

**ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
May 18, 1989**

Members Present: Joyce Bowden, Bill Colbath, Chris Jacobs,
Dean Trefethen and David Anderson

Also Present: Steven Stancel and Thomas Clark

Meeting called to order at 7:05.

NEW BUSINESS

Corrections to the minutes of the April 20, 1989. On page two under case #H89-10 Timothy Pearson, second paragraph, second sentence is to read: The Silver House is in the proposed Historic District and is the house that the street was named after.

Bill Colbath made the motion to approve the minutes with the above change.

Chris Jacobs seconded.

VOTE U/A

OLD BUSINESS

Steve Stancel read the second reading of the ZBA By-laws section entitled Petitions. He said that after it is published in the newspaper it will be in effect.

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. This item was tabled from the meeting of 4-20-89.

Mr. St. Laurent wrote a letter asking the Board to do a site review of the property and for an extension to allow him to complete gathering his information for the next meeting.

Dave Anderson and Chris Jacobs said they saw no need for a site review, that the site plan should show them all they need to know.

The case was postponed until the June 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 increase the height of an existing non-conforming structure. This item was tabled from the meeting of 4-20-89.

Atty. Bill Shaheen represented the Boukuses. He said that they have addressed the concerns of the Board.

1. They have a survey with a stamp on it. The plan doesn't have the front deck on it although the pilings are there.
2. A Building Permit was found dated July 1978, which was when the building was built.
3. There is an adequate septic system. They tried to get the plans from Mr. Ellis but they could not be found. They could not get help in Concord as they are using a new computer system. Mr. Ellis, a licensed installer, dug a test pit and said that there are three main lines and the system is adequate.

Tom Clark questioned the permit was for cement block walls and the house seems to be built on piers, which is a deviation from the permit, but added the size is adequate.

Peggy McLaughlin, of the Conservation Commission stated she still had concerns with the septic and the Board should get absolute proof from the State concerning it.

David Anderson asked if in raising the building and putting in a foundation, would it increase bedrooms or bathrooms.

Mr. Shaheen answered that it would not.

Steve Stancel stated that the Planning Department is concerned with the septic system.

Chris Jacobs, a certified septic designer with the State, stated that the only suitable area is a 15 X 15 area on the front hand corner. He also said that the State cannot deny people the use of their structures. He said that they should not put in foundation drains and the cellar not be allowed to be habitated.

Thomas Clark stated they are planning a family room in the cellar.

Public Hearing Closed.

5 CRITERIA

1. The applicant does face an unnecessary hardship because the zoning ordinance prohibits the applicant from replacing an inadequate foundation.
2. The variance will deliver substantial justice because it will allow him to reasonably maintain his property.

3. The variance will be in harmony with the spirit and intent of the zoning ordinance because the use of the property will remain single-family.
4. The variance will not result in a diminution in value of the surrounding properties because no evidence of diminution was offered.
5. The variance will be of benefit to the public interest because it will maintain a safe habitable structure and allow the applicant to upgrade his property to be consistent with those around it.

Chris Jacobs made the motion to grant the Variance.
Bill Colbath seconded.

VOTE U/A

GRANTED with three conditions.

1. No foundation drains on the inside or outside of the building footprints may be installed.
2. The cellar area may not be used as a living space.
3. The applicant must hook up to City water before a Certificate of Occupancy is issued.

H89-18B Gary & Elizabeth Boukus, 139 Spur Road, A/K/A Assessor's Map L, Lot 36, zoned R-20, request 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 construct a foundation under a house located in the Conservation District. This item was tabled from the meeting of 4-20-89.

Atty. Shaheen stated that all has been said and they also qualify for the Special Exception. He stated that Mr. & Mrs. Boukus are prepared to meet all the requirements of the Conservation Commission.

Steve Stancel stated that the Planning Department has no problem as long as part of the approval is that they adopt the Conservation Commission conditions.

Joyce Bowden mentioned the idea of putting up frost walls instead of a foundation, and if they did, how would it relate to putting in water pipes.

Atty. Shaheen said he is not in favor of frost walls. He assumes that in time, as the septic systems in that area fail and City sewer is put in, it will allow his clients to use the basement.

Close Public Hearing

Chris Jacobs made the motion to approve the Special Exception with the conditions that the building plans be approved by the City Engineer and the Public Works Director with special attention to the septic system, all conditions on the memo from the Conservation Commission dated February 22, 1989 and they attach to the City water system.

Bill Colbath seconded.

VOTE U/A

GRANTED with the following conditions.

1. The building plans must be approved by the City Engineer and the Public Works Director with special attention to the septic system.
2. All condition of the Conservation Committee memo of 2/22/89 must be met with the exception of #5.
3. They attach to the City water supply before a Certificate of Occupancy is issued.

H89-21 Cullen Bay Dockowners Assn., Cullen Bay Road, A/K/A Assessor's Map M, Lot 93-A-4 (owner: Elizabeth Fowler), zoned R-40, requests a variance from the terms of Article VII, Section 170-27.C(3) (e) to construct a dock with eight (8) slips where two (2) slips are permitted.

Withdrawn - no Wetlands or Governor's Council approvals.

H89-22 James & Cherri Marshall, 5 Spring Street, A/K/A Assessor's Map 12, Lot 19, zoned RM-10, requests a Variance from the terms of Article V, Section 170-17, to construct an accessory building with a two (2) ft six (6) inch rear setback where ten (10) feet is required and a four (4) ft side setback where ten (10) feet is required.

Tom Clark gave an overview of the request saying that they have a current non-conforming structure and want to demolish the old and rebuild. Overall it was determined that there is an increase of a nonconformity.

James Marshall said that the hardships are cause by things they have no control of. The tax assessment record rates it as F-minus for usefulness. He said he has owned the property for two years. Mr. Marshall submitted pictures of his garage and property and letters from his neighbors stating they have no objections to the variance. He also submitted a letter from Seacoast Home Improvement stating they cannot accept the job of restoring because the condition of the garage is such that they believe it would be in the Marshalls' best interest to remove it and start over.

Sitting on this case were Dean Trefethen, Randy Turner, Joyce Bowden, Dave Anderson and Bill Colbath.

David made the motion to accept the case.
Dean Trefethen seconded.

Steve Stancel asked if they would be able to tear down the garage and replace it to its present dimensions.

Mr. Marshall said he cannot use it as a garage because it is only 18 ft. long and he can't put his 1950 Pontiac or his 1979 Bronco in it.

Close Public Hearing

5 CRITERIA

1. The applicant does face an unnecessary hardship because the present structure is not safe and cannot be rehabed. The size of the lot prohibits any improvement and the applicant doesn't have reasonable use of his property.
2. The variance will deliver substantial justice because it will allow him reasonable use of the property while remaining consistent with the neighborhood.
3. The variance will be in harmony with the spirit and intent of the zoning ordinance because the use of the land remains unchanged and will be no more non-conforming than it presently is.
4. The variance will not result in a diminution in value of surrounding properties because no evidence of diminution offered.
5. The variance will be of benefit to the public interest because it will eliminate an unsafe building in a crowded area and increase the building quality on a whole.

David Anderson made the motion to grant the variance.
Dean Trefethen seconded.

GRANTED

VOTE U/A

H89-23 Dennis & Karen Breton, 2 Toftree Lane, A/K/A Assessor's Map M, Lot 163, zoned R-40, requests: (1) a Variance from the terms of Article V, Section 170-16, to construct a rear dormer thirty-nine (39) feet from a front property line where fifty (50) feet is required and eighteen (18) feet from a side property line where twenty-five (25) feet is required; and (2) a Variance from the terms of

Article X, Section 170-41.A, to increase anon-conforming structure.

Thomas Clark said that Toftree Lane was rezoned in 1980 and is now in an R-40 with a required 50' front setback.

Mr. Breton said he has a gas company easement running thru his back yard. He can't build in front or in back and can only go up. He has a cape with nothing upstairs which he has owned for nine years.

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

Bill Colbath made the motion to accept the case.
David Anderson seconded.

VOTE U/A

Steve Stancel said that the Planning Department has no problem with it, it is a classic hardship case. The hardship is inherent in the land.

Close Public Hearing

5 CRITERIA

1. He does face an unnecessary hardship because of the configuration of the land and the placement of the easement prevents the applicant from any reasonable use.
2. The variance will deliver substantial justice and will allow reasonable use of the applicant's land.
3. The variance will be in harmony with the spirit and intent of the zoning ordinance because the use of the structure will still remain a single family home
4. The variance will not result in a diminution in value of the surrounding properties because no evidence of diminution offered.
5. The variance will be of benefit to the public interest because it was not shown to be a detriment.

Chris Jacobs made the motion to grant the Variance.
David Anderson seconded.

GRANTED

VOTE U/A

H89-24 Loyd Webber Assoc., 24-34 Mill Street, A/K/A

Assessor's Map 16, Lot 35, zoned UMUD, 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 (foundation wall) within the Conservation District.

Tom Clark said the building is known as "The 10 Commandments" and is in serious need of repair. He said that the Community Development Department is working with the owner. Parts are within the Conservation District and the foundation is needed to stabilize the structure.

John Peterman spoke representing Loyd Webber. He said that he is prepared to follow the recommendations of the Conservation Commission noted on the Memo from Peggy McLaughlin dated May 17, 1989. He also requested that the building be identified as 25-34 Mill Street and not "The Ten Commandments." He said that they are updating the building and it will be used for affordable housing.

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

Sitting on the case were Dean Trefethen, Joyce Bowden, Bill Colbath, David Anderson, Randy Turner.

Steve Stancel stated that the Planning Department recommends that any approvals include the recommendations of the Conservation Commission.

Close Public Hearing.

Randy Turner made the motion to approve the Special Exception with the conditions submitted by the Conservation Commission.

Bill Colbath seconded.

GRANTED with the following conditions.

1. Dredged material must be kept in a controlled manner so as not to erode into the river and floodplain.
2. Hay bales and erosion net must be used as per Wetlands Board recommendations.
3. Care should be taken to stabilize any disturbed areas with grading and seeding immediately upon completion of foundation work.

VOTE U/A

H89-25 Randal & Elaine Harvey, 119 Court Street, A/K/A Assessor's Map 19, Lot 1-A, Zoned R-12, requests (1) A variance from the terms of Article V, Section 170-16 to construct an addition within two (2) feet of a side property

line where thirty (30) feet is required; and (2) a Variance from the terms of Article X, Section 170-41.A, to increase a non conforming structure.

Tom Clark gave the background on the case.

Randal Harvey said his hardship is in the shape of the lot. He has two bedrooms and would like to add 2 more. He said it would not obstruct vision or infringe on the neighbors.

Sitting on the case were Chris Jacobs, David Anderson, Joyce Bowden, Bill Colbath, Dana Turner.

Bill Colbath made the motion to accept the case. David Anderson seconded.

VOTE U/A

Steve Stancel stated that the Planning Dept. is against having living space within two feet of a property line. He said that the addition could be put elsewhere.

Mr. Harvey said he bought the property 3 years ago.

Steve Stancel stated that it may cost more and not be as convenient but he wouldn't need a variance if he put the addition on the other side of the house. He said that there is no hardship inherent in the land.

Mr. Clark stated that the lot is big enough to put the addition elsewhere.

Close Public Hearing

David Anderson said that he sees a number of other options that would allow his to do what he wants to do and meet all the setbacks.

5 CRITERIA

1. The applicant does not face an unnecessary hardship because he has the ability to have an addition and comply with the set back requirements.
2. The variance will not deliver substantial justice because the applicant can comply with the setbacks and still place an addition on the house.
3. The variance will not be in harmony with the spirit and intent of the zoning ordinance because the spirit and intent is for setbacks to prevent overcrowding.
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 a building this close to the public right of way is not in the best public interest.

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

DENIED

VOTE U/A

H89-26 Joel & Caron Fraser, 4 Willand Ave., A/K/A Assessor's Map 40, Lot 38 F, zoned R-12, requests (1) a Variance from the terms of Article V, Section 170-16, to construct a second floor on a building with a setback of twenty-seven (27) ft where thirty (30 ft is required; and (2) a Variance from the terms of Article X, Section 170-41.A to increase a non-conforming structure.

Tom Clark said they want to convert a cape into a two-story colonial and the lack of 3 ft is increasing the non-conforming structure.

Carol Fraser said they were 27 feet from the property line and 32 feet from the road. She stated that they have a teenager and a 6 year old and want a third bedroom and a bath upstairs.

Sitting on this case were Dean Trefethen, David Anderson, Bill Colbath, Joyce Bowden, Randy Turner.

Randy Turner made the motion to accept the case.
David Anderson seconded.

VOTE U/A

Dean Trefethen asked what prevented them from putting the addition on the back.

Carol Fraser answered that they did not want to put an addition on the back because of the extra cost of putting in a foundation and it would give them more rooms than they really needed.

Tom Newgent and abutter, Lot 38C, spoke in favor and said that he hoped that the Board would grant the variance. he stated that it should not affect the value or anyone in the neighborhood.

Joyce Bowden stated that if they have a way to satisfy the ordinance there is no hardship.

Randy Turner felt that the word "unnecessary" allows a little

leeway.

Joyce Bowden stated that they bought the house with the requirements in place.

Chris Jacobs said they are not being denied reasonable use of their property because they could add on in the back.

Carol Fraser stated that she got an estimate and it would be an additional \$15,000. or \$20,000.

Randy Turner said as another option they could extend the upstairs three or four feet and support it on columns.

Close Public Hearing

5 CRITERIA

1. The applicant does not face an unnecessary hardship because the applicant can comply with the setbacks and place an addition on the house.
2. The variance will not deliver substantial justice because the applicant can satisfy ordinance requirements.
3. The variance will not be in harmony with the spirit and intent of the zoning ordinance because the ordinance requires a 30 foot setback.
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 no evidence was presented.

David Anderson made the motion to deny the Variance.
Dean Trefethen seconded.

DENIED

VOTE U/A

Joyce Bowden explained the Planning Process Synopsis that was handed out at the beginning of the meeting and said it would be given to all new members.

Bill Colbath made the motion to adjourn.

Randy Turner seconded.

MEETING ADJOURNED AT 9:50