

DOVER ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
NOVEMBER 16, 1995

MEMBERS PRESENT: Dean Trefethen, Chairman, Bill Colbath,
Vice-Chairman, Robert Mullen, John Murphy, and
Bob Callan

STAFF PRESENT: Thomas Clark, Building Inspector

Dean Trefethen called the meeting to order.

Dean Trefethen informed those that were present for Case
#Z 95-22, Robert & Edith Farr of 20 Farmington Dr. that it has
been canceled.

ITEM #1: NEW BUSINESS

Approval of the October 19, 1995 minutes

John Murphy made the motion to accept the minutes with the
following change:

On page 6, second paragraph down, change "Bob Murphy sat in
on this case," to read "Bob Mullen sat in on this case."

Bob Callan seconded the motion.

U/A

ITEM #2: OLD BUSINESS

- A. Consideration of a Motion for Rehearing request by Clara
Fisher, 89 Stark Ave., a/k/a Assessor's Map 17, Lot 28,
Zoned R-12 concerning frontage requirements (ZBA Case
#Z 95-14).

Robert Fisher - Applicant's son. In an attempt to explore other
possibilities, with the help of the Planning Dept., and Building
Inspection Dept., the applicant has been able to come up with a
preliminary plan for a 4-lot subdivision. Also exploring the
possibility of purchasing an adjoining parcel. The heirs live
out of state and it has been difficult to communicate with them.
Also a hazardous waste test will have to be done of that parcel
because of what was dumped there years ago. No soil survey has
been done, and will not be done. The survey will have to be done
at the buyer's expense. Hoping that this will all be resolved by
the springtime.

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MOTION:

John Murphy made the motion to table the case for six months and to notify the abutters by certified mail at the applicant's expense. (May 16, 1996 meeting).
Bob Callan seconded the motion.
U/A

ITEM #3:

Z 95-21, Clayton Randall, (owner: Estate of Marie Randall), 1 Hough St., a/k/a Assessor's Map 30, Lot 129, Zoned RM-10, requests a variance from: (1) the terms of Article V, Section 170-16, to create two (2) lots, one with 7,075 sq. ft. and one with 7,898 sq. ft. where a minimum of 10,000 sq. ft. per lot is required; and (2) the terms of Article V, Section 170-17 to place a side property line within two (2) feet of a detached garage where a minimum of ten (10) ft. is required.

Clayton Randall - The lot has 2 buildings on it, a 4 unit and a single family dwelling. Need to sub-divide the lot because the buildings were willed to two different individuals. The proposed sub-division will place the garage within two feet of the lot line and the new lots it would create would be non-conforming. The driveway will be a shared driveway.

Dean Trefethen - Questioned whether there would be sufficient parking spaces.

Clayton Randall - Additional paving will be made to increase parking spaces.

Dean Trefethen - Questioned whether the garage is movable.

Clayton Randall - It may be possible to move it.

Bob Callan - Does not have a problem with the 2 foot setback for the garage due to the length of time it has been there.

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MOTION:

Bob Callan made the motion to accept the case.

Bill Colbath seconded the motion.

U/A

PUBLIC HEARING OPENED

Robert Chiesa - Husband of co-executrix - The will was set-up by a lawyer without first consulting the zoning ordinance. There is no plan for a new garage on the lot with the multi-family bldg. There is a curb cut on Mt. Vernon St. so some of the tenants can park on that side of the building. There is no problem with off-street parking.

Tom Clark - Read comments from Steve Stancel, Planning Director, in his absence. "The Planning Dept. is not opposed to this request. The variance is not unreasonable because the two dwellings already exist on one lot, and it is preferable for each dwelling unit to have its own land. The immediate neighborhood contains similarly sized and spaced parcels." There will be no physical change, just establishing a lot line. They will have to petition the Planning Board for a minor sub-division if the variance is granted. By approving this, they will be eliminating the non-conformance of two buildings on one lot, even though it would be creating two non-conforming parcels.

PUBLIC HEARING CLOSED

Dean Trefethen - Concerned with the possibility of moving the garage and with the conflict that could arise in a shared driveway.

Bill Colbath - Concerned with creating 2 lots that are non-conforming and the conflict that could arise between the multi-unit tenants and the single family dwelling with separate ownership.

Bob Mullen - Has no problem with the garage where it is but is concerned with the conflict from the shared driveway.

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Clayton Randall - There is an access on the left side of the apartment building for parking which will alleviate the parking on the shared driveway.

Bob Callan - Suggests that it is not up to this Board to be concerned with any conflict between owners.

The Board discussed the hardship:

- (1) Two structures on one lot
- (2) Condition existed for a long time
- (3) Zoning changes

The Board discussed the possibilities of one owner; moving the garage; and creating more parking for the apartment building.

FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. (Bill Colbath & Dean Trefethen voted does not). Denial would be a needless or unnecessary restriction and nothing would be gained.
2. It is the Board's conclusion that the variance will deliver substantial justice. (Bill Colbath voted will not). It will allow the property to be passed on to rightful heirs and be used and maintained as it has been historically.
3. It is the Board's conclusion that the variance will be in harmony with the spirit and intent of the Zoning ordinance. (Bill Colbath and Dean Trefethen voted will not). The intent of the ordinance is to decrease congestion and allow proper safety access and granting the application would not change the present situation.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. (Bill Colbath voted will). There is no change in the structures so there is no impact to surrounding properties, which also is similar.

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5. It is the Board's conclusion that the variance will be of benefit to the public interest. (Dean Trefethen voted will not). There is no detriment shown.

MOTION:

Robert Callan made the motion to grant the variance.

John Murphy seconded the motion.

Condition: If the garage needs to be substantially repaired, that it would be demolished or moved to a location that would be conforming.

Three voted to grant and two voted to deny. (Bill Colbath and Dean Trefethen voted to deny).

ITEM #4:

Z 95-23, Donald & Chattie Cheney, (Applicant: Charles Cheney), 53 Back River Rd. a/k/a Assessor's Map I, Lot 59, Zoned RM-12 requests a variance from the terms of Article V, Section 170-16 to sub-divide a parcel into two (2) lots, one of which having a forty (40) feet of frontage on a public right-of-way where one hundred twenty-five (125) feet is required.

Kevin McEneaney - Represented the Cheney's. They wish to sub-divide a 4 acre parcel of land and make 2 lots out of it. The parcel is U shaped and it has two segments of frontage and the minimum frontage requirements for this zone is 125 feet for a single family dwelling and 20,000 sq. ft per lot. There is no problem meeting the lot size but there is a problem with the frontage. There will be a common driveway. Feels the hardship is that the parcel is located at the top of a hill. The 40 ft. section, where the driveway exists, is the only area where there is a reasonable slope to it. The lot with 150 ft. frontage has a very steep slope which creates a hardship in constructing a road to create frontage for a sub-division. In addition, in the area of the 40 ft. frontage where the slope is reasonable to construct a road, the minimum width requirement for a right-of-way is 50 ft. so there is not sufficient area to construct a City Street. Kevin reviewed the application.

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Dean Trefethen - Asked if there would be something in the deed that will allow driveway access for lot 2.

Kevin McEneaney - Yes.

MOTION:

Bill Colbath made the motion to accept the case.
John Murphy seconded the motion.
U/A

PUBLIC HEARING OPENED

Kevin McEneaney - Submitted letters from Mr. & Mrs. Richard Towle and Mr. & Mrs. James McManus, who are abutters, stating that they have no objections to the variance request.

Dean Trefethen - Read the letters from the abutters to the Board and also a memo from Steve Stancel stating that the City is in agreement with the hardship reasoning. It is the Planning Department's opinion that two lots with common access because of the slopes would constitute "maximum" reasonable use. The Department will support the request if a condition is added to the variance approval prohibiting any further subdivision of the parcels.

PUBLIC HEARING CLOSED

Kevin McEneaney - Expressed concern with the condition of no further subdivision of the parcels. He can understand Mr. Stancel not wanting 7 residential units on each lot. However, if the Zoning should change in the future and permit commercial use, he does not know what effect this condition would have on these parcels.

Tom Clark - With the proposed configuration of the lots, if the subdivision is granted, any future subdivision wouldn't be allowed under the current regulations anyway. They would have to come back for a variance.

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FIVE CRITERIA:

1. It is the Board's conclusion that the applicant does face an unnecessary hardship. There are only two access points and one is not usable due to the slope of the land. The remaining access point is currently used as a driveway and that would not change.
2. It is the Board's conclusion that the variance will deliver substantial justice. The additional created lot, as well as the remaining lot, would be substantially larger than required and would allow reasonable use of the property.
3. It is the Board's conclusion that the variance will be in harmony with the spirit and intent of the zoning ordinance. Proposed lot sizes will be larger than required in this zone and a reasonable access to a right-of-way will be maintained.
4. It is the Board's conclusion that the variance will not result in a diminution in value of surrounding properties. No evidence to the contrary.
5. It is the Board's conclusion that the variance will be of benefit to the public interest. One additional proposed home and lot would be better than several multi-family units that could be built from a school system standpoint.

MOTION:

John Murphy made the motion to grant the variance.
Bill Colbath seconded the motion.

Conditions:

- (1) Maintenance of right-of-way to be shared by both property owners.
- (2) End of driveway at Back River Rd. to be marked with the address for safety personnel.
- (3) No further variances for frontage relief will be granted.

U/A

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Dean Trefethen made the motion that if there were no meeting in December then the election of officers would take place in January 1996.

Bill Colbath seconded the motion.
U/A

Bob Callan advised the Board that he will not be available for the January, February and March 1996 meetings.

Bob Callan made the motion to adjourn.
John Murphy seconded the motion.
U/A