

ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
NOVEMBER 16, 1989

Members Present: Joyce Bowden, Bill Colbath, Randy Turner,
Dave Paolini, Chris Jacobs.

Also Present: Tom Clark, Steve Stancel

Meeting brought to order at 7:00.

Joyce made the announcement that Case #H89-49, Mr. & Mrs. Robert Foster, withdrew. The Foster's requested that their letter to the ZBA Chairperson be read at the meeting. Joyce Bowden read the letter which expressed their considerable frustration and disappointment with the actions of the Dover Conservation Commission.

New Business

Dave Paolini made the motion to accept the minutes of the last meeting.

Randy Turner seconded.

VOTE U/A

New Business

Steve Stancel went through some of the Zoning Changes the Planning Department has been reviewing. He stated there will be a public hearing process and a City wide mailing before they are adopted.

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 #89-37. (Variance request regarding setbacks for an accessory building.)

Atty. Alan Krans represented the Sextons. He submitted letters he received from John Springer and Neil Vroman, abutters, stating that they have no objection to the location of Mr. Sexton's shed.

Joyce Bowden read the letters and asked the Board if they felt this brought any new evidence to the case. The consensus was it did not.

Chris Jacobs made the motion to deny a rehearing.

Bill Colbath seconded.

VOTE 4 - 1

Randy Turner Against

DENIED

David & Debra Wilson, (Owner: Cochecho River Cooperative), 417 Middle Road, Lot 15, A/K/A Assessor's Map M, Lot 62A, zoned R-20, requests a Site Plan Revision in connection with a Variance granted 8/11/88. (ZBA Case #H88-44)

David Wilson stated there were unclear lot lines at the time

of the variance. His trailer does hang 18' over on Mr. Viel's property. He stated that he would like to re-angle the trailer on the lot. That would keep him away from Mr. Viel's line and also keep him 14' from Brian Pelletier's line.

Randy Turner made the motion to accept the Site Plan Revision.

Chris Jacobs seconded.

VOTE U/A

Steve Stancel stated that the Planning Department did not have a problem with the revision.

Mr. Wilson stated that he needed a letter from the City to the Co-Op stating it is OK to move his trailer.

Close Public Hearing.

Bill Colbath made a motion to grant the Site Plan Revision based on the drawing submitted.

Randy Turner seconded.

VOTE U/A

GRANTED

H89-58 Earl & Elaine Case, 1 Cross Street, A/K/A Assessor's Map 25, Lot 8, Zoned R-12, request a Variance from (1) the terms of Article V, Section 170-16 to construct front & rear dormer additions approximately twenty-three feet from a front property line where thirty feet is required, twenty feet from a side property line as it abuts a street where thirty feet is required, and eight feet from a rear property line where fifteen feet is required; and the terms of Article X, Section 170-41.A, to increase a non-conforming structure.

Earl Case stated he cannot expand except by going up. He has two children with another on the way and needs the extra room and 1/2 bath for his family. He stated that the footprint won't be increased and there are several similar houses in the area.

Bill Colbath motioned to accept the case.

David Paolini seconded.

VOTE U/A

Steve Stancel spoke in favor of the variance saying that there are a number of other houses with second storeys or dormers in the neighborhood. He stated that granting the Cases the variance would allow them the same use as their neighbors.

Close Public Hearing

5 CRITERIA

1. The applicants do face an unnecessary hardship because of the unique shape and size of the lot. The lot size and shape will allow no expansion.
2. The variance will deliver substantial justice by allowing

the applicant use of his property similar to that of his neighbors.

3. The variance will be in harmony with the spirit and intent of the zoning ordinance because it is in a single family zone and the use is not being challenged.
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 presented that it will not be of benefit.

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

VOTE U/A
GRANTED

H89-59 Steve & Mary Beth Celona (owner: Seacoast Saving Bank) 400 Washington Street, A/K/A Assessor's Map G, Lot 19-C, zoned R-12, request a Variance from the terms of Article IV, Section 170-12, Table I, Part E, to establish a profit educational institution (Preschool & Child Care) in an R-12 Zone.

Steve Celone stated that he operates a State licensed day care facility in Somersworth and wants to relocate to Dover as many of the parents are from Dover. The permitted uses for the building are not suited to the building or location. He feels a day care facility would serve a useful purpose and would certainly not be a detriment to the community or neighborhood. It will be helpful to employers and employees. He will be offering a kindergarten program. He will be paying back taxes through Seacoast Savings Bank. He stated he has spoken to Mark Dellner and will meet all the fire standards.

Chris Jacobs made the motion to accept the case.
Randy Turner seconded.
VOTE U/A

Steve Stancel stated that the Planning Department is in favor of the variance because there is a quest for day care in the community and it will soon become an allowed use in all zones. He also stated that the Celonas will have to go to Site Review before the Planning Board and the State will take care of everything else.

Close Public Hearing.

5 CRITERIA

1. The applicant does face an unnecessary hardship because the size and shape renders the structure unsuitable for permitted uses allowed in this zone. The fact that the building has remained vacant for over one year supports this.

2. The variance will deliver substantial justice because it will allow a reasonable use of an otherwise non-usable structure.
3. The variance will be in harmony with the spirit and intent of the zoning ordinance because education facilities are allowed if non-profit, which is in the spirit and intent of this ordinance.
4. The variance will not result in a diminution in value of surrounding properties because of no evidence presented and evidence was presented to show it would increase the value of surrounding properties.
5. The variance will be of benefit to the public interest and provide a needed service and upgrade a previously unsuitable structure.

Chris Jacobs made the motion to grant the Variance as presented.

Bill Colbath seconded.

VOTE U/A

GRANTED

H89-60 Nickolas Skaltsis, 90 Washington Street, A/K/A Assessor's Map 2, Lot 14, Zoned B-2, requests a Variance from (1) the terms of Article IV, Section 170-12, to establish a non-conforming use (Multi-Family Dwelling) in a G-2 Zone; and (2) the terms of Article X, Section 170-41 A, to increase a non-conforming structure (Maximum permitted floor ration = 2.0; existing floor ration = approximately 4.1, proposed floor ration = approximately 5.0).

Bill Colbath withdrew himself from this case.

Nick Skaltsis stated that 25% of his building will be empty now that the Masons are relocating. The ceilings are 22 to 26' high. He met with Bill Collins about this space and restaurant, office and residential uses are permitted but all three present problems. Parking spaces near the building are almost impossible. There is zero parking with the building. He stated that Community Development suggested elderly housing, which would minimize the automobile problem. The building is only handicapped accessible during the hours the restaurant is operating since they have the only elevator.

Mr. Skaltsis stated that he wanted to create 24 units, doubling the square footage. Only by creating the floor space can he make the project work. Kathy Cool sent out surveys to the elderly with a 50% response, all favorable and enquiring.

Tom Clark stated that 14 units would be allowed without coming to ZBA. The use is allowed, the quantity is the question.

Mr. Skaltsis said he would be asking \$520.00 per month including utilities. It would be run similar to Section 8 Housing. He stated that this project can't go through

without certificates.

Steve Stancel asked if they would be 1 or 2 bedroom apts.

Mr. Skaltsis said they would be 1 bedroom apts. He went on to say that he met with the Housing Authority and they would take care of the leases and rents.

Mr. Skaltsis stated that the elevator would have to go outside the footprint of the building. He will have to go to the Planning Board for Change of Use and he will need to show parking. He will need City parking for this plan to work because he does need some daytime parking.

Dave Paolini motioned to accept the case.

Randy Turner seconded.

VOTE U/A

Steve Stancel stated that the Planning Department is in favor of the application. He said they can't speak against it because the public benefit is so great.

Chris Jacobs sees no problem because Mr. Skaltsis has to go before 6 other boards and the uniqueness of the building. Even if it was a restaurant, he would still have to have an elevator.

Steve Stancel stated that, if approved, it should have a condition attached stating that it only be used as elderly housing.

Close Public Hearing.

5 CRITERIA

1. The applicant does face an unnecessary hardship because the ceiling height of the structure (26') makes it unique and a hardship exists in allowing the applicant to use the building to its full potential.
2. The variance will deliver substantial justice because it allows the applicant adequate use of a unique building.
3. The variance will be in harmony with the spirit and intent of the zoning ordinance because the ordinance permits this 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 is a permitted use and the use and elderly housing is a definite benefit to the public interest.

Randy Turner made the motion to grant with the condition that the units must be for elderly tenants only and a maximum of 24 units.

David Paolini seconded.

VOTE U/A

GRANTED with the condition that the units must be for elderly tenants only, and a maximum of 24 units.

H89-61 George Demosthenes, Drew Road, A/K/A Assessor's Map I, Lot 25-C, zoned R-40, requests a Special Exception as provided by the terms of Article VII, Section 170-27.C(1) and Article XII, Section 170-52 C(3) to construct a private drive across a Conservation District.

Brian Holt, represented the case. He stated that the Planning Board has approved the plans and now needs the ZBA approval for the 2 culverts and 2 crossings. Mr. Demosthenes does have Wetland approval for the culverts and driveways.

Chris Jacobs asked if Lot #4 can be further subdivided?

Steve Stancel answered that it could if the private way was turned into a City street.

Brian Hold stated that one of the conditions of the Planning Board approval was that they get a Special Exception.

Dave Paolini asked about the temporary turn around.

Mr. Hold said it was a requirement of approval and that there is a law case on this project.

Chris Jacobs stated that our key roll is to minimize impact and he doesn't think we should accept the application.

Steve Stancel stated that this project has been through the courts and doesn't feel the ZBA can do that. The City Attorney and Demosthenes went into an agreement based on the 1984 subdivision rules. He stated that this is a unique situation.

Randy Turner made the motion to accept the case.
Dave Paolini seconded.
VOTE U/A

Steve Stancel said that he would recommend that Dean Peschel inspect the area and establish a letter of credit or a bond to be posted as a condition of approval.

Close Public Hearing.

Bill Colbath can't see how the State can approve driveway crossing without having them marked on the plans.

Joyce Bowden said that the State approved this plan without any driveways. She stated that it is the Board's job to make sure the road meets the standards and that's it. The fact that there could be driveways thru the wetlands doesn't apply.

Joyce asked if everyone thinks that the road meets the criteria under the Special Exception?

Everyone agreed that it did except Bill Colbath.

Dave Paolini motioned to grant the Special Exception.

Randy Turner seconded.

VOTE 3 - 2

Yes - Dave Paolini
Randy Turner
Joyce Bowden

No - Chris Jacobs
Bill Colbath

GRANTED

H89-62 Diocese of Manchester, 222 Central Avenue, A/K/A Assessor's Map 9, Lot 98, zoned B-2, requests a Variance from (1) the terms of Article V, Section 170-16 to construct a portion of a building zero feet from a rear lot line where twelve (12) feet is required; and (2) the terms of Article X, Section 170-40 A and D to increase a non-conforming use.

Atty. Anthony McManus represented the case. He stated that the addition would be for a gym, a kitchen and storage space. The building will be metal, except for the Church Street side, which will be brick. At the present time, the kids go to the Dover Rec. Center and there are no provisions for providing meals. The new building will solve both problems. There is a safety factor in moving the kids from the school to the Rec. Center. There is an existing retaining wall from when the convent was torn down that can be used as part of the new foundation, thus cutting down the cost. He stated that the school has been there for many years and it is in keeping with the ordinance to upgrade the facility. The structure will be well constructed, attractive, and will alleviate the safety problem. The building will be built by private donations and they hope to have it done by the opening of school 1990.

Joyce Bowden asked Atty. McManus if he had seen the letter she received from Mrs. Abbot and let him read it.

Mr. McManus, after reading the letter, stated that he does not see an increase in traffic as a result of the new building. He stated that there is a hardship in the land because they are surrounded by 4 streets. They cannot put the new building closer to the existing building because of the location of an underground oil tank and because there are windows on that side of the school and do not want to lose valuable light.

Steve Stancel stated that the rear lot line is on Middle Street and that the street address is in the front.

Mr. McManus stated that they will be using the parking lot for the First Parish Church during the week and the Church will use the school parking on Sunday.

Kevin McEnneaney stated that there is a six foot drop at the retaining wall.

Nick Skaltsis stated that the building is modular and will come in kit form. It would not be a simple matter to alter the plan.

Steve Stancel recommended that they table the case and have a site visit.

Joyce Bowden explained what Atty. McManus would be running into if he decided to challenge an administrative decision and asked him if he wanted to appeal the decision that he needed a rear setback?

Atty. McManus answered that he did.

Chris Jacobs made the motion to accept the case.

David Paolini seconded.

VOTE U/A

5 CRITERIA on part #2 - to increase a non-conforming use (Non-profit Educational Institution)

1. The applicant does face an unnecessary hardship because the ordinance itself is a hardship in itself.
2. The variance will deliver substantial justice because it will allow reasonable use of a school to provide meals and sports activities.
3. The variance will be in harmony with the spirit and intent of the zoning ordinance because educational facilities are permitted.
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 the improvement of an educational facility is in the public interest.

Chris Jacobs made the motion to grant item #2 only - The applicant will appeal Item #1 as an Appeal of an Administrative Decision.

Randy Turner seconded.

VOTE U/A

GRANTED #2 ONLY

Steve Stancel stated that if they fail to win the Appeal of an Administrative Decision they will have to try for a Variance.

H89-63 Donald Cichon, (owner: Vincent & Mary Hennessey), 410 Dover Point Road, A/K/A Assessor's Map 8, Lot 44, zoned B-1 requests a Variance from the terms of Article IV, Section 170-12, Table I, Part C to establish a non-conforming use (office building) in a B-1 Zone.

Atty. Alan Krans represented Mr. Cichon. He stated that Mr. Cichon has been associated with a company based in Washington for one year. He has received a grant to study children and

does many other types of research. He needs an office for his research where he can hire 5 to 8 people to work week days. He has no storage needs or tools of the trade and would be low traffic impact.

Joyce Bowden asked him how long his grant was for. He stated the grant was for 3 years but this is just one of several and he had been doing this for 15 years now.

Chris Jacobs made a motion to accept.
Bill Colbath seconded.
VOTE U/A

A discussion ensued whether an office where research is being conducted would fit into the ETP Zone for Research/High Technology.

Steve Stancel stated that the Planning Department has no problem with this variance.

Close Public Hearing

5 CRITERIA

1. The applicant does face an unnecessary hardship because the uses allowed in the B-1 zone are not conducive to the property due to the unique location and size.
2. The variance will deliver substantial justice because it will allow the applicant to use his property in a similar manner to other properties in the area.
3. The variance will be in harmony with the spirit and intent of the zoning ordinance because a low impact use will be utilized and called for in the ordinance.
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 and in keeping with the ordinance which is a benefit to the public.

Chris Jacobs made a motion to grant the variance as per the applicant's petition.
Bill Colbath seconded.
VOTE U/A
GRANTED

David Paolini made a motion to adjourn.
Bill Colbath second.

Meeting adjourned at 10:45PM