

DOVER ZONING BOARD OF ADJUSTMENT

Held: December 18, 1986

Members Present: Alden Joy-Chairman, Barry Hager, Mark Dellner, David Bertrand, Joyce Bowden, and Randy Turner.

Also Present: Steven Stancel-Assistant Planner, Dick Selleck-Building Inspector, Tom Clark-Assistant Building Inspector, and Kathy Munson-Recording Secretary.

Mr. Joy called the Business Meeting to order at 7:00 P.M.

Old Business: November 20, 1986 Minutes were approved.

Mr. Joy moved to amend the by-laws constituting a quorum to three members. Mark Dellner seconded the motion. All members were in favor.

VOTE: 6-0.

New Business: Alden Joy noted to the members of the board to base their special exception acceptance for Jenson's application solely on the fact of 170-20 and 152.

Steve Stancel reminded board members that the signs identifying zoning applicants' property would be used starting the month of January.

Mr. Joy called the Business Meeting to order at 7:30 P.M.

H86-69 Jenson's Inc. (Owner: Irene York) Garrison Road, also known as Assessor's Map J, Lot 2, zoned R-40, requests a special exception as provided by the terms of Article VI, Section 170-20, to establish a mobile home.

Bill Collins, Planning Director, appeared before the board members. He stated that Mr. Jenson was seeking a special exception- preliminary approval has already been granted by the Planning Board and concluded that in regards to flow tests, sewer analysis, and traffic impact - there were no problems.

Barry Hager removed himself from board member position with regards to the Jenson's case.

Randy Turner stepped in and served as an alternate board member.

Bill Tanguay

William Tanguay appeared before the board serving as Chris Jenson's representative. He stated that Irene York was no longer owner of the property in question - the property is now owned by his client, Chris Jenson. He continued by stating that his client was seek a special exception, not a variance ( a use not permitted ). Special Exception is based on four criteria: A.) Proposed park must conform to the Mobile Home Ordinance B). All plans for the propped park must have been granted preliminary approval by the Planning Board C.) The proposed park will not adversely affect the overall land values in the neighborhood D.) The propped mobile home park will not result in the creation of hazardous traffic conditions. The stated criteria has been approved by

the Planning Board. He stated that this meeting was not to involve the pastoral images - the scope of the meeting is limited to the four criteria mentioned. Mobile homes are permitted in an R-40 zone. The homes would be of a double-wide variety. The park would be for folks of 45 years of age or older. His client feels that there is a demand for this particular type of housing and this is reflected in the RKG traffic testing.

Public Hearing:

Irene York, former owner of the Jenson's property, stated that she recently sold land in the size less than three acres for over two million dollars. She stated that the buyers knew of the proposed mobile home park. She continued to state that the proposed manufactured homes will run in the same price range as the homes on Morning Side Drive and on Austin Drive.

Frank Menez, spoke as a resident and former School Board Member. He asked the board to please consider having Jenson's being required to placing a sidewalk running all the way down from Jenson's continuing to Spruce Lane as well as having the city consider widening the road.

Bill Colbath spoke in regards to the traffic study completed by RKG Associates. He felt that the test was inconclusive - the facts stated were irrelevant. Information on whether or not land values in the surrounding proposed park area would or would not be adversely affected was not included. Information was included on a 40-unit park located in Nashua, New Hampshire. He added that he drove to Nashua and could not locate the property. Developing a parcel to three times its own density should no be allowed. He questioned how the sewage system could handle this increase. He also questioned how RKG Associates could state information from case studies performed in Michigan and Florida. In conclusion, information included in the testing is not relevant to homes in the New England area, let alone in Dover, New Hampshire.

Sam Arnold spoke out against the granting of a special exception. He asked the Board members to please consider the fact that this area is already too congested. He added that he had been notified by Fosters Daily Democate that the area is too dangerous for the paper to be delivered by any of the company's employees. He also questioned the issue of placing a modular home on a lot of the square footage size of a full-size house lot - both the double-wide modular home and house are the same size - how can placing a modular home on the proposed lot size be done if not the same for a house.

\* Ron Weeden spoke against the grantin of the special exception as well. He stated that he was present at the preliminary hearing of the Planning Board. He further added that all of the information in regards to sidewalks, sewage, and subdivision plans was not available. He questioned the fact on how preliminary approval could have been granted in the first place.

Barry Hager spoke against granting of the special exception. He stated that he drove through the Jenson Mobile Home Park located on Route 108 at 11:45 P.M. during the week and noted that only eight of the lots had only one car parked in their driveways. All of the remaining lots had at least two cars parked in their driveways. He stated that granting further approval for the proposed mobile home park would only continue to overload and jam the present area. This jamming was clearly stated by Mr. Arnold when he mentioned that the Democrat could not be delivered was his opinion. He presented to the members of the board a petition listing 209 signatures all immediate residents of the proposed mobile home park—all petitioning further approval. He also presented a letter addressed to himself from Caldwell Bankers. The letter estimated his home's value as being \$155,000 as opposed to \$200,000. Caldwell Bankers felt the characteristics (Seabourne Hospital and proposed trailer park) influenced the estimated figure.

Mr. Birmingham also spoke in disfavor of granting the special exception. He stated that in viewing the children walking home from Garrison school, they are forced to walk on lawns - there is no sidewalk available for them to use - traffic is too busy - they have to worry know about trucks barreling down the road. They also have to walk on snow mounds to stay out of the way of the traffic speeding by. He questioned what will happen if one of the children falls from the snow mounds.

Jim Buckley informed the board members that on April 30, 1986, someone drove right through his fence - drove right into their living room. He begged that action be taking before its too late.

Chris Jenson spoke in rebuttal. He stated that he was not insensitive to the problems of the Garrison area. He said that he is obligated and will work with the Planning Board to design sidewalks, etc. and with regards to the lot size issue - homes are being sold with only 9,000 square feet in the area. He concluded by stating many homes sold within the last year in this area do not include as much land.

William Tanguay reminded the board members that the issue involved only was the zoning ordinance. What is being mentioned is not an issue for the Zoning Board members to consider.

Public Hearing closed.

Mark Dellner questioned if the proposed mobile home park is for individuals 40 years and older - what happens if the ownership of the park changes down the line..

Chris Jenson responded by stating that all of the company's trailer parks have been marketed in this way. He feels that it would be too expensive to run the park any other way. Running the park for those of this age group is the most profitable way. He finished by stating that this stipulation could be included in the approval.

Joyce Bowden stated her concern with the city's plans for sidewalking the Garrison area. She questioned if this is the underlying basis for approval.

Mark Dellner stated that the proposed park's overall impact is the major concern - there is only so much land available - land value will drop.

Alden Joy mentioned that all parties involved should receive careful consideration - feeling that the question involved would be which party has more of a bearing over the others. Granting of the special exception would have a negative impact.

Joyce Bowden added that in regards to overall land value - the higher priced homes would be affected - many of the homes are in the same price range - every home in the area will be affected.

Mark Dellner continued to state that if one was to put themselves in the position of buying a home - you set out with x amount of dollars - if the area is already dense you pay less - if not as dense, pay more - not saying that the park itself is a detriment, numbers alone will lower the property value.

Alden Joy added that density is an issue to consider as well as the creation of a hazardous traffic condition.

Joyce Bowden stated that the hazardous condition is already present. Planning Board is trying to alleviate this.

Alden Joy stated that it is the wrong area because of the conditions that exist.

Mark Dellner stated that he agreed with Alden Joy's statement 100%. If one was to consider the curve on the Garrison Road which is already dangerous - what will happen if the traffic is increased. What happens if the curve is removed and traffic speeds up - these questions are of concern where is beliefs.

Alden Joy asked the Board members if they felt the requested use is essential or desirable to the public convenience or welfare.

Mark Dellner stated the he felt that the proposed mobile home park did not fit for the public convenience.

Alden Joy stated that with regards to the requested use creating undue traffic congestion, or unduly impair pedestrian safety - granting would create this.

Joyce Bowden commented on the fact that with the proposed changes addressed by Bill Collins in regards to the help received from developers - this cooperation would help - even in this area of high density.

David Bertrand mentioned that the city could take years on the above matter.

Alden Joy stated that increasing the density in this area is of no help. - schools are generally placed in an area of low density - not helping if we add to this.

Mark Dellner pointed out that safety appears to be the major concern - and with this being the case 170-20 D) will result in the creation of hazardous traffic conditions - not meeting with 170(C) where proposed mobile home park will adversely affect overall land values in the neighborhood.

VOTE: 3-2. Special Exception denied. David Bertrand and Alden Joy in favor..

H86-69 Robert and Joan Callan, Bay View Road, also known as Assessor's Map J, Lot 21, zoned R-40, requests a variance from terms of Article V, Section 170-16 to create four lots, three of which have no frontage on a public right-of-way.

Public hearings resumed after five minute recess - 9:35 P.M.

Robert Callan appeared before the board and stated that he wished to subdivide his land of 18 acres and create four lots. The first lot would be his own lot (already existing) and the remaining three lots would be off the same right-of-way. He stated that he felt that he was in the spirit and intent of ordinance - keeping the area being developed within a low density range - will not adversely affect the surrounding property - he presented information to be included in his application package - deed for the Higgins right-of-way as well as a letter from the Higgins Trust in support of the subdivision - intending to improve the right-of-way by putting in a new drain - will resurface and bring up to standard - the back of the area is heavily screened with pines - he reiterated that he is looking to develop three lots - feeling that this is the least obtrusive way - will be less impact - will put culdesac off right-of-way in order to get to lot.

Public Hearing opened:

Trustee of the Higgins appeared before the board in support of granting the subdivision. The area further down the road has been donated to the Audoban Society and stated that he feels that Robert Callan is in keeping with the maintaining of the area - he also felt that Robert Callan has been pressured - just look at the whole area in the Dover Point area in general - excellent plan for excellent use..

Bruce Vallanger, an abuttor to the Callan property stated that he was also in favor of the granting of the variance - would rather see that the area is not developed - but feels that Robert Callan is

Bruce Valanger, an abuttor to the Callan property stated that he was in favor of granting the variance as well. He stated that he would rather not have the area developed further at all, but felt that Mr. Callan was in line with keeping within the rural characteristics.

Tim Pearson spoke out against the granting of the variance. He stated that he did not see any hardship involved - its time the board members take a stand - set a precedent - if the city wished to have more lots create - ordinance would state this - the policy of inherent hardship of land needs to be addressed.

Robert Callan spoke in rebuttal. He noted the recent change in the number of lots allowed off a public right-of-way and restated that his plans were in keeping with this.

Tim Pearson again mentioned the question of hardship.

Public Hearing closed:

Barry Hager questioned if Mr. Callan would state that the lots could not be further subdivided.

Robert Callan responded yes that the deeds would restrict further subdivision.

Alden Joy questioned the issue of how many lots were allowed.

Steve Stancel pointed out the issue is hardship - is there apparent hardship involved.

Robert Callan stated that he felt that hardship is involved - if he had to subdivide and construct number of lots to meet city ordinance - would be required to have 150 feet of frontage - this is not feasible to only have three lots - would have to put in major subdivision - trying to avoid this - seeking to have two additional homes on the lot - the third home would be built down the road (in years to come).

Alden Joy stated that it appears that the Huggins right-of-way is presently servicing one habital property lot - and if approved - will be servicing five lots.

Robert Callan responded yes to Alden Joy's statement.

Alden Joy stated that the applicants map (in package) displayed this.

Robert Callan again affirmed Alden Joy's statement.

David Bertrand mentioned that he felt there was apparent hardship involved being with the limited access of land involved.

Joyce Bowden pointed out that finance is not an issue to be involved with determining hardship - it appears to be an economic hardship.

Mark Dellner pointed out that Robert Callan just wishes to further develop his property.

Joyce Bowden pointed out that it is his privilege to develop - but economic hardship is not to be an issue.

All members agreed that if granted - substantial justice would be granted.

Alden Joy stated that he felt that by granting the variance - would not be in the spirit and intent - not in harmony - increasing the density of the area from two house lots to 4 and then even five.

VOTE: 3-2. Variance denied on the grounds that no apparent hardship is involved.

H86-70 Gary Sonnenschein and Deena Peschke (Owner: Charles Cole and Bonnie Edwin) 258 1/2 Dover Point Road, also known as Assessor's Map L, Lot 97A, zoned R-20, requests a variance from terms of Article V, Section 170-16, to create four lots, none of which have any frontage on a public right-of-way.

Gary Sonnenschein pointed out to the board that he wished to subdivide his property. He passed out a smaller map to the members (included in application folder) and stated that the existing lot has sufficient frontage - the remaining three lots did not. He stated that he felt that hardship is involved - hardship being the configuration of the lot line - due to this configuration in an R-20 zone - required minimum is 20,000 feet - land can only be used on minimum lot size. If variance is granted this will allow ~~substantial~~ substantial justice - he felt that his application is with keeping within the Spirit and Intent of the ordinance - no visual problem involved - no negative side effects involved - there is an apparent shortage of single-family dwellings.

Public Hearing opened:

Tim Pearson spoke in opposition of the granting of the variance. He stated that the board again should set a precedent - there are lots of narrow strips on the Dover Point Road - is developing going to continue - requiring a city street would rectify the problem - hardship is economic.

Ed Hoskinski spoke in opposition as well. He based his opposition on the fact that hardship is not involved. Granting the variance would not be within the Spirit and Intent - too many narrow strips on the Dover Point Road - to bring the density up to four lots is not within the Spirit and Intent.

Anthony Kuran spoke for his client and abuttor to the property in question of Mr. Garafano. He addressed the issue on the keeping within the Spirit and Intent of the ordinance - the city at one time develop a master plan and zoned the area in question R-20. The design of the master plan should not be second guessed - hardship issue should not involve economic aspects - something unique about the property should be pointed out - should not deviate from th master plan unless something is pointed out along these terms. He cited the case of Moore Vs. Rochester - Zoning members could not determine any case of uniqueness and therefore, land could not be used for any other permitted use than what the ordinance states. He reiterated that the Spirit and Intent of the ordinance should not be overlooked - must enforce the master plan - those who move to the Dover Point area and those who live there currently hope that it will remain that way. There will be more and more case like this - one trying to make a buck - this should be curtailed. If one was to look at the Spirit and Intent and take it at face value - the 125 feet is not available for this particular piece of property. The petitioner is seeking for the board to waive this - this is increasing the density in the area - R-20 is a low density area - if 125 feet of land is too much to require - have the area rezoned.

Arthur Grimes also spoke in disfavor of granting the variance. He pointed out that Dover Point Road is a major entrance way to the city and zoned R-20.

Gary Sonnenschein spoke in rebuttal. He mentioned that he should not be penalized for not having the ability to use the land to its best use. He questioned as to way he was here in the first place before the board - he stated that he was here because he felt that this was a special case and was seeking relief from the ordinance. He also questioned why four lots would be allowed if his lots for proposed subdivision could not be accepted.

Ed Hosinski stated that it was his belief that a good ordinance is the case - and that there is no uniqueness involved in this particular hearing and asked the board to enforce the present zoning ordinance.

Anthony Kuran appeared before the board again and pointed out to the board that it always appears that individuals are asking for the members to ignore the master plan - ordinance is at the expense of losing some liberty.

Tim Pearson also appeared before the board again - stating that he still was unaware of any hardship involved in this particular case.

Public Hearing closed:

Alden Joy mentioned that this case involved opening up a river way - talking about a state highway and adding on to a traffic problem.

Joyce Bowden pointed out that Mr. Sonnenschein could develop the land by putting in a road.

VOTE: 3-2. Variance denied. Not within Intent and Spirit of the ordinance.

H86-71 Steven Ellis (Doing Business as: Wedgewood Builders) 81 Littleworth Road, also known as Assessor's Map F, Lot 30, zoned R-40. requests a variance from terms of Article V, Section 170-16, to create three lots, two of which have no frontage on a public right-of-way.

Steve Ellis appeared before the board members and presented them with a map of the land. He stated that the land was surveyed by UNH - back piece contains a pine growth - central area is area of blueberry bushes - intends to keep bushes and pines - the front lot on the map is a five acre lot - hardship is with the total frontage - access to rear is on the extreme left - best access would be with 50 foot right-of-way.

Public Hearing opened: no comment.

Mark Dellner question if this would be a city road.

Steve Ellis stated that he was just looking to get to back area access.

Barry Hager asked Mr. Ellis how many lots would be developed.

Steve Ellis responded to Barry Hager questioned by answering four lots.

VOTE: 5-0. Variance granted based on the Findings of Fact that applicant does face apparent hardship, within Spirit and Intent of the ordinance, will not adversely affect surrounding property. Decision subject to Site Review by the Planning Department and Conservation issue as well.

H86-71 Albert Berthiaume, 57 Boston Harbor Road, also known as Assessor's Map 7, Lot 19A, zoned R-20, requests a special exception as provided by terms of Article VII, Section 170-27C(2), to bring in fill and construct a retaining wall and a pier in the Conservation District.

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Albert Berthiaume appeared before the board and stated that he wished to construct a retaining wall and a pier in the Conservation District. He added that he has gone through all the proper channels in seeking this request.

Public Hearing opened: no comment.  
Public Hearing closed:

David Bertrand noted that all requirements have been met.

VOTE: 5-0. Variance granted.

Meeting adjourned at 11:35 P.M.