

**DOVER ZONING BOARD OF ADJUSTMENT
MINUTES OF PUBLIC HEARING
JUNE 20, 2002**

MEMBERS PRESENT: Bill Colbath, Chairperson; David Ruoff, Doug Cummings, Art Corte (alternate), Frank Landford (alternate)

MEMBERS ABSENT: Dean Trefethen, Chairperson; Tom Dolbec (alternate), Richard Callaghan

STAFF PRESENT: Christopher Parker, City Planner; Tom Clark, Building Official; Kate Pelletier, Recording Secretary

ITEM #1: NEW BUSINESS

- A. Approval of minutes for regular meeting of May 16, 2002**

MOTION:

Doug Cummings made the motion to accept the minutes.

David Ruoff seconded

Vote U/A

ITEM #2: OLD BUSINESS

- A. Consideration of a motion for rehearing request submitted by Douglas & Lucia DeDe concerning Zoning Board of Adjustment Case Z01-19, 143 Locust St., A/K/A Assessor's Map 12, Lot 37, Zoned RM-10.**

Attorney Steve Roberts represented the applicants. He stated that there was no specific finding in the minutes regarding the rear set back relative to diminution of property values. He pointed out an error in the minutes from the meeting of May 16, 2002 stating that there was a duplication of one of the five criteria. He also pointed out an inconsistency in the Board's vote from the meeting of February 21, 2002 and the meeting of May 16, 2002. The Board first voted that the rear set back would be in harmony with the spirit and intent of the ordinance and that there would not be a diminution of surrounding property values. The Board then found on May 16, 2002 that there would be diminution of surrounding property values and that it would not be in harmony with the spirit and intent of the ordinance. He stated that, in his opinion, these decisions were unlawful, unreasonable and arbitrary and that the Board had made a mistake. He stated that the Planning Department was in support of the variance and that there had been no opposition from abutters.

Doug Cummings stated that the Board had heard this case several times, and that the applicant had still not shown a hardship.

David Ruoff stated that he had voted in favor for the variance, but was not sure the applicant had satisfied the requirements for a rehearing. He stated that every time the Board had voted on the issue of hardship on the rear setback, they had not found the hardship. He agreed that the motion for rehearing should be denied.

Frank Landford stated that the issue had been heard several times and that a decision had already been made. He agreed that the motion for rehearing should be denied.

Bill Colbath asked Attorney Roberts to explain the inconsistency in the Board's vote on the rear setback.

Attorney Roberts explained that in February 2002 the Board voted to deny all three variances. However, in doing so, they did not vote that all three variances did not meet all five criteria. They voted to deny on the claim that it did not meet three of the five criteria but did find that the variances requested would not result in diminution of property value and would be in harmony with the spirit and intent of the ordinance. He then explained that at the May 2002 meeting, the Board found, by majority of 3-2 for the rear setback, that all five criteria were not present. He stated that the Board had completely changed from their original opinion without any addition evidence presented to them.

David Ruoff stated that the Board had voted on the front porch, the side and the rear setback all together and that they were not each voted on separately, therefore, there wasn't a specific finding as to the rear setback.

MOTION:

Doug Cummings made the motion to deny the motion for rehearing.

David Ruoff seconded the motion.

Vote U/A

MOTION:

David Ruoff made the motion to amend the minutes to reflect the error Attorney Roberts pointed out.

Doug Cummings seconded the motion.

Vote U/A

The Board decided to hear the motion for rehearing for Bow Street Realty at the end of the meeting as neither Attorney Hoover, representative of the applicant, nor Attorney Wyskiel, Attorney for the opposition would be present at the meeting. Bill Colbath asked if there was anyone who wished to speak on the matter. There was no one.

ITEM #3:

A. ZO2-18 Tri-City Builders Inc., 10 Atlantic Ave., A/K/A Assessor's Map 25, Lots 45A-1 and 45A-2, zoned RM-10, requests a special exception under the provisions of Article VI, Sections 170-25-1 and Article XII, Section 170-52.C(3) to construct a four (4) family dwelling on each lot.

Attorney James Schulte represented the applicant. He stated that it was brought to his attention that one of the elements that needed to be established was the percentage of lot coverage. However, the figures he had prepared may have included more lots than should have been included, and there may have been a question as to the percentages figured. He stated that the proposed coverage for the two lots was approximately 36% and 37% and there was some question as to the total coverage of the neighborhood being either 37% or 26% depending on which lots are included.

Chris Parker stated that, while reviewing the application, he found that all lots in the neighborhood had been used to figure the average lot coverage while only the lots within 200 feet should have been used. He stated that his calculations had shown an average of 26% of lot coverage and that the applicant's proposal of 37% and 36% is above what is allowed.

Attorney Schulte stated that if the applicant decided to build duplexes instead, the percentage of lot coverage would not be an issue. He asked the Board if they wanted to table the case until the next month's meeting.

Bill Colbath pointed out that there would be a radical change in the application if the applicant were limited to 26% of lot coverage.

Attorney Schulte stated that he was unsure if the information given to him had been verified and stated that more work would need to be done before a final ruling was made. He offered to present what he could or put the rest of the presentation off until the next meeting.

Bill Colbath stated that the Board could accept the case if the applicant was going to radically change the application at the next meeting.

Dave Ruoff stated that the abutters would need to be notified of the changes as well.

Attorney Schulte requested that the case be deferred until the next meeting.

Tom Clark asked Attorney Schulte if he wanted to withdraw his application until the next meeting.

Attorney Schulte stated that he did, but did not want to repay the filing fees again. He suggested keeping the same application rather than having it be withdrawn.

Tom Clark asked Attorney Schulte he wanted to keep the same application just for the purpose of saving the filing fees and informed Attorney Schulte that the only fees that would need to be paid would be the cost of notifying the abutters.

Bill Colbath asked if he wished to withdraw the application.

Attorney Schulte stated that he did.

George Snell, 6 Atlantic Ave., stated his concerns about parking.

Tom Clark explained his concerns about parking spaces needing to be independent rather than stacked, but stated that these issues would be discussed later.

ITEM #4

Z02-19 Kenmore Real Estate (Applicant: CN Brown Co.), 102 Central Ave., A/K/A Assessor's Map 15, Lot 80, zoned RM-10 requests a variance from the terms of Article X, Section 170-40.C to re-establish a non-conforming gas station use.

Attorney James Schulte represented the applicant. He explained that the property had been used as an active gas station for many years, but because of lack of a tenant, it was no longer used. He stated that if it had been used one day a year, it would not need a variance. He explained that all of the tanks had been replaced five or six years ago and the canopy had been redone. He stated that the gas station had two service bays and the applicant intended to do automotive repair in those bays. He described the topography of the lot and stated that any other uses would be too costly because of the topography. He explained that there are traffic lights accommodating the gas station and that there are other commercial uses in the surrounding area.

MOTION:

David Ruoff made the motion to accept the case.

Doug Cummings seconded the motion.

Vote U/A

Bill Colbath asked for staff recommendations.

Chris Parker stated that the Planning Department supports the request for a variance.

Frank Landford asked if the applicant had obtained the proper permits from the State of NH.

Attorney Schulte explained that once the variance was granted, the proper permits would be obtained.

Bill Colbath asked when the gas station had last been operated.

Attorney Schulte stated it had last been operated in October 2000.

Public hearing opened.

None.

Public hearing closed.

Dave Ruoff stated that, because of the topography, there would be no other logical uses because of the cost of renovating. He stated that he was in favor of granting the variance.

Bill Colbath asked if this property had come before the Board for a variance for a convenience store in the past.

Tom Clark stated that they had come before the Board previously to eliminate the service bays and convert them into a convenience store, but were denied.

FIVE CRITERIA:

1. It is the Board's conclusion that, if the applicant complies with the strict letter of the ordinance, he does face an unnecessary hardship. The topography of the land, existing structures and improvements limit the use of this property to use as a service station.
2. It is the Board's conclusion that, if granted, the variance will deliver substantial justice. It will allow for the continued, reasonable use and continue a needed service in the area.
3. It is the Board's conclusion that, if granted, the variance will be in harmony with the spirit and intent of the zoning ordinance. It will allow for the continuation of a past use in an area of similar commercial uses.
4. It is the Board's conclusion that, if granted, the variance will not result in a diminution of value of surrounding properties. The use would be a continuation of a use that has been in the area for many years.
5. It is the Board's conclusion that, if granted, the variance will not be contrary to the public or private interests or rights. There will be no change in the nature or intent of the use and will allow public use of a needed service.

Therefore, based upon the foregoing, it is ordered that the application for the variance be granted.

OLD BUSINESS:

- B. Consideration of a motion for rehearing request submitted by Bow Street Realty Trust concerning Zoning Board of Adjustment case #Z02-16, Dover Point Rd., Assessor's Map L, Lot 105B, zoned R-20.**

There was no one present to represent the applicant or any interested parties.

Bill Colbath asked if the Board had found any new evidence that had not presented at the first hearing.

David Ruoff stated that he did not find any new evidence. He stated that he did not think that there were any persuasive arguments that the Board made a legal error.

MOTION:

Doug Cummings made the motion to deny the request for rehearing.
David Ruoff seconded the motion.

Vote U/A

MOTION:

Doug Cummings made the motion to adjourn.
Frank Landford seconded the motion.

Vote U/A