

ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
JANUARY 19, 1989

Members Present: Joyce Bowden, Bill Colbath, Chris Jacobs, David Anderson, David Paolini and Randy Turner.

Also present were Steve Stancel, Planner and Tom Clark, Building Inspector.

The meeting was called to order at 7:00.

NEW BUSINESS

Election of Officers.

Members voting were: Joyce Bowden, Bill Colbath, Chris Jacobs, David Anderson

The names up for nomination where:

Chairman - Joyce Bowden

Vice Chairman - William Colbath & Randy Turner

The votes were taken by secret ballot and the results were as follows:

Chairman: 5 votes for Joyce Bowden

Vice Chairman: 5 votes for William Colbath

Joyce introduced the Board and explained how the alternates would vary on the different cases that evening.

OLD BUSINESS

A request for a rehearing was received from Christopher A. Wyskiel, representing the applicants, Edward and Geraldine Joyce and owner, Allan B. Krans of 23 Everett Street, Case #H88-71.

Sitting on the case were Joyce Bowden, Bill Colbath, Chris Jacobs, David Paolini and Randy Turner.

It was asked of Mr. Wyskiel if they were willing to give up the Grandfathered Use.

Chris Wyskiel, stated that they were.

Joyce Bowden informed him that if he was given the variance it would be for a dance studio only.

Randy Turner made the motion to rehear the case based on new information.

Chris Jacobs seconded.

In favor: Joyce Bowden
Chris Jacobs
David Anderson
Randy Turner

Against: Bill Colbath

VOTE 4 - 1 IN FAVOR

It will be put on the February Agenda.

H89-1 Yield House (owner: Rowe Chev. Co.), 701 Central Avenue, A/K/A Assessor's Map 28, Lot 19, zoned B-3, requests a Variance from the terms of Article IX, Section 170-32 G(3) (a) to erect a free standing sign where the principal building is set back approximately 16'6" from the property line where fifty (50) feet is required.

As the representatives of Yield House were not prepared to represent their case, Joyce explained the procedure to help them familiarize themselves with the criteria they would have to meet.

They decided to withdraw the application.

H89-2 Paul Rose (owner: Blue Jacket Trust), Industrial Park Rd., A/K/A Assessor's Map G, Lot 4-B, zoned I-1 requests a Special Exception as provided by the terms of Article VI, Section 170-23 and Article VII Section 170-52.C(3) to establish an Auto Service business in an I-1 Zone.

Paul Rose stated that he has been doing business at 72 Littleworth Road for 3 years until he had to vacate. He then found this present building and moved in. He had to apply for a Special Exception and that is what brought him to the ZBA. He also stated he was late filing the Special Exception because of the move.

He feels there is a great need for his business. When asked how many junk cars he had on his lot, he stated there were 42. The cars stem from a revolving police list he is on to tow abandoned cars from the City streets for the Police Dept.

Once he has the car on his lot he must:

1. Sit on the car for 90 days.
2. Send out certified letters to the owner.
3. Put a notice in the newspaper.
4. Apply to the State for ownership.

After this procedure they give him the car. There are many things that must be taken off the car before Madbury Metals will accept it.

Mr. Rose stated he takes cars for the City Police Department

because he wants wrecks for repair but in order to do that he must also take the abandoned cars. Most cars are abandoned because Madbury Metals and Landry's Salvage won't accept them so the owners strip them of any evidence of ownership and abandon them somewhere in the City.

Sitting on this case were: Joyce Bowden, William Colbath, Dave Anderson, David Paolini and Randy Turner.

Attn. John Maher, Trusty of Blue Jacket Trust suggested that the application be tabled if the Board were inclined to include the junk car issue in their decision. He did not want it turned down because of the overriding issues of the junk cars that are a big problem for the City.

Joyce Bowden read the definitions of Junk Yard, Junk Yard Motor Vehicles, and Auto Service. Mr. Rose wants to establish an Auto Service Business.

Tom Clark stated that an Auto Repair Service is allowed in an R-40 Zone but only by Special Exception. A Motor Vehicle Junk Yard would not be allowed without a variance.

Paul Rose stated that his advertising states Auto Body Repair and Towing. He does not make a penny on abandoned cars.

John Maher stated that in order to get the good cars he has to take the abandoned one. The environmentalists are stopping the disposal of cars and it is a great problem that is growing.

Randy Turner made the motion to accept the case.
Bill Colbath seconded.

VOTE U/A

Joyce read over the 3 criteria for Special Exception.

1. Is it desirable to the public?
2. Does it create traffic congestion?
3. Is it creating a problem with water or sewage or the health and safety and welfare of the general public?

Mr. Rose stated he has 14 employees compared to the former tenants who had 40. When asked what precautions he takes for fluids dripping out of cars, he stated that he puts the wrecked vehicles inside the shop. The others are on pavement where any spilling would be on the pavement. When asked about the snapshots taken that afternoon of the cars that were not parked on pavement, he stated that they were abandoned vehicles not wrecks. From the abandoned vehicles he removes the batteries, the oil is drained into waste barrels and removed by a waste company. An agency came to check the disposal of waste materials on his past property

and everything was in order. He stated that he pays dearly to have this material removed. He answered no when questioned if there was any fencing surrounding his property.

William Fennemin of the Dover Police Department submitted a letter from Chief Reynolds stating that denial should not be based on the number of vehicles on the Rose property. He spoke on the list of people available to take care of abandoned cars, how these individuals can't get rid of the vehicles because of the State law that stops them from disposing of the cars for 4 to 5 months. There are approximately 6 to 10 cars that are abandoned per month in the City and Mr. Rose is trying to help the Police at an inconvenience to himself. Mr. Fennemin stated he is not in favor or opposed, he just wants to make people aware of the problem that exists in the City. There are only two places that he knows of in New England for disposing of cars, one is in Rhode Island and one is in Massachusetts.

Mr. Maher stressed that Mr. Rose received a Special Exception in his former location which was also located in an I-1 Zone. He also stressed that Mr. Rose had to go to the National Guard and missed the filing date for the earlier meeting. He went on to say that if the Board allows Mr. Rose to have the Special Exception and put conditions on it, it would be their pleasure. If the Board says screening, he will construct the screening. If there are any conditions on leaking of oil or gas, they will agree to them. Mr. Maher stated that if you grant the special exception with the condition that they don't take another junk car, they won't.

Mr. Maher went thru some of the criteria. 1) He said there are fewer quality places that repair cars. 2) The number of people that visit the shop are few and doesn't call for pedestrian traffic. 3) He has 14 employees and that does not stress the water and sewage. 4) It is clearly within the spirit and intent of the Industrial Park. It does not cause a diminution in the property and he feels he has met all the criteria of Special Exception.

Joyce Bowden read Articles VI, Section 170-23 and Article VII Section 170-52.C(3).

Mr. Paul Rose stated there is no place in Dover for a garage like his.

Mr. Maher emphasized that Mr. Rose will literally be out of business if this special exception is not granted.

Harold Preston, Chairman of the Planning Board stated that the junk yard was created by the City of Dover. He said he had 34 junk cars on his own property to get rid of and it was a "hell" of a job. He personally checked Mr. Rose's records and said they were in order. Mr. Preston thinks that the

application should be handled as two separate items.

Steve Stancel said that the Planning Department is not for or against. He stated that a new drainage ditch has been dug and runs into Knox Marsh Brook and then to the Bellamy River and the City draws water from the river. He said a problem arose at 2:00 this afternoon and it did not leave enough time to work with Paul Rose to rectify the junk car issue in such a short period of time. The Zoning Ordinance states that you can't have more than 2 junk cars on your property. Mr. Stancel feels it should be tabled until they can see about the environmental impact of the drainage ditch and the junk car issue. He felt it would be in the best interest of the City to look into the legality of Restricted Covenants.

Joyce asked if 30 days was enough time to come up with a solution.

Mr. Maher reiterated that he wanted the Special Exception to be voted on. He said that the ditch was always there it was just relocated.

Mr. Bob Heins, Vice President, Davidson Rubber stated that Davidson Rubber has operated within the covenants of the park. He stated that if Paul Rose wants to live within the covenants, that's fine but they don't. Their site is in a highly visible area and it looks awful. He went on to say that their operation should abide by the requirement of the Industrial Park. He also said that he spoke to Mr. Lapointe Sr. and Jr., abutters of Paul Rose Automotive, and they are definitely opposed.

Steve Stancel reiterated that the two issues cannot be separated and he has grave concerns about the drainage and the cars leaking but he feel that Mr. Rose should continue to operate until this is worked out.

Close Public Hearing

Joyce feels that this is a Catch 22, but she doesn't feel the cars should go to the Industrial Park. She feels that Mr. Rose should present a plan within 30 days on how he can get rid of 42 junk cars. She went on to state that Mr. Rose cannot meet the criteria of Special Exception.

David Anderson made the motion to table the case for 30 days and have Mr. Rose appear before the Board at their next regular meeting of February 16, 1989 and be prepared to discuss his plans concerning the placement of junk cars on his property and also address the drainage and water quality on his parcel.

David Paolini seconded.
VOTE U/A

Meeting recessed.

Meeting called to order.

H89-3 The Triangle Club, Inc., 120 Broadway, A/K/A Assessor's Map 27, Lot 291-A, zoned B-3, requests a Variance from (1) Article V, Section 170-16 to construct a second story on a building with a thirty-three (33) feet front setback where fifty (50) feet is required and (2) Article X, Section 170-41.A, to increase a non-conforming structure.

Mr. James Bond of 120 Broadway stated that the Triangle Club is a non-profit organization for persons recovering from alcohol and drug abuse. He said the property was purchased last Spring. He went on to say there are two hardships: 1) the roof over the front door needs replacement, and 2) the facility doesn't offer enough space for the membership. The increase of height is not inconsistent with the building adjacent to the club. It will increase the value of the property and will be of help to the people of Dover and the surrounding area.

Joyce Bowden asked if the building was too small at the time of purchase.

Mr. Bond stated that he was not President of the club at the time.

Joyce Bowden read a letter received from Loughlin & Wade stating the concerns of Mr. Carrier to the lack of adequate parking. The letter states that persons using the club have been parking on his property.

Mr. Bond doesn't deny there is a parking problem. He said parking in their lot is for members only. The club has rented space to other organizations. As of January 1st, parking has been by permit only and for members only. He also stated that he thought they had corrected the problem with Strafford Tire.

Sitting on this case were: Chris Jacobs, Randy Turner, David Anderson, Bill Colbath and Joyce Bowden.

David Anderson made the motion to hear the case.

Randy Turner seconded.
VOTE U/A

Steve Stancel stated the Planning Department is against the variance. The Department feels there is no hardship and the applicant has reasonable use of the land. He feels they knew the zoning when they purchased the building. He feels the value of the surrounding property would be diminished.

Nick Skelsis of 124 Broadway stated that everyone should have the opportunity to put up a new roof, but the parking situation was a serious problem. He said noontime is the worst time of day, the cars are parked on his lawn and his entrance is blockaded, which interferes with his deliveries. Evenings are not a problem, only during the day. He stated that Harris Graphics is a problem also. The traffic is compounded at 11:15 and people park wherever they want. He hopes they can resolve the use of their space with the parking available.

Thomas Duffy, Councilor, represents that area, and has received numerous complaints regarding the parking problem.

Mr. Bond stated that the addition is well within the code for their lot. The club is in two sections, one for members only the other for the general public. The new addition is for members only and would provide meditation space which is essential for recovering members for growth improvement.

Public Hearing Closed

Chris Jacobs stated he went to the site, spoke to the abutters and said they were displeased. The lunch hour is the problem. He would like to see something in parking design. The roof would do a lot for the property value but the parking is a problem.

David Anderson doesn't see the hardship, he'd like to but doesn't.

Randy Turner stated he doesn't see a hardship either.

5 CRITERIA

1. The applicant does not face an unnecessary hardship because the applicant failed to prove any hardship with the land.

VOTE U/A

2. The variance will not deliver substantial justice because the rightful use of the property now exists.

VOTE U/A

3. The variance will not be in harmony with the spirit and intent of the zoning ordinance because adequate use of the property is permitted under the ordinance and density is a problem.

VOTE U/A

4. The variance will/will not result in a diminution in value of the surrounding properties based on the evidence given.

VOTE

WILL - William Colbath WILL NOT - Randy Turner
 Chris Jacobs David Anderson
 Joyce Bowden

VOTE - WILL - 3-2

5. The variance will not be of benefit to the public interest because the applicant failed to present evidence.

VOTE U/A

DENIED - U/A

H89-4 Richard Downing, 19-21 Belknap Street, A/K/A Assessor's Map 10, Lot 73, zoned RM-10, requests a Variance from the terms of Article X, Section 170-41.B, to restore a nonconforming structure.

Attn. Bob Mittelholzer represented Mr. Downing who lives in New York. He gave a history of the house which started out as mill housing and then converted into an apartment house. Mr. Downing inherited the house, which has been in his family for years. On Nov. 7, 1987 there was a fire in the house and a person was killed. The house was uninhabitable and was put up for sale thru Eagle Realty. In 1988 there were 3 potential buyers but each fell through. In late October of last year Mr. Olinsky wanted to buy the property and is still interested, however, the property has lost it's grandfathered rights because the building has gone unrepaired for over a year after the anniversary of the fire. Mr. Mittelholzer feels it would be confiscatory if the variance was denied.

Mr. Mittelholzer stated that Mr. Downing was not aware of the risk to the grandfather clause. He also feels that loosing the Grandfather status would be an unnecessary hardship, and would therefore, render the property useless to Mr. Downing. It is a very small lot with a large building on it, much too large for a single family residence and a duplex is not economically feasible. Persons wanting to buy are only interested in the building as a 4 unit apt. building. He stated that Earl Seward of Eagle Realty also came to the conclusion that if it is not a 4 unit apartment building, then it is nothing. The alternative is an abandoned building.

Mr. Mittlehowzer went on to say that by denying the variance they would be taking away his rights which would be confiscatory and would render the property useless. He said

that Mr. Downing was given no notice that his rights would be taken away. He feels that the variance would promote the health & general welfare of the community by providing affordable housing. Allowing this apartment house to be renovated would be the most efficacious use of the building. He discussed the letter received from Mr. Seward regarding Eagle Realty's statistics of the property. He also said that Kathy Connolly Doyle was going to come to the meeting but was unable to, to speak on how this area has been used to provide affordable housing which is critical in Dover at the present time.

Members sitting on this case: Joyce Bowden, Bill Colbath, David Anderson, David Paolini and Randy Turner.

Randy Turner made the motion to accept the case.

David Anderson seconded.

VOTE U/A

David Anderson made the statement that there is only enough parking for 2 cars off street and this area has a problem with multi-family buildings.

Mr. Mittelholzer stated that Mr. Downing shared parking with abutters.

Cheryl Donahue of Eagle Realty stated that parking would not be a problem. Maybe a clothes line could be taken down.

Mr. Sanderson, an abutter, across the street, said the property is an eyesore and he is very in favor of the application.

Tom Duffy stated he is leery of a variance of this kind and reminded the Board of the Hennessey case. He stated that there should be two parking spaces per unit and a variance would mean six more cars on the street.

Joyce Bowden stated that if a duplex burns it can only be rebuilt as a duplex.

Tom Clark said that the City doesn't notify people in cases like this but they did notify the possible buyers and the Realtors that the "clock was ticking."

Steve Stancel stated the Planning Department is in favor of affordable housing but the Zoning Ordinance has first priority. The applicant had a year to rebuild and he reminded the Board of the philosophy of nonconforming uses. The spirit and intent of the RM-10 zone is to limit density and to put 3 or 4 units on such a small parcel is not in the spirit and intent of the ordinance. Giving him the variance

would give him more use of his property than the neighbors.

Mr. Mittelholzer stated that the people who lived in the house previous to the fire were kept there by the Dover Housing Authority and they did not have a car, therefore, there was no parking problem, and not everyone is expected to have two cars, especially older folks or folks on fixed incomes.

Dan Hale, an abutter and owner of a duplex, would love to see something happening with the building. He stated he looked into buying the building but for what Mr. Downing wants for it, it was not feasible.

Steve Stancel reiterated that there is a need for affordable housing but not at the expense of the ordinance. It would set a precedence.

Close Public Hearing.

David Anderson has a problem with anyone who owns property, pays taxes, collects rents and doesn't find out all the facts. He feels it is self imposed for whatever reason. He stated that he sees the parking problem, and feels that anyone who rehabs the building will be looking at higher rents.

Tom Clark stated that if the building is found to be unsafe there will be a court order to secure it or demolish it.

5 CRITERIA

The applicant does not face an unnecessary hardship because the applicant has reasonable use of the property under the ordinance.

DOES NOT - David Paolini
David Anderson
Joyce Bowden
William Colbath

DOES - Randy Turner

2. The variance will not deliver substantial justice because the effective use of the property is available under the ordinance.

WILL NOT - David Paolini
David Anderson
Joyce Bowden
William Colbath

DOES - Randy Turner

3. The variance will not be in harmony with the spirit and intent of the zoning ordinance because the ordinance allows a duplex in this situation because of density

control.

WILL NOT - David Paolini
David Anderson
Joyce Bowden
William Colbath

WILL - Randy Turner

4. The variance will not result in a diminution in value of surrounding property because evidence is not present to verify diminution in value.

WILL NOT - Randy Turner
David Paolini
David Anderson

WILL - William Colbath
Joyce Bowden

5. The variance will not be of benefit to the public interest because of over density and lack of parking will present more problems.

WILL NOT - David Paolini
David Anderson
William Colbath
Joyce Bowden

WILL - Randy Turner

VOTE

DENIED - David Paolini
David Anderson
William Colbath
Joyce Bowden

GRANTED - Randy Turner

VOTE - 4-1

DENIED

H89-5 Edmund & Doris Grady and George & Jean Rivers, Long Hill Road, A/K/A Assessor's May A., Lot 53G and Map D, Lot 9, zoned R-12, requests a Special Exception as provided by the terms of Article VII, Section 170-27.C(1) and Article XII, Section 170-52.C(3) to allow a street to be constructed with three (3) crossings within the conservation district.

Malcolm McNeill discussed the crossing of the Conservation District and explained that there is a 6 or 7 acre land mass that would be useless if the special exception was not allowed. He went on to say that after discussion with the Planning Board it was suggested that this crossing would be better and he believes the Planning Board has no problem with this plan. He said that the crossing will provide reasonable crossing to the land mass. The pedestrian & vehicular traffic will be enhanced as there will be sidewalks. They will get subdivision and site review approval and the state demands will have to be met. He emphasized that the lot sizes exceed the requirements and that as far as the second

paragraph of the Conservation Commission letter it will be addressed with the Planning Board. Regarding paragraph 3 of the letter the roads do not add up to 50% of the Conservation District. He stated that the plans will minimize the impact on the wetlands and will best utilize the property.

William Colbath made the motion to accept the case.
David Anderson Seconded.

VOTE U/A

Joyce Bowden asked if anyone from the Conservation Commission has submitted a plan relating to paragraph 1 of their letter.

Chris Jacobs stated that he deals with the Wetlands Board and mentioned possibly moving the road to the Spaulding Turnpike. They should be looking to relocate the road to mitigate the impact. He asked if there was any attempt to meet with Dr. Richardson.

Kevin McEneaney, the surveyor, said that the Wetlands application has been sent and has knowledge that they have received it but have not gone on a site walk to date.

Harold Preston spoke on the Site Plan, he said the road will be staked out and if it is wet the road may have to be moved.

Malcolm McNeill spoke on the timing to get before various boards.

Kevin McEneaney stated that Parcel A is meant to be a detention area.

Randy Turner felt that only one crossing was needed.

Steve Stancel stated that the Planning Department feels that the applicant has met all the Special Exception requirements. The looped roads are better than straight roads with cul-de-sacs and these issues are better addressed at the Planning level.

Chris Jacobs asked if the water & sewer is being looped with the crossing of the conservation district.

Kevin answered that it was.

Randy Turner sees a problem with the layout of the crossing, he thinks it could be better protected.

David Anderson made the motion to grant the special Exception.

Chris Jacobs seconded.

GRANT - Chris Jacobs
David Anderson
Joyce Bowden

DENY - William Colbath
Randy Turner

VOTE 3-2

GRANTED

H89-6 James & Bette Papa, 120 Henry Law Avenue, A/K/A Assessor's Map 22, Lot 26, zoned R-12, requests a variance from the terms of (1) Article V, Section 170-16, to construct a deck approximately seven (7) feet from a front property line where thirty (30) feet is required; and (2) Article X, Section 170-41.A, to increase a non-conforming structure.

James Papa stated he has lived at this address for 2 years. He said that the old deck was run down so he built a new one. The original deck was 6X6 and 10 feet from the sidewalk. He built a new one that is 10X12 without a building permit. He stated that the new deck is wider and safer, a larger porch makes for better family enjoyment, it is not inhibiting any public way, it is similar to others in the neighborhood, it is safer and attractive to the public eye. He also stated that the deck has been up since December.

David Anderson made the motion to accept the case.
David Paolini seconded.

VOTE U/A

Mr. Papa said that he didn't think he had to go to the Building Inspector since he was taking the old one down and putting up a new.

Close Public Hearing

Discussion ensued on how he would have to get a variance no matter where he put the deck.

5 CRITERIA

1. He does not face an unnecessary hardship because the applicant failed to prove a hardship.

VOTE U/A

2. The variance will not deliver substantial justice because he has reasonable use with the previous sized deck.

VOTE U/A

3. The variance will not be in harmony with the spirit and intent of the zoning ordinance because the setbacks were

not adhered to.

VOTE U/A

4. The variance will not result in a diminution in value of surrounding properties because no evidence was presented.

VOTE U/A

5. The variance will not be of benefit to the public interest because the applicant failed to prove any benefit.

David Anderson made the motion to deny.
William Colbath seconded.

VOTE U/A

DENIED

Joyce Bowden stated that there was a discrepancy in the minutes of December 15, 1988. She felt sure that Mark Dellner changed his mind at the end of the meeting about stepping down from the Vice-Chairmanship to an Alternate position and it was not noted in the minutes. Since Mark was absent she will be checking with him regarding this manner.

Chris Jacobs pointed out that Les Butler's name was typed in as Less Butler in the minutes and elaborated on the meaning of less.

Thomas Duffy stated that he wants the rules and regulations to be reaffirmed every year and on file at the City Clerk's office.

Joyce made the motion to reaffirm the rules and regulations.
David Anderson seconded.

VOTE U/A

William Colbath made the motion to adjourn the meeting.
David Paolini seconded.

Meeting adjourned at 12:00 AM

Get a copy of the By Laws to the City clerk with a memo stating that the Board did reaffirm the By-Laws.