

approved  
10.15.86  
GP

MINUTES  
Board of Adjustment

September 24, 1986

Board members present: Tom Mitchell-Acting Chairman, Herbert Klein, Grayson Parker, Gail Proctor (replacing E. Lamminen) also acting as Recording Secretary. Stephen Blanchard absented himself from the case due to a business conflict.

Others present: Ron Bitten, Peter Ferrand, Charles McGettigan,

Board members Tom Mitchell, Grayson Parker, and Gail Proctor viewed the properties prior to the meeting.

The meeting was called to order at 7:35 P.M. in the Town Hall Court Room by Chairman Mitchell. Ch. Mitchell read the application request of Donald Philbrick for a variance to the terms of Article VI, Section C-1 of the zoning ordinance. According to the application, Mr. Philbrick would like to sub-divide a 5 acre lot from his property (B-095) which is located on a private road off Curtis Farm Road in the Residential-Agricultural Zone. Ch. Mitchell added that presently there is a mobile home with an approved septic system on the lot.

Ch. Mitchell asked Mr. Philbrick to explain to the Board his intentions. Mr. Philbrick proceeded by explaining that basically what is going to be done to the lot has been done. Mr. Philbrick continued by stating they do not plan to make any changes or additions to the property. Mr. Philbrick described that his present tenants have work horses which they make their living with and they have no other place for them (the horses). Mr. Philbrick stated that all they wanted to do was to change the ownership of the lot from us (Philbricks) to them (present tenants). Mr. Philbrick explained to the Board that the Mr. Guay (tenant has had health problems and that he needed a place to stay that would be secure for himself and his family. Mr. Philbrick pointed out that if the property was located on a town road that there would not be any problems with the subdivision as it met all the other requirements. Mr. Philbrick stated that he would be maintaining the road as he has done in the past without any help. Ch. Mitchell asked Mr. Philbrick what would happen if he could no longer maintain the road. Mr. Philbrick replied that he would probably hire someone to do it. Mrs. Philbrick added how they have maintained the road in the past and had hired the town grader at their expense to grade the road. Mrs. Philbrick emphasized that the road would also be maintained because they too would have need to "get out".

Mrs. Philbrick explained to the Board that the present tenants would like to buy the 5 acres from the Philbrick's 45 a. (approx.) larger lot. The Philbrick's showed the Board a diagram outlining the proposed lot in relationship to the existing lots. Mr. Philbrick added that the mobile home had its own well and septic system. The Philbrick's showed the Board the building permit in 1983 which allowed the placement of the mobile home.

According to the building permit, the Philbrick's had 1205' of road frontage. The permit did not indicate that the road was private. Ch. Mitchell stated that the issue was "water over the dam" and he added that the permit was probably not legal. Ch. Mitchell pointed

that a lot must have 200' frontage on a Town approved road. Mrs. Philbrick stated that there was no way that they could put in the road and have the Town accept it.

The Board asked Road Agent, Charles McGettigan to clarify the status and the condition of the road in question.

Mr. McGettigan responded by stating that the road has been there for some time and that the houses and trailers now on it have been there before town zoning. Mr. McGettigan pointed out that the houses were perfectly legal although there might be a problem with the last one (referring to the 1983 request). Mr. McGettigan compared the Philbrick's road to anyone else with a long driveway. Mr. McGettigan reminded the Board that the Town was responsible for ambulance and fire calls to the area. Stephen Blanchard pointed out that both the Philbrick's were on the ambulance squad for over 10 years. Mrs. Philbrick stated that their road is always open because they are on "ambulance duty".

Mrs. Philbrick summarized by stating that the only only purpose of their proposal was to give their tenants a piece of land of their own.

G. Proctor asked the Philbrick's to explain why they did not want to keep the arrangement as it is presently. Mrs. Philbrick responded by explaining that because their tenant had 5 or 6 large animals and heavy equipment that he used in his business, their insurances were high. Mrs. Philbrick added that it was difficult to split the property taxes too.

Stephen Blanchard stated that the Town erred in allowing the mobile home on the lot and that created a "bad situation". Mr. Blanchard concluded by stating that he felt the granting of a variance would correct the situation and prevent an injustice.

G. Proctor explained that a variance goes with the land and not just the present circumstances and that the Board must consider the long term effects too.

Mr. Philbrick pointed out that in 1976 he was granted a variance to subdivide two lots from his main parcel on the same private road, (lots #B-093 and B-094). Mr. Philbrick felt this set a precedent and he should be granted a variance for this request.

G. Parker replied by stating, "three wrongs don't make a right".

Ch. Mitchell explained that the Board cannot use precedents in deciding a case and that each application is reviewed on its merits and circumstances.

Ch. Mitchell asked the Board to review the five criteria that the Board uses in determining a case.

1. Diminution of surrounding property - The Board agreed that the surrounding properties would not be affected by the proposed request.

2. Public interest - The Board agreed that the proposed subdivision did not contradict the intent of the "public interest".

3. Special conditions - (hardship) - Ch. Mitchell explained to the group the legal definition of "hardship". Ch. Mitchell stated that he did not find anything unique in granting the subdivision on

this private road and he continued by stating that this property was no different from other landlocked areas in town. Ch. Mitchell said he understood the problem but it was not unique. Ch. Mitchell pointed out that the owner can still enjoy the property, the occupant can still live on the property, and nothing needs to be changed except for the fact that the occupant will not have the satisfaction of owning his own land. The other Board members agreed with Ch. Mitchell's comments. Ch. Mitchell added that the hardship that existed presently were financial in that insurance and taxes made it difficult for the Philbricks to continue the current arrangements.

G. Parker suggested a long term lease may solve the Philbrick's problem.

4. Substantial justice - The Board agreed that there did not exist any "overbearing evidence" that would deprive the property owners of their rights.

5. Spirit and intent of the ordinance - Ch. Mitchell commented that the Town ordinance requires 200' frontage on a Class V road or better for a sub-division and the request clearly does not fall into the law.

Ch. McGettigan added his comments on the importance of fire and safety measures as well as growth control in requiring the 200' frontage requirement in the local ordinance.

Motion by Grayson Parker: That the Board grant the application as applied for.

Second to the motion: by Herbert Klein.

The Board voted 4-0 not to grant the variance request.

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The second request of the evening was from Catherine Travis of Holt Road who would like to establish a Home Occupation selling dried flower wreaths and other such crafts from October to December in her residence.

Ch. Mitchell read the request and asked Mrs. Travis to outline her plans. Mrs. Travis explained that the project would not be a permanent arrangement and she would be using the "breezeway" as her selling area. Board members Mitchell, Parker, and Proctor had viewed the site prior to the meeting.

The Board went through the criteria for Home Occupations and the agreement of the Board was that the proposal met the ordinance requirements.

The Travis home had a double driveway and it appeared that there would be ample off-street parking. C. Travis stated that she felt there would be no more than three customers at any one time. Ch. Mitchell reminded the applicant that if a business outgrows the home it must relocate in a commercial district.

G. Proctor pointed out that a residential sign is permitted but it must follow the ordinance requirements.

Motion by Stephen Blanchard: to approve the Special Exception as presented.

Second to motion: by Grayson Parker.

The Board voted 5-0 in favor of motion.

Other business: Minutes of the 9/17/86 meeting were passed out to Board members. The minutes were approved as submitted by a 4-0 vote. Recording Secretary-Gail Proctor was commended on the "good job".

An application was received by Ronald Daigle. The Board would like to schedule the hearing for October 15, 1986 to accommodate the deadlines.

*Gail Proctor*

Gail Proctor  
Recording Secretary