



ZONING BOARD OF ADJUSTMENT
WILTON
NEW HAMPSHIRE 03086

Minutes June 14, 1988

Meeting called to order by Tom Mitchell, Chairman, at 7:01 p.m., Town Hall Court Room with members George Infanti, Eddie J. Lamminen Jr., Grayson Parker, Cindy Harris and Tom Mitchell present. Mitchell introduced Joanna K. Eckstrom, new secretary to the Board.

Mitchell noted three items on the agenda for the evening: Item 1-SUMA REALTY TRUST request for variance to terms of Article V Section D-2; Item 2- Mssrs. Samuel G. Proctor Jr., Barry A. Greene and Gary W. Frye request for Special Exception as provided in Article XI Section 1, a public hearing regarding "wetlands". (Public hearing must be held 30 days in advance of decisional hearing on this issue. Decisional hearing is scheduled for July 27, 1988).; and Item 3- Irene Duval request for variance to add an in-law apartment to existing house on lot without required acreage.

Item 1: Case 8.88, SUMA REALTY TRUST, C. Wilson Sullivan, Trustee, Applicant.

Sullivan requests variance to terms of Article V Section D-2 to permit construction of a single family home (s.f.h.) on Lot L-67, Island St. Construction on said lot would not conform to set-back requirements. Sullivan presented Wilton's Tax Map, the Hillsborough Mills Plan of TF Moran, Inc. and site plan with locus of proposed structure.

Mitchell asked that five criteria for findings of fact be addressed. Sullivan responded as follows:

1. Construction of a sfh would be in public interest as this is residential use of land.

2. Construction of a residence would increase the value of surrounding properties.

3. The spirit of the ordinance would not be broken. Sullivan believes purpose of setback requirements is fire protection and access for emergency vehicles. Aesthetic appearance is preserved as there are now houses on both sides of lot.

4. There is a hardship - lot is bound in front by the road and at the rear by the river.

5. Denial of variance would be an injustice as no use of the land can be made without it. There would be no decrease to value of surrounding properties; construction of a sfh would be in keeping with rest of neighborhood (other houses in area are two family).

** please note corrections
minutes approved 6/29/88*

Reference was made by Mitchell to Article XIV Section C-1 which states that a sub-standard lot may be used for single family use permitted subject to septic system approval. Abutters/audience were asked for their comments.

Grayson Parker, an abutter, noted a possible conflict of interest in that he owns the property across the street and did not get abutter's notice. However, he did not feel this was an issue with him as far as re-hearing the case.

Lamminen asked if this is a "lot of record". Sullivan answered yes. Lamminen asked why. (former) Building Inspector sent Sullivan to ZBA. Sullivan replied that permit denied due to noncompliance with setbacks.

Gail Proctor, abutter, asked if SUMA had relationship to any abutters. Sullivan - no. Proctor asked what about "Lacasse?"

It was noted that Lacasse was not on the abutters list and Ms. Proctor questioned whether this was a legal meeting in that not all abutters had been notified.

Infanti gave his interpretation of "lot of record" and a board's inability to restrict use on a lot of record.

Mitchell quoted regulations on lots of record and uses permitted; does not feel variance is needed.

Lamminen agreed with the provisions for substandard lots.

Ms. Proctor argued that even though a lot of record, the only use in past was a shed or storage. She questioned permitted use on lot of record. Ms. Proctor requested clarification of Mr. Sullivan's involvement with SUMA, wanting identity of members of trust. Sullivan assured Board and Ms Proctor that he was the sole trustee.

Inasmuch as it was agreed that there was either a misunderstanding or misinterpretation by the former Building Inspector of the need for variance, Lamminen moved that SUMA REALTY TRUST meets the terms of Article XIV Section C-1, provisions for substandard lots of record, there is no need for variance. Motion seconded by Parker.

Vote: Mssrs Infanti, Lamminen, Parker and Mitchell in favor; Ms. Harris against; ~~(3-2)~~

Mitchell advised Sullivan that new evidence could be presented or re-hearing within 20 days.

The minutes of May 25, 1988 were reviewed. One correction was made

Page 2 Line 4 is changed to read: "T. Mitchell felt the spirit of the ordinance may be violated because current density requirements are in violation."

Minutes were approved with noted corrections.

Not on the agenda was KAJ-AAGE ARENDS of Isaac Frye Hwy & Wilton Center Rd who appeared to request advice of procedure for variances and in relation to his hearing with the

Planning Board on June 15. He expressed concern re: moving a building and setback requirements. He has been operating a mail order business from the property since 1975. Grandfathered is the continued use of building for business.

Mitchell advised Arends that alterations of grandfather clauses require Special Exception under Article V Section B-1 and 2. (IF CHANGING BUSINESS - MUST ABIDE BY HOME OCCUPATION RULES) TM

There was some question as to which applications had been filed to date so the suggestion was made that Arends check on this and file application with ZBA if necessary. Instructions for filing were given.

Item 2- Gary W. Frye et al (Highfields), Case 7.88, Special Exception to Article XI Section D-1 - proposal to construct a road over poorly drained/very poorly drained soil. Since the project involves "wetlands," a public hearing must be held thirty (30) days in advance of a decisional hearing. Mitchell reviewed information collected so far - a. Weston Engineers review of data provided by TF Moran Surveyors. b. Soil Conservation Service visit to site. c. ZBA visit of site.

Mitchell advised audience that further evidence would be accepted in writing within the next 30 days or in person at the decisional meeting on July 27, 1988.

Mitchell read a letter from Weston Engineering to the audience. ATTACH LETTER/TM

Sitting for this hearing are Messrs. Mitchell, Infanti, Lamminen, Parker, ~~Ms. Harris~~ and alternates Arlene Laurenitis and Herbert Klein, (under study)

C. Wilson Sullivan, Attorney for Frye et al (Highfields) presented maps. John Sennot of TF Moran said that soil quality had been taken into account very early in the project, not after the fact. He feels the soils are "dry" as far as wetlands are concerned. He said steps had been taken to try to avoid the pond and poorly drained soils and that 400 ft distance ^{SIGHT DISTANCE CORRELATE OF TRAFFIC} (from road to wetland) as required by State had been met in both directions. In response to a question from Ms. Harris, he described a "soil survey."

Klein asked if it was possible to drain water from the wet areas to the pond. Sennot said yes and that this course is being considered.

Abutter comments were then addressed.

Mr & Mrs FJ Wengerter, Lot H-43 expressed their great concern about runoff from the road and erosion prevention. They described a situation 2+ years ago in which their driveway was washed out. Bruce Garvin, Mason Road, Lot H-45 escaped damage from runoff in the incident according to Wengerter.

Leo Maloney, Lot H-43-1 commented that runoff does not subside until May or June (in this area).

Sullivan stressed that engineering information is accurate and point of road crossing wetland is above Wengerter property. He complained he was tired of listening to same old (!).

Richard Greeley said that he had seen Wengerter's house while it was under construction and he was Interim Building Inspector. Stated that first time he saw property, he couldn't go up drive due to icing and water from the ground (cellar). He says there are springs there and as Inspector, he told the builder at the time that this was a problem. Greeley believes the water is Wengerter's own problem.

Sullivan argued that engineering reports show that water will be channeled away and that an 8.3% reduction in water in area will result. Three wetland areas were noted on the maps.

Lamminen said we (ZBA) deal with wetland and impact of roads. He could not understand argument if engineering data supports an 8.3% reduction of water in area.

(JAY HEAVISIDES - ^{7:11 MORON}) confirms that plan design reduces runoff 8.3% on Wengerter's property and 1 % on Maloney's.

Wengerter was asked if he got independent report of own engineer (after driveway wash out). He replied that he had, had taken engineer's advice, however, this appeared inadequate.

Bruce Rafter, Lot H-39

Sam Proctor insisted that all questions had been answered at Planning Board level and all issues addressed as well.

Mrs. Wengerter asked if work had begun; answer no.

Charles McGettigan, Road Agent requested that board get back to issue of wetland.

Sullivan commented about high water table and manmade pond.

Klein asked Proctor if depth of soil had been established: answer yes, as result of 70+ studies, and that septic requirements for ledge were met.

Infanti feels this is wetlands issue.

Sullivan, referring to Section D-1 for roads in wetlands, argued that experts chosen by Town agree there is

minimal impact.

Ms. Laurenitis referred to letter from Mr. Hardy in which reference is made to steep slopes on two pieces of property and the suggestion that erosion control plan should be part of plan.

Erosion control plans were outlined by (engineer) from TF Moran. Proctor will post bond for erosion control plan.

Mitchell asked that other evidence on the ordinance be sought and submitted in writing within 30 days or in person at 7/27/88 decision meeting.

Klein asked if board had conservation wetland map. Such map is available, however, it was pointed out that Moran map is more accurate.

Mitchell read letter from Charles D. Hardy Jr into record. SOIL CONSERVATION SERVICE REVIEW OF WETLANDS ATTACH
LETTER

Parker asked for other comments.

Maloney reiterated concerns for cellar holes and drainage.

Hearing closed at 9:00 pm.

Item 3 Irene Duval, Prince St., Case 9.88, Application for variance reference Article V Section D, to permit an in-law apartment in existing home on $\frac{1}{2}$ @ land.

Sitting for hearing are Ms Harris and Mssrs Infanti, Lamminen, Parker and Mitchell. Mitchell asked Mrs. Duval to present her case.

Mrs Duval claims her house is too big for a single family. Wants to add in-law apartment where she and daughter would live; son and family would live in other part. If necessary or conditional to granting variance, she would revert building to original state upon her passing. She noted there is parking. A site visit was conducted prior to this hearing.

When asked by Mitchell to address the criteria, Mrs Duval responded as follows:

1. Improvements would increase value of property. Mitchell agreed.

2. Re: public interest, yes. House and yard would look better. Mrs Duval has lived here all her life and believes intent is in public interest. A neighbor, Mrs. Paul Perault, commented during site visit that she didn't mind (the plan).

3. Hardship is that she wouldn't be able to live there if variance were denied. Mitchell questioned the uniqueness relative to hardship.

4. Belief that justice would be done by granting variance because house is eyesore now. Variance would allow for improvements.

5. Spirit of ordinance re: density. Mrs Duval felt density would not be increased as same number of people would

live there, just with more privacy.

Mrs. Duval asked that stipulation be put on variance (to revert property to original status upon her passing).

Lamminen questioned legality of this. He felt he would rule by his heart in this and do what's best for Town. Referred to definition of hardship in ordinance.

Mitchell. quoted page 51 of (K...^{ab}) regarding setting conditions in granting variances. He felt hardship is hard to define in this case and that allowing variance would be in violation of spirit of ordinance.

Charles McGettigan, property owner in area although not an abutter, pointed out there are many 2 family homes in area on smaller lots than Duval's and that her property is probably one of largest lots on Maple Street at 145' x 125'. Believes people today are entitled to a house and that Board is here to see that people do have problems and to try to resolve them.

Mitchell argued that Town had not said people have right to split a house to survive.

Infanti made motion to grant variance unconditionally; second by Lamminen. Vote was 3-2 with Mssrs Infanti, Lamminen and Parker in favor and Mitchell and Ms Harris against.

The agenda for next meeting, June 29, 1988 @ 7:30 PM in Town Hall was set. Site visits scheduled prior to meeting.

Jacqueline Lord, #150 Route 31, reference Art XIV Sec
A-3, site visit @ 6:45 and hearing @ 7:30 pm.

Kaj-Aage Arends, Lot C-64, Isaac Frye Hwy & Wilton Ctr Rd, reference Art V Sec B-1, at 8:00 pm.

Robert & Joanna Eckstrom, Dale St, Lot B-075-2 aka D-159, reference Art V Sec D-2 at 8:30 pm.

Secretary is to request tax map for ZBA use from Selectmen. Meeting adjourned at 9:45 PM.

Joanna K Eckstrom
Secretary ZBA

"The appeal cannot be granted simply because, by attaching the condition, no harm will be done."