ZONING BOARD OF ADJUSTMENT
WILTON
NEW HAMPSHIRE 03086

MINUTES OCTOBER 11, 1989

Chairman Tom Mitchell called meeting to order at 7:31 PM. Seated were Grayson Parker, Neil Faiman, Mitchell, Cindy Harris, Roger Wellington (Alternate for George Infanti) and Secretary (Alternate) Joanna K Eckstrom. The press was not present, however, William Keefe, a Wilton attorney, requested permission to record the proceedings.

Mitchell announced one case - Linda Vanetti's request for Special Exception. Mitchell said request was to (terms of) a new article; Ms Vanetti had been before Board previously for variance to allow a studio apartment in an existing garage. The variance had been denied. Mitchell said Vanetti is here because she believes there is provision in ordinance for granting her request now. Mitchell said conditions must be met to grant request and cited Article V Section D-2 a - e criteria/terms.

Bill Keefe and Ms Vanetti present the case. A layout of the property was shown. This depicted the existing two family house, garage and shed. Keefe described garage as two car, approximately 20 x 20 with skylit dormers on second floor. He said garage was built to replace an old mobile home (that had been used as housing) and garage was built with idea of being utilized for residential space.

Ed Vanetti corrected garage size to be 24 x 26.

Keefe said that the total area occupied by buildings, driveway and parking is approximately 4000 SF. On a lot that's a little over ½ acre, only 1/6 of lot is occupied, remaining is open space. Keefe and Vanetti saw no impact on neighborhood in adding studio apartment. There be no adverse light, noise, etc. Occupancy would most likely be single person or couple without children (due to size of proposed apt). Traffic impact would be insignificant. Vanetti lives in part of house - has five rooms. She and her tenant have one car each and lot can accommodate 2 cars per unit requirement easily. Keefe said traffic impact from day care center (which ZBA recently approved) would be more significant than his client's proposal.

Mitchell noted that three families would be allowed on more than ½ acre and that this seems to be met. Mitchell asked if they had calculations on percentage of open space. Keefe replied that his rough calculations show that approximately 70-80% of the lot would remain "open". That's more than required by ordinance. The lot is approximately 24000 SF; house is 50 x 30; garage 24 x 26; driveway/parking 80 x 20. This is

well within requirement he said.

Ms Vanetti said she is requesting that Board restore her property to condition it was in when she bought it in 1973 - 3 families or 3 dwelling units, two in house, one in garage (formerly the mobile home). She would likely rent it to a single, professional person, rather than to family with children because she enjoys the peace and quiet. Notes a need for housing; believes there are several single lots in neighborhood that already have multifamily housing in detached buildings.

Roger Wellington asked if Ms Vanetti considered term "residential building". There was no opportunity for response as abutter comments were then requested by the Chairman.

Dave Dubois, Maple St, lives across the street. He has been in his house since before removal of mobile home. Saw no adverse impact with mobile home used as residence and does not feel there'd be any adverse impact now.

C Wilson Sullivan, attorney representing JW and Patricia Tatum, Maple St, next door neighbors, asked if there is evidence that lot is indeed more than ½ acre as is stated on application. Ms Eckstrom requested permission to respond and said that the tax assessment card on file in town hall lists lot as being .53 acres, which satisfies criteria for lot's being more than ½ acre. She said Vanetti's have been taxed on a .53 acre lot at least since the assessment card was created in 1983. Sullivan asked Board if it had surveyed to prove lot is size that is claimed. Mitchell said no, Board has not required this.

Sullivan asked if application complies with ordinance, specifically with Article V Section A-4 which prohibits more than one residential building on a lot. He referred to Bill McKeown's request which was denied because of there being two separate buildings. He charged that applicant was asking Board to rule on the wording that was voted on at Town Meeting. He referred to American Law of Zoning (handouts provided). Sullivan said the ordinance was passed because large houses were unable to be used for purpose intended. Older buildings were too large for single families. Does garage comply with old buildings, he asked.

Dave Dubois argued he understood Sullivan's point if you're talking about new construction on new grounds; here we're talking about a building in existence in March 1989. Felt it should be allowed.

Ms Vanetti quoted from ballot what she voted on and what her understanding of what she voted on was. She felt that ordinance did not discriminate against garages vs "houses" or attached vs detached buildings. She voted on grounds of being able to utilize buildings in existence as of March 14.

Ms Eckstrom concurred. She said the article she voted on did not require buildings to be attached nor did it prohibit using an existing garage as residence. What she voted on she said was being able, in her understanding, to utilize buildings in existence as of March 14, 1989.

Keefe notes that Article III W (definitions) defines "building" as structure used to shelter persons, property etc. Feels that garage, or whatever else you call it, fits definition of building and should qualify if in existence at 3/14/89.

Neil Faiman asked Keefe to speak to "residential" buildings. Keefe said Board had considered 2 other cases recently, both of which were granted. Bob Bragdon's Special Exception would allow him to utilize an "attached" barn as the third unit in a multifamily situation. Jack Skelly's proposal allows him to add a second unit in the house (a third unit on the lot) and he has two separate buildings (for housing) on the lot. Sees Vanetti's situation as same as either of these. Ordinance defines dwelling, he said whereas residential building is not defined.

Mitchell said Planning Board concedes there is no definition for "residential building" now, but this is something to be corrected via work sessions/vote in upcoming Town Meeting. Says Planning Board was aware of A-4 in writing this ordinance and that Board's intent was that buildings be attached. ZBA must now determine whether ordinance applies to detached buildings as well as attached. He added that each case is considered separately, on its own merits.

Keefe argued there is a distinct definition of "dwelling". If the Planning Board wanted to say dwelling, they could have in drafting this ordinance, but they did not. He said Board should not expect flood of applications for this particular Special Exception because the changes must occur within a structure existing as of March 14, 1989.

DeeAnn Dubois, Maple St, abutter said she favors the proposal. Sees affordable housing as an asset to the community. In her own house, she has had several people come asking if she had apartments for rent. She is totally in favor of proposal.

Keefe added that Boards have historically viewed barns as part of residential use. Sullivan rebutted that in Walker vs Goffstown, the Supreme Court held that a barn was not an accessory use. Faiman corrected-that the Supreme Court did not rule on whether or not a barn was residential. The court ruled on whether the Board's (ZBA) decision was legal. Sullivan stood corrected.

Ms Vanetti quoted from minutes of a meeting in which Sullivan represented an applicant in which Sullivan allegedly stated that the "Board must deal with what was voted on, not what intent in drafting an ordinance might have been."

Public input was closed and Board discussed application. Wellington noted that definitions specifically define "multifamily" uses.

Faiman said law says you can't read just a piece of ordinance; you must consider "residential building" in context with entire ordinance. Laws provide for placement of garages on a lot, not for two separate residential buildings. To allow would be self-contradictory.

Grayson Parker felt matter is "cut and dry". Since there aren't two distinct lots, you can't have two residential buildings.

Ms Eckstrom offered input, however, Mitchell said that since she was not a voting member of Board, she should not be allowed to speak.

Faiman moved to reject the application because proposed use was not to be in existing residential building.

Mitchell suggested that motion must be in affirmative, so Faiman withdrew the motion.

Wellington moved to accept the application as presented; second by Harris. The vote on the motion was unanimous against granting the Special Exception. Mitchell summarized reason for denial being that it would be in detached building and does not meet requirements for Special Exception. Parker elaborated that there can not be two residential buildings on one lot. It (garage) does not fit definition of residential building as of March 14, 1989.

Mitchell advised Ms Vanetti of right to appeal decision within 20 days. Rehearing could be granted if technical error or new evidence could be presented. Case dismissed.

Ms Eckstrom requested Chair's permission to speak. Said she was not sure why she had not been allowed to speak during Board discussion. If not then when could/should she speak with her opinions. Said that in Granite State hearing, she had been allowed to participate in discussion amongst Board members, even though not a voting member in that hearing, as was Roger Wellington. Faiman said he'd gone to Zoning school and in "mock" testimony both Board members and alternates were allowed to participate in discussion. Only members seated on case, however, could vote. This was good idea, he said, because if rehearing necessary, alternates, if needed, would be familiar with case. Consensus was that it was okay for alternates to participate in discussion and Mitchell apologized to Eckstrom for not allowing her to speak. Eckstrom said this could be grounds for rehearing on basis of technical error. Mitchell asked if she had new evidence that she had wanted to present. She said she had studied ordinance and done research on a number of similar situations in which same terms could apply. She wished to

emphasize or recap what she had said before, which is what others on the Board were doing in the discussion. She recapped - there was failure to define "residential building"; ordinance does not require buildings be attached; nor does ordinance specify that a garage or barn would be prohibited from this use. And if conditions for granting the Special Exception are met (terms of Article V Section D-2 a-e) then Board can't legally deny request.

Mitchell asked if there was cases pending for November. There are none to date. In future Board should get copies of entire application, before it's advertised in newspaper, so it will know what the details of cases are and can be familiar with them beforehand. Eckstrom asked if the cost of this (photocopying, mail, time, etc) is to be passed on to applicant. Mitchell said no, this should come from Board's budget. If problem, it can be taken care of later.

Minutes of September 13, 1989 were approved unanimously upon a motion by Parker, second by Faiman. Ms Harris asked that correction pages to minutes be sent to Board as soon as possible after they've been made.

Faiman suggested Board put its interpretations in writing so they'd have guidelines to follow. Parker disagreed with this, as did others, because each case should be considered on its own merits, individually as it is heard. There should not be precedents, he said.

Faiman also suggested refunding those cases that are impossible to hear due to incorrect application or other. Eckstrom said there'd be difficulty in doing this because notices must be paid for ($30 for advertising & abutters $1.10 each) before a hearing. Parker said this is a necessary expense of doing business. Applications that come to Board usually have merit so no need to disqualify or refund.

Mitchell suggested that perhaps tonight's case should not have been heard because to grant would go against another part of ordinance. Eckstrom asked Board why previous case with similar circumstance was granted unanimously. Consensus was that apartment in detached building grandfathered and additional family space was to be in house. Parker admitted he was in awkward position tonight because Vanetti's have been long-time friends of his. Eckstrom asked if he sat last year. No - he stepped down; he did not step down this year because he felt he could decide without prejudice.

Mitchell asked Eckstrom if Vanetti was personal friend of hers, why she had such an interest in the case. Eckstrom said she doesn't know Vanetti other than through Town business. It's not a special concern for Vanetti; she said her investigation showed several parcels in residential district with two separate buildings on a lot with potential for in-law apartments or

other. Doesn't think there should be discrimination between attached vs detached among other things.

Mitchell listed some items being worked on at the Planning Board work sessions for amendments to the ordinances. Noted work on defining more clearly home occupation, citing the computer operator. Eckstrom asked if there was consideration given to getting special exception and site plan review "for the record" in event that there were changes or expansions in the future to home occupations. Mitchell said Planning is working on clarifying this; in meantime if an application or questions arise about home occupations, applicant should call Board chairmen.

Roger Wellington moved to adjourn at 8:30; second by Harris. Unanimous.

Respectfully submitted,

Joanna K Eckstrom
Secretary