

MINUTES

BOARD OF ADJUSTMENT

AUGUST 26, 1987

Case #13 - Walter & Betty Ellis

Case #14 - Steven Krook & Peter Carini

Meeting called to order at 7:30 P.M. in the Town Hall Court Room by Ch. Laurenitis.

Members present: Arlene Laurenitis, Chairman, Grayson Parker, Eddie Lamminen, Tom Mitchell, Cindy Harris, Gail Proctor, secretary.

Ch. Laurenitis read the application request of Walter & Betty Ellis for a variance to the terms of Article V, Section A-2 & D of the zoning ordinance. Applicant proposes to add a one room apt. to the existing two units in their Main St. residence.

Ch. Laurenitis provided some background information regarding the case. The prior owners of the property had requested a variance for 4-units in 1977, the decision of the ZBA at that time was to permit 2 units. Ch. Laurenitis read the ZBA's decision. Ch. Laurenitis consulted with Town Counsel regarding the new request and cited Waugh vs. Manchester. According to the case, the applicant must state a "... difference in nature and degree from the use". Ch. Laurenitis asked the applicant to address the differences in this proposal before the Board continued with the variance criteria.

Betty Ellis explained to the Board that she has owned the property since Nov. 1984 and had leased it for one year prior to that. Mrs. Ellis said that there was already existing an apt. w/ a bed room when she purchased the property. Now it is a one-room apt. Mrs. Ellis pointed out that they have made many improvements to the property and has added two parking spaces, making a total of nine. The lot is approx. $\frac{1}{4}$ a. In 1982 Mrs. Ellis was granted a Sp. Exc. for a Home Occupation for a day care. Mrs. Ellis said the original license was for 22 children with the State but now she is licensed as a family day care and is limited to 12 children. The house has two fire exits and there have been no parking problems as was the case with the initial request. Mrs. Ellis said that she receives three water and sewer bills and three electric bills. John Hammar and Dorothy Foote, prior owners, stated that the original variance was denied because of inadequate parking, lack of fire exits, and no hardship to the property.

G. Parker questioned the legality of the three meters. Hammar and Foote did not know who had installed the meters. G. Parker was concerned about "compounding a problem when someone did something wrong," (estab. the 3rd apt.).

T. Mitchell suggested because there were no criteria or legal definitions for "use", that the Board move on to the variances to review the case.

Motion by Tom Mitchell: to look at the variance criteria for the Ellis appli-

cation for a 3 unit dwelling as being significantly different from the previous request.

Second to Motion by Eddie Lamminen.

Vote: 4-1 Motion passed. A. Laurenitis "no".

The Board proceeded in addressing the variance criteria.

#1-Value of surrounding property - Mrs. Ellis said that many of the neighborhood properties were two units and more and that the factory across the street made the air full of sawdust. She added that Main St. was already busy and that adding another unit would not increase congestion. Mrs. Ellis felt that because the unit was a one-room efficiency apt., it would not be a problem.

#2-Public interest-Mrs. Ellis felt that apt. would be helping out her tenant, enabling her to keep her place to live. Mrs. Ellis would also be able to "keep the daycare center".

G. Parker expressed concern about the appropriateness of keeping the third apt. when approval had been previously given for only two units. G. Parker stated that "it doesn't seem right to approve the extra unit after the fact".

E. Lamminen felt the proposal was of benefit to the neighborhood because the Ellis'es had improved the property and it "looks 50 times better than before." Mrs. Ellis pointed out that the tenant was more of a boarder because she only charged the lady \$25.00 /wk. for rent. Mrs. Ellis said she needed the third apt. for a loan approval. E. Lamminen explained to Mrs. Ellis that the decision could be based on financial need.

#3-Hardship-Mrs. Ellis said the property is currently appraised at \$189,000.00 and because of the many improvements she has made to the property she has brought "a value to the street". Barry Greene pointed out similar conversions in the area when the ZBA granted third units to large houses. Mr. Greene added that physical size of the building can be a "hardship". E. Lamminen read from the ZBA Manual the section on "needless restriction". E. Lamminen felt that the denial of the request would be a needless restriction and there would be nothing to gain from a denial.

#4-Substantial justice-Mrs. Ellis stated that she has been paying for three water and sewer bills and that her loan is in jeopardy without the three units. Mrs. Ellis said her house was for sale, but she would like to keep it.

#5-Spirit and intent-Mrs. Ellis felt the density of the neighborhood would not increase with the addition of the one-room apt. that one person lived in.

G. Parker said he agreed with the present request but the previous Board's decision should not be disregarded. He added that the buyer should be aware of property's status making sure that it conforms with the zoning. G. Parker said he had, "no problems with the request except for the zoning violations and the Board should not approve the request."

John Hammar, abutter and former owner, explained that he had leased the property in 1980 or 81 for about 1½ yrs. and that the tenant Mr. Bouchard had installed the three meters. According to Mr. Hammar, the tenant was suppose to

"fix-up" the property but did not. When Mrs. Ellis moved in to the property the third apt. was partially completed.

Ron Fournier, abutter, read a statement to the Board expresses his concerns and problems with the request. Mr. Fournier stated that he was opposed to the zoning change because it would lessen the value of his property. He added that the aesthetics of the area would change with the increased usage. Mr. Fournier stated that he had seen many interior changes to the property and he considered the property as 4 units including the daycare business. He expressed concern that the one-room apt. could expand into the rest of the house. Mr. Fournier felt that Mrs. Ellis wanted to only increase the value of the property for a higher resale price. He pointed out that the property has been for sale for 2 yrs. and that Mrs. Ellis had asked him about the possibilities of changing the neighborhood to a Commercial Zone. Mr. Fournier was concerned about the possibility of having an absentee landlord with three units plus a daycare business. Parking, snow removal, and the shared driveway have presently been problems with the existing use according to Mr. Fournier. He added that a third apt. would make the situation worse.

Ch. Laurenitis asked for clarification on the tenants/owner situation. Mrs. Ellis said she had moved into the entire house initially. Mr. Hammar stated that he had not been paying for three water and sewer bills.

Motion by Tom Mitchell to grant the variance to add a third apt. as requested in the application.

Second to Motion: E. Lamminen

Vote: 3-1 denying the request (Grayson Parker passed, Eddie Lamminen in favor)

Mrs. Ellis felt the decision was unjust and unfair. Ch. Laurenitis explained to the applicant that a request for a rehearing must be made in 20 days.

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Ch. Laurenitis asked for clarification on the tenants/owner situation. Mrs. Ellis said she had moved into the entire house initially. Mr. Hammar stated that he had not been paying for three water and sewer bills. *Ellis family moved upstairs with one other apartment and the daycare was downstairs. Then Mrs. Ellis family moved downstairs and rented the 2 unit upstairs.*
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Ah stated she voted against the variance b/c

- 1) there was no benefit to public interest in allowing another where the owner had been in violation of a previous ZBA decision.
- 2) there was no hardship of the land or uniqueness of the property.
- 3) the application was contrary to the spirit of the ordinance requiring 1/2 acre per dwelling unit. On 1/4 acre there were already 2 apartments and a daycare business.

Case #14 Peter Carini & Steve Krook 8:40 P.M.

Ch. Laurenitis read the application request of Peter Carini & Steve Krook for variances to the terms of Article VII, Section C-1-4 and G for 33 elderly housing units on Howard St. property located in the Industrial Zone. Ch. Laurenitis noted that the public notices incorrectly stated Article XII.

Att. Jeffrey Crocker addressed the Board representing the applicants. Mr. Phil Tuomola of Monadnock Survey was also present. Att. Crocker explained the purpose and nature of the project as being 33 elderly housing units, subsidized by funding from FmHA for financing. Att. Crocker stated that the project would be serviced by town water and sewer (with a ground floor pump for lower level) and added that the project would be paying real estate taxes to the Town.

Att. Crocker presented the Board with a packet of supporting data and material summarizing the the variances and commenting on each one. Additional comments from the applicant and Board members are:

1. Article VIII,C-1 (frontage requirements)

Mr. Tuomola stated that because of previous sewer work it has been difficult to determine the precise boundaries. At this time, the lot appears to have approx. 90' frontage. Att. Crocker said he has not done any dee research, but it appears that the property is a pre-existing grandfathered residential use and possibly does not need a variance.

2. Article VIII,C-2 (lot coverage)

See summary.

3. Article VIII,C-3 (setbacks)

Att. Crocker added that the location of the river makes the property unique.

4. Article VIII,C-4 (parking)

See summary. Att: Crocker also referred the Board to the Moseley & Fucci report which shows elderly housing projects usually require less parking spaces than industrial a/o similar residential uses.

5. Article VIII, Section G (residential uses in the industrial dsirict)

Att. Crocker emphasized that because there are no density requirements for the residential use proposed that it would be in the power of the Board to set the standard. Att. Crocker felt that the 33 units was a "reasonable" number to request.

Five criteria - Att. Crocker's submitted a written statement addressing the criteria. The follwoing are additional comments, concerns, and observations by the applicant and Board members:

#1 - Value of surrounding property

Att. Crocker explained that the project would aid the existing commercial businesses on the street by providing more clientel. Ch. Laurenits asked about funding procedures and residential requirements. Mr. Krook explained that federal monies were available at this time with the probability that there would be no funds in next year's federal budget. Mr. Krook said the minimum age of tenants is 62 (if a couple than only one need be 62), max. income levels would be \$23,000 per couple and that the building would be de-

signed for the elderly. Mr. Krook added it would be difficult to rent to others because of this fact.

#2 - Public interest

Att. Crocker stated that Mr. Krook has received consistent encouragement from community members and groups supporting the project. Ch. Laurenitis asked about rent increases and local priorities for tenants. Mr. Krook indicated that rent increases would only occur if utilities, services, or taxes significantly increased. Mr. Krook explained that although there would be no local priority for tenants, he would advertise for openings locally first and then include other areas.

#3 - Hardship

Att. Crocker pointed out that the property is geographically unique considering the 90' frontage, the river abutting, and its prior residential uses. Att. Crocker reminded the Board that because of the property's physical limitations, it would be difficult to find an appropriate industrial use. Att. Crocker stated that it would be "highly unlikely" that someone could use the property w/out variances. T. Mitchell agreed that the "land was made for a variance", but he added that he felt the proposal was an "intense use". Att. Crocker response was that an industrial use could be more intense.

Barry Greene said the site was unique because of a scarcity of suitable sites for elderly housing in the community. Mr. Greene said it is the only site currently acceptable for FmHA financing.

Ch. Laurenitis asked the applicant why they chose not to "go to Town Meeting" for the zoning changes instead. Mr. Krook explained that the funding deadlines were SEpt. 16th or 20th and that zero dollars is being proposed for next year's federal budget.

Ch. Laurenitis asked about other funding possibilities and Mr. Krook said at this time this was the only active group available (FmHA). Mr. Krook stated that rents would be in the \$390.00/month incl. util. range. B. Greene added the local rents are in the \$575-600.00 range.

Joan Melcher pointed out that although there could be a max. of 66 individuals in 33 units, her experience suggested that there would be few couples and many (majority) widows.

Harold Melcher commented that the zoning ordinances do not address density requirements and that when the Z.O. were enacted this kind of project was not in mind. He added that there is no existing provision for multi-unit developments as such.

B. Greene concurred with Mr. Melcher's observation.

#4 - Substantial justice

Att. Crocker repeated that there was a strong public interest in the project.

#5 - Spirit and intent

T. Mitchell expressed about the increased density for such a small area. Att. Crocker reminded the Board that the proposed use would be the "lightest" given the alternatives of an Industrial Use. He added that although the project is residential in nature it is not "typical" of stan-

dard residential developments in that it would not generate the usual activity (cars, children, etc.).

Ch. Laurenitis expressed concern about the lack of open space and the difficulty of caring for pets (dogs) with so little yard. Mr. Krook pointed out that the design contained many "common spaces", seats, benches inside and outside to accommodate the differences.

Ch. Laurenitis read a letter from David Stein supporting the proposal.

Donna Hoover commented questioning the need for this project in Town and she expressed concern about the possibility of created a "stigma" by placing a "homogeneous group of people" in one project.

Steven Gilson said it was "better to have houses in that area than an industry".

Harold Melcher pointed out that there were 3% more elderly in Wilton than in surrounding areas and more near-elderly.

Ch. Laurenitis questioned the "enduring nature" of the project for the elderly. She felt that some type of commercial/industrial use could be established on the site.

Att. Crocker stated that Mr. Krook was willing to attach a condition to the request restricting the use to elderly housing.

Ch. Laurenitis asked about the reduction in the # of units. Mr. Krook responded by saying "this is the number needed to make it work."

E. Lamminen expressed concerned about the Board's jurisdiction in granting a variance to a use that is prohibited in the Industrial Zone.

Att. Crocker added that elderly housing was not considered at tha time when this zoning was enacted.

T. Mitchell expressed concerned about "rezoning" the area. Att. Crocker emphasized that the request was not to rezone, adding that the variance is for asking relief to permit the use in the zone.

Motion by Eddie Lamminen to accept the application as presented.
Second to Motion: Grayson Parker

Vote: 3-2 denying the request. Arlene Laurenitis, Cindy Harris, Tom Mitchell "no".

Att. Crocker asked that the minutes reflect that, ". . . there were no reasons as part of the motion for denial of the request."

B. Greene stated that he was "disgusted" with the Board's decision.

Other Business

Board members made plans to attend the Mun. Law Lecture Series.

Minutes approved w/ corrections by T. Mitchell from 7/87.

Meeting adjourned at 10:30 P.M.

Gail Proctor
Gail Proctor -Sec.