

ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
JUNE 17, 1993

MEMBERS PRESENT: Chris Jacobs, Bill Colbath, David Paolini
Robert Callan, Dean Trefethen and Brenda Whitmore

ALSO PRESENT: Tom Clark, Steve Stancel

Chris Jacobs, Chairman, called meeting to order.

ITEM #1: New Business

Bill Colbath made the motion to accept the minutes of April
15, 1993 meeting.

Bob Callan seconded the motion.

VOTE U/A

ITEM 2: Old Business - None

ITEM 3: H93-7, Jan & Ellen Lozo, 7 Atlantic Ave., a/k/a
Assessor's Map 25, Lot 59, Zoned RM-10, requests a
variance from the terms of Article V, Section 170-
15.B to construct an addition on a main building
approximately five (5) feet from an accessory
building where approximately ten (10) feet is
required.

Bill Colbath - Stepped down for this case.

Jan Lozo - Presented letters from abutters to the Chairman.
He presented his case by reading his answers on his
application. Property is not as large as appears. The pool
and swing set is on a neighbor's property, with his
permission. Property line is approximately 3 feet behind the
garage.

Dean Trefethen made the motion to accept the case.

Dave Paolini seconded it.

U/A

Chris Jacobs -- read letters from abutters.

Fern & Leo Alie - no objections to the variance

Juliette & Gerard Courteau - no objections.

George & Jeanne Snell - no objections.

Tom - When the plot plan was originally presented, the possibility of attaching the garage was discussed so that it could become part of the principal structure. However, it is now grandfathered as a detached garage and if it were attached then the set back requirement would be 15 feet and the applicant would have to come to the Zoning Board for that set back discrepancy.

Steve Stancel - Is there a reason why the addition couldn't be shifted to the other side?

Jan Lozo - There is a mud room on the other side.

Chris Jacobs - Concerned about the existing steps coming out into the 5 feet between the buildings.

Jan Lozo - Steps will be in front of the garage going towards the street.

No further responses for or against.

5 CRITERIA

1. Applicant does face an unnecessary hardship due to the undersized lot and configuration of the building.
2. If granted, the variance will deliver substantial justice in that it will allow reasonable use to the property that does not negatively effect the abutters.
3. If granted, the variance will be in harmony with the spirit and intent of the zoning ordinance which is to maintain adequate building separation. That is being maintained.
4. If granted, the variance will not result in a diminution in value of surrounding properties. No evidence to the contrary was presented.
5. If granted, the variance will be of benefit to the public interest. It will allow reasonable use and access to the structure.

Dean Trefethen made the motion to grant the variance.

Dave Paolini seconded the motion.

U/A

ITEM 4: H93-8, Richard Haun, 6 Ela St., a/k/a Assessor's Map 27, Lot 269, Zoned R-12, requests variances from 1) the terms of Article V, Section 170-16 to construct an extension to a roofed porch within approximately fifteen (15) feet from a front property line where thirty (30) feet is required, and 2) the terms of Article X, Section 170-41.A. to increase a non-conforming structure.

Edmond Labonte - abutter spoke in favor of the variance.

No one was present to present the case. It was agreed to hold this case until last to allow those who were present to be heard.

ITEM 5: H93-9 Paul & Cindy Horvath, (Owner: Cochecho River Co-op.), 417 Middle Rd., #10, a/k/a Assessor's Map M, Lot 62, Zoned R-20 requests a variance from the terms of Article V, Section 170-17 to construct/install an accessory structure (storage shed) within two (2) feet of a side property line where ten (10) feet is required.

Chris Jacob will not be voting on this case.

Tom Clark - Also addressed a concern which was not on the application is that the shed is too close to the principal building.

Cindy Horvath - Presented her case by reading her answers on her application.

Bob Callan - Made the motion to accept the case.

Bill Colbath - seconded the motion.

U/A

Tom Clark - Some of the sheds in the surrounding area are too close to their lot lines, however, they either pre-date the ordinance or comply.

Steve Stancel - The ordinance has been changed so that anything 36 square feet & smaller can go anywhere to the lot line. Anything larger than 36 sq. ft. has to be a min. of 10 feet from the lot line.

Steve Stancel - A site inspection was conducted by the Planning Dept. There are a couple of differences which leads us to speak against this variance request. (1) The applicant already has an existing accessory structure which is closer than 10 feet from the rear property line. This gives them the same right as the neighbors. (2) Also the size of the shed.

Cindy Horvath - The existing accessory building is a screen house.

Steve Stancel - The CDBG is funding a sewer line to this mobile park this year and so there will not be a need for the leach field after this fall. If the Board approves anything, recommends that the building be placed temporarily. Also concerned about the number of accessory structures in regards to the safety issue. It was recommended to the Park Association that they have control over the number and size of accessory structures for the mobile homes.

Dean Trefethen - During the site visit, observed that some lots have more than one accessory buildings. Another question is, is it a real junk yard?

Tom Clark - Aware that there has been an accumulation over the years and has been doing so for some years. Does not know if it is a licensed junk yard. Use existed prior to this ordinance.

PUBLIC HEARING CLOSED

Dave Paolini - Asked Steve Stancel if we would be granting a variance or just something temporary.

Steve Stancel - The Board has the power to set a limit and say that the shed can go there until such time as the leach field is no longer needed.

The Board members discussed the new sewer line to the park.

Chris Jacobs - Concerned with two issues: (1) The shed is larger than the ordinance allows; (2) Fire safety issue.

Dave Paolini - Asked Steve Stancel which leach field was he referring to. The one next to the screen house or the one adjacent to the driveway.

Steve Stancel - Actually, either one. Hope to hook everyone up to the line.

Bob Callan - Concerned with the fact that there are 4 structures on one lot, and the size of the shed. Agrees with Steve in regards to it being temporarily placed.

Dave Paolini - The Park Association will have to also approve of this. If the Association votes against moving the shed, where will the variance stand. Would we have to stipulate that if the variance would be granted that it would be understood that the shed would be moved and approved by the Association.

5 CRITERIA

1. The applicant does face an unnecessary hardship because of the location of the leach field.
2. The variance will deliver substantial justice in that the use will allow equal use of property with the conditions.
3. The variance will be in harmony with the spirit and intent of the zoning ordinance. Some access will exist currently and in the future will meet the criteria.
4. The variance will not result in a diminution in value of surrounding properties because no evidence to the contrary and abuts a junk yard.
5. The variance will be of benefit to the public interest. It currently would not be a detriment to the public.

Dean Trefethen made the motion to grant the variance on a temporary basis.

Bob Callan seconded the motion.

4 yes votes & 1 no, with the following conditions:

- 1) That the shed be moved to comply with the current zoning set backs within six (6) months of completion of the sewer line.
- 2) Building Permit to be issued upon receiving a new letter of authorization from the Co-op.

ITEM 6. H93-10 Daniel & Jacqueline Ayer, 160 Back Rd., a/k/a Assessor's Map N, Lot 21, Zoned R-40, requests variances from (1) the terms of Article V, Section 170-16 to construct an addition within thirty-five (35) feet from a front property line as it abuts the street where fifty (50) feet is required, and (2) the terms of Article X, Section 170-41.A to increase a non-conforming structure.

Brenda Whitmore stepped down from voting on this case.

Dan Ayer - Repeated the answers on his application.

Tom Clark - The applicant applied for a Building Permit and it was found that the addition does not meet the required set back and that he could petition the Zoning Board.

Dave Paolini - Questions whether additional living area or separate unit.

Tom Clark - It becomes a duplex.

Steve Stancel - Questions Mr. Ayers to his giving up some of his property.

Dan Ayer - When the property was surveyed, he willingly set the property line back to give Back Road a fifty ft. right-of-way so that when the City does develop Back Rd., they will not have to ask for some of his property. This caused the amount of setback to be reduced.

Dean Trefethen - Asked about plans to sub-divide.

Dan Ayer - No plans at this moment.

Dean Trefethen - Asked if Dan explored the possibility of rerouting the drain so that the addition could be built as proposed.

Dan Ayer - The drain exists. To change the route of the drain would be extensive work and expense.

Bob Callan - Made the motion to accept the case.

Bill Colbath - Seconded it.

U/A

Dean Trefethen - If addition were placed on the other side, would the lot still be large enough to be sub-divided.

Steve Stancel - It is feasible.

Dean Trefethen - Questions the hardship to the land. Addition could be placed on the other side. Understands future plans to sub-divide, but at the present there is no hardship. Or, to use the lot fully, consider moving the drain.

Bob Callan - The applicant could have preceded with a minor sub-division, then applied for a variance and it could have been granted. The hardship exists due to the drain.

The Board members discussed the alternatives to the placement of the addition; the movement of the drain; the development of Back Rd., and the establishment of property line.

PUBLIC HEARING CLOSED

Bob Callan - To move the drain line would pose hardship on applicant. It is a City drain running hundreds of feet.

5 CRITERIA

1. The applicant does not face an unnecessary hardship. Sufficient area and frontage exists to build the structure on other portions of the parcel.
2. The variance will not deliver substantial justice. Gives the owner greater use of his property.
3. The variance will not be in harmony with the spirit and intent of the zoning ordinance. Zoning set up with 50 foot setback, applicant can meet the spirit & intent but does not want to.
4. The variance will not result in a diminution in value of surrounding properties. No change, and no evidence presented.
5. The variance will not be of benefit to the public interest.

Bill Colbath made the motion to deny the variance.
Dean Trefethen seconded the motion.
4 in favor and 1 oppose

The applicant was advised that he has 20 days to appeal and needs to have new evidence. Also advised that the City Clerk's Office will give him information in regards to what the City has received in footage for the right-of-way for Back Rd.

ITEM 7 H93-11 Andrew Stewart, 42 Pearl St., a/k/a Assessor's Map 27, Lot 156, zoned R-12 requests a variance from the terms of Article V Section 170-17 and Article X, Section 170-41.C to replace an existing detached garage within one (1) foot of a side lot line where ten (10) feet is required.

Dean Trefethen stepped down from voting on this case.

Andrew Stewart - Purpose is not to change anything but to replace the garage to same size and appearance due to the lack of footings, the back of the structure has sunk. Could replace 2 or 3 walls but would not make a sound structure.

Tom Clark - Site inspection did show that it is in an advanced state of disrepair but not sufficiently gone as to determine it destroyed. Advised applicant of the ordinance in regards to the moving of the structure and maintaining the required setback. Could not issue the Building Permit for the replacement on site.

Steve Stancel - Planning Dept. does not have a problem with this variance request.

Bob Callan - During site inspection, abutter expressed he is in favor of the variance.

Tom Clark - The applicant has sufficient distance between his garage and the abutter's.

PUBLIC HEARING CLOSED

5 CRITERIA

1. The applicant does face an unnecessary hardship. Wet areas on the rear of the lot and the house location prevent other suitable locations.
2. The variance will deliver substantial justice. It allows the owner to fully utilize the structure as located.

3. The variance will be in harmony with the spirit and intent of the zoning ordinance. Spirit and intent was to preserve existing uses that does not cause unsafe building and replacement is safe
4. The variance will not result in a diminution in value of surrounding properties. No evidence stating it will. Abutter in favor of variance.
5. The variance will be of benefit to the public interest. Safety of neighborhood by replacement of building.

Dave Paolini made the motion to grant the variance.
Bob Callan seconded the motion
U/A

ITEM 8. H93-12, George Foster & Co., Inc., 14 Kirkland St., a/k/a Assessor's Map 9, Lot 105, Zoned B-2 requests a variance from the terms of Article IV Section 170-12 to allow a machine shop use in an existing building in a B-2 Zone.

Brenda Whitmore stepped down from voting on this case.

Mrs. Foster represented Foster Co. The building is not in use and is particularly well suited for this type of business. It is a hardship for us in that it appears to be unsuitable for many of the businesses allowed in the B-2 zone. It is much more suited for this type of business. Less traffic from this business than other businesses allowed in the B-2 zone.

Michael Moore - Owner of business to go into the Foster building. Repeated his answers in his application. This building is not suited for office or retail. This will be light industry which is what it is suited for.

Dave Paolini - Made the motion to accept the case.
Bill Colbath - Seconded the motion.
U/A

Tom Clark - The building was previously a machine shop use, and was classified a non-conforming use when rezoned to B-2. Since this use has been discontinued for a period of 12 months and more, the use needs to comply to current ordinance. Petition is to re-establish the non-conforming use.

Steve Stancel - the Planning Dept is in favor of the variance. It is the perfect use for this building.

Chris Jacobs - Concerned with employee parking and loading and unloading in the street. Also future growth.

Michael Moore - Have the use of 3 lots, 2 for employee parking and 1 for a dumpster. Trucks delivering steel usually have side access making delivery possible by parking along side of building rather than into the street.

Mrs. Foster - Room will be made for growth of the company by allowing additional parking spaces.

PUBLIC HEARING CLOSED

5 CRITERIA

1. The applicant does face an unnecessary hardship. Present building does not lend itself to permitted uses. Previous uses similar to proposed use.
2. The variance will deliver substantial justice. It will allow a reasonable use to the building.
3. The variance will be in harmony with the spirit and intent of the zoning ordinance. Reasonable use of the property with a business which is quiet and unobtrusive.
4. The variance will not result in a diminution in value of surrounding properties. No evidence present. No abutters present.
5. The variance will be of benefit to the public interest. It will allow reasonable use of the property.

Dave Paolini made the motion to grant the variance.
Dean Trefethen seconded the motion.
U/A with the following condition.

That owners lease agreement provide for sufficient parking.

ITEM 4. H93-8, Richard Haun, 6 Ela St., a/k/a Assessor's Map 27, Lot 269, Zoned R-12

This case was moved to the last due to applicant's absence.

Dave Paolini stepped down from voting on this case.

Tom Clark - Construction begun before application for Building Permit. The increase would be in violation with zoning. Applicant advised either to restore or appeal to the Zoning Board.

Steve Stancel - *see next page* Site inspection showed that surrounding properties do meet the set back requirement. The applicant is receiving a higher standard than surrounding neighbors.

Chris Jacobs - *see next page* Read letter from abutter, Edmond Labonte, who is in favor of variance.

5 CRITERIA

1. The applicant does face an unnecessary hardship. The house lies within the setback. Any revision of the deck would have required a variance.
2. The variance will deliver substantial justice. Has the same usage as neighbors. Extension does not extend closer to street.
3. The variance will be in harmony with the spirit and intent of the zoning ordinance. It will allow reasonable use of the property and maintain porch.
4. The variance will not result in a diminution in value of surrounding properties. It will serve to beautify.
5. The variance will be of benefit to the public interest. It will maintain property value and beautify.

Dean Trefethen made the motion to grant the variance.

Bob Callan seconded it.

U/A with the following conditions:

- (1) That guardrails and handrails be installed if necessary. *see next page*
- (2) That the porch not be enclosed with glass or walls. Screens are permitted.

Meeting Adjourned

ZBA 8/19/93

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5. The variance will be of benefit to the public interest. No detriment to the public interest shown. (4 voted will and 1 will not).

Dean Trefethen made the motion to grant the variance.
Bill Colbath seconded the motion.
4 voted to grant the variance and 1 voted against.
Variance was granted

Dean Trefethen made the motion to accept the June 17th. minutes with the following corrections:

- (1) On page 11 Steve Stancel's statement is corrected to read as follows: "Site inspection showed that surrounding properties do not meet the set back requirement. The applicant is not receiving a higher standard than surrounding neighbors."
- (2) On page 11, at the bottom, item (1) is corrected to read as follows: "That guardrails and handrails be installed if required by code."

Bill Colbath seconded the motion.
U/A

Dean Trefethen asked Steve Stancel if the City is required to meet the fence regulations.

Steve Stancel - No, the City does not have to meet the fence regulations.

MEETING ADJOURNED