

DOVER ZONING BOARD OF ADJUSTMENT
MINUTES OF SPECIAL MEETING
DECEMBER 1, 1997

MEMBERS PRESENT: Dean Trefethen, Chairperson, Bill Colbath, Vice-Chairperson, Robert Mullan, Rick Callaghan, John Murphy and Parks Christenbury

STAFF PRESENT: Thomas Clark, Building Official

1. Old Business

- A. Consideration of a Motion for Rehearing request submitted by Advanced Systems in Measurement and Evaluation, Inc. concerning Zoning Board of Adjustment case #Z 97-25, Bank of N.H. (Applicant: Civilworks Inc.), Watson Rd., a/k/a Assessor's Map E, Lot 32-1, Zoned ETP. (NOTE: This item was postponed from the meeting of November 20, 1997 at the petitioner's request.)

Dean Trefethen - To grant a rehearing the Board must determine one of two things. (1) That there is new evidence presented by the party that is making the motion, or (2) that the Board made an error in their original decision.

Atty Wensley - The motion speaks for itself. There is no new evidence. Our request is based solely on legal grounds. The major claim in the petition is that we feel the Board was in error in changing the burden of proof. The burden of proof, by law in New Hampshire, is on the applicant to satisfy all criteria, and in this case there is no evidence introduced to the Board on the issue of the impact of this variance on the value of surrounding properties. The Board set forth in their position at the time of their decision, that in the absence of something on either side that it was entitled to find that there would be no adverse impact. He believes that this is not correct and that in the absence of evidence on the issues of impact on the surrounding properties, the Board is not in a position to make a finding that there would not be an adverse impact.

John Murphy - Asked Tom Clark if a written opinion was received from the City attorney.

Tom Clark - No

John Murphy - In reviewing Attorney Wensley's petition, he found that it was a rehash of what has already been presented. Based on information presented in the gray book, on the diminution of value, the Board can rely on the evidence presented or not. The Board can either accept the evidence or accept no evidence. This is at their discretion. He does concur that the burden of proof does lie with the applicant not with the abutter. However, in this instance, because the abutter strongly claims that there will be a diminution of value to his property and wants the variance denied, they have not as of this date presented any evidence to their claim. John reviewed the Attorney's petition.

ZBA

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Bill Colbath - Referring to the Attorney's petition in regards to evidence that both the applicant and abutter were both going to offer the same amount of money for this same parcel of land, he believes it was mentioned but no copy of a purchase and sales agreement was presented as evidence. This is a monetary concern and hardship is not based on monetary concerns so this is not pertinent to this case.

Rick Callaghan - Concurs with John Murphy - His view is that the owner in this case does have a hardship inherent in the land and the applicant is merely the presenter. Also in regards to the diminution in value, he feels that the Board does not have to require any evidence unless they feel there is doubt and that it is necessary. And even if this information is presented, the Board can go against it.

Parks Christenbury - Also feels that diminution of value is a judgement call on the Board's part. He feels that the Board did not make an error in its decision

The five regular members voted.

MOTION

Rick Callaghan made the motion to deny the request for a rehearing based on no new evidence was presented and that the Board did not make an error in its decision.

John Murphy seconded the motion.

U/A

Bill Colbath - Asked about the garage situation at Sunnybrooke.

Tom Clark - The independent appraiser's report confirmed the original appraiser's report and said that there would not be a diminution of ^{value to} property to the gentleman ^{prop} of #18 Sunnybrooke Dr.. So Attorney Wattendorf filed a motion to the Superior Court to have the case returned to the Zoning Board and as soon as that is done the Board will be notified and act on it accordingly.

John Murphy - So the appraiser finds that there is no diminution of value.

Tom Clark - Correct. He sites examples in Portsmouth.

John Murphy and Rick Callaghan feel that a written brief should be submitted by the City Attorney in regards to this evening's case #Z 97-25.

ZBA

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Dean Trefethen - Agrees that this request should be presented to the City Attorney and rely on his submitting the written report at what he feels is an appropriate time.

Parks Christenbury - advised the Board that he should be able to make the meeting in December but will not be re-applying for the new year due to a change in jobs and constraints on time.

Dean Trefethen - Feels that Howard Williams, of the City Council, should be notified of the Board's need for more members

John Murphy - Asked about the number of girls that will be allowed in Our Home.

Tom Clark - Spoke with Mary Rizzuto and she meant to say only 9 girls. If licensed by the State, and they have an opportunity to provide to the community, temporary as overnight, three or four beds to girls that could not go anywhere else then she would make some arrangements to take them in working with the Police Dept. etc. They are not expanding to 14 beds.

MOTION

John Murphy made the motion to adjourn.

Rick Callaghan seconded the motion.

U/A