

**ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
OCTOBER 19, 1989**

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

Also present: Steve Stancel and Tom Clark.

Meeting brought to order at 7:05 by Bill Colbath.

NEW BUSINESS

Dean Trefethen made the motion to accept the minutes of last month's meeting.

Chris Jacobs seconded.

VOTE U/A

James & Ann Sexton, 37 Cataract Avenue, A/K/A Assessor's Map 14, Lot 26, zoned R-12, requests a motion for rehearing concerning ZBA Case H89-37.

Ann Sexton asked to be postponed to the meeting of November 16, 1989.

Chris Jacobs made a motion to move the case to the next meeting.

Randy Turner seconded.

VOTE U/A

OLD BUSINESS

H89-49 Robert & Therese Foster, 192 Dover Point Road, A/K/A Assessor's Map L, Lots 89B & 89I, zoned R-20, request 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 construct a private drive within the Conservation District. (This item was tabled from the meeting of September 21, 1989.)

Robert Foster stated he was under the impression that his case had been tabled to the November meeting and he was not prepared for this evening.

Chris Jacobs made the motion to move the case to the November 16, 1989 meeting.

Dean Trefethen seconded.

VOTE U/A

H89-51 Gordon Tibbetts, Sixth Street, A/K/A Assessor's Map E, Lot 72-F-2, 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 install utility lines in a Conservation District.

Gordon Tibbetts represented himself. He stated that he wanted to go through the low land to Whittier Street. He said that septic systems are another option but the soils are not very good. He stated that the Sewer & Water Departments have reviewed the project and it met with their specifications.

Tom Clark stated that the Conservation Commission is involved because of a stream bed and that the Planning Board has approved the subdivision contingent to a Special Exception from The Zoning Board.

Steve Stancel stated that the Planning Department recommends approval of this Special Exception.

Debby Burrington, of 25 Sixth Street, said she is in opposition for two reasons.

1. There is a continually running stream and extensive wetlands.
2. She doesn't want a disruption of wetlands at this time.

Close Public Hearing.

Discussion ensued regarding an erosion control plan and inspections by the Soils Inspector and Engineering.

Chris Jacobs made the motion to approve the Special Exception subject to the following conditions:

1. Conservation Commission approval of erosion Control Plan.
2. Post a letter of credit/bond for work to be done with the Soil Inspector.

Dave Anderson seconded.

VOTE U/A

APPROVED with the above stated conditions.

H89-52 Living World Ministries, 32 Pearl Street, A/K/A
Assessor's Map 27, Lot 153, zoned R-12, requests a Variance from the terms of Article IV, Section 170-12, to establish a non-conforming use (Masonic Temple).

Dave Anderson disqualified himself from the case.

Atty. Don Bryant represented the purchaser, Moses Paul and the applicant, Living World Ministries. He stated that the property is not suited for any of the uses allowed in the R-12 Zone. None of these uses are economically suitable to the property and the owner is suffering a hardship.

Anthony Zizos stated that the building is a simple rectangular structure which lends itself to Masonic needs. It has off-street parking which is more than ample for their needs. The average attendance is 25 men and 5 to 10 vehicles. He stated that there will be no maintenance of a bar. The Lodge has been in Dover for 100 years and there would be justice served by allowing them to establish themselves for another 100 years. He stated that they are not a church but religious and very similar in nature to a church or a non-profit educational establishment. He feels Masonry is to the benefit to the public interest. If the variance is approved it will result in a decrease in congestion in the area.

Mr. Rudolph, owner of the building, stated that The Assembly of God has a lease with Living World Ministries. The property has been on the market for 9 months and there is no market for the approved uses. He stated that the Assembly of God Church has purchased land on 6th Street to meet their expanding needs.

Jack Story, a representative to the seller, stated that the uses are economically unfeasible for a duplex or a one family home. The ceilings on the 1st floor are very high and the ceilings in the basement are very low. Granting the variance would not result in a diminution of the surrounding property, it would increase the value.

Dean Trefethen made the motion to accept the case.
Chris Jacobs seconded.

VOTE U/A

Steve Stancel stated that the Planning Department is in favor of the Variance with a possible condition that it be specific to the Masonic Temple so in the future another service organization couldn't just go in without coming before the Zoning Board.

Close Public Hearing

5 CRITERIA

1. The applicant does face an unnecessary hardship because the building is not suitable for other permitted uses.
2. The variance will deliver substantial justice because it is currently a church and similar activity is pursued.
3. The variance will be in harmony with the spirit and intent of the zoning ordinance because there is a small difference between permitted use and intended use.
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 assure continued use and upkeep of the building and the presence of the Masons in Dover.

Chris Jacobs made the motion to approve the Variance subject to be used only by the Masonic Lodge as per plan presented, or by another allowed use as outlined in the Zoning Ordinance.

Dean Trefethen seconded.

VOTE U/A

APPROVED - Subject to use only by the Masonic Lodge as per plan presented, or by another allowed use as outlined in the Zoning Ordinance.

H89-53 Diversified Ventures, Fieldstone Drive, A/K/A
Assessor's Map A, Lots 39-1, 39-9, 39-10, 39-17, 39-18, 39-23, 39-25, 39-26, 39-35, 39-36, 39-37 and 39-40, zoned R-40, requests a Special Exception as provided from the R-40, requests a Special Exception as provided from the terms of Article VII, Section 170-27.C(1) and Article XII, Section 170-52.C(3) to install driveways and/or utility right-of-ways in the Conservation District.

Chris Jacobs excused himself from the case.

Garry Holden represented Diversified Ventures. He stated it was a 40 lot subdivision that has already been approved prior to the Wetlands Ordinance, but a Special Exception is still required.

Tom Clark stated it is an approved subdivision and Dean Peschel has been monitoring the work.

Gary Holden stated that they will start as soon as they get approval and that the road has been in for 1 1/2 years.

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

VOTE U/A

Jim Tsimekles, an abutter, spoke against. He stated that this project was refused a permit in Portsmouth but they went to Concord and received approval there. He stated that they took down a stone wall at one end of the property.

Dave Peckham, the developer, stated that they did not take down the wall.

Tom Clark stated that the subdivision was denied by the Planning Board but approved in Superior Court.

Dave Anderson made the motion to grant the Special Exception.
Dean Trefethen seconded.

For - Dave Anderson
Dean Trefethen
Bill Colbath

against - Randy Turner

APPROVED 3 - 1

H89-54 Greg Drury, 39 Toftree Lane, A/K/A Assessor's Map M, Lot 125, zoned R-40, requests a Variance from (1) Article V, Section 170-16 to allow an addition to remain with a thirty-five (35) foot front setback where fifty (50) feet is required: and (2) Article X, Section 170-41.A to increase a non-conforming structure.

Greg Drury stated that a Public Service easement uses up most of his useable land. He stated that the bank will be foreclosing on the house. He does have a buyer but because of the need for a variance for the sunroom no bank will touch it. He stated that it is not in the public interest to have the house lost to foreclosure.

Mr. Drury stated that the sunroom was added three years ago and that he has owned the house since 1982.

Chris Jacobs made the motion to accept the case.
Randy Turner seconded.

For - Dave Anderson
Bill Colbath
Randy Turner

Against - Chris Jacobs
Dean Trefethen

Chris Jacobs and Dean Trefethen felt that Mr. Drury should have presented a plan done by a professional engineer or a registered land surveyor - something more accurate than what was presented.

Steve Stancel stated that the Planning Department can't support this variance.

Atty. Steve White spoke about the possible foreclosure and bankruptcy facing Mr. Drury. He elaborated on the hardship caused from the configuration of his lot and the need to put a sunroom addition on the South side of the property.

Close Public Hearing

5 CRITERIA

1. The applicant does face an unnecessary hardship because of the lot configuration and utility easement.

Does - Randy Turner
Dean Trefethen
Dave Anderson
Bill Colbath

Does Not - Chris Jacobs

2. The variance will deliver substantial justice because it will allow him to live in his chosen style.

Will - Randy Turner
Dean Trefethen
Dave Anderson
Bill Colbath

Will Not - Chris Jacobs

3. The Variance will be in harmony with the spirit and intent of the zoning ordinance because the original zoning permitted placement with reasonable space for expansion.

Will - Randy Turner
Dean Trefethen
Dave Anderson
Bill Colbath

Will Not - Dean Trefethen

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

VOTE U/A

5. The variance will be of benefit to the public interest because no evidence was presented to the contrary.

VOTE U/A

Randy Turner made the motion to approve the variance.
Dave Anderson seconded.

Approve - Dean Trefethen
David Anderson
Bill Colbath
Randy Turner

Deny - Chris Jacobs

APPROVED 4 - 1

H89-55 Rayvon & Winifred Ballard, 3 Back Road, A/K/A Assessor's Map K, Lot 12-C, zoned R-12, requests a Variance from (1) Article V, Section 170-17 to allow an above-ground swimming pool & deck to remain with a five (5) foot setback where ten (10) feet is required; and (2) Article IX, Section 170-33.A to allow an eight (8) foot high fence to remain where a maximum of six (6) feet is required.

Dean Trefethen excused himself from the case.

Paul Spencer, designer of the deck in question, stated that the house was placed on the lot in such a way that there is no place to put up a pool. He was also under the impression that a permit was not needed for above the ground pools. He stated that Aquarias Pool said that only a 5 ft. setback is required. It does not detract from the looks of the property. He stated that a doctor recommended that Mr. Ballard use a pool for knee therapy and has noticed some improvement. He said that the neighbors like the looks of the pool and there are other pools in the neighborhood just like it.

Mr. Ballard stated that he went to various pool dealerships and was told that free standing structures do not need to meet setbacks because they are a disposable structure.

Steve Stancel asked how difficult it would be to move the pool closer to the garage.

Paul Spencer said it would be impossible.

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

VOTE U/A

Close Public Hearing

5 CRITERIA

1. The applicant does face an unnecessary hardship because of the configuration of the lot and the slope of the rear areas.
2. The variance will deliver substantial justice because a pool is not a permanent structure and will allow him reasonable use as per neighbors.
3. The variance will be in harmony with the spirit and intent of the zoning ordinance because a reasonable setback is still maintained.
4. The variance will not result in a diminution in value of surrounding properties because no evidence was submitted to the contrary.
5. The variance will be of benefit to the public interest because it is not detriment as a reasonable setback was maintained.

Chris Jacobs made the motion to approve the variance with the stipulation that when the pool is replaced the setbacks must be maintained.

Randy Turner seconded.

GRANTED

VOTE U/A

H89-56 Caesare 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 an addition, 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). Also, requests a Special Exception as provided by the terms of Article VII, Section 170-27.C and Article XII, Section 170-52.C(3) to fill in a Conservation District.

Tony Anlouisi stated that the Grange wanted an addition to the 100 year old Grange Hall for toilet facilities. He stated that this request will increase the value of the property. The State assured the City that in the event that the Dredge and Fill application is denied, an alternate septic system will be approved for this site.

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

VOTE U/A

Steve Stancel stated that the Planning Department is in favor of the Variance.

Close Public Hearing.

5 CRITERIA

1. The applicant does face an unnecessary hardship because of the unique configuration and historical preservation of the property.
2. The Variance will deliver substantial justice because it will allow continued use of an existing property for its original intent.
3. The variance will be in harmony with the spirit and intent of the zoning ordinance because of no further encroachment on set backs and only a minor increase in use.
4. The variance will not result in a diminution in value of surrounding properties because no evidence was submitted.
5. The variance will be of benefit to the public interest because of public health and safety and the preservation of an historical structure.

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

VOTE U/A

APPROVED

Chris Jacobs made the motion to approve the Special Exception
David Anderson seconded.

VOTE U/A

APPROVED

H89-57 Robert Matchett (Fibrethane Inc.), Crosby Road (Owner:
The Flatley Co.) A/K/A Assessor's Map G, Lot 31-A, zoned I-1,
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 install a utility right-of-way in the
Conservation District.

No one was present to represent the case.

Dave Anderson made the motion to accept the case.
Chris Jacobs seconded.

VOTE U/A

Chris Jacobs made the motion to accept the special exception
with the following conditions:

1. Wetland Board Permit be obtained.
2. Construction and erosion control be reviewed by the City
Soil Scientist.
3. Should the Conservation Committee have any conditions
they be adhered to.

Randy Turner seconded.

VOTE U/A

GRANTED - with the above conditions.

Randy Turner made the motion to adjourn.
David Anderson seconded.

VOTE U/A

Meeting adjourned at 11:25 PM