

ZONING BOARD OF ADJUSTMENT

CITY OF DOVER, NEW HAMPSHIRE

APRIL 20, 1995

MEMBERS PRESENT: William Colbath, Vice Chair, David Paolini, John Murphy, Richard Murphy, Richard Callaghan, Robert Mullan

MEMBERS ABSENT: Dean Trefethen, Chairman, Robert Callan

STAFF PRESENT: Thomas Clark, Building Inspector, Jamie McCulloch, Secretary

1. OLD BUSINESS

A.) Approval of the March 16, 1994 minutes.

Motion: John Murphy made the motion to accept the minutes, seconded by Richard Callaghan. Motion passed 5-0.

2. NEW BUSINESS

A.) ***Z 95-6. Carl & Karen Angelini. 359 Washington St.**, a/k/a Assessor's Map 33, Lot 77, Zoned R-12 requests a variance from (1) the terms of Article V, Section 170-12, to maintain a rear deck addition to a single family dwelling within eight (8) feet of a side property line where twelve (12) feet is required, and (2) the terms of Article X, Section 170-41.A. to increase a non-conforming structure.

Carl Angelini was present to explain his reasons for the variance. He stated that the deck runs no farther towards the property line than the house. We are short 4 feet according to the current zoning. He went through the five (5) findings of facts with the board. 1) He explained that the house is set to the extreme left side of the property, and there never ended up being another home built on that side of the driveway.

2) We brought the deck out further from the house than it was originally, and bringing it 4 feet short would be aesthetically improbable for the design that flows with the house. 3) Any other location would be unsuitable for the deck and would diminish privacy. 4) The deck is in no way diminishing the value of any of the properties, it is viewed by one neighbor who has no objections. 5) The deck is a replacement of a deteriorating structure making a safer situation.

Motion: Robert Mullan made the motion to accept the case, seconded by Rick Callaghan.
Motion passed 5-0.

No one else spoke in favor or against the case.

John Murphy asked the applicants if there was a doorway off of the deck and where it was located. Ms. Angelini stated that it was located in the center of the deck. Rick Callaghan questioned if they had to move to the deck back to meet the setbacks, and you extended it out farther than the seven feet, what kind of problem would that be. Mr. Angelini stated that the railings were all in place, and he would not extend it out further away from the house, his only choice would be to cut it back the four feet. Richard Callaghan asked how far apart are the posts that are indicated in the plan. Mr. Angelini stated that the longest distance was eight feet.

John Murphy asked if Mr. Angelini had a permit when he tore down the old deck and replaced it with the new one and Mr. Angelini stated no. The old deck was deteriorated and so he tore it down, and the Building Inspector pointed out to him that he needed an application for a variance before a permit could be issued, and that's why he was here tonight.

Public Hearing Closed

Thomas Clark stated that this is a common misunderstanding that people have about decks and that this was done innocently. At some point the zoning will be revised as part of the Master Plan and the amendment that we will be putting forth whether or not it is approved, which we feel it will, will allow for this type of expansion as long as there was no further encroachment. He also stated that the Planning Department was not opposed to the variance.

Rick Callaghan stated a supporting comment stating that he feels that there is a hardship present on the property which is the two lots next to each other and the existing boundaries between them do create an existing hardship, it's inherent in the property and I think if were to make him move the four feet off we are asking a lot. He thinks the hardship is there in the footprints of the building.

Findings of Fact

- 1.) It is the Board's CONCLUSION that, if the applicant complies with the strict letter of the ordinance, he/she does/does not face an unnecessary hardship. Vote 5-0.

This CONCLUSION is based on the following FINDINGS OF FACT: Existing footprint makes the deck setback impractical and as it does not further in fringe on the surrounding property the hardship is the original location of the house.

Zoning Board of Adjustment
Minutes - Page 3 of 6
April 20, 1995

- 2.) It is the Board's CONCLUSION that, if granted, the variance (will/will not) deliver substantial justice. Vote 5-0.

This CONCLUSION is based on the following FINDINGS OF FACT: Full reasonable utilization of the land where the building is set.

- 3.) It is the Board's CONCLUSION that, if granted, the variance (will/will not) be in harmony with the spirit and intent of the zoning ordinance. Vote 3-2.

This CONCLUSION is based on the following FINDINGS OF FACT: Deck does not cut further into current set back.

- 4.) It is the Board's CONCLUSION that, if granted, the variance (will/will not) result in a diminution in value of surrounding properties. Vote 5-0.

This CONCLUSION is based on the following FINDINGS OF FACT: No evidence presented.

- 5.) It is the Board's CONCLUSION that, if granted, the variance (will/will not) be of benefit to the public interest. Vote 4-1.

This CONCLUSION is based on the following FINDINGS OF FACT: Gives applicant same rights as neighbors.

Motion: David Paolini made the motion to granted the variance, seconded by Richard Callaghan. Vote 5-0.

THEREFORE, based upon the foregoing, IT IS ORDERED that the application for the variance be (GRANTED/DENIED).

- B.) *Z 95-7, Warren & Patricia Dowaliby, 477 Tolend Rd., a/k/a Assessor's Map TC00, Lot 42-C, Zoned R-40 requests a variance from the terms of Article X, Section 170-40.A. and B. to increase a non-conforming use (Mobile Home) by replacing the existing mobile home with a larger unit and placing it in a different location on the lot.

Patricia Dowaliby explained that she would like to remove the existing Mobile Home and replace it with an existing model. Purchased home on and the existing mobile home is not fit to be occupied, she would like to remove the barn and the shed. She would like to replace the mobile home on a different location on the lot that will meet the setbacks. The existing home does not comply with the setback requirements, the existing home does not meet the requirements and is about 46 feet from the road, in one area and the side setbacks do not comply either.

Zoning Board of Adjustment

Zoning Board of Adjustment
Minutes - Page 4 of 6
April 20, 1995

She went through her explanations for the findings of fact with the board. Based on the existing ordinance the existing is seriously below living standard, the roof leaks, the floors and rotted & the wiring is deficient and the extension on the addition of the mobile home has been become detached from the main structure, and to try and occupy the mobile home would result in substandard living as well as a fire and safety hazard. To bring the existing structure up to a suitable living environment would be close to impossible. Regarding the question of how the variance would result in substantial justice, by granting the variance justice would be substantially served in that the newer updated structure would provide an improved dwelling for a potential occupant that would not be a safety or health hazard. By allowing this variance it would be in the spirit and intent with the ordinance in that it would allow for a placement of a mobile home where one is presented located. The existing home is unlivable and replacing it with a new home would be consistent with the spirit and intent of the ordinance, and it would meet all of the setbacks. Concerning question #4 if the variance is granted, it will not result in a diminution in value of surrounding properties because the existing home is at least 30 years old and in extremely poor condition slightly less than 50 ft from the road, the new one will be 80 ft and upgrade in age. The variance would benefit the public interest because the current structure is quite dilapidated and an eye sore to the surrounding properties and a newer model will enhance the appearance and not devalue other surrounding residences.

Patricia Dowaliby stated that she does owns 1.82 acres that abut to the left of the property. The new mobile will be 14 feet wide and not more than 28 feet wide, 60 feet long and not more than 80 feet long.

Rick Callaghan asked the applicant if the request was really to put a mobile home in a non mobile home area. Patricia Dowaliby stated that there is an existing mobile home and she wants to replace it with a larger model. Thomas Clark stated this is another matter in the ordinance that is going to be targeted for review that a mobile home outside of a park is a permitted use provided it is in a mobile home subdivision. The process for the individual would be to go before the planning board and subdivide a piece of land and designate a mobile home subdivision.

Bill Colbath stated that the use is grandfathered with the lot, and could be changed to a new unit without removing the grandfather clause. The size of the mobile home and the location is what the variance is going to grant.

Motion: Robert Mullan made the motion to accept the case, seconded by John Murphy. Vote 4-1, Richard Callaghan was opposed.

No one else was present to speak for or against the case.

David Paolini questioned the fact that if the reason the mobile home is right now, is because it is grandfathered, and if they remove the mobile and replace it with a new mobile the grandfather ship would be removed. Tom Clark stated that it is to prolong the grandfather clause, just in another spot. Bill Colbath stated that the use is grandfathered because the mobile home existed before the zoning ordinance. The location is non-conforming, but could be conforming with the amount of land they have to work with.

Warren Dowaliby asked if the variance was denied, and the mobile home fell down would they be eligible to replace it with a home. Bill Colbath stated that they would have to replace it with the same size mobile home in the same place.

John Murphy asked Tom Clark if there were any changes seen in future for this type of issue. Bill Colbath stated that this issue has come up before in a grandfathered mobile home parks.

David Paolini asked Bill Colbath what he thought the hardship was, and Bill stated that he felt there was not a problem with the replacement of the mobile home and he believes that that is a hardship in itself in the way that we have allowed it before in conforming and non-conforming parks. He does not think there is any reason why they cannot move the trailer, and by moving it back and allowing normal setbacks, they are lessening the non-conformity.

Rob Mullan stated he believes there is hardship, but expressed concern on how to word it, so as to not set a *presedent* president for something to come up in the future.

Public Hearing Closed

Findings of Fact

- 1.) It is the Board's CONCLUSION that, if the applicant complies with the strict letter of the ordinance, he/she does/does not face an unnecessary hardship. Vote 4-1. Callaghan opposed.

This CONCLUSION is based on the following FINDINGS OF FACT: A mobile home of similar size is no longer commercially available.

- 2.) It is the Board's CONCLUSION that, if granted, the variance (will/will not) deliver substantial justice. Vote 4-1. Richard Callaghan was opposed.

This CONCLUSION is based on the following FINDINGS OF FACT: Allowed continued use of grandfathered use.

Zoning Board of Adjustment
Minutes - Page 6 of 6
April 20, 1995

- 3.) It is the Board's CONCLUSION that, if granted, the variance (will/will not) be in harmony with the spirit and intent of the zoning ordinance. Vote 3-2. David Paolini & Richard Callaghan were opposed.

This CONCLUSION is based on the following FINDINGS OF FACT: Non-Conformity is reduced by meeting current setbacks.

- 4.) It is the Board's CONCLUSION that, if granted, the variance (will/will not) result in a diminution in value of surrounding properties. Vote 5-0.

This CONCLUSION is based on the following FINDINGS OF FACT: Will improve the site therefore increasing property value.

- 5.) It is the Board's CONCLUSION that, if granted, the variance (will/will not) be of benefit to the public interest. Vote 5-0.

This CONCLUSION is based on the following FINDINGS OF FACT: Provide more habitable space, and to allow for proper setbacks.

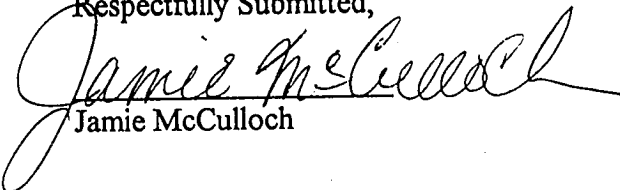
Motion: John Murphy made the motion to grant the variance, seconded by Robert Mullan. Vote passed 4-1. Richard Callaghan was opposed.

THEREFORE, based upon the foregoing, IT IS ORDERED that the application for the variance be (GRANTED/DENIED).

CONDITION: Maximum mobile home area shall be no greater than 1680 square feet and shall meet all required setbacks.

John Murphy made the motion to adjourn at 8:30 P.M. seconded by Robert Mullan.
Vote passed 5-0.

Respectfully Submitted,


Jamie McCulloch