

ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
OCTOBER 15, 1992

MEMBERS PRESENT: Bill Colbath, Dean Trefethen, Bob Callan,
Dave Paolini, Randy Turner and Chris Jacobs

ALSO PRESENT: Tom Clark, Steve Stancel

Meeting brought to order by Bill Colbath at 7:05 p.m.

ITEM #1: New Business

Steve Stancel read the letter to the Board that will be sent to the Planning Board in regards to reviewing the sign ordinance as agreed upon at the September 1992 Zoning Board meeting.

Dean Trefethen made the motion to accept the minutes of September 17, 1992 meeting.

Dave Paolini seconded the motion.

VOTE U/A

ITEM 2: Old Business

Chris Jacobs did not sit on the next case

ITEM 3: H92-14, Dennis Chalmers & Elinor Murphy, 29 Stark Ave. and 16 Birchwood Pl. a/k/a Assessor's Map 17, Lots 51 & 52, zoned R-12, requests a variance from the terms of Article IV, Section 170-12; Table I, part C-2, to establish an office use(s).

Dennis Chalmers - Presented a brief history of his property on Stark Ave., including the Round House, to the Board members, its unique structure, and the renovations that have been made and will be needed to maintain its historical value. Mr. Chalmers also informed the Board of his need to relocate his business from Somersworth to his property on Stark Ave. due to the economy. He stated that there are already small businesses in the area and he wishes to preserve the Round House which will be in keeping with the residential and small businesses already established. In spite of the fact that his business has suffered due to the economy, he will strive to build it back up and continue to bring monies into New Hampshire.

Dean Trefethen - Asked if the structure could be converted into a 2 unit residential building.

Mr. Chalmers - Yes. However, the two buildings would have to be joined to form one structure on the lot. At the time of the purchase of this lot the sprinkler ordinance was in effect making it too expensive to do.

Dean Trefethen made the motion to accept the application. Randy Turner seconded it.

U/A

Thomas Clark - Asked what the garage is being used for.

Mr. Chalmers - For storage.

Bill Colbath - asked if anyone wish to speak in favor of the request.

No response

Bill Colbath - asked if anyone wish to speak in opposition.

Richard Sweet - 14 Stark Ave. Opposed because the area is all residential. The businesses are not as close as Mr. Chalmers says. The only business in the R-12 is a Doll Hospital which is a customary home occupation which is not a violation of the residential district. However, Mr. Chalmers was in violation when he had his business out of his home because he had 3 employees where 2 are allowed. There would be a violation if offices and business were allowed in a residential district.

Jack Kulas - 20 Stark Ave. Appreciates Mr. Chalmers maintaining a historic site and the position of his business in the economy however, is concerned with keeping the area residential. A multiple use district is not in keeping with this area. Through the years, businesses have been moving into residential areas by spot zoning. R-12 is strictly residential. Should make use of the already vacant office bldgs.

Helen Riley - Concerned with maintaining the area as residential. Current businesses are in a different zone. Should make use of other available vacant office bldgs. in Dover.

John Sourby - Ms. Riley read letter from John Sourby who also opposes the business on Stark Ave. Should be maintained as residential district.

Allan Krans - This would be a very dangerous intersection if office use were permitted in this area. There would be traffic tie-ups. People do not want to see Stark Ave. become a combination of residential and commercial.

Steve Stancel - The Planning Dept. is opposed to the request. (1) Does applicant have reasonable use of his property? If applicant does have reasonable use of his property than he doesn't have a hardship. A duplex is allowed on both parcels of land without the need of sprinkler system. (2) Would applicant receive same rights or more rights than abutters. I think that if the applicant were to receive the variance then he would be receiving more rights than the abutters.

Mr. Chalmers - Knows about the available office space. The problem is the expense of the office space. Reiterated his desire to preserve the historic value of the property and need to lower overhead of his business.

Elinor Murphy - Co-owner - Restated the renovations that have taken place and the desire to preserve the historic value of the Round House. Also the status of the business and listed other businesses within residential zone.

Bill Colbath - Anyone else in favor? Anyone else opposed?

Richard Sweet - Understands their predicament but must also understand our predicament. Businesses could come in and infringe upon us.

Steve Stancel - Sympathetic with the Chalmers needs but the bottom line is - the area is residential. The Master Plan does not identify this area for rezoning. If the variance were granted it would be spot zoning.

Mr. Chalmers - Prepared to accept covenants.

PUBLIC HEARING CLOSED

Randy Turner - Financial hardship is not allowed. Sees no hardship to the land.

Dean Trefethen - No hardship.

Dave Paolini - No hardship.

5 CRITERIA

1. The applicant does not face an unnecessary hardship because he has reasonable use and there are other alternatives available.
2. The variance will not deliver substantial justice, but injustice to surrounding residences.
3. The variance will not be in harmony with the spirit and intent of the zoning ordinance in that the intent of the ordinance was to preserve rights of owners of surrounding properties.
4. The variance will result in a diminution in value of surrounding properties in that it will render surrounding properties less desirable.
5. The variance will not be of benefit to the public interest. Spot zoning is not in the public interest.

Dean Trefethen made the motion to deny the request for variance.

Randy Turner seconded it.

U/A

ITEM 4: H92-15, Thomas & Elizabeth Cuthbertson, 161 Varney Rd., a/k/a Assessor's Map A, Lot 36-H, zoned R-40, requests a variance from the terms of Article V, Section 170-16 to maintain a structure (single family dwelling) with a side setback of fifteen (15) feet, more or less, where twenty-five (25) feet is required.

Chris Jacobs replaced Bob Callan on this case.

Thomas Cuthbertson - House was already constructed when he bought it. Not aware of the setback violation.

Dean Trefethen - Asked if it was a newly constructed house. at the time of his (applicant's) purchase.

Thomas Cuthbertson - Yes.

Chris Jacobs made the motion to accept the case.
Randy Turner seconded it.

U/A

Dave Paolini - Asked if Cuthbertson had a foundation plan at the time of the purchase.

Mr. Cuthbertson - No.

Tom Clark - At the time, the Inspection Div. did not require certified as-built plot plans.

Steve Stancel - Cannot have the building torn down now.

Bill Colbath - Does anyone wish to speak in opposition to this?

No response.

PUBLIC HEARING CLOSED

5 CRITERIA

1. The applicant does face an unnecessary hardship in that the hardship is inherent because the home was constructed to close to the property line and has been allowed to exist and has therefore been grandfathered.
2. The variance will deliver substantial justice because it allows continued reasonable use of property.
3. The variance will be in harmony with the spirit and intent of the zoning ordinance in that reasonable set back exists.
4. The variance will not result in a diminution in value of surrounding properties in that no evidence presented to the contrary.
5. The variance will be of benefit to the public interest in that there is no detriment to the public interest and the benefit to the property owner is great.

Chris Jacobs made the motion to grant the variance.

Randy seconded it.

U/A

ITEM #5 H92-16 Charles Claseman, 3 Linda Ave., a/k/a Assessor's Map I, Lot 79U, zoned R-12, requests a variance from the terms of Article V, Section 170-16 to construct an uncovered deck and a handicapped access ramp within twenty (20) feet of a front property line as it abuts a street where twenty-seven (27) feet is required.

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Bob Callan replaced Dave Paolini on this case.

Charles Claseman - Due to being in a wheelchair needs a ramp but doesn't meet the required setback.

Dean Trefethen made the motion to accept the case.

Bob Callan seconded it.

U/A

Bill Colbath - Anyone wish to speak in favor or opposition.

Steve Stancel - The Planning Office is in favor of the request for a variance. Due to the new ADA regulations, provisions proposed in the Zoning Ordinance will be to allow encroachment into the set back for handicapped ramps.

Tom Clark - Site inspection was done to see if there were any other way to accomplish the objective and there is none.

CLOSE PUBLIC HEARING

5 CRITERIA

1. The applicant does face an unnecessary hardship in that there is insufficient area to provide reasonable access on the existing property.
2. The variance will deliver substantial justice in that it will allow full reasonable use of the property.
3. The variance will be in harmony with the spirit and intent of the zoning ordinance in that zoning was designed to allow reasonable access to property.
4. The variance will not result in a diminution in value of surrounding properties because no evidence was presented to show that it will.
5. The variance will be of benefit to the public interest in that it will allow reasonable and convenient access to the property.

Bob Callan made the motion to grant the variance.

Randy Turner seconded it.

U/A

MEETING ADJOURNED