

ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
AUGUST 17, 1989

Members present: Dean Trefethen, Randy Turner, David Anderson, Joyce Bowden, Chris Jacobs, Bill Colbath, David Anderson.

Also Present: Steve Stancel and Thomas Clark.

Meeting called to order 7:00

OLD BUSINESS:

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

David Paolini seconded the motion.

VOTE U/A

H89-39 James & Nancy Schulte, 2 Towle Ave., A/K/A Assessor's Map 12, Lot 154, zoned R-12, requests an Appeal from an Administrative Decision concerning applicability of accessory building setback requirements for certain structures.

Mr. Atty. Jim Shulte stated that the ordinance did not intend to regulate everything, a dog house for instance. He said that the ordinance is not concerned about size or weight. A fixture is something affixed to the ground and cannot be removed easily. If the building were removed, there would only be a slight depression.

Joyce asked Mr. Schulte if he had requested Scott Woodman to write the memo, dated May 26, 1989, to Tom Clark.

Mr. Schulte stated that he did not but had spoken to Atty. Woodman about the matter.

Bill Colbath made the motion to accept the case.

Dave Anderson said that we should hear from Tom Clark before accepting the case.

Bill Colbath withdrew his motion.

Tom Clark stated that regardless of Mr. Woodman's opinion, he still feels that a storage shed needs a setback. Mr. Clark said that we could be dealing with a 24 X 24 garage if it was built on blocks.

Mr. Shulte stated that the City has the right and should draft an ordinance that regulates sheds but has not done so

yet. The burden shouldn't be placed on the people.

Joyce Bowden read the letter received from Mr. Sheldon regarding his intent when writing the ordinance. She said that there are conflicting opinions. The City Attorney says one thing and the author, Mr. Sheldon, says another.

Randy Turner stated that he doesn't believe a shed is an accessory building.

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

VOTE U/A

Steve Stancel is against granting the Special Exception. He stated that the definition should be written better but it has been in effect for 10 years and this is the first time this issue has come up. For drainage reasons, fire safety and overcrowding, a building should be at least 10 feet from a property line, which is not that far.

Chris Jacobs commented that he saw Mr. Schulte's shed and it is well maintained. He stated that the ordinance is ambiguous. What would stop people from putting 4 or 5 sheds on their property. For example, a gentleman who collects cars and fills them can park them on the property line. In real estate terms, sheds are listed as an asset. People do not move them, they are kept with the property. He said they can be moved, with a crane anything is movable.

Randy Turner stated that we have to deal with the ordinance as written. He feels that these sheds are not buildings.

Dave Anderson feels that an accessory building should be viewed as a structure and have the same setbacks as garages.

Dave Paolini cannot see how we can permit a storage shed on a lot line. Other towns have shed ordinances to limit height and size.

Joyce Bowden asked the Board to vote on if they felt that Mr. Clark is correct.

Yes	David Anderson	No	Randy Turner
	Bill Colbath		
	Dave Poalini		
	Joyce Bowden		

VOTE 4 - 1 TO UPHOLD THE ADMINISTRATIVE DECISION.

OLD BUSINESS

H89-37 James & Annelinese Sexton, 37 Cataract Avenue, A/K/A Assessor's Map 14, Lot 26, zoned R-12, requests a Variance from the terms of Article V, Section 170-16 and Section 170-17, to construct a storage shed eleven (11) feet one (1) inch from a front property line where thirty (30) feet is required and adjacent to a side property line where a ten (10) foot setback is required. (Tabled from meeting of 7/20/89)

Mr. James Sexton represented himself and feels that he is here wasting his time after hearing the Board's decision on the previous case. He did state that he has a drainage problem on the left side of his house and can't put a shed there, it would float away. If he had to keep the 10 foot setback his shed would be either in the pool, on the deck or it would float away. After a downpour, there is terrible flooding. His shed is on an easement. He said that he would move the shed to let anyone use it. He has tried to find out what kind of easement it is but no one knows. He said it is very unlikely that it will ever be used.

Steve Stancel stated that after observing the property it seemed to be dry, but after hearing of the drainage problem, that is a hardship. He said that Mr. Sexton has a pool in his back yard that takes up a lot of space and that is considered a self imposed hardship.

Close Public Hearing

5 CRITERIA

1. The applicant does face an unnecessary hardship because the topography and drainage make this site unique and other placement of the building impossible.

DOES - D. Paolini
R. Turner
D. Anderson

DOES NOT - B. Colbath
J. Bowden

2. If granted the variance will deliver substantial justice because it will allow the applicant reasonable use of his lot.

WILL - D. Anderson
R. Turner
D. Paolini

WILL NOT - B. Colbath
J. Bowden

3. The variance will not be in harmony with the spirit and intent of the zoning ordinance because the intent of the ordinance is for a setback requirement of 10 feet.

WILL - R. Turner

WILL NOT - D. Paolini
B. Colbath
J. Bowden
D. Anderson

4. The variance will result in a diminution in value of surrounding properties because it is the Board's opinion that an accessory structure set on a property line will result in a diminution of value.

WILL - J. Bowden
R. Turner
D. Paolini
B. Colbath

NO OPINION - R. Turner

5. The variance will not be of benefit to the public interest because crowding setbacks and encroaching on easements are not a benefit to the public interest.

WILL - R. Turner

WILL NOT - D. Anderson
B. Colbath
D. Paolini
J. Bowden

VOTE

GRANT - R. Turner

DENY - J. Bowden
D. Anderson
B. Colbath
D. Paolini

Bill Colbath made the motion to deny the case
Dave Paolini seconded.

VOTE 4 - 1

DENIED

H89-38 Neil B. Vroman, 39 Cataract Avenue, A/K/A Assessor's Map 14, Lot 25, zoned R-12 requests a Variance from the terms of Article V, Section 170-17 to construct a storage shed two feet from a side property line where ten feet is required. (Tabled from the meeting of 7/20/89)

Neil Vroman represented himself. He stated that he put his shed in its location to preserve precious space for his children. He said that his entire backyard is 6" of ice in the winter and has problems with his foundation and water in his cellar. He placed the shed where it would be hidden and wouldn't diminish property values.

Tom Clark stated that Mr. Vroman came in the get a building permit. It was denied because it didn't meet the setback in its present location but he built the shed anyhow.

Steve Stancel spoke in opposition to the variance because he has a fair amount of land to put the shed on and meet the setbacks.

Close Public Hearing

5 CRITERIA

1. The applicant does not face an unnecessary hardship because he has adequate space on his property to comply with the setback requirements.

VOTE U/A

2. The variance will not deliver substantial justice because the applicant can easily comply with the ordinance requirements. No injustice has been proven by the applicant.

VOTE U/A

3. The variance will not be in harmony with the spirit and intent of the zoning ordinance because the intent of the ordinance is for setback requirements.

VOTE U/A

4. The variance will result in a diminution in value of surrounding properties because encroachment of the setback will result in a diminution of value in the Board's opinion.

VOTE

WILL - D. Paolini
B. Colbath
D. Anderson
J. Bowden

NO OPINION - R. Turner

5. The variance will not be of benefit to the public interest because encroachment of setbacks is not in the public interest.

VOTE - U/A

Bill Colbath made the motion to deny.
Dave Anderson seconded.

VOTE U/A

DENIED

H89-40 Forum Development, Rutland Street, A/K/A Assessor's Map 15, Lot 66, zoned I-1, requests an Appeal from an Administrative Decision concerning the definition of "Public Recreation".

Malcolm McNeill stated he would be representing Forum Development and introduced Anders Albertson and Mr. Labrie, of that company, to the Board. Atty. McNeill gave a history on the property, the former Diamond National building. He stated that this I-1 zone is a particularly unique industrial zone and has been for many years. He submitted a petition with the signatures of people in favor. He stressed that the Bingo Hall use is a much better use than the approved uses for that zone. Mr. McNeill said that Bingo should come under public recreation. He spoke on refurbishing 203 parking spaces on the site. He stated that adequate parking will be provided. There will be police to coordinate parking in the lot and on the street.

Mr. Joseph Yergeau, an expert on Bingo stated that Bingo players are quiet people so they can hear the numbers as they are called. The game usually stops at 10:00 o'clock and there is a state law that prohibits Bingo after 11:00 o'clock. There is no alcohol allowed on the premises and most of the proceeds go to non-profit organizations. The average bingo player is a woman who is single or widowed.

Tom Clark said that his interpretation of "public" means "municipal."

Atty McNeill said that it is recreation and is open to the public and the proceeds will benefit the public. This hall is not a function hall, it will only be used for bingo. The charitable organization will only pay rent for the space. He said that "Commercial Use" must be like The Works. He read the dictionary definition of public. He stated that if the ordinance lacks clarity, the ambiguity should be held against the person who wrote it. He also stated that based on the definition, Bingo is a permitted use and desirable for the neighborhood.

Mr. Yergeau stated that in order to apply for a Bingo license you must be a non-profit organization. It is policed by the Department of Safety and the Gaming Commission.

Tom Clark said there is no definition of public use. There will be some profit made from the rent so it is a profit making organization, therefore, Commercial Recreation. He stated, if this were determined to be a Public Recreation, it would be allowed in many zoned.

Steve Stancel stated that public recreation can be owned by private non-profit groups such as Aquariums and Little League ball fields, that is the distinction we are looking for.

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

VOTE U/A

Tom Clark said that the Bingo hall is subject to TRC so this is not the end.

Father Kuver of St Joseph's Church said that there are three charitable organization that rent outside of Dover for Bingo. He stated that Bingo is beneficial because it gives people the opportunity to socialize. He said that he gets to know people through Bingo. It is a social event and an available hall in Dover would be a benefit to the community and good for people who cannot travel.

Ervin Ketchel of 7 Cataract Avenue was opposed. He said that the setting is wrong and surrounded by residences. There will be a problem with traffic and cars and will devalue the property because of the traffic. He was also worried about the children who would be playing in the neighborhood.

Mary Lewis said that it is definitely a Commercial Use. There are between 1,100 and 1,200 people at these games. She stated that the company runs the concession stand and makes the profit from that also.

Steve Stancel said it is obviously a commercial use.

Close Public Hearing

Joyce asked the Board members if they thought it was a Public or a Commercial Use.

VOTE - COMMERCIAL - U/A

H89-41 Philip & Bonnie Jennison, Tolend Road, A/K/A Assessor's Map E, Lots 42 & 44, zoned R-40, requests a Special Exception as provided by the terms of Article VII, Section 170-27.C(1) to construct a private right-of-way within the Conservation District.

Dana Lynch from Civil Works represented the Jennisons. He described the project and said that the conservation area that has to be crossed is about one tenth of an acre. He said that they had all their approvals and that the project has been thoroughly scrutinized.

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

Steve Stancel said that the Planning Department agrees to the Special Exception.

Close Public Hearing

Joyce Bowden elaborated on the memo received from Peggy McLaughlin of the Conservation Commission, dated May 9, 1989. Joyce said that if the Board approved this case, it would be with the conditions stated on the memo and condition #3 would be made to read as follows: The open space will remain open in perpetuity.

Philip Jennison asked about whether tennis courts would be allowed.

Dana Lynch said that the Conservation Commission stated what they preferred, that nothing be done with the open area, not what we want.

Tom Clark said that this should be tabled awaiting the Conservation Commission's interpretation.

Bill Colbath made the motion to send a memo back to the CC for clarification.

Randy Turner seconded.

VOTE U/A

TABLED

H89-42 William & Dorothy Vieira, 46 Toftree Lane, A/K/A Assessor's Map M, Lot 162, zoned R-40, request a Variance from the terms of (1) Article V, Section 170-16 to construct a side addition (attached garage) twenty-eight feet from a front property line as it abuts a street where fifty feet is required; and (2) Article X, Section 170-41.A, to increase a non-conforming structure.

William Vieira stated that he has a hardship because his wife suffered a heart attack and this variance would allow her to use the car without having to scrape snow and ice from the car and to go directly to the car from the house.

Tom Clark gave a history of the subdivision.

Steve Stancel said that there is a problem with the entire subdivision. The Planning Department suggests that it should be re-zoned to an R-12 to reduce the setbacks. That would allow everyone to put on garages. He stated that this Board could request that this area be rezoned.

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

VOTE U/A

Close Public Hearing

5 CRITERIA

1. The applicant does face an unnecessary hardship because he faces an unnecessary hardship due to the undue and overly restrictive restrictions placed on their property.

VOTE U/A

2. The variance will deliver substantial justice because the applicant will be allowed reasonable use of his property.

VOTE U/A

3. The variance will be in harmony with the spirit and intent of the zoning ordinance because the encroachment of the front setback will be detrimental given the angle of the front lot line.

VOTE U/A

4. The variance will not result in a diminution in value of surrounding properties because there is no evidence of diminution offered.

VOTE U/A

5. The variance will be of benefit to the public interest because no evidence has been presented to prove it would not be a benefit.

VOTE U/A

David Paolini made the motion to grant.
David Anderson Seconded.

VOTE U/A

GRANTED

H89-43 Nickolas Skaltsis, 90 Washington Street, A/K/A Assessor's Map 2, Lot 14, zoned B-2, requests an Appeal from an Administrative Decision concerning the quantity of permitted wall signs. (Article IX, Section 170-32.F.)

Nick Skaltsis stated that the three marquis are the most ornamental part of the building. He said that there are three separate addresses and each should have its distinct sign marquis. Tenant means to hold and this tenant holds three spaces, and therefor, should be allowed three marquis.

Tom Clark said that the occupancy of that space is a restaurant named Charlie Brown and you don't mail to 2, 3 and

4 Washington Street even though there are three separate numbers assigned to that address.

Joyce Bowden read a letter from Mr. Sheldon stating that the intent of the ordinance was that one wall sign is permitted for each tenant or occupant of a premises regardless of the quantity of "store fronts" the occupant leases from the owner.

Steve Stancel said the Planning Department is in agreement with the Building Inspector.

Dean Trefethen made the motion to accept the case.

Randy Turner seconded.

VOTE U/A

Steve Stancel stated that because of the unique structure a variance may be the way to go.

Close Public Hearing.

Joyce said that the question is one sign per tenant or one sign per tenancy?

Vote to uphold the Building Inspector's decision.

No - David Anderson
Randy Turner
Dean Trefethen
Joyce Bowden

Yes - David Paolini

VOTE 4 - 1 NOT TO UPHOLD THE ADMINISTRATIVE DECISION

H89-44 David & Barbara Abbott, 74 Longhill Road, A/K/A Assessor's Map A, Lot 53-C, zoned R-12, request a Variance from the terms of Article X, Section 170-40.A, to increase a non-conforming use (Mobile Home).

David Abbott stated that the present mobile home has been on the lot for five years.

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

VOTE U/A

Steve Stancel said that the Planning Department is against the variance but there is plenty of latitude for the Board to make a decision.

Mr. Abbott stated that the mobile home is permanently attached to the ground.

5 CRITERIA

1. The applicant does face an unnecessary hardship because in the Board's opinion for the applicant to satisfy the ordinance he would be faced with an unnecessary hardship.
2. The variance will deliver substantial justice because it will allow the applicant to have reasonable use of his land.
3. The variance will be in harmony with the spirit and intent of the zoning ordinance because he meets all setback requirements.
4. The variance will not result in a diminution in value of the surrounding properties because no evidence was presented.
5. The variance will be of benefit to the public interest because there is no evidence that it would be a detriment.

VOTE U/A

GRANTED

NEW BUSINESS

Discussion on the following:

1. NH Law Lectures - the City will pay the cost.
2. Toftree Lane
3. Limit the number of applications or put a time limit on the meetings.

Bill Colbath made the motion to adjourn.
David Paolini seconded.

MEETING ADJOURNED AT 12:30 PM