

**ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
APRIL 20, 1989**

MEMBERS PRESENT: Bill Colbath, Joyce Bowden, David Anderson, Chris Jacobs, David Paolini.

ALSO PRESENT: Steve Stancel and Tom Clark.

Meeting called to order at 7:05.

NEW BUSINESS

Resignation of Mark Dellner from the Board because he took a job with the Dover Fire Department. The Appointments Committee must be asked to appoint a new member.

Bill Colbath made the motion to accept the minutes of the last meeting.

David Anderson seconded.

VOTE U/A

Joyce asked if any members were interested in the training sessions being held on Saturday, April 29, 1989.

Steve Stancel spoke on the possibility of raising fees for variances. It was determined that a variance request cost the City approximately \$90.00 to process and he recommended a fee of \$100.00 for an application. Steve said it would go through two consecutive readings before being passed.

Chris Jacobs said he didn't mind charging \$100.00 if that is what it costs the City. But said the higher fee won't bother most people that come before the Board. He said it would be a lot of money to the ordinary small property owner.

David Anderson made the motion to adopt the resolution and read it this month and next and to increase the fee to \$100.00 for Variances, Special exceptions and Appeals from Administrative Decisions.

Chris Jacobs said he wanted to see two fees, Variances and Special Exceptions \$100.00 and Appeals from Administrative Decisions to remain at \$25.00.

David Anderson withdrew his motion.

David Anderson made the motion to have both Variances and Special Exceptions raised to \$100.00 and to have Appeals to Administrative Decisions to remain the same at \$25.00

Bill Colbath seconded.

VOTE U/A

Joyce said this is the first reading and it will be read at the next meeting.

Steve Stancel said that there have been incidents coming through the Planning Board where there were verbal conditions stated to the effect that there would be no more subdivision of a parcel. The City Attorney said that verbal statements may not be binding. Steve said that if there are conditions, don't assume that the verbal statement will be held binding they should be put down in writing.

OLD BUSINESS

H88-39B William & Lucille Merrill, 350 Dover Point Road, A/K/A Assessor's Map L, Lot 57-A, zoned R-20, requests a Special Exception as provided by the terms of Article VII, Section 170-27.C(2) and Article XII, Section 170-52-C(3) to erect a structure within the Conservation District. This item was tabled from the meeting of July 21, 1988.

Steve Stancel stated that the case was tabled because they were waiting for Wetland approval. Steve said that they have been to the Planning Board and the Conservation Commission.

Joyce Bowden read the letter to the ZBA from the Conservation Commission and stated that they had Wetland Board approval.

Tom Clark stated that they did not need an Army Corps of Engineers approval.

Chris Jacobs commented that the Wetlands Board approval has to be in the office before the application is accepted.

Chris Jacobs made the motion to grant the Special Exception. Bill Colbath seconded.

VOTE U/A

GRANTED

H89-10 Timothy Pearson, 53 Silver Street, A/K/A Assessors Map J, Lot 44, Zoned Office, requests a Variance from the terms of Article IX, Section 170-32.I(3)(a) to erect a free-standing sign where the principal building is set back ten feet from the property line on the line on the street it abuts, where twenty feet is required.

Tim Peason said that the Historic Commission prefers the sign not be on the house. The Silver House is in the proposed

Historic District and is the house the street was named after. Mr. Pearson said that the sign is visible but unobtrusive. It will be indirectly lit with one spot light on the ground directly in front of it. He will bring in a sketch of the sign to the Building Inspector for a permit.

Steve Stancel stated that the Historic Commission is currently working on creating a Historic District and a specific ordinance specifying sign requirements.

CLOSE PUBLIC HEARING

5 CRITERIA

1. The applicant does face an unnecessary hardship because the house is located in a historical district and the applicant is unable to comply with both the Historical District Commission regulations and the City sign ordinance.
2. The variance will allow him to advertise and meet the Historical Commission's request.
3. The variance will be in harmony with the spirit and intent of the zoning ordinance because all size requirements will be met - just at an alternate location.
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 preserve the historical integrity of the dwelling without affecting the surrounding area.

David Anderson made the motion to grant the variance with the condition that all dimensional requirements for the sign shall be met.

David Paolini seconded.

VOTE U/A

GRANTED with the condition that all dimensional requirements for the sign be met.

H89-14 The City of Dover, Middle Road, A/K/A Assessor's Map M, Lot 57-A, Zoned R-40, requests a Special Exception as provided by the terms of Article VII, Section 170-27-(C) (1) and Article XII Section 170-523-C(3) to install pipe lines within the Conservation District.

Steve Stancel stated that the City is exempt from the Zoning Ordinance but they wanted to bring it before the Board so everyone would be aware of what was going on. He stated that

all the necessary permits are in the file.

Art Hoffman described the project as a secondary Sewer Treatment Plant in the Middle Road area. He stated that the existing plant will be discontinued and the new plant will have double the capacity of the old plant and it will be approximately two years before the plant operational.

CLOSE PUBLIC HEARING

Bill Colbath moved to grant the Special Exception.
Chris Jacobs seconded.

VOTE U/A

GRANTED

H89-15 Dover Advent Christian Church, 157 Sixth Street, A/K/A/Assessor's Map E, Lot 73-A zoned R-12, request a Variance from the terms of Article IX, Section 170-32.E.(5) to have three (3) signs where one (1) is permitted and to have a total area of approximately one hundred forty-three square feet where sixteen square feet is permitted.

Chris Jacobs moved to accept the case.
Dave Paolini seconded.

VOTE U/A

Lona Hewitt, Trustee represented the Church. She stated that the square footage is large because it has to be seen from quite a distance.

George Harris, Mast Road, spoke in favor of the sign because it would let people know the name of the church.

Steve Stancel said that the Planning Department is opposed to the variance for the following reasons:

1. A sign of that size is far beyond what is allowed.
2. It will not give directional assistance.
3. He sees no hardship.
4. It will not be of benefit to the public.

David Anderson asked if they looked into the green location signs the State puts up.

Lona Hewitt stated that the Church is visible but people do not know what church it is. She stated that the sign will not be lit in any way.

Ronald Anderson said that there were flood lights on the corners of the building and they plan to cut the trees down that are on their property to improve visibility.

Steve Stancel stated there was further concern on the safety of traffic along the highway since there is an entrance ramp shortly before the church that could pose a safety hazard.

CLOSE PUBLIC HEARING

5 CRITERIA

1. The church does not face an unnecessary hardship because the applicant did not prove any special condition present to constitute a hardship and two signs are currently present.
2. The variance will not deliver substantial justice because adequate signage is already in place.
3. The variance will not be in harmony with the spirit and intent of the zoning ordinance because 16 sq. ft. is permitted and the applicant is requesting 143 sq. ft.
4. The variance will not result in a diminution in value of surrounding properties because no evidence was presented.
5. The variance will not be of benefit to the public interest because the Board feels that this sign would be a detriment to traffic on the Spaulding Turnpike.

Will - Chris Jacobs

Will not - B. Colbath
D. Anderson
D. Paolini
J. Bowden

Chris Jacobs made the motion to deny the variance.
Bill Colbath seconded.

VOTE U/A

DENIED

H89-16 William St. Laurent, County Farm Road, A/K/A Assessor's Map C. Lot 3-B, zoned R-40, requests a Variance from the terms of Article IV, Section 170-12, Table of Use Regulations, to establish a Bed and Breakfast Use.

Bill St. Laurent stated the house is a 2 1/2 story brick colonial and sits of 5 acres and has 130 feet along the river. He stated that when he purchased the property in 1985 it was quite dilapidated. He finished the house in 1989. Mr. St. Laurent stated there was lots of interest in the building but everyone wants a commercial use. The legal uses are alcohol rehabilitation, retirement home, group home for 12 children but the building is too nice. He is seeking a variance for the new owners who will put it to the Bed & Breakfast use. The Bed & Breakfast use was not a trend at

the time of the zoning laws. He stated that the size of building is 11 rooms with 6 bedrooms. Given the size of the building and the fact that there are no provisions for a B & B use constitutes a hardship. The new owners plan to live on the property so there would be not more than 5 rooms in their B & B.

Mr. St. Laurent said that finally the building will be able to be of beneficial use to the City and not just lie dormant. He said that it is consistent with the ordinance because it will closely approximate a single family house type of use. It will have less water usage and a minimal amount of cars. It would bring the property into active use and will therefore be kept up. Mr. St. Laurent said efforts were made to keep the house historically significant and would be an attractive and inviting place for people to stay overnight and be in a country setting. He feels that the building will add to the property value around it and will be an attraction for Dover.

Chris Jacobs moved to accept the application.

Dave Paolini seconded.

David Paolini asked if the parcel will stay as a single parcel.

Mr. St Laurent answered that technically it can be subdivided if a sewer line should come by.

David Anderson said that he would like to see hard facts on the operation of the B & B.

Mr. St. Laurent said that based on his meeting with Bill Collins it would have to go to TRC for a Change of Use and they would deal with the sprinkler system etc.

David Anderson stated his concerns with the amount of people in the building. He wants to make sure it does not turn into a hotel or a rooming house and interfere with the neighbors lives.

Steve Stancel stated that the Planning Department is in favor of the B & B and are in the process of putting together 60 or 70 minor zoning changes. They have developed specific criteria that would allow a Bed & Breakfast in the following zones: R-40, R-20, RM-10, B-1, B-2, UMUD, CWD.

Steve read the proposed B & B regulations.

1. The proposed Bed and Breakfast must maintain the character of the neighborhood.
2. Off-street parking, in accordance with Chapter 149, Site

Review, shall be provided so as to avoid vehicles backing into the street. One and one-half (1.5) parking spaces per sleeping room shall be required.

3. Parking areas shall be screened from the street and from abutting lots.
4. Room rentals shall be on a nightly basis, not to exceed one week.
5. On site management must be provided on a 24 hour basis.
6. Breakfast shall be the only meal served, and to registered guests only.
7. The maximum size of a sign shall be four (4) sq. ft.

Joyce Bowden asked Steve to give a copy of his list of proposed criteria to the Board and to Mr. St. Laurent. She stated she wants Mr. St. Laurent to address the criteria in writing.

Bill Carroll asked that once the plans are prepared will he get a chance to review them.

Joyce Bowden said that the information is all kept in files and are in the Planning Department for the review of the public.

Nora Bowers is the buyers of the building, she stated that only 2 or 3 bedrooms will be use for the business. It will not change the configuration of the building.

Joyce Bowden said that Zoning has a right to require a plot plan. Bed & Breakfast is too ambiguous a term. She said that Mr. St. Laurent should get a list of the proposed criteria for a B & B from the Planning Department and address them.

Steve Stancel said the Board has the right to ask for any information it wishes and site review regulations come into play. TRC does address parking, driveways, screening, utilities, and the Fire Department will look at the building permit. The septic could be a condition of approval, they must have a letter from a septic expert.

David Anderson said they have to set standards for information so they can make competent decisions.

Bill Colbath made the motion to table the application and have it come up again under OLD BUSINESS when Mr. St. Laurent comes back with the necessary information.

Chris Jacobs seconded.

VOTE U/A

TABLED

H89-17 John Dobe, 12 Richardson Drive, A/K/A Assessor Map F, Lot 34Y, zoned R-40, requests a Variance from the terms of Article V, Section 170-16, to construct an accessory building (two-car detached garage) with a setback of forty feet from the front property line as it abuts the street where fifty feet is required.

John Dobe represented his case. He said he has an accessory building but it is not movable. The garage can't be moved to the rear because he has a septic system there. The garage is detached because of accessibility to the septic. He is asking for a variance because he doesn't want to tear down the accessory bldg.

David Anderson made the motion to accept the application.

Bill Colbath seconded.

Steve Stancel stated that the Planning Department is against the variance because he cannot have both the accessory building and the garage, ultimately, he has more use than his neighbors.

CLOSE PUBLIC HEARING

Bill Colbath said that if you draw the 50 foot setback there is only 30 percent of the entire lot that is useful land. It is not a nice square lot.

5 CRITERIA

1. The applicant does face an unnecessary hardship because of the unique configuration of the lot which prohibits the applicant from strict compliance with the ordinance.
2. The variance will deliver substantial justice because it will allow reasonable use of the unique configuration of their lot.
3. The variance will be in harmony with the spirit and intent of the zoning ordinance because it is zoned single-family and there will be no increased use or density.
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 there was no evidence to the contrary.

Colbath moved to grant the variance with one condition that an "as-built" plan must be presented to the Building Inspector and completed by a registered professional land surveyor.

Chris Jacobs seconded.

VOTE U/A

GRANTED WITH ONE CONDITION - That an "as-built" plan must be presented to the Building Inspector and completed by a registered professional land surveyor.

**5 MINUTE RECESS
RECONVENE MEETING**

H89-18A Gary & Elizabeth Boukus, 139 Spur Road, A/K/A Assessor's Map L, Lot 36, zoned R-20, requests a Variance from the terms of Article X, Section 170-41-A to the height of an existing non-conforming structure.

Atty. Bill Shaheene represented the Boukuses. He explained that the line was erased on the plan because of a misunderstanding over the line after going to the Assessor's office.

Atty. Shaheen said that Mr. Boukus drew the house on the plan. He stated that Mr. More didn't do any of the plans he did the surveying.

Joyce Bowden said she was upset with the 4 separate maps. She said that the original was altered 4 times. She stated it is not an accurate survey with the seals superimposed on the other plans. She recommends a new survey. She feels that they were led to believe that Mr. More prepared the survey.

Joyce Bowden asked if any variance was ever issued on this property.

Tom Clark said that he was not aware of any.

Atty. Shaheen stated that the request is very simple they want to go up 5 feet and are not changing anything else.

Joyce Bowden stated that the plot plan doesn't agree with the deed and the dimensions on the house are not accurate.

Mrs. Boukus said the septic tank was put in sometime in the mid 70's. She tried getting a record of it but they are changing to computers in Concord and couldn't help her and

Mr. Ellis who put it in passed away.

Atty. Shaheen said that a test pit was done and there is a 1000 gal tank.

Joyce Bowden stated that the Board should not accept the application because there should be an accurate survey of the septic.

Mr. Boukus said that in 1977 the septic was accepted at that time and the installer said he would do it the same way again today.

Atty. Shaheen said they must comply with the Wetlands Board guidelines and go back to them to get approval. They are checking with the Ellis Brothers for their records on the project. He stated that they are just lifting the building up and are adding no new bedrooms. They will hire a surveyor if that's what the Board wants. The boundaries have not changed.

Harold Preston said that someone added a wing to the original house. The main concern is the septic. The position of the house on the lot is only 4 feet between the house and the abutting property. The size of the leach field is 10 X 30 and it probably should be bigger. The perimeter of the survey satisfies him. The house is now a seasonal cottage, if someone moves in the septic must work.

Mrs. Boukus said the property has been owned by her family since 1926 and the Building Permit should be under the name of Castiola in 1978 or 1979.

David Anderson noted that all perimeter boundaries are identical on all the plans submitted.

Joyce stated that the Board would like to see an accurate plot plan.

Mr. Shaheen said the advantage of putting in a foundation is to abandon the well and get on City water. They will return with a building permit. The foundation will improve the property and increase the tax base.

Chris Jacobs said that they should get the house size verified and get the septic on a plan. They could get a site assessment or get the State to render an opinion. He stated that Bill Evans runs that department and is the person to see.

Chris Jacobs made a motion to accept the application with the conditions that they get everything done and come back in 30 days.

Dave Paolini seconded.

VOTE U/A

ACCEPTED - Will be on the agenda under OLD BUSINESS next month.

Atty. Shaheen asked if they can have Kevin McAnneaney use Mr. Moor's plan.

The Board answered yes.

H89-19 Raymond Martineau Jr., McKone Lane, A/K/A Assessor's Map K, Lot 1-A, zoned R-40, requests a variance from the terms of Article V, Section 170-16, to subdivide an existing lot into three lots, one of which having no frontage on a public right-of-way.

Ray Martineau said that he has a 25 1/2 acre parcel. He has a hardship because of the high tension power lines that run through the property. He said that he went before the Planning Board last month with plans for an ADS. His lots are all much bigger than needed. When he bought the parcel it was not to be divided into more than 3 lots. He stated that he is only putting 3 houses on this large parcel and they would not be visible from the road and barely visible from the river.

Bruce Pohopek discussed the ADS plan. He said he is asking for Lot #2 with no frontage. The hardship is that the plan met all ADS requirement but was turned down by the Planning Board.

David Paolini stepped down from the Board.

Joyce Bowden stated that it left only 4 Board members to hear the case and asked Mr. Martineau if that created a problem for him.

Mr. Martineau said it did not.

Chris Jacobs made the motion to accept the application.

David Anderson seconded.

VOTE U/A

Steve Stancel stated that the Planning Department is against the variance. Firstly, because he recently subdivided the land and it's a self-created hardship. Secondly, the ADS concept was disapproved because he has only enough frontage for two lots.

Mr. Martineau said he bought the parcel two months ago. He stated that Mr. Collins helped him draw up the plans for the ADS.

Steve Stancel stated that he spoke with Mr. Collins and he in no way insinuated that an ADS would go.

Joyce stated that he has to prove a hardship. She also stated that he bought the property knowing that he did not have proper frontage.

Harold Preston said that the Planning Board can reject a project if it doesn't meet the intent of the ADS.

Steve Stancel said the concept of an ADS is cluster development. If there are wetlands, it allows a cluster development and leaves open space. It is not the concept to get a third lot in where only two can go.

Ray Martineau said his hardship is a power line easement and frontage.

Steve Stancel said he could put in a City street and get a waiver from the Planning Board and have the road not as wide or he may not need curbs.

Ray Martineau said that two people on the Planning Board advised him to go to the ZBA after the Planning Board meeting.

Joyce Bowden stated that the Planning Board members probably do not understand the ZBA. It could be they thought you had a hardship but it has to be inherent in the land.

CLOSE PUBLIC HEARING

5 CRITERIA

1. He does not face an unnecessary hardship because the land was purchased with the existing restrictions in place.
2. The variance will not deliver substantial justice because the applicant has produced no evidence.
3. The variance will not be in harmony with the spirit and intent of the zoning ordinance because the frontage requirements were not satisfied.
4. The variance will not result in a diminution in value of surrounding properties because no evidence was offered.
5. The variance will not be of benefit to the public interest because it is not in the public interest to allow a lot with no frontage.

DENIED

VOTE U/A

H89-20 McIntosh College, 23 Cataract Avenue, A/K/A Assessor's Map 13, Lot 23, zoned R-12 requests a Site Plan Revision in connection with a variance granted 10/6/83 (H83-32).

Atty. Don Mitchell represented McIntosh and gave a history of the College. He is asking the conditions be changed on the prior plans to the newer plans. He mentioned that time is in the essence for this proposal.

Joyce asked if the extra 1700 square feet is for handicapped access because spacing of hallways and rest rooms have to be much larger.

Bob DeColfmacher said that general services have to be available to the handicapped. This would allow the handicapped to have access to the lounge, office, library, the faculty office and the bookstore. The new building will be attached to the academic building. They are taking 3 stories and trying to compress it into one story.

Bill Colbath made the move to accept the case.

David Anderson seconded.

VOTE U/A

Steve Stancel said the Planning Board has no problem with the 1700 sq. ft., it could be trimmed from another building.

David Paolini made the motion to approve.

David Anderson seconded.

APPROVED WITH ONE CONDITION - remove the 1700 sq. ft. from a future building. The total square footage cannot exceed the amount granted in the original variance.

Bill Colbath made the motion to adjourn.

Joyce Bowden seconded.

MEETING ADJOURNED AT 11:15 PM.