

ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
AUGUST 15, 1991

MEMBERS PRESENT: Joyce Bowden, Bob Callan, Bill Colbath,
Dean Trefethen

ALSO PRESENT: Steve Stancel, Tom Clark

Joyce Bowden explained to all the applicants that there were only four Board members present, which means they would have to get 3 out of 4 votes to be approved or could wait and be heard next month. She stated that Bill Colbath would be stepping down on the Jalbert application and told Mrs. Jalbert that she could be heard that evening with only 3 members which would mean she would have to get a unanimous vote or wait and be heard next month when a full Board would be present.

Mrs. Jalbert and the other applicants decided to be heard.

Meeting brought to order at 7:12 PM.

Joyce Bowden stated that there is a law lecture course being offered that would be of benefit to the ZBA. If anyone was interested in going, please fill out the application and the City would pay the fee.

H91-11 Richard Kay, 25 Littleworth Road, A/K/A Assessor's Map H, Lot 28-1 and 28, zoned R-20, Section 170-40.A & B to increase a non-conforming use (Auto Service).

Dean Trefethen made the motion to take the case off the table.

Bill Colbath seconded.

VOTE U/A

Jeff Nawrocki stated that there is some screening between the auto service station and the property belonging to Wallace Kay in the form of two big trees. He stated that Dick's father oversees the property.

Bob Callan stated that it is a rural area and doesn't see the need for screening in the given situation.

Tom Clark stated that the site plan doesn't show the existing barns.

Dick Kay stated that one has been removed and another will be removed.

Dean Trefethen asked about the in-operable cars.

Dick answered that three have already gone and he has a place to get rid of the others.

Close Public Hearing

Dean Trefethen stated that a stipulation should be added if approved, to state that should the property change hands, screening will have to be put into place.

Bob Callan stated that the 28 parking spaces will have to be adhered to by getting rid of the junk cars.

Steve Stancel recommended to make the variance approval contingent upon receipt of subdivision approval from the Planning Board.

5 CRITERIA

1. The applicant does face an unnecessary hardship because the topography, location and subsequent zoning changes over the years has created an unnecessary hardship.
2. The variance will deliver substantial justice as it will allow the applicant to have continued operations on a year round basis.
3. The variance will be in harmony with the spirit and intent of the zoning ordinance as the applicant is not increasing the use, only making it more accessible.
4. The variance will not result in a diminution in value of surrounding properties because no evidence was presented and the building will conceal an eyesore.
5. The variance will be of benefit to the public interest as it will improve safety and improve an eyesore. No detrimental evidence was presented.

Dean Trefethen made the motion to grant with the following conditions.

1. In the event the property (Lot 28, Map H) is sold, suitable screening is provided.
2. The 28 parking spaces required are adhered to and the unregistered vehicles are removed.
3. Receipt of Planning Board approval for their subdivision.

Bill Colbath seconded.

VOTE U/A
GRANTED

H91-12 Margaret Jalbert (Owner: Kenmore Real Estate), 519 Central Avenue, A/K/A Assessor's Map 4, Lots 5 & 19, zoned B-2, requests a variance from the terms of 1) Article V, Section 170-16 to permit a lot line adjustment and new construction which would result in rear setbacks of two buildings of less than one (1) foot where twelve (12) feet is required; and 2) Article X, Section 170-41-A to increase non-conforming structures.

Tom Clark gave an overview of the case and stated that this item had been tabled at the Planning Board level. They felt a variance was needed first.

Joyce Bowden explained that the hardship has to be in the land and cannot be economic.

Margaret Jalbert stated that the buildings are pre-existing and so is the railroad that borders the property. Nothing can be done about moving the buildings. She stated she is asking to increase the building approximately three feet. The building has suffered a fire and it is an eyesore. She stated she is working with what exists because what is preexisting can't be changed. She stated that she hopes to purchase Lot 4-19 and place it under renovation.

Dean Trefethen made the motion to accept the case.
Bob Callan seconded.
VOTE U/A

Margaret Jalbert stated that there is an unnecessary hardship because the building is in the downtown area and it is confined. She stated that she is trying to work with what is there. She stated that this is the only location to place the lot line because the property does not lend itself to conformance to the zoning regulations. She stated that a variance will promote safety as there will be clear access to the property from more than one side. The surrounding property will be greatly enhanced as the property will be remodeled and returned to a vital use and an active downtown area will enhance the public interest.

Margaret Jalbert stated that the addition will be approximately 3 feet and the back wall will be cement block. She stated that the property and building is very small and she is trying to get as much use out of the building as possible. She said A Bit 'O Green will be occupying the first floor. The addition will provide a garage to load live merchandise in the winter. She wants to enlarge the building to allow for an 8 X 16 refrigerator unit and a garage. She stated that the second story to the addition would house an office for herself and storage.

Mrs. Jalbert was asked about the three oil receptacles and a

loading door which would be blocked from the Franklin Electroplating business. She stated that she doesn't see a problem. She would sit down with John Cabral, owner of Franklin Electroplating, and they would work out these issues. She stated that she has nothing on paper but is confident that they can work it out.

Bob Callan asked about the lease on Lot 4-5.

Ken O'Neil said that Franklin Electroplating doesn't have a lease. He said that John Cabral claims he has a lease but doesn't have a copy of that lease.

Bob Callan stated that he has concerns about this case as he doesn't live on promises.

Steve Stancel stated that the Planning Department is concerned with the blockage of the garage door in the Franklin Electroplating building and the sewer. There should be some kind of access easement.

Margaret Jalbert stated there will be no deeded right-of-way but there will be access. She stated that the proposed addition would not impinge on the garage door. She stated that door is not the only entrance to Franklin Electroplating and is not the primary access.

Ken O'Neil stated that it is very seldom used.

Steve Stancel stated there would be a problem if the other lot would not be able to use the loading dock.

Close Public Hearing

Joyce stated that she sees problems down the road with this case because of the lack of access to the garage door and it doesn't meet the ZBA criteria.

Joyce stated that the roll of the ZBA is to alleviate unjust situations, to solve problems and not to create them. With no written agreements, Franklin Electroplating loses. She stated that if there were more concrete agreements, maybe the Board might look at it differently. Joyce stated that Mrs. Jalbert must address the hardship issue if she is to re-apply.

5 CRITERIA

1. The applicant does not face an unnecessary hardship as the applicant failed to prove a case of hardship. She has reasonable use of the building as it exists.
2. The variance will not deliver substantial justice due to the location of their property there could be

infringement of an abutter's easement and utilities.

3. The variance will not be in harmony with the spirit and intent of the zoning ordinance as the ordinance requires setbacks and the variance is for less than a one foot setback.
4. The variance will result in a diminution in value of surrounding property because further evidence needs to be obtained.
5. The variance will not be of benefit to the public interest because it is not in the public interest to create a zero lot line setback.

Dean Trefethen made the motion to deny the variance.

Bob Callan seconded.

VOTE U/A

DENIED

H91-13 John Correia (Owner: Pat Levesque-Hawley), 45 Columbus Avenue, A/K/A Assessor's Map F, Lot 1-K, zoned R-40, requests a variance from the terms of 1) Article V, Section 170-16 to construct a second story addition within twelve (12 feet of a property line as it abuts a street (Private R-O-W) where fifty (50) feet is required; and 2) Article X, Section 170-41-A to increase a non-conforming structure.

John Correia stated that there is an existing foundation for a double car garage. It was built with the intention of building an addition over it. He stated that he is not trying to change the setbacks, only build above the garage.

Tom Clark stated that Cummer Street is a private right-of-way. A variance was granted to build a double car garage at one time. Tom thought that a former building inspector probably did not realize that the lot did not physically front on Columbus Ave. There is evidence, however, that the former owners of the property had built the garage to support an addition above it.

Steve Stancel stated that the Planning Department did not have a problem with this case because it is unique to its neighbors.

Close Public Hearing

5 CRITERIA

1. The applicant does face an unnecessary hardship because the configuration and placement of this property creates an unnecessary hardship.

2. The variance will deliver substantial justice as it will allow use as a single family residential property.
3. The variance will be in harmony with the spirit and intent of the zoning ordinance as it will still remain a single family residence.
4. The variance will not result in a diminution in value of surrounding properties because no evidence was presented.
5. The variance will be of benefit to the public interest because it will allow aesthetic improvement and is in keeping with the residential neighborhood.

Bill Colbath made the motion to grant the variance.
Dean Trefethen seconded.
VOTE U/A
GRANTED

APPROVAL OF MINUTES OF THE MEETING OF JULY 18, 1991

Dean Trefethen made the motion to approve.
Bob Callan seconded.
VOTE U/A

Bill Colbath made the motion to adjourn.
Bob Callan seconded.
Meeting adjourned at 9:05 PM.