Marcia Tiberio, Varney St., spoke against the project stating that the natural beauty of the area was worth preserving and single family homes would be in keeping with the ordinance.

**Rebuttal:** Attorney Taube noted that road improvements, signalling at the intersection and other improvements would occur because of the project. He stated that the traffic would not be significantly increased because of the age of the residents and a mini bus would be operating to alleviate much of the traffic otherwise created by that increase in the population.

**Rebuttal:** Mr. Galt stated that the uniqueness of the land is not a hardship and that several single family dwellings have been constructed on the westerly side of Garrison Hill. He noted that road improvements are premature, that none are in the works for the City as yet.

**Rebuttal:** Attorney Taube noted that the improvements on Old Rollinsford Road would be done at the expense of the Hospital with the approval of the City.

Public Hearing Closed.

Discussion of the issue followed by Board members.

Mr. Joy moved to deny the variance due to the fact that there is no hardship of the land and that it is not in the spirit of the ordinance. Mardean Frazer seconded.

Vote: 5-0 to deny

**H85-49** Albert Berthiaume, Boston Harbor Road, also known as Assessor's map 7, lot 19A, zoned R-20, requests a variance from Article V, Section 170-16, for relief from setback requirements, and a special exception from Article VII, Section 170.27c(2) to construct a single family dwelling in an R-20 zone in the Conservation District.

Albert Bertiaume, Rainbow Drive in Loudon New Hampshire, explained his lot as a buildable lot now that the City Council has voted to relocate a sewer easement and the Conservation Commission has allowed encroachment in the Conservation District.

**Opposed:** Ken Gallant, Boston Harbor Road, inquired as to setbacks and the amount of land Mr. Bertiaume is building on.

Mr. Selleck noted that the lot is grandfathered.

Mr. Gallant noted that most of the homes in the area are 160 feet from the water and Mr. Berthiaume's plan shows that a portion of his land is submerged.

Mr. Bertiaume noted that this was due to erosion and can be filled in.

Mr. Joy read the letters from the City Council with regard to the easement, and from the Dover Conservation Commission with regard to the Conservation District.

Mr. Ciotti inquired as to whether Mr. Bertiaume has a letter from the State Wetlands Board, to which Mr. Berthiaume replied in the negative.

Mr. Selleck noted that he is not now encroaching in the Wetlands, but if he intends to he must get a permit from the City Clerk.

**Opposed:** Thomas Casey, 49 Boston Harbor Road, noted that the applicant is building in a flood zone and that increased traffic on Boston Harbor road will be detrimental.

Public Hearing closed.

Mr. Bertrand motioned to grant the variance as presented. Mr. Ciotti seconded.

Vote: 5-0 to grant.

Mr. Joy stated that he would not vote in the following item; Mrs. Turner sat in as a voting member.

**H85-50** Raymond H. Bardwell, 76A Sixth St., also known as Assessor's map 31, lot 103, zoned RM-8, requests a variance from Article X, Section 170-40, to expand a pre-existing, non-conforming use in an RM-8 zone.

Joe Kennick, contractor from Exeter, explained that the land was originally zoned I when Jimbo's Auto Body first established their business in the area. Now they would like to add an addition to the building and it is non-conforming. He explained that the Conservation Commission has approved their encroachment in the Conservation District (Berry Brook), and that the new addition will be painted white along with the old part of the building which is now blue.

**Opposed:** Judith Chapman, Sixth Street, noted that the traffic and noise will increase with the addition, and that right now a fan blows exhaust from the paint fumes directly at her house. She feels property values will be lowered.

**Rebuttal:** Joe Kennick explained that the exhaust fumes would be aimed elsewhere and he presented pictures to the Board showing the vegetation between Jimbo's and Mrs. Chapman's property. He noted that the business is a pre-existing, non-conforming use so it will stay.

**Rebuttal:** Mrs. Chapman noted that the area is residentially zoned and the applicant is doubling the size of a non-conforming use.

Mr. Joy read the letters from the Planning Board and Conservation Commission with regard to the Conservation District.

Public Hearing Closed.

Mr. Bertrand motioned to deny the variance based on the fact that they are enlarging a non-conforming use. Mardean Frazer seconded.

Vote: 5-0 to deny

**H85-51:** Richard and Suzanne Valliere, corner Tolend Road and Upper Factory Road, also known as Assessor's map E, lot 56, zoned R-40, requests a variance from Article V, Section 170-16, for relief from setback requirements.

Richard Valliere explained his proposal to build a barn for his horses 45 feet from the street and 90 feet from his neighbor.

No one spoke for or against the proposal.

Mr. Joy moved to grant the variance, Mr. Hunt seconded.

Vote: 5-0 granted.

H85-52 Bill and Ruth Wilson, 4 New Ballamy Lane, also known as Assessor's map L, lot 27B, zoned R-20, request a ruling on an administrative decision by the Building Inspector on definition of Antique Dealer under Customary Home Occupation - Article 170, Section 6.

Mr. Wilson explained that a clarification of the term Antique Dealer is necessary in order for him to start a business from his home in that capacity.

Mr. Selleck concurred, noting that several people have asked for clarification of the term. He noted that his interpretation of the term indicated retail sales, which are not permitted from the home.

Discussion followed amongst members of the Board.

Mr. Joy moved that Antique Dealer is a Customary Home Occupation subject to all other considerations. Mardean Frazer seconded.

Vote: 5-0 approve

H85-52A Bill and Ruth Wilson, 4 New Bellamy Lane, also known as Assessor's map L, lot 27B, zoned R-20, request a special exception from Article VI, Section 170-25, to operate a farm stand in an R-20 zone and also request a variance from 170-6 (6) to have an additional 2 square feet of advertising space on a sign.

Mr. Wilson explained his intention to sell produce from a stand on Bellamy Lane and his desire to erect a sign with smaller detachable signs below indicating certain produce for sale.

**Opposed:** Patricia Mann, 227 Dover Point Road, noted that the farm stand is on a separate lot and inquired as to whether Mr. Wilson would be setting a precedent for that lot if he sold it.

Mr. Joy noted that the variance goes with the land.

Mr. Joy inquired of Mr. Selleck as to whether the farm stand is a permitted use, to which Mr. Selleck responded affirmatively.

Public Hearing closed.

Mardean Frazer moved to grant the special exception and variance for the sign. Mr. Bertrand seconded.

Vote: 4-1 to grant. (Joy)

H85-53 Paul & Lillian Fisher, Garrison, Road, also known as Assessor's map I, lots 2A & 2I, zoned RM-12, request a variance from Article V, Section 170-16, to combine 2 parcels of land having no public right of way frontage.

Mr. Fisher explained that the wells for his property are located on the lot he would like to add to his present lot, that the lot is not a buildable lot, and that if in the future he decides to subdivide the larger lot currently attached to the lot with the wells on it, he would have complete control over his wells.

Public Hearing Closed.

Mr. Bertrand moved to grant the variance. Mr. Ciotti seconded.

Vote: 5-0 grant

The meeting was adjourned at 11:30 P.M.