

ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
JUNE 18, 1992

MEMBERS PRESENT: Joyce Bowden, Bill Colbath, Dave Paolini,
Randy Turner, Bob Callan

ALSO PRESENT: Tom Clark, Steve Stancel

Meeting brought to order by Joyce Bowden at 7:15 p.m.

ITEM #1: New Business

Bob Callan made the motion to approve the minutes of May 21, 1992.

Randy Turner seconded the motion.

VOTE U/A

ITEM 2: Old Business

a) H92-5, Paula Karabelas, 239 Washington St.,
a/k/a Assessor's Map 10, Lot 32, zoned RM-10,
requests a variance from the terms of Article V,
Section 170-16, to create a lot having no frontage
on a public right-of-way, where eighty (80) feet is
required.

Joyce Bowden - The reason why the Board was late was because they went out and looked at the lot. No one seemed to know just exactly where the lot is. Is applicant present.

Barbara Dunnington represented the applicant.

Joyce Bowden - Asked if the applicant read the response from the Conservation Commission in regards to her lot.

Barbara Dunnington - She did not have the letter.

Joyce Bowden - Read the response from Michael Hearn, Conservation Commission dated June 16, 1992.

Tom Clark - clarified the topographical map of the Planning Dept. Section 170 27D pg. 17030, If there is not sufficient minimum lot size outside the Conservation District, a second variance would have to be requested. This information was just recently brought out.

Joyce Bowden - At this time, because no survey has been done, it is not known where the boundary lines are, how much of it is conservation district, and/or wetlands. So there is no idea what is going to be done, for example where the house would go.

Tom Clark - Essentially, that is correct.

Barbara Dunnington - First seeking a relief for the frontage before going to the expense of a survey.

Joyce Bowden - There is no survey, boundary lines have not been identified, and relief from frontage is requested which makes it difficult for the Board to grant a variance.

Tom Clark - In the past, applications for variances have been accepted with plot plans without a survey.

Joyce Bowden - But they haven't been of this type of nature. This land is sloping, in some places straight down to the water.

Steve Stancel - 2 ways to go. Conditionally approve and send it to the Planning Board or, make applicant supply required information to this Board.

Randy Turner - Applicant would be well advised to do that because of insufficient information.

Bill Colbath - Meetings with Conservation Committee and Technical Review Committee were supposed to have taken place prior to this meeting. Was this done.

Steve Stancel - The Conservation Commission and Technical Review Committee did go out to the site.

Bill Colbath - Did the Conservation Commission and Technical Review Committee determine if this is a buildable lot.

Steve Stancel - The City will not state if this can be done or not.

Tom Clark - The Conservation Commission and TRC did go out. The Engineer, Fire Dept., Police Dept. had same comments. Need 30 foot right-of-way, 16 feet of pavement. Basically what they are saying is If the regulations are followed, yes it can be done. They will not give advice as to whether it should or not. There were concerns as to the sewer lines, whether or not they would be adequate and who will own the sewer line.

Bill Colbath - In order to give a definite yes or not, then a survey has to be done.

Bob Callan - In addition to survey, the right-of-way will be a stumbling block. Has applicant met with anyone to extend

that right-of-way, to widen it. No plan has been submitted for the expansion of the right-of-way therefore, the Board cannot possibly give a variance for the frontage. Even though there is one lot now, there is a possibility of 16 future lots. We have to go by our zoning regulations.

Atty. Dunnington - Issue that is being presented is whether or not a variance will be granted basically to move ahead with exploring the possibility of a sub-division. If variance will not be granted then a sub-division will not be permitted on this lot. But if a variance were granted then a survey and other requirements will be done for a sub-division. However, before spending money for all these requirements, need to know whether or not the City will allow exploring the sub-division possibility and the frontage requirement is critical. Without the frontage variance, we don't have any kind of a project.

PUBLIC HEARING CLOSED

No further Board discussion

Randy Turner made a motion to deny the variance.
Bill Colbath seconded it.

VOTE: U/DENIED

ITEM #3 *H92-8 Christian Linker & Lawrence Raiche, (owner: Greg Koutrelakos), 595 Central Ave., a/k/a Assessor's Map 27, lot 1, zoned Office, requests a variance from (1) the terms of Article IX Section 170-32.I(3) (b) to maintain a free-standing sign larger than four (4) sq. ft. per tenant and exceeding twelve (12) sq. ft. in total area; and (2) the terms of Article IX, Section 170-32.0(1) to increase a non-conforming sign.

Atty. Robert Murphy: Represented Chris Linker, one of the applicants. The five (5) criteria points on the application were read by Atty. Murphy. Hardship being that surrounding properties have larger signs. Also that applicant Chris Linker was misinformed by the sign builder in regards to sign permit requirements. Tom Clark spoke to Lawrence Raiche and informed him that a sign permit was needed and sign builder told Mr. Raiche that a permit was not needed and Mr. Raiche went by what the sign builder said. Sign went up. Ms. Linker never had a conversation with Mr. Clark before this went up. Ms. Linker also went by what the sign builder said, that no sign permit was needed.

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Joyce Bowden: How long has sign been up?

Tom Clark: Possibly 3 or 4 months.

Joyce Bowden: Asked if Tom had seen the other sign.

Tom Clark: Yes

Bill Colbath: Questioned position of previous sign and the increase of new sign size.

Bob Callan made the motion to accept this case.

Dave Paolini seconded it.

VOTE U/A

Bob Callan: Questioned part 2 of criteria. Asked if the sign builder was a local one.

Atty. Murphy: Yes.

Joyce Bowden: Does the sign builder know he needs a sign permit?

Tom Clark: Gave background. Spoke to Mr. Raiche possibly in December of last year, he asked what he could do to change his sign. Tom explained the procedure to him and gave him a sign permit application. Mr. Raiche went to a sign builder (unnamed) and that sign builder told him that he needed a sign permit. Then Mr. Raiche went to Mr. Sherwood and he told Mr. Raiche that he did not need a sign permit. Unfortunately that is the one Mr. Raiche listened to. Sign was constructed and erected and Mr. Clark noticed it. He spoke to Mr. Raiche about it and informed him that he does need a sign permit. In a lot of cases, sign permits are looked at after the fact. When permit applied for, the required information showed that the sign was larger than the already non-conforming sign. Ms. Linker had her sign made which increased hers greatly.

Atty. Murphy: Ms. Linker had no conversation with Mr. Clark and was relying on what Mr. Sherwood said.

Bob Callan: The Board sees too much after the fact pertaining to signs and feels that the burden should not be totally on the Inspector's office. People should know that they need sign permits. It brings too many to the Board and spending \$130. for an application.

Bill Colbath: Questioned the grandfathering of the sign.

Joyce Bowden: Asked City Planner, Steve Stancel his opinion on the issue of grandfathering of the sign.

Steve Stancel: In past, if a tenant came in and changed the wording of an existing on-conforming sign, it could be done because of grandfather clause. But if you took the sign down it could not be put back up.

Tom Clark: There is a provision that if you have a non-conforming sign it has to stay as is. It cannot be enlarged.

Bill Colbath: So in this case the sign has not only been enlarged but also changed position. Too many times cases are heard after the fact.

Joyce Bowden: Asked if anyone would like to speak in favor of this application. No response.

Joyce Bowden: Asked if anyone would like to speak in opposition to this application.

Steve Stancel: The Planning Dept. is opposed to this application for 2 of the 5 criteria. (1) hardship and (2) the Spirit and Intent of the Ordinance. This is a case of miscommunication but it is not a valid reason. The majority of the signs in that area do conform to the ordinance. The applicant had a legal non-conforming sign that was more than its neighbors were allowed. Essentially, there is not a hardship inherent in that land.

PUBLIC HEARING CLOSED

BOARD'S COMMENTS

Randy Turner: Whether sign exists or not is irrelevant. If the question came before the Board before the sign went up would the Board approve or disapprove it. My answer would probably be no.

Joyce Bowden: Asked Bob Callan and Dave Paolini what direction would they go in.

Dave Paolini: If the sign was not up I wouldn't go with it.

Bob Callan: Approves of concept of sign but concern would be of other 2 tenants because the sign, to some degree, cuts down the view of their signs. I would expect that they would conform.

Bill Colbath made the motion to deny the variance.
Randy Turner seconded the motion

VOTE; U/DENIED

ITEM #4. *H92-9, Richard and Deborah Kane, 55 Horne St.,
a/k/a Assessor's Map 29, Lot 54, zoned R-12,
requests a variance from (1) the terms of Article
V, Section 170-16 to construct two (2) additions:
one within twenty-four (24) feet of a side property
line as it abuts a street where thirty (30) feet is
required; the second within twenty-one (21) feet of
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.

Tom Clark: Explained the plot plan. These additions have
not been constructed yet.

Robert Carrier: According to the deed, this is a non-
conforming lot. The owner would like to enhance their
property and add on to it tastefully. The construction plans
were given to each Board member for review.

Joyce Bowden: You wish to expand the living room and put in
an apartment to house Mrs. Kane's mother?

Bob Carrier: It is not a separate apartment. It is a
mother-in-law apartment.

Bob Callan made the motion to accept this case.
Randy Turner seconded it.
U/A

Dave Paolini: Questions the setbacks.

Bob Carrier: This house is on the corner of 3 streets.

Joyce Bowden: Anyone else wish to say anything for or
against this.

Steve Stancel: This is difficult because the applicant has
reasonable use of his property as it is now. However, in
allowing him the same rights as his neighbors, most of them
are the same size or smaller. This applicant's property is
surrounded by 3 streets. That constitutes a hardship.

PUBLIC HEARING CLOSED

No more discussion by the Board

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Randy Turner made the motion to grant this variance.
Bob Callan seconded the motion.

VOTE: U/A without stipulations.

ITEM # 5 *H92-10, Charles and Maxine Sheckler, 4 Northam Dr., a/k/a Assessor's Map 36, Lot 15-J, zoned R-12, requests a variance from the terms of Article IV, Section 170-12, Table I, Part E, to establish a nursing home.

Chuck Sheckler: Clarified, not a Nursing Home but a Shared Home.

Tom Clark: Dover's Table of Use Regulations does not address shared home. Based on review of information provided, this does not come under a single family dwelling and the closest use is nursing home because of the services provided.

Chuck Sheckler: There will be a maximum of 4 elderly residents. It will be a small shared home with 24 hour supervised facility for ambulatory people. It must be licensed by the State. It is not skilled nursing and not a boarding house. Maximum of 4 to keep it as residential. Do not wish to change that, no building modification. The owners will live there making it 6. Trying to provide an alternative for ambulatory elderly people. Adequate parking.

Joyce Bowden: Where is the hardship inherent in the land?

Chuck Sheckler: I can't say there is a hardship other than comparing what is in the ordinance for what is allowed in the R-12.

Joyce Bowden: A hardship would consist of if you had no use of the property.

Chuck Sheckler: It's a residential and will continue to be. Discussion between Mr. Sheckler & Board members in regards to shared home is not addressed in the zoning ordinance so it has to come under nursing home. The Zoning Board of Adjustment must deal with the current regulations.

Tom Clark: There are plans being made to consider establishing this as a separate use in the table of use regulations at some time so that we do not just have single family dwellings and nursing homes. There is a commercial aspect to this enterprise. These individuals will be paying the Shecklers for room and board, they do require 24- hr.

supervision and it does require licensing by the State which does not put it into the category of single family dwelling.

Steve Stancel: Planning office differs in opinion. Believes that there is a category that this falls under and that is single family.

Joyce Bowden: You don't have to be licensed to be a single family dwelling.

Steve Stancel: Planning Dept. fails to see how State licensing plays into a single family. My Friend's Place, group homes run by Strafford Guidance, these are considered single family residents and require 24-hr. supervision. It is our opinion that if one group of people are living together as a single family, eating together, living together then it should be considered single family. You are right, there is no hardship and it shouldn't be looked at as a variance but as an appeal from administrative decision.

Joyce Bowden: But tonight's case is looking for a variance.

Dave Paolini made a motion to accept the case.

Bob Callan seconded it.

VOTE: U/A

Joyce Bowden: Anyone in favor

Steve Stancel: Planning Office has a difficult time not justifying this as a single family dwelling as opposed to a rooming house or nursing home.

Joyce Bowden: Are you disagreeing with Mr. Clark at this point.

Steve Stancel: In terms of a hardship, I would say that the hardship is in fact that it is nonexistent in zoning.

Joyce Bowden: Anyone opposed

Mr. Fortier: A direct abutter. Concerned at having a parking lot next to his house. Who will be liable if one of the residents wandered onto his lot and got hurt. There are protective covenants in the deeds. There will be more than 6 people there because they will all need care.

Bob Tanner: Submitted a signed petition of those who opposed this variance. Covenant cannot be enforced if variance is granted. This is an injustice to residents.

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Donna Manseau: Opposed for the same reasons as Mr. Fortier.

Rosemary Jenkins: Covenants prohibits commercial use of property. Dover House Healthcare is located nearby that can accommodate more elderly. The hardship to the residents would be to allow commercial use of this property. The effect on property value would be that it would diminish.

Bill Gowen: The City mandated that a home owner's association be established to maintain the private sewer system in this development. Also need to enforce the covenant of this association in regards to commercial use. We will seek legal advise if this is granted.

Fred Zoro: Concerned with the additional traffic this home would attract. Cars will be turning around in the culdesac all the time.

Chuck Sheckler: It is not the intention to create a hardship on the people. Intent was to keep it residential.

Dave Paolini: People need more information on what a shared home is. It is a good idea but there is no hardship in this particular case to grant the variance.

Joyce Bowden: This variance is for a nursing home and covenants are not the City's problem. This Board has to address the variance not covenants.

PUBLIC HEARING CLOSED

Bill Colbath made a motion that the variance be denied.
Bob Callan seconded it.

VOTE; U/DENIED

MEETING ADJOURNED