

ZONING BOARD OF ADJUSTMENT  
MINUTES OF MEETING  
MARCH 21, 1991

MEMBERS PRESENT: Randy Turner, Joyce Bowden, Chris Jacobs,  
Randy Turner, Dean Trefethen, Bob Callan

ALSO PRESENT: Steve Stancel and Tom Clark

OLD BUSINESS

Chris Jacobs made the motion to accept the minutes of  
November 15, 1990 and January 17, 1991 as presented.  
Randy Turner seconded.

VOTE U/A

Dean Trefethen stated that he would not be at the April ZBA  
meeting.

Bob Callan, a new ZBA alternate, was introduced.

Steve spoke on the value of the training session being  
offered by the Office of State Planning to new members of  
zoning boards. They should fill out the form, mail it to him  
and the City will pay the registration fee and travel.

H91-4 Raymond & Eileen Bardwell, 76-A Sixth Street, A/K/A  
Assessor's Map 31, Lots 103, 105 & 1, Zoned RM-8 requests a  
variance from the terms of Article IV, Section 170-12, to  
operate a Personal Service Establishment (Rental & Repair of  
Home & Garden Equipment including sales of same)

Atty. Anthony McManus represented Raymond & Eileen Bardwell.  
He stated that Jimbo's Autobody has been there for quite a  
while. It was zoned Commercial at the time. The zoning  
changed and it is now a non-conforming use. William Colbath  
will rent the building with option to buy.

The hardship is the legal non-conforming use. The building  
cannot be very easily adapted to residential. The Bardwell's  
are stuck with it as a commercial use. Mr. Colbath proposes  
to use it to repair lawnmowers and small appliances, which is  
a needed use in Dover. He has Dover residents who have to  
travel to Rochester to use his services. This use will be an  
improvement over Jimbo's. While an autobody shop, chemicals  
were used and the area was unsightly.

Mr. Colbath will have some outside display during the day but  
will be brought in at night. It will not affect the  
character of the neighborhood and will allow the owner the  
best use of his land. It will provide a public convenience.  
Mr. Colbath is not asking to expand the use just changing and  
upgrading the use of the property.

Joyce stated that if he wants a personal service establishment, his sales are to be less than 50% of his intake.

Tom Clark stated that with sales, service and rental, he feels that the service and rental is greater than the retail.

Chris Jacobs made the motion to accept the case.  
Dean Trefethen Seconded.

VOTE U/A

Chris Jacobs asked if the variance was being asked for 2 parcels?

Tom Clark stated that the property was 3 continuous non-conforming lots which were absorbed into one.

Steve Stancel stated that the Planning Department doesn't have a problem with the request with the condition that they forfeit the Auto Repair use of the property.

Atty. McManus stated that he has no objection. He said that assuming he receives the variance, it would seem that if someone wanted to go back to an autobody use they would have to come to the ZBA. He said he understands that they cannot go back to an Auto Repair use.

Judy Chatman, 78 Sixth Street, an abutter had the following concerns and comments:

Will there be any discharge into Berry Brook?  
Will the air quality be improved? She had an exhaust fan facing her building.  
Will there be a lot of testing of equipment outdoors?  
Will there be any unused motors stored outside?  
Will fencing be put up?

William Colbath's brother stated that nothing will be discharged in the brook. He said that Wentworth Greenhouse picks up his oil to be used as heating fuel. Chainsaws and lawnmowers will be started up on the left side of building. The mess around the building will be cleaned up. He will put up a 30 X 30 chainlink fence to put the rental tools in. There will be some traffic flow. There is no painting done as part of his business. He can direct the fan up or to the left. He stated that the location is ideal because of the natural buffers. He does not want to be a problem to neighbors. He stated that he has a security system that is linked to the Police Department. His hours will be from 8 to 5 and April 1st 8 to 5:30 with no evening or Sunday hours.

Joyce Bowden stated that if he wanted to expand he would have to come before the ZBA.

Steve Stancel stated that if the Personal Service were to change they would have to go before the Planning Board and that would offer a safety net.

#### 5 CRITERIA

1. The applicant does face an unnecessary hardship because the building was of a conforming use when built. After the zoning was changed it became non-conforming.
2. The variance will deliver substantial justice as it will allow the applicant the use of this property in the manner it was constructed.
3. The variance will be in harmony with the spirit and intent of the zoning ordinance as the zoning ordinance is not to deprive a property owner the enjoyment of his property as intended in the construction.
4. The variance will not result in a diminution in value of surrounding property as there was no evidence presented.
5. The variance will be of benefit to the public interest because it will allow a beneficial use of this commercial building and won't be a detriment to the neighborhood.

Randy Turner made the motion to grant the variawnce with the following conditions:

1. Fence facing the Chatman property is screened for visibility.
2. Fan facing the Chatman property is covered and not used.

Dean Trefethen seconded.

VOTE U/A  
GRANTED

<sup>9</sup>  
H&I-5 Peter & Mary Salinder, 27 Toftree Lane, A/K/A Assessor's Map M, Lot 119, zoned R-40, requests a variance from (1) the terms of Article V, Section 170-16, to construct an addition (attached garage) approximately thirty-seven (37) feet from a front property line where fifty (50) feet is required; and (2) the terms of Article X, Section 170-41.A, to increase a non-conforming structure.

Steve Stancel stated that when that development was approved the zoning was Agricultural I, shortly thereafter it was rezoned to R-40 which made all the lots non-conforming. He said he would like to see it rezoned to R-12. The side setback would be 15' and the non-conforming property would make it 10'.

Joyce Bowden asked why nothing has been done regarding the rezoning of that development?

Steve stated that he recommended to the people who own property in that development to get a petition together requesting it be rezoned. He said that he checked out the other variances that have been given to Toftree Lane property owners over the years and would write a letter asking for rezoning of the area for Joyce's signature.

Peter Salinder stated that he has been living in his home for 11 years. He would like to build a single-door two car garage.

Chris Jacobs made the motion to accept the case.

Dean Trefethen seconded.

VOTE U/A

Steve Stancel stated that the Planning Department sees no problem with this request given the fact that we will be suggesting a zoning change.

Joyce Bowden asked Steve how soon he can get a letter ready.

Steve Stancel stated that he would write the letter next week.

Close Public Hearing

#### 5 CRITERIA

1. The applicant does face an unnecessary hardship because the property was conforming when it was built and the zoning change made it non-conforming.
2. The variance will deliver substantial justice by allowing the applicant the use of his property. The present zoning is too restrictive.
3. The variance will be in harmony with the spirit and intent of the zoning ordinance by allowing him to use his property in a single family neighborhood.
4. The variance will not result in a diminution in value of surrounding properties as no evidence was presented.
5. The variance will be of benefit to the public interest.

Dean Trefethen made the motion to grant the variance.

Chris Jacobs seconded.

VOTE U/A

GRANTED

Meeting adjourned at 8:00 PM