

Minutes of Zoning Board of Adjustment
August 9, 1989

ZBA Chairman, Tom Mitchell, called the meeting to order at 7:33 PM. Members present were Neil Faiman, Steve Blanchard, George Infanti, Cindy Harris, Tom Mitchell. Also attending was alternate, Roger Wellington (acting secretary). The press was represented by Peter Ferrand. Mitchell announced four hearings: A continuation of a request for Variance and Special Exception by Robert Manning and Gerald Mazur, request for Special Exception by John and Elizabeth Skelly, request for Special Exception by Constant and Colleen Yanuszewski, and an appeal for rehearing of the Granite State Concrete decision from Tom Newbold.

Manning and Mazur. Alec McMartin, attorney representing applicants, presented testimony. Hearing was continued from July 12th because one abutter was not properly notified. Since then applicant has revised plan because of insufficient dry land for two back lots. Also, surveyors have revised frontage upwards from 449.43' to 450', the required minimum. McMartin submitted plan for three lot subdivision with one 10 acre back lot all served by a common drive. Applicant requests Variance for a driveway placed less than 200' from nearest egress point as required in Article VI section C.1.g.2.d. Also requests a Special Exception for back lot under Article VI section C.1.g.2.e.II.

Argument for Variance: Ordinance requires driveways opposite existing egress points or at least 200' away. Objective is to reduce the concentration of access points. McMartin presented alternative plan showing placement of access points assuming ordinance was complied with. Such a plan would result in more access points (2 vs. 1 as proposed) and therefore a greater concentration. Driveway as proposed would be 130-140 feet from nearest egress point. Regarding the five criteria for a variance, McMartin argued that there will be no diminuation of property values as the access does not create a hazard; the plan is in the public interest because it permits a reduction of access points; denial of the variance would cause a hardship because the ordinance is oppressive and arbitrary due to off-site improvements (i.e. existing driveways) while the idea is to create an orderly number of access points; Does substantial justice by reducing the number of access points; and is clearly within the spirit and intent of the ordinance.

Mitchell asked for further defense for hardship criteria. McMartin responded that there is a hardship in the land. The character of the property that differentiates it from surrounding property is the nature of the off-site improvements, specifically the placement of the driveways for surrounding lots. Faiman asked could applicant meet the ordinance by constructing a common drive opposite one across the street. McMartin presented map detailing the site's

wetland and claimed that re-routing the drive is impossible given the slope and wetness of the lot.

Infanti moved to permit a variance from the 200' road distance between driveways requirement. Second by Blanchard. No discussion. Vote unanimous to grant variance. Mitchell in summary said the plan presented is more consistent with the intention of the ordinance by reducing the number of access points.

Argument for Special Exception for back lot zoning followed. McMartin said that common drive as planned would be capable of providing proper access to emergency vehicles as required by subsection e.l.a. Further it meets all requirements for frontage, setbacks, dry land and 16 acres for 3 lots is well within zoning intention for back lots. The alternative is more intensive development with a full road as opposed to a common drive. Faيمان moved to approve the application for Special Exception under terms of Article VI section C.1.g.2.e.I for a private driveway serving three lots. Harris seconded. Vote unanimous for approval. Mitchell in summary said that all requirements for special exception were met given that Variance concerning placement of access point was already granted. Faيمان questioned whether the 200' all-season site distance requirement in sec. C.1.g.2.d had been part of Board's discussion. Consensus that it had been included. Mitchell said there is a 20 day appeal period.

John F., and Elizabeth A. Skelly. Mitchell said Board visited Skelly's house before the meeting. Skelly has 2 dwelling units on 2.42 acres. Wants to take the larger of the two residences and make it into a duplex. Will Sullivan, attorney, representing applicants submitted sketch of tax map and rough proposed floor and parking plans. Said applicant is asking for 3 dwelling units as permitted under Article V sec. D.2. Explained that ordinance requires 1/2 acre, 6 parking spaces (2 per dwelling unit) and open space equal to twice the living and parking space. Proposed plan has 2.4 acres, 6 parking places, and 97% open space. Sullivan said that purpose of ordinance is to allow conversion of older homes in town to multi-family use. House was built in 1890's. Property abuts Rt. 101, is down the street from auto repair facility, machine shop, and a lot approved for triplexes, so proposed use is not out of character with surrounding community.

Charlotte Pollock, abutter, asked if a drainage study had been done. Blanchard responded that planning board had authority to look at that during site plan review.

Bob Pollock complained that there was not enough parking; questioned whether the driveway running to existing apartment could go right on the boundary line; asked when the apartment was ever approved; asked if apartment was connected to town sewer. Mitchell asked if apartment was hooked up to town sewer. Skelly replied yes. Receives two sewer bills.

Faiman said we may have a nonconforming use and therefore should be discussing the continuation of a nonconforming use. Others on Board disagreed saying that ordinance clearly states that Special Exception applies to "residential buildings in existence as of March 14, 1989".

Art Hodgdon, abutter, expressed concern about parking around the existing apartment; said that many nights there are 6 cars parked around there. Parking areas do not service what is going on now, not to mention impact of new unit in main house.

Faiman wanted to return to the issue of the nonconforming status of the apartment. Sullivan argued that Skelly had a legal building permit from 1982; the time to contest the construction of the apartment was then not now. Blanchard disagreed with Faiman as to definition of nonconforming use. Believes apartment is not nonconforming.

Dick Rockwood, Abbot Hill Road, questioned why the applicant came before ZBA at all. Said they have enough acreage for 2 dwelling units in main house. Mitchell said that ordinance calls for only one residential building per lot.

Natalie Hodgdon, abutter, said we're dealing with a long, narrow lot. Total acreage may be adequate but the back portion is not used.

Jean Knight, abutter, said back land could be used for parking.

Infanti said structures were legally constructed; Our consideration is to look at what exists today.

Faiman states that if they meet the requirements for a special exception, then they do not need one because they fall under Article V sec. A.1 regulating duplex dwellings. Blanchard disagreed. The fact that there will ultimately be three dwelling units makes it prudent to seek special exception.

Rockwood asked if building permit was applied for. No.

Blanchard moved to approve the application for Special Exception as presented. Infanti seconded. Mitchell said surrounding property owners see problem with parking. Skelly admitted there are extra cars parked during the summer when people visit their pool but winter parking is not a problem. Natalie Hodgdon said she couldn't see how Skelly could say that. Parked cars often obstruct the street. Jean Knight asked if it is legal to park on the street. Yes. Infanti said he saw space for 7 cars and ordinance only calls for 6. If parking obstructs traffic, must take complaint to police. ZBA can't legislate who parks where. Natalie Hodgdon said parking on back land is not possible because of drainage problem. Blanchard said ZBA doesn't have to consider that because parking meets requirement of ordinance.

Mitchell in summary said all criteria are met with respect to lot size, parking, open space, adequate water and sewer, noise, odors, and impact on property values. Further it satisfies the purpose of the ordinance to rehabilitate existing old structures. Since applicant meets all criteria,

ZBA cannot deny the application. Unanimous vote to grant Special Exception. Mitchell said there is a 20 day appeal period.

Colleen and Constant Yanuszezski. Mitchell stated that applicants desire to put in Bed and Breakfast (B&B) under the home occupation provision in Article V. sec. C. Board visited site prior to meeting and toured the house.

Mrs. Y said that house has been substantially renovated with state approved septic system, new plumbing, new electrical wiring throughout. No noise impact on neighborhood expected because abutters are gravel pit, Route 101 and the cemetery. Infanti stated that abutter, L. White called him and voiced his approval for the plan.

Mitchell questioned whether building can revert to residential use as required by ordinance. Expressed concern that applicants may have undertaken renovations with the intention of coming before ZBA asking Board to sanction changes that were done specifically to make space suitable for a B&B. Faiman, Blanchard and others said they have no such concern. House has not been structurally changed. All renovations make house more livable not less.

Faiman wanted to raise question concerning the degree to which the home occupation was incidental and secondary to the use of the building as a residence as required by the ordinance. Mitchell asked how many guests were expected. Mrs. Y replied she didn't know. This was to be just a hobby. Dick Rockwood stated that in real estate appraisals he has done on B&Bs a 35% occupancy rate would be considered high. Mitchell stated that he thought home occupation would be incidental given the sporadic use the guest bedrooms would be likely to get. Others stated that entire downstairs, everything but the four upstairs bedrooms, would still be available to the Yanuszezskis as living space.

Blanchard moved to approve the application for Special Exception with the requirement that the Yanuszezskis submit a detailed parking plan to the town office. Infanti seconded. Unanimous vote in favor. Wellington asked when the Y's could submit plan. Mr Y. said he could submit this week. Mitchell said there is a 20 day appeal period.

Two matters not on the agenda were then heard.

Mary Leadbeader of Captain Clark Road asked the Board for advice concerning her home occupation making gift baskets. She has recently moved from Nashua and wishes to continue this business in her home. She was given a copy of the home occupation ordinance and asked to apply for a special exception at the Board's next meeting.

Dick Rockwood asked for clarification of the back lot ordinance, specifically Article VI sec. C.1.g.2.c versus C.1.g.2.e.II The former requires five acres excluding wetland for a single family residential use while the latter simply

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requires 10 acres with no wetland constraint for a duplex. Faiman responded that an ordinance had to be read in its entirety to be properly interpreted. Infanti suggested that Rockwood seek clarification from an attorney.

The Board then took up the appeal for rehearing of the Granite State Concrete (GSC) decision by Tom Newbold. Faiman stepped down and Wellington replaced him. Newbold's argument, delivered to the Board by letter, was based on three points. First, that the expansion of noise equates to an expansion of use within the context of the extended area of Wilton. Second, that the addition of a railroad spur is not the norm in the Residential/Agricultural zone, and therefore should require a variance. Third, that before any ZBA judgements are finalized, GSC's grandfathered status should be ruled upon by town counsel. Mitchell said that an appeal can be granted if there is new information or if the Board made a technical error in its initial decision.

Wellington argued that the discussion at the July 12th meeting was centered only on the rock crusher and did not address completely GSC's grandfathered status. He cited the minutes from the July 12th meeting where Drescher, attorney for GSC, stated that only the rock crusher was at issue, not GSC's grandfathered status. Said his impression during discussion was that the court action between GSC and planning board would resolve grandfathered status; ZBA was making its decision assuming such status, but not validating it.

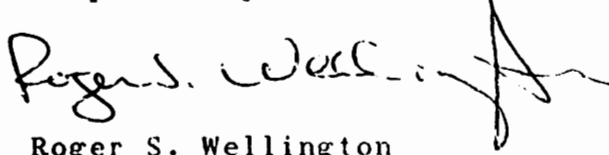
Mitchell, Blanchard, and Infanti disagreed. All said they accepted GSC as grandfathered and understood this during discussion. Infanti moved to grant a rehearing on the grounds that a technical error was made, namely that GSC's grandfathered status was not clear to all board members. Wellington seconded. Blanchard, Infanti, and Mitchell voted No; Harris and Wellington voted yes. Vote 3-2 to deny rehearing on technical error grounds.

Mitchell asked if Newbold's other two points constitute new information not already discussed by the Board. Consensus that they did not.

Mitchell asked if revised minutes from July 12 were ready for review. No.

Motion to adjourn at 10:10 PM unanimous.

Respectfully submitted,



Roger S. Wellington

CORRECTIONS/ADDITIONS
MINUTES OF AUGUST 8, 1989

Per Cindy Harris re: Granite State, appeal for rehearing from Tom Newbold

Paragraph 2 - "Harris also felt the Board did not understand the implications to the grandfathered use when the vote was made to appeal the Building Inspector. Bill Drescher led the Board to believe, in Harris' opinion, that the ZBA was not voting on the grandfathered use. The Board was told by Drescher at the site visit that what the ZBA was hearing had nothing to do with Granite State's argument with the Planning Board - Harris felt Drescher's presentation was confusing.

The unanimous decision of the 7 member Planning Board saying this use was not grandfathered should be taken into consideration in our vote to appeal the original decision.

*app'd above
9/11/89*