Town of Wilton
Zoning Board of Adjustment
Minutes December 28, 1988

Chairman Thomas Mitchell called the meeting to order at 7:35 PM. Members present were Herbert Klein Alternate, George Infanti, Grayson Parker and Arlene Laurenitis Alternate. Mitchell cited three requests to be heard. Due to conflict of interest, relation to applicant, Mitchell stepped down from first case, Karen B. Mitchell, request for Special Exception to allow a Home Occupation. Case number 24.88. Vice Chairman Grayson Parker conducted the hearing.

Ms Mitchell seeks Special Exception to allow a home occupation in the basement of her Lyndeborough Center Road residence. Her business is jewelry making. Ms Mitchell said she plans to make jewelry which would be sold through shops and shows. She does not intend to have a retail business out of her home, but admits that there may be an occasional customer visit. Parker did not see this as causing adverse effects relative to traffic to area.

Ms Laurenitis asked if Ms Mitchell would have employees. Mitchell said did not intend to have business get that large. Her daughter helps now and her own involvement is not "full time".

Klein asked about equipment and materials used in making her jewelry. Ms Mitchell said she has an acetylene torch; jewelry made from silver, sheet metal, etc. There is special area for acetylene torch. An acid bath is a self contained unit and children are not allowed in the "workshop" area unsupervised.

Infanti moved to grant the Special Exception as requested; second by Klein. Motion carried unanimously.

Chairman Mitchell called the second case, 22.88, JW and Patricia Tatum, Maple Street. The Tatums request a variance to allow a two family dwelling on less than required lot size at their Maple Street property. Chairman Mitchell advised the Tatums that five criteria would need to be addressed and proven in order that the variance be granted.

Mrs Tatum said that she did not feel property values of neighborhood would be diminished by allowing variance. Says many of the houses in neighborhood are two family. Presented a map showing a great number of two family dwellings surrounding her property. Also said she believes the property had a history of multifamily use.

The public interest would be served in that granting the variance would provide housing at modest cost. Said house is too large for one family.

Special conditions that exist she said are that building was used as rectory for Catholic church. There was a separate unit for a housekeeper at one time. Believes used as two family prior to introduction of zoning. The building is twice the size of others in neighborhood, some of which sit on larger lots. Another special condition is that property was advertised as two family, a mortgage was obtained for two family.

Justice would be done by granting because of large number of two families in neighborhood.

Spirit of ordinance served because they are not changing use. With 7+ bedrooms and 5 baths used historically since they purchased property, they are not adding to congestion. There is a church and funeral home nearby which already contribute to traffic.

Parker asked how many rooms in each unit. Mrs Tatum said front has 10; rear has 4 to 5.

Klein asked whether complete separation of units. Yes.

Ms Laurenitis asked description of property when Tatums bought. Mrs Tatum said a darkroom on second floor was removed and replaced with a bathroom, but otherwise everything else was in place, including cabinetry for 'apartment' kitchen. Separate entrances had been established prior to their buying.

Mitchell asked if Veteran's Administration ever checked into zoning of area, or status of two family occupancy. Mrs Tatum said no, that there did not appear to be a need for this.

Parker asked how many water and sewer bills. Mrs Tatum said two of each. She said that she advised the Town that there were two units, that she wanted two bills. There are also two electrical services.

Ms Laurenitis asked for more detail on history of building. Mrs Tatum said house built in 1878 as single family. Church bought it shortly thereafter; used as rectory, and at one point had accommodations for housekeeper (bedroom and bath). Church owned up to 1970's and sold to Edward Bunnell who then sold it to Tatum in 1985. Mrs Tatum said there has been conflicting information regarding use as two family.

Abutters questions, comments now addressed. Arthur Martin, Maple Street, abutter, said Tatums are nice neighbors. His only problem with allowing the variance is that Tatums have deeded right of way on his driveway now and when they turn their cars around, they encroach upon his yard. If variance granted, right of way extends to Tatum tenants and this is misuse and disregard of his property.

Martin said he'd lived there for 25 years and <u>never</u> was

property used as two family. It was a rectory, but housekeeper's separate quarters did not include separate kitchen area. Bunnell used a backroom "shed" as an office for his business, but customers did not visit. His work was mostly done by phone and mail.

Martin repeated his concern about the traffic problem of 4 cars using his driveway in addition to his own. Granting of variance would do injustice to him if conditions regarding traffic patterns in his driveway were not addressed.

Infanti said site visit indicates cars in/out could be problem, but resolvable one.

Parker said he thought that two family status reflected in use as rectory for priest and separate quarters for housekeeper.

Linda Vanetti, Maple Street, said she is abutter on Tatums other side. Said she knew the Bunnells. Renovated area was a shed. Bunnell put darkroom on second floor for own enjoyment. She insisted no separate entrances prior to purchase by Tatum. She alleged that Tatum put separate entrance, dividing wall, apartment and bathroom, in order to qualify for a special type of loan. Alleged Tatum had agreement with Bunnell to make it two family so they could qualify, that consideration paid to Bunnell to make change, that consideration paid would be forfeited if deal fell through. She complained that Tatum claim right of way to her yard and drive; their tenant had placed clothesline on Vanetti's property and Tatum parked her car under a tree on Vanetti's lot to keep it cool in summer. She complained also about Tatums and tenants driving up and down her drive all day long.

Mrs Tatum responded to these charges saying at one time they were friends. When asked to do so, she removed clothesline. Also because of information from the seller, Tatum originally thought right of way was on Vanetti's side, not Martin's.

Vanetti continued saying that granting variance would be travesty of justice in view of driveway questions.

Mrs Tatum said as regards the Martins, she felt the traffic pattern on his driveway has been "symbiotic" relationship.

Mitchell added that Tatum had led Board to believe that property was set up as two family and that Bunnell set up apartment to profit in sale of property. He asked whether Tatums aware of Zoning regs. Mrs Tatum said no. But that she had original listing, purchase agreement and deeds to support her claim that it was indeed a two family.

Commenting from floor, Richard Greeley referred to the Town's assessment record which clearly shows the property as single family; that is how designated when properties in town were reassessed in 1983. He added that when water or sewer department

gets wind of more than one dwelling unit or additional use of a property, they automatically bill for additional service.

Water Commissioner Charles Mcgettigan said although they may be billed for two services each, there is only one water and sewer hookup to the property.

Ms Vanetti again argued right of way situation which she says her attorneys will resolve in court.

Klein asked Mr Martin about the four cars. He said Tatum had two, tenant two. He asked Tatum if there was an area on their side that could be paved for parking and turnaround. Tatum responded there is but that this was not a problem until the recent complaints. Again Martin insisted that his purpose for attending the hearing and making the complaint is to keep Tatum and tenants from abusing his private property.

Mitchell summarized the pros and cons of this request. In favor of granting is fact that many abutters are two family; residential use - housing, would be good use of 4000+ sqft property; there is some history of multifamily use, home occupation use, and possibly grandfathered two family use; and Tatums have used as two family since their purchase in 1985. Greeley interjected that property had been taxed as single family in all the years he has been Selectman, an assessing body. Against granting the request are increase in number of cars in driveway; evidence that it did not have two family use has been presented; back area was shed converted by Tatum to apartment; Tatum tenants use driveways on both sides; and density would be increased.

Patricia Martin, Maple Street, abutter, said her original deed (1910) does show right of way to Tatum. Tatum read her deed dated 1885 which states right of way as well.

DeeAnn Dubois, Maple Street, abutter, questioned enlarging the Tatums parking area. Felt that so doing decreases property values and poses threat to children who would have less yard area to play in. Infanti said his personal feeling was there is adequate parking for four cars. If cars parked in same direction, each would be able to complete a turnaround without going into Martin's yard at all and the area wouldn't even need paving. But Martin insisted that they rent apartment and do nothing to improve their own area, so tenants use his yard.

Ms Vanetti said that in interest of fairness, Board should not grant variance request to someone who has knowingly violated the Town laws. Mitchell challenged Vanetti saying that this was only her opinion that this was willful act. Unless she had proof, she should refrain from this kind of comment.

C. Wilson Sullivan, Wilton Center Road, speaking as an observer, said this seems like battle between neighbors; discussion has not been focused on variance request. Board should give this request same consideration it gives others.

Mrs Tatum said the real issue is that her house is too big for a single family. The history is unfortunately hearsay. But they purchased property in good faith as two family and for it to

be a single family home in that neighborhood, it would be white elephant.

Chairman Mitchell closed the public discussion asked Board to discuss case amongst themselves.

Parker said map Mrs tatum presented speaks for itself; single family house is surrounded by multifamily units. Believes criteria for granting have been met. That Tatums bought two family in good faith. Mitchell asked Parker how he felt hardship criteria had been met. Did not feel size of house makes it unique. Parker said fact that Tatum has used as two family for four years makes it unique; that injustice would be to deny continued use as such.

Klein defined "spirit of ordinance" as maintenance of density. Their continued use will not increase density. Sees history as innocent use.

Mitchell argued granting would be in violation of spirit. Quoted Richardson vs Salisbury, stating that hardship must lie with the land, not building and can't be financial. Feels request is for monetary gain. Klein challenged Mitchell. Richardson vs Salisbury deals with unimproved land and paragraph quoted was not the entire decision, only an excerpt. Mitchell rebutted where in Town ordinance is a difference made between improved and unimproved as a basis for granting a request.

Ms Laurenitis saw hardship, perhaps, in the changing circumstances of the neighborhood. Changing circumstances have led to increased use of large homes as multifamily.

Parker added that property is unique if it's the only single family house on block.

Infanti moved to grant the variance as requested. Believes all criteria met. Parker seconded. Motion carried 4 to 1; Mitchell voted against granting variance request.

Klein commented that in view of problems with abutters, Tatums should do everything possible to improve relation with neighbors and improve driveway situation. Mr Tatum responded "Consider it done."

Quinn Bros Corp, Amherst NH, case 23.88, was called. Applicant requests variance to allow building of 68 and 72 feet height in Industrial zone where limit is 45 ft. Thomas Quinn, President and C Wilson Sullivan present case.

Sullivan says "building" really undefined in ordinance. When approached to represent, suggested withdrawing application on basis of asphalt plant not building, but equipment. No stories; operated from ground. Silos do not have stories. Believes purpose of 45'/2 story requirement for fire protection. Had own

doubts as to whether in violation of ordinance; since application made, decided to pursue.

Pictures of plant showed 68' plant with 72' silo; attached by conveyor belts. Property has historic use as gravel pit, earth removal (grandfathered). Lot changed from R/A to Industrial because of use. Proposed use is not contrary to spirit; continuation of industrial use. Plant really two "unoccupied" structures. People on equipment for maintainance; operated from a computer control room. Justice served - fits and is natural extension of current operation. Hardship exists with 58 acres Industrial land that has no road frontage. Not a standard Industrial lot. Access via right of way over stream and railroad tracks. Land very ledgy; poor perc; not served by twon sewer and water. Proposed industrial use not labor-intensive.

Values of surrounding properties not diminished; already a 62' structure on site. Variance request strictly for height; not Board's place to decide whether or not asphalt plant should be allowed.

Public interest served. Town tries to attract industry; would increase tax base without burdening Town services. Only other plan in Milford. Customers from north would find more convenient plant to deal with.

There were no abutters present. Comments from floor were addressed. Norman Stimson, Curtis Farm Rd, complained about noise from current operation; property value would decrease because of more noise, traffic, smoke, soot, etc of asphalt plant. Infanti felt Board must address height issue, not merits of asphalt plant. Sullivan admitted fear of decision by referendum. Mitchell saw no debate; Board would stick to issues raised by citizens, but that comments should be based on fact.

Irene Van Kaman, Barret Hill Rd was concerned about traffic, pollution, protecting Goss Park.

Warren Wake, Barret Hill Rd said he's an architect by trade. His property was chosen for beauty of land, scenic views. 72' high structure threatened view, aesthetics. Regardless of opinion, this is building. Code not just for fire safety. Concerned about particulates, pollution.

Lori Wake, Barret Hill Rd, said operation there now is clean compared to what an asphalt plant could mean. Having grown up in Pittsburgh Pa, she knows what petro industry can do to property values.

Peter Leishman, Milford, expressed interest in revitalizing railroad. Asked whether Board would consider application on basis of height only, or if it would consider proposed use in decision.

Sullivan didn't believe you could see stack. Doesn't see

62' one now. Quinn said he's travelled all over Town and can't see stack. Added there before zoning. Noise may not be entirely from his operation; there is another gravel operation on 75 acre abutting parcel.

Bill Belanger, Sales Engineer for the manufacturer, addressed concernes about pollution. Demands of EPA, OSHA stringent; products guaranteed to meet standards. Product designed tbo blend in with environment. Said exhaust fan of unit located at grade level; this is two man operation with process run from computer control room.

Ms Laurenitis asked if all units 68 and 72' high. No, this is standard on "small" side. If smaller, special tooling, special order would be required.

Belanger explained that liquid asphalt, AC20 is used. Kept at 300 degrees. If it were to spill, it would harden and could be removed in "one" piece, chunk. It would not get into the ground or contaminate environment. Other materials in process are sand/stone of various sizes. He emphasized that the liquid asphalt is not coal tar or tar pitch. He named Tilcon-Wells operation in Wells Maine as a major operation which uses this plant. Does not believe it would have been approved by that Town if it did not meet all criteria for public and environmental safety. To his knowledge, there have been no explosions or fires involving this equipment.

Asked about noise, the burner that maintains 300 degrees has some noise, but not like old type burners. You can stand next to unit and conduct normal voice conversation. Infanti recalled old noisy burners. Belanger showed picture of new type.

Klein asked about smoke, soot, etc. Belanger said what comes from stack is basically steam; and products of combustion of furnace that maintain temperature. Effluence of units is probably cleaner than the average home heating system.

Asked if trucks would be oiled, Belanger said federal requirements call for use of Liquislip, a soap product used to prevent the finished asphalt from sticking in bed of trucks. As to odor, the system is self-contained. The only odor would arise from the finished product being dropped into trucks and more odor is generated from individual operations hauling the asphalt than from the plant itself. Belanger said he is not anti-environment and invited visits to plants in operation.

Ms Wake welcomed invitation to visit, but does not feel Board should base its decision on sales brochures or one hearing. Mr Wake asked that a decision be deferred until after a visit to an operating plant.

Mitchell summarized two views had been heard; one peoples' impression of what an asphalt plant is and an expert's testimony about his product.

Stimson repeated his concern about traffic and Goss Park.

Mitchell said, assuming what the expert said is all true, would granting variance be in public interest. Stimson agreed that jobs would be created. Wake said his concern about particulates in air would be reduced; but there's still problem of aesthetic of a stack 72' high.

Mitchell said Board must make decision based on five criteria. Ms Laurenitis said request is big departure from 45' limit of regulation. Mitchell said authors of ordinance did not take equipment into consideration when setting height limit. Feels change of ordinance is required to allow 72' height. He does not believe property is unique. Property values, he said, could go either way.

Klein feels only offense is with landscape. Suggests trees can be planted to obstruct view. Believes Board should be dealing only with merits of height requirement, not merit of asphalt plant. Mitchell argued that the parcel is not unique in response to Klein's belief that all criteria addressed.

Parker said 62' structure exists already. No big difference in what is requested. He lives further away than Stimson and he hears the noise of trucks too. But he feels this is ideal location for plant in that it can be located out of sight.

Parker moved to grant the request to allow 68 and 72' height in Industrial Zone, conditional that asphalt plant not be located in Aquifer. Motion seconded by Infanti. Ms Laurenitis said she believes proper way to handle this is by Zoning change.

Motion carried 3 to 2. Ms Laurenitis and Mitchell voted against.

A work session followed. Mitchell gave an updated application form which was approved unanimously after some minor changes were made. Application fee was increased to $30 as legal advertising for hearings is averaging $25 now. Roberts' rule for conducting business are to be reviewed. A work session will be held on January 25, 1989 at 7:00 to be followed at 8:00 by public hearings.

Meeting adjourned at 11:00.