

ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
AUGUST 16, 1990

Members present: Bill Colbath, Dean Trefethen, Dave Paolini
and Chris Jacobs

Also present: Steve Stancel and Tom Clark

Meeting brought to order at 7:07.

Bill Colbath chaired the meeting. He explained to the applicants that there were only three members present and it would take all three votes to grant their applications.

NEW BUSINESS

Dean Trefethen made a correction in the minutes of July 19, 1990. On Page 2, a statement by Jim Jalbert will be corrected to read 10,000 to 14,000 sq. ft. rather than 10 to 14 sq. ft.

Dean Trefethen made the motion to accept the minutes as amended.

David Paolini seconded.

VOTE U/A

OLD BUSINESS

Tom Clark made the Board aware of the results of the Schulte court case.

Chris Jacobs arrived and made it a four member Board.

H90-15 William McMillan decided to postpone his hearing until next month when he will be heard by a full Board.

H90-13 Dover Assembly of God Church (Owner, Philip Christie) 66 Third Street, A/K/A Assessor's Map 31, Lot 7, Zoned I-2, requests a variance from the terms of Article IV, Section 170-12, Table I, Part E, to establish a non-conforming use (church) in an I-2 Zone.

Joseph Camp, pastor of the Assembly of God Church, stated that they would like a temporary variance for 3 to 4 years while they continue to work on their site on 6th Street. He stated that they would not be making any exterior renovations to the building but would be taking down some shelving. There is another church directly across the street. Mr. Camp stated that there are approximately 200 people in attendance for Sunday services, at other times approximately 100.

Dean Trefethen asked if there were 50 parking spaces.

Mr. Camp answered that there were.

Philip Christie said that there is also public parking in the area.

Mr. Camp stated that there would be times when both churches would be having services at the same time.

Steve Stancel asked if the building has been on the market for a long time.

Mr. Christie said that it has been on the market for about three years. He stated that the building has been difficult to rent because it is so large. He stated that there is a sprinkler system installed.

Chris Jacobs asked Mr. Christie if the Catholic Church had an agreement with him for the use of his parking lot.

Mr. Christie said that there is no agreement, they just use it and he doesn't mind. Everyone is a potential customer.

Tom Clark stated that municipal parking spaces are not to be taken into consideration.

Philip Christie asked if the area is going to be rezoned to B-2 in the future.

Steve Stancel stated that on-site parking would not be required if it were changed to B-2.

Tom Clark stated that all of the building is in an I-2 Zone and the lot is in a B-2.

Steve Stancel stated that the ordinance requires 1 space for every 4 seats.

Chris Jacobs made the motion to accept the case.
Dean Trefethen seconded
VOTE U/A

Steve Stancel stated that given the fact of the location, the I-2 Zone, and the building has been vacant for 3 years, the Planning Department feels that the zoning is not correct for the business and the church could be a good use for the building.

Chris Jacobs said he would recommend a maximum number of years on the variance and limiting the use to Wednesday and Sunday nights not to end up with other uses for other nights.

David Goodwin said he appreciated the endorsement of the Planning Department but limiting the use for Wednesday and Sunday nights would be difficult for their fellowship. He

stated that they never used the facilities seven days a week on Pearl St., but they do need flexibility. On Tuesday nights there is choir practice for about 20 people. Limiting their use to Sundays and Wednesdays would interfere with their freedom.

Mr. Christie asked when weddings take place.

Mr. Camp stated that weddings are generally held on Saturdays but they have very few weddings.

Mr. Goodwin stated that they do not endorse Bingo or run suppers for money. They may have special religious classes that would involved about 15 people.

CLOSE PUBLIC HEARING

Chris Jacobs said that he has no problem with the Variance but would limit the variance to 5 years and limit the large functions to Sundays and Wednesdays.

Dean Trefethen stated that looking at the history of the applicant, he doesn't think there would be a problem.

Steve Stancel stated that the variance should have a condition that it is for this church only.

5 CRITERIA

1. The applicant does face an unnecessary hardship because the property is not zoned for reasonable expected uses.
2. The variance will deliver substantial justice because similar uses in the neighborhood enjoy similar rights.
3. The variance will be in harmony with the spirit and intent of the zoning ordinance because the property has split zoning and the use would be compatible with the other existing uses.
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 because it will allow use of an otherwise vacant parcel and will be in harmony with existing uses.

Chris Jacobs made the motion to grant the variance with the conditions that the variance is for the use of the Assembly of God Church only and not to exceed five years with services limited to Sundays, Wednesdays and holidays.

Dave Paolini seconded.

GRANTED - with the following conditions:

1. The variance is for the Assembly of God Church only.
2. Granted for a time period not to exceed five years.
3. Services will be limited to Sundays, Wednesdays and holidays.

VOTE U/A

H90-14 Leonard & Virginia Silver, Jr, 32 Portland Avenue, A/K/A Assessor's Map 24, Lot 59, Zoned RM-8, requests a variance from the terms of Article IV, Section 170-12, Table I, Part C.1, and Article X, Section 170-40.C, to establish a non-conforming use (Eating & Drinking Establishment) in an RM-8 Zone.

Mr. Len Silver represented his application. He said that for 70 years there has been a business there until 8 months ago when a catering business moved out. Some of the uses have been a catering business, Chickland, a take-out business and the Fish Shanty, a take-out business. The Mexican take-out may have tables for approximately 20 people. There is parking for 20 cars which is more than sufficient. Mr. Silver said that he must have a tenant to continue his operation. There is about 1000 sq. ft. inside the building.

Lynn Charnez stated that her hours for operation will be Monday through Saturday from 11:00 to 8:00. It will be a take-out operation and there will be seating for 20 to 25 people. It will be a limited menu with reasonable prices.

Dave Paolini motioned to accept the application.
Chris Jacobs seconded.

VOTE U/A

Steve Stancel stated that his only concern is that through the years it would turn into a bar and asked if there would be a problem to setting a closing limit of 10:00 PM.

Tom Clark stated that it has been an Eating & Drinking Establishment use and later changed to Catering. Now they want to go back to its former use.

Steve Stancel stated that the Planning Department doesn't have a problem with this but would recommend a 10:00 PM closing time.

CLOSE PUBLIC HEARING

No discussion

5 CRITERIA

1. The applicant does face an unnecessary hardship and this will continue a low-impact commercial use consistent with the previous use and neighborhood.
2. The variance will deliver substantial justice as it will continue adequate use of an existing building.
3. The variance will be in harmony with the spirit and intent of the zoning ordinance. The Spirit and Intent is to allow similar use and privileges given to abutting properties and this will be similar to existing uses.
4. The variance will not result in a diminution in value of surrounding properties as there was no evidence presented.
5. The variance will be of benefit to the public interest because it will continue moderate use of a structure which is similar to other uses in the area.

Chris Jacobs stated that he doesn't want to see this kind of use in that area. He would like to see some condition, whereby, if the structure was destroyed, that particular nonconforming use would not be able to be re-established.

Chris Jacobs asked Mr. Silver if he would be against a statement like that added to the variance.

Mr. Silver answered that he wasn't. His insurance company would determine if the building was destroyed and couldn't be fixed.

Chris Jacobs made the motion to approve the variance with the conditions that the operation shall close at or before 10:00 PM and if the structure is destroyed, the variance shall cease.

David Paolini seconded.

VOTE U/A

APPROVED - With the following conditions:

1. The operation shall close at or before 10:00 PM.
2. If the structure is destroyed the variance shall cease.

Chris Jacobs made the motion to adjourn the meeting.
David Paolini seconded.

VOTE U/A

Meeting adjourned at 8:25.