

ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
JUNE 15, 1989

Members Present: Joyce Bowden, David Anderson, Bill Colbath, Dave Paolini, Chris Jacobs, Dean Trefethen.

Also Present: Steve Stancel and Thomas Clark

Meeting call to order 7:05

NEW BUSINESS

Tom Clark asked the Board to consider a time limit on variances. Portsmouth has a one year limit but he feels that is too short. He said he was thinking of 3 or 4 years. He said that with posting, it would take at least 60 days and most likely 3 or 4 months to have it in effect. He said a Variance goes with the land.

Bill Colbath moved to accept the minutes.
David Anderson seconded.

VOTE U/A

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.

Sitting on this case were Joyce Bowden, David Anderson, Bill Colbath, David Paolini, Chris Jacobs.

Joyce Bowden read the letter received from Mr. St. Laurent stating that the house had been sold to Anderson and Noreen Bowers and they would like to continue the application for another month.

Thomas Clark stated he has an application filled out by the new owners.

Chris Jacobs said that he doesn't mind transferring the application but said that the abutters should be notified again and they must pay another abutter's fee.

Joyce Bowden told Tom to notify the Bowers that the Board will want a site plan.

Case will be heard next month.

VOTE U/A

H89-27 Cullen Bay Dockowners Assn., Cullen Bay Road, A/K/A Assessor's Map M, Lot 93-A-4, zoned R-40, requests a Special Exception as provided by the terms of Article VII, Section 170-27.C(3) and Article XII, Section 170-52.C(3) to construct a boat dock.

Joyce Bowden stepped down and Bill Colbath took over the meeting.

Sitting on this case were Bill Colbath, David Anderson, David Paolini, Chris Jacobs and Dean Trefethen.

Collis Adams of Granite State Engineering stated that the dock was designed for 8 slips which is less than the allowable per lot. He stated that the floats are seasonable and will be retrieved in the fall. He said that he met with the Conservation Commission and will meet all the conditions.

Atty. Ken Pena stated there are 8 lots in the subdivision and 5 are in the Dockowners Association. The waterfront lots have agreed to use a community dock and not try to get a dock of their own. The restriction is in their deed and the waiver is registered at the Registry of Deeds so there will not be a problem in the future.

CLOSE PUBLIC HEARING

Dean Trefethen made the motion to accept the case.
David Anderson seconded.
VOTE U/A

David Anderson said that he had no trouble with the case from the beginning.

Collis Adams had the original Wetlands Permit with him. He had just driven to Concord to get it and did not have time to make copies for the Board but would be bringing copies in as soon as he got them made.

Chris Jacobs made the motion the grant the Special Exception with the conditions listed below from the Conservation Commission dated Sept 9/9/88 and copies of approvals from the Wetlands Board, Army Corps of Engineers and a copy of the document signed by all owners waiving their rights for docks on their waterfront lots. All these conditions must be met before a Building Permit will be issued.

1. No cars should be parked within the 100' setback from the highest observable tide line.
2. Vehicular traffic should be limited to boat launch and removal and/or placement of floats 2X per season (spring & fall).

3. Floats should be stored outside of the Conservation District.
4. No dredge spoils may be stored within the Conservation District.
5. Any digging or dredging for pilings must be performed between November 15 & March 15.
6. Care should be taken to minimize the impact upon the Conservation District by heavy equipment, i.e. avoidance of erosion and sedimentation reaching into the river. Our preference is that no heavy equipment be used, if at all possible.
7. Both the State Wetlands Board inspectors and the Conservation Commission strongly recommend leaving the 100' conservation setback in its natural state. Mowing or any other disturbance of the surface is a threat to the sensitive tidal fringe marsh. Disturbance of the Conservation District limits the filtering action of the existing vegetation.

David Anderson seconded.

GRANTED
VOTE U/A

H89-28-A Ronald Daigle, Cochecho Street, A/K/A Assessor's Map 25, Lot 66, zoned R-12, requests a Variance from the terms of Article VII, Section 170-27.D to permit a subdivision which would create two (2) lots which would not have an area equal to the minimum lot size outside the Conservation District.

Sitting on this case were Joyce Bowden, Dave Anderson, Bill Colbath, David Paolini, Dean Trefethen.

Tom Clark gave an overview of the subdivision saying that 2 of the 10 lots do not meet the regulations and 3 of the driveways cross the Conservation District.

Karen O'Rourke represented Ronald Daigle. She stated that the 25% slope was not much over the 20% slope that is allowed. She said that lots 1 and 10 have areas suitable for building sites. She stated that the parcel is surrounded by previously developed land, and once developed using safe and sound construction practices, it will blend in nicely with the neighboring areas. Also, sites with similar lot sizes prevail in the neighboring area. She stated that granting this variance would allow an unmaintained piece of property to be transformed into attractive home sites.

Joyce asked if they had complied with the conservation regulations how many lots would comply.

Karen O'Rouke said that 8 lots would comply. She said that in the buildable area of each lot there would be enough room for a 24 X 32 house. When asked if there would be enough room for decks and garages she said there would probably not be enough room.

Dean Trefethen moved to accept the application.
Bill Colbath seconded.
VOTE U/A

Gloria Maxfield, Map 25, Lot 76 presented a petition with 29 names on it opposed to granting the variance.

Atty. Chris Calivas represented Robert and Geraldine Sylvester. He stated that the hardship is self induced. He stated that with a slope of 20% or greater there is a problem. He also said that if there is no hardship there is no variance.

Jessy Galt of 35 Atlantic Avenue stated that he did not get notice by certified mail. He looked at the property and did not see a hardship and feels it should be turned down.

Rita Gagnon, 37 Atlantic Avenue stated that her lot abuts Lot 5 and said she was concerned with the drainage.

Ed Millman, Cochecho Street, cannot see the hardship. He stated there was quite a bit of wetland besides the slopes. He stated that the sign was not posted and feels the variance should be denied.

Karen O'Rouke said the property was posted. The sign was put up on the 5th of this month on a tree.

Steve Stancel said that the Planning Department was opposed for many reasons. There is reasonable use of the land and there is no hardship. He can easily put in 8 of the 10 lots.

Ed Milman said there were other abutters who were not notified.

Tom Clark said that he checked with the Assessor's office and a former employee showed an outdated list.

Chris Calivas stated that certain abutters were not notified but they didn't want to delay the decision.

Ed Milman withdrew the notification issue so it wouldn't delay the decision.

Gloria Maxfield said she checked in the Assessor's office and found that the land was put into a trust.

Karen O'Rourke said that the name on the deed is Atty. Coolige as Trustee and Ronald Daigle as Co-trustee.

Public Hearing Closed

5 CRITERIA

1. The applicant does not face an unnecessary hardship because it is possible for the applicant to comply with the terms of the ordinance.
2. The variance will not deliver substantial justice because the applicant failed to prove injustice.
3. The variance will not be in harmony with the spirit and intent of the zoning ordinance because he must have as much area outside of the Conservation District as inside and the applicant failed to meet this.
4. The variance will not result in a diminution in value of the surrounding properties because there was no evidence presented.
5. The variance will not be of benefit to the public interest because the public interest would not be served by further encroachment on the Conservation District.

Dean Trefethen made the motion to deny the variance.
Bill Colbath seconded.

DENIED
VOTE U/A

H89-29 Leon Shaw, 20 Tennison Avenue, A/K/A Assessor's Map 21, Lot 62, zoned R-12, requests a Variance from (1) the terms of Article V, Section 170-16 to construct an attached garage with a five (5) foot side setback where fifteen (15) feet is required and a fifteen (15) foot front setback where thirty (30) feet is required; and (2) the terms of Article X, Section 179-41.A to increase a non-conforming structure.

Sitting on this case were Joyce Bowden, David Anderson, Bill Colbath, David Paolini and Dean Trefethen.

Everet Jordan spoke for the applicant and said that he drew up the design. He said that the applicant has 4 vehicles and wants to house 2 of them. He added that he has drawn something that would add beauty to the area.

Dave Paolini asked if the land was wet or unbuildable.

Everet Jordan said that all the wet areas tend to go to the applicant's property.

Tom Clark said that the original subdivider placed the house in the center of the area and if the applicant wanted a garage on either side he would have to come to Zoning.

Joyce Bowden read a letter received from James P. Minor stating that he was opposed to the variance.

Dean Trefethen mentioned relocating the driveway and putting the garage behind the house.

Mr. Jordan responded that it would entail changing the sidewalks, a curb cut and relocating a telephone pole.

Chris Jacobs said that half of the houses suffer chronic wet basements.

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

VOTE U/A

Ron Lyons stated that he lives "downstream" from Mr. Shaw. He stated that the 5 feet from the Shaw property is mud and can be mowed once every 3 weeks if it doesn't rain. There is no surface drain in the winter and there is 6 feet of ice coming up the driveway in the winter. He said that he will get more water coming off the garage roof if Mr. Shaw is allowed to put one up.

Steve Stancel said that the Planning Department is opposed because every parcel is in the same situation. He said if a variance is given we will have 20 people outside the door tomorrow. When it was approved it was an R-1 Zone but the setbacks have stayed the same since the house was built.

Public Hearing Closed

Bill Colbath stated that he has a problem with a 5 ft setback and can't see a hardship that the rest of the neighborhood doesn't have. He said that there are alternatives but they may be more costly.

5 CRITERIA

1. The applicant does not face an unnecessary hardship because he has adequate use of the land and there are alternatives that will comply with the ordinance.
2. The variance will not deliver substantial justice because the applicant failed to prove it.
3. The variance will not be in harmony with the spirit and intent of the zoning. It is a clear violation of front and side setbacks of the zone.

4. The variance will result in a diminution in value of surrounding properties because any building within 5 feet of a property line will result in a diminution of value.

Will - D. Paolini
D. Anderson
D. Trefethen
J. Bowden

Will Not - B. Colbath

5. The variance will not be of benefit to the public interest because the applicant failed to prove benefit. Overcrowding of frontage area is not a benefit.

Bill Colbath made the motion to deny the Variance
David Anderson seconded.

DENIED
VOTE U/A

H89-30 William & Jan MacMillan, 14 Boston Harbor Road, A/K/A Assessors Map 7, Lot 25, zoned R-20, requests a Variance from (1) the terms of Article V, Section 170-16 to construct an attached garage with a side setback of thirteen and one-half (13 1/2) feet where twenty (20) feet is required and a front setback of seventeen (17) feet where thirty-five (35) feet is required; and (2) the terms of Article X, Section 170-41.A, to increase a non-conforming structure.

Tom Clark said it would be difficult to do anything without getting a variance.

William MacMillan stated that he has owned the house for 6 years but lived in it for 12. He said that the front of the house is on Rt. 4 and there is a pumping station on the other side. He also said that if he made the garage smaller it would not give him much room.

Chris Jacobs moved to accept the case.
Bill Colbath seconded.

VOTE U/A

Steve Stancel spoke against. He feels there is an existing underground garage and the Planning Department recommends giving him the front setback allowing the owner the right to have a detached garage on his property.

Mr. MacMillan said the garage is the only one of its kind in the neighborhood and it is useless; it is full of water. He said a detached garage would be a hardship because his wife just had twins.

Close Public Hearing

Bill Colbath said that he had an oddly configured lot and the other lots were at least square.

Chris Jacob has seen the "pond" in his backyard and has no problem with him building near the pump station.

5 CRITERIA

1. he does face an unnecessary hardship because of the unique configuration of the lots and the lot owned by the State of NH creates a hardship in this piece of land.
2. The variance will deliver substantial justice allowing him the same use of his property that other parcels in the neighborhood have.
3. The variance will be in harmony with the spirit and intent of the zoning ordinance because the lot's unique configuration and surrounding lots created a hardship and the lot will still be a single family residence.
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 upgrade the property and make it more consistent with surrounding properties.

William Colbath made the motion to grant the variance with the condition that the Building Permit must be issued within 3 years or the variance lapses.

GRANTED

VOTE

for - Chris Jacobs
Bill Colbath
Dave Anderson
David Paolini

against - Joyce Bowden

H89-31 Stanley & Miriam Allen, 417 Dover Point Road, A/K/A Assessor's Map 8, Lot 8-A, zoned R-20 requests a Special Exception as provided by the terms of Article VII, Section 170-27-C(3) and Article XII, Section 170-52.C(3) and Article XII, Section 170-52.C(3) to construct a boat dock.

Tom Clark stated that all permits necessary have been obtained and one permit extra.

Stanley Allen said that it was difficult to get it all completed. He got State approval on January 17, 1989 but did not receive the written copy until 3 weeks ago. He stated

that he drove to Waltham, MA to pick up the Corps of Engineers permit. Mr. Allen stated that the dock is just for his use.

David Paolini made the motion to accept the case.
Bill Colbath seconded.
VOTE U/A

Close Public Hearing

Bill Colbath made the move to approve.
David Paolini seconded.

GRANTED

VOTE /U/A

H89-32 Ceasare Gonnella Trust Fund (Raymond Smith, Trustee), Sixth Street, A/K/A Assessor's Map B, Lot 7 Zoned R-40, requests a Variance from (1) the terms of Article V, Section 170-16, to construct two (2) additions, one three 93) feet and one thirty-seven (37) feet from a front property line where fifty (50) feet is required; (2) the terms of Article X, Section 170-41.A, to increase a non-conforming structure; and (3) the terms of Article X, section 170-40.A & D, to increase a non-conforming use (Service Club).

Toni Anlouisi stated it is an historical building. It has no indoor plumbing and no room inside to put in bathrooms. He stated that the access to the porch is very dangerous and they want to put in a ramp for the handicapped. Granting the variance will allow continued use of the structure as a non profit organizational meeting place. He stated that there is water on the land because of a culvert that goes under the road and backs up. He said that he would come in to see Tom Clark to fill out any conceivable forms that he may need.

Joyce said they were asking for three different variances and they still need a Special Exception for septic.

Joyce Bowden and Chris Jacobs both said that they can't see accepting it.

David Anderson suggested that they address a hardship toward the land and not the building. He also stated that their application is incomplete.

Bill Colbath made the motion not to accept the application.
Dean Trefethen seconded.

VOTE U/A

Dean Trefethen asked if a developer has to show where the houses will be in his development.

Steve Stancel said that they draw out the setbacks and the driveway cuts.

Joyce Bowden made the motion to adjourn.
Dean Trefethen seconded.

Meeting adjourned at 9:55 PM