

Cases 85-8 and 85-9

Board of Adjustment

June 27, 1985

Board members present:

Chairman Greg Bohosiewicz, Gail Proctor, Gary Crooker,
Arlene Laurenitis, and Tom Mitchell

Case # 85-8

Applicants: David and Dorothea Garland

At 7:30 p.m. Chairman Greg Bohosiewicz called the meeting to order. Member Gail Proctor then read the application for a variance from David and Dorothea Garland for an addition of an entrance hall and two car garage.

Discussion was opened with Mr. Garland showing a sketch of the lot with proposed garage and entrance way. The garage to be approx 24 x 24 and the entrance hall approx. 8 x 12 leaving only a 17 ft setback.

Member Tom Mitchell suggested a hardship be in order.

Abutter Barry Greene explained the lay of the lot and stated he had no problem with the proposed variance.

Member Tom Mitchell moved to grant the variance.

Member Gail Proctor made the motion to grant David and Dorothea Garland of Keyes Hill Rd. a variance subject to Article VI, Section D, to permit to attach an addition of an entrance hall, approx 8x12, and a two car garage, approx. 24x24.

Motion was seconded by Member Gary Crooker.

Motion passed 3-2 with Members Gary Crooker, Gail Proctor and Arlene Laurenitis in the affirmative. Chairman Greg Bohosiewicz and Member Tom Mitchell in the negative.

8:00 p.m. Case 85-9

Applicant: G & P Construction

Represented by Barry Greene

Abutters present: Mr. and Mrs. Don McLeod and James Debelek. Also Road Agent Charles McGettigan Jr.

Member Gail Proctor read the application for a variance from G & P Construction to erect a two family home on Badger Farm Road - Lot H-051.

Discussion opened with Barry Greene admitting he had made an unintentional mistake. He explained a sequence of events.

1. He measured approx. 26 ft from lot line
2. He had the hole excavated
3. The footings were poured.
4. He halted the operation to check zoning laws.
5. checked map and checked his zoning book -
stated a 25 ft setback
6. He had the foundation poured
7. Then conversed with Building Inspector Norm Stimson. Norm's zoning book had a 35 ft set-

back from lot line penciled into his zoning book.

8. He then went to Town Hall and checked amendments and found he had made a mistake. Stated it was unintentional.
9. Halted all construction on his own.
10. Expressed his concerns that all zoning ordinances should be in one book and was upset that he had traveled to two locations to determine his mistake.
11. He described the house and apologized for an honest mistake.
12. Stated it would be a hardship and would prefer not to allocate this home as it would lose its entire visual effect.

Chairman Greg Bohosiewicz then questioned the size of the right-of-way (Badger Farm Rd.)

Road Agent Charles McGettigan Jr. felt in his opinion the right-of-way in question was a 3 rod road (approx. 49 ft.)

Chairman Bohosiewicz, speaking for the board, stated that on Monday, June 24th, members of the board visited the lot in question and measured a 10 ft setback and felt that was too close.

Mr. Greene stated that he and the Building Inspector Norm Stimson agreed he had a 26 ft setback. He

also stated he would be willing to comply with any restrictions the board wished to place on the lot, otherwise he'd stick a trailer onto the foundation. He then stressed he was willing to cooperate with the board.

Road Agent McGettigan stated his opinion of a 3 rod road was based on evidence of a stone wall which had been dismantled a few years ago by former Road Agent James Tuttle.

Abutter James Debelek stated he was also under the impression of the 25 ft setback.

Mr. Greene asked if parking was the issue.

Abutter Debelek stated the safety of the children and the safety of the drivers was the only concern that he had.

Mr. Greene stated he was trying to cooperate. He proposed to building the house where it is he could also add a continuous hedge and/or a fence to avoid cars from parking on the road. He also suggested the Zoning Board should have the authority to pass a "Special Exception" ruling from the Planning Board.

Member Tom Mitchell suggested a hardship. He felt the setback was 10 ft. and what alternatives did Mr. Greene have.

Mr. Greene stated it would effect his parking area and the back yard.

Chairman Bohosiewicz suggested pushing back the

foundation.

Mr. Greene explained the back yard would then be unusable.

Chairman Bohosiewicz would feel better granting a variance if the foundation were pushed back some.

Mr. Greene stressed he would put a trailer on the lot instead and in his opinion he has a 26 ft setback.

Chairman Bohosiewicz speaking for the board stated they felt he only has a 10 ft setback.

Member Arlene Laurenitis asked for more details on the house in question.

Mr. Greene stated it was a 2 acre lot proposing a two family home.

Abutter Don McLeod stated he wanted to see a house on the lot rather than a trailer.

At 8:55 p.m. Member Gail Proctor motioned for a recess which was seconded by Member Gary Crooker. Motion passed.

At 9:10 p.m. meeting resumed.

Member Laurenitis then made the motion, based upon the Boards opinion that Badger Farm Road is a 3 Rod Road, that the proposed building in question within 10 ft of the Right of Way move to permit G & P Construction a variance to the terms of Article VI, Section D, for a 26x32 house within the setback limit of 35 ft on property, Lot H-051, located on Badger Farm Road.

Member Mitchell seconded the motion.

Motion was denied 4-1. The affirmative vote coming from Member Gary Crooker. Negative votes being Chairman Bohosiewicz, Members Proctor, Mitchell, and Laurenitis.

Mr. Greene then left upset.

Business at hand was then discussed.

Two cases have been scheduled for July 10th. It was agreed to inspect the site of Natalie C. Parker at 7:00 p.m. on July 10th with the meeting beginning at 7:30 p.m.

The minutes from the last meeting were approved.

Tom Mitchell made the motion to adjourn the meeting. Gail Proctor seconded the motion.

Meeting was adjourned at 9:30 p.m.

Case # 85-9 Applicant: G & P Construction

Minutes insert/ July 10, 1985

The applicant requested a variance to build a duplex house within a distance less the required 35 foot setback from the road.

The Board made the determination as to the distance of the already poured concrete foundation from the road.

1. The surveyor's plot plan shows the Town's Right of Way.

2. The Board requested the Road Agent to determine the width of the right-of-way. Observing the accepted practice of measuring the distance between stone walls in several places on either side of the Greene property (the stone wall on the Greene property was removed) the arithmetic mean was ca. 3 rods (1 rod = 16.5 ft.)

3. Observing customary practice the distance from the stone wall directly opposite of the foundation wall was measured. The distance from the middle of the stone wall to the foundation was about 60 feet (with a 2 ft. margin of error).

4. The Road Agent stated that the road is a 3 rod road.

5. Hence the distance of 60 ft. less 49.5 ft (3 rods) puts the foundation between 8 to 12 feet from the edge of the Town's right-of-way.

By statute the Board is required to consider the following conditions:

1. HARDSHIP
2. THE SPIRIT OF THE ORDINANCE
3. THE ISSUE OF INJUSTICE
4. ADVERSE EFFECT ON THE ABUTTERS

HARDSHIP

The element is inherent in the land. The land is mostly steep slopes. The Board considered the steep topography but did not consider a 10 ft. setback adequate

in the light of configuration of the road (visibility, parking, play space in front of the house, and snow plowing). In other words the safety of the occupants of the house should be compromised. The board considered these elements in light of the fact that the house to be constructed is a duplex.

THE SPIRIT OF THE ORDINANCE

Some two years ago the electorate voted to increase the setback from 25 ft. to 35 ft. It was clear to the Board that the very small setback would not be in accordance with the voter's wishes.

INJUSTICE.

The board weighed the rights of the property owner against the hazards created by a small setback. The consideration of public safety and welfare prevailed.

ADVERSE EFFECT

The board did not find any significant adverse affects on surrounding properties.