

TOWN OF WILTON

ZONING BOARD OF ADJUSTMENT MINUTES

JANUARY 9, 1990

VOTING BOARD: Tom Mitchell, Grayson Parker, Neil Faiman, Steve Blanchard and Joanna Eckstrom

ACTING CLERK: Diane Nilsson

AGENDA: Kushlis hearing, Lichtman hearing, SanSoucie hearing, Minutes, By-laws changes, Upcoming cases.

Chairperson Tom Mitchell called the meeting to order at 7:35 p.m.

Case # 1-90 (1/9/90-1) KUSHLIS

Robert Kushlis, Forest Road, Wilton, requests a Special Exception to Article XI Section D. Applicant wishes to cross the Wetlands Conservation District with a road within a subdivision.

Mr. Mitchell explained that a Special exception is allowed in this area for putting in driveways or roads if the applicant can show that there will be no detriment to the Wetlands. The ordinance also says that there must be two hearings held at least 30 days apart. He further explained that no decision will be made at this meeting. The purpose of this meeting will be only to take in information and comments. Weston Engineering of Concord has been hired by the Town to asses the impact to the Wetlands and the Soil Conservation Service will be contacted as well. All Board members tried to walk the property, but it was covered with snow.

Jay Heyvisides of Moran Engineering Associates representing Robert Kushlis, presented the Subdivision plan for 5 lots in a 30 acre parcel. He pointed out the spot where the road would cross the Wetland, explained that the plan would require 900 sq. feet of fill for the crossing which would be 16' wide by 50' long, and added that a field map has been done showing the different types of soils and the impact on the Wetlands. The field map was done by soil scientists and the survey of poorly-drained soils was done in November, 1989.

Mr. Heyvisides stated that the proposal calls for a 12" culvert under the Wetland crossing. He feels that this request for a Special Exception is reasonable because Mr. Kushlis has chosen the safest and narrowest spot for a Wetland crossing and he feels that the Wetlands on this property are rather marginal and that since the road is private, there would be little or no maintenance from the Town needed.

Abutter Richard Bertrand stated his concern about drainage under Route 31. He said that there is already a lot of water coming from the Kushlis property and felt that more water might be created by this development. He wanted an assurance from the developer that his property would not be adversely effected by the subdivision.

Mr. Heyvisides responded that he feels that there will be little effect from this small subdivision.

Case # 1-90 (1/9/90-1) KUSHLIS

Abutter Darrel Klemme expressed concern about the dredge and fill permit from the State. He also wanted to know if there exists any State restriction to prohibit future home owners from clear cutting on the Kushlis property.

Mr. Parker responded that except for the Wetland protection, there is no other protection.

Mr. Mitchell read a letter from Abutters Joan & Pascal Covici, Jr. of Dallas, Texas who stated that they are very familiar with the land to be developed and that it becomes extremely saturated in the Spring. Because of the saturation, the brook near the Covici's cabin rises to the top of the concrete pilings supporting their cabin. They feel the additional runoff created by the subdivision would cause the brook to rise even more, possibly causing damage to their cabin.

Mr. Heyvisides responded that the brook would rise no more than a thousandth of an inch.

Abutter Bertrand agreed with the Covici letter and feels that the Board should not make a decision on the special exception until they can observe the land in late Spring.

State Road agent Samuel Walker who maintains Route 31 in the area of proposed development confirmed that there was quite a bit of water along the road and that larger culverts would be needed.

Mr. Mitchell restated that the Board will be asking other agencies for input regarding the environmental impact to the area. He also informed Mr. Heyvisides that his client would need to set up an escrow account with the Town in order to pay for the studies by Weston.

Mr. Mitchell closed the Kushlis hearing and stated that it would be continued on 2/13/90 at 7:30 p.m. At that time the Board will look at the available evidence and decide if it is ready to make a decision.

Case # 2-90 (1/9/90-2) LICHTMAN

Louis & Marcia Lichtman, Isaac Frye Highway, Wilton, request a Variance to Article XV Section C. Applicant requests a variance so that they will not need to make Lot B-145, which has sub-standard frontage, into a standard lot.

Attorney William Keefe represented the Lichtman's and explained that his clients are in the process of selling Lot B-145 and adjoining Lot B-144 - in fact properties are in escrow awaiting decision of ZBA.

He stated that Lot B-145 is 9 & 1/4 acres and Lot B-144 is 33 acres. Both lots have been jointly owned since 1983 and taxed separately since 1983.

Mr. Keefe stated that Lot B-145 has been treated and taxed as a grandfathered lot by the Town. He is not sure that it is a sub-standard lot because in addition to the 173' of actual frontage, it also has a 50' right of way giving it a total of 223'. He also stated that Lot B-145 meets the requirements of back-lot zoning, which only requires 50' of frontage and 5 acres, so it could be seen as standard in this regard. He further explained that his client is trying to avoid the cost of subdivision by applying for this variance.

Attorney Wil Sullivan, who represents the buyers of the two lots stated that he feels Article XV is poorly written and if need be he could advise his clients to simply put the two lots in different names and avoid the whole problem. He also added that if they were to go for a subdivision, the 27' that would be added to the 9 acre piece and taken away from the 33 acre piece is unusable, hilly land and neither piece benefits from having it. In regards to this particular situation, this appears to be a needless restriction.

The Board asked Mr. Keefe to restate his reasons for requesting a variance.

REQUEST: Article XV Section C

Requesting a variance to build on a lot of separate record where the owner owns an adjacent parcel.

REASONS: #1 The proposed use would not diminish the surrounding property value because... the combined frontage of 173' and right of way of 50' would give an effective frontage of 223'.

#2 Granting this variance would be in the public interest because... the lot qualifies for back-lot subdivision zoning. The owner and the Town would save time and expense of reviewing subdivision. If forced to subdivide, there could be many more homes than in this proposal.

#3 Denial of the variance would cause unnecessary hardship because of the following special circumstances which make the property unique from other properties in the same zone: the 50' right of way is unique, it is a large piece of property and it meets the regulations of back-lot zoning.

#4 Granting the variance would do substantial justice because... The lot has been taxed as a lot of separate record and should be treated as such.

#5 The use is not contrary to the spirit of the ordinance because... It is a large lot, it meets the requirements of back-lot zoning and the adjoining lots can be put in two different names but can't be put in the same name.

BOARD RESPONSE:

Mr. Parker pointed out that the lot which holds the 50' right of way only has 150' of frontage, making it a sub-standard lot. Two properties cannot use the same right of way as frontage, so he feels that Lot B-145 is a sub-standard lot.

Mr. Faiman pointed out that the ordinance of back-lot zoning is an ordinance on new subdivisions requiring approval for site plan review by the Planning Board. He also restated that Lot B-145 is a sub-standard lot of record and is not buildable at present without a variance from Article XV Section C.

Mr. Parker concurred in that the rules which govern the Board say that Lot B-145 cannot be built upon.

Mr. Mitchell closed the public discussion and the Board discussed the request and formulated reasons.

Mr. Blanchard stated his feelings that this is a needless restriction in that the lot conforms except for the lot line placement. Ms. Eckstrom and Mr. Faiman concur. Mr. Parker would like to see the regulation written such that both lots would be buildable with one owner, but using the regulations available now, there is no way a variance can be granted because of the one owner. The current regulation requires a lot line adjustment when adjoining properties are owned by the same party, so the variance would be contrary to the spirit of the ordinance. The only hardship is the monetary \$1000 cost for the lot line adjustment. He feels that conformity with the ordinance is easily done.

Mr. Faiman agrees with Mr. Parker in that denial would not cause hardship.

Ms. Eckstrom stated that she feels the owner's situation is unique simply because he owns two adjoining pieces and must apply for a lot line adjustment rather than a variance.

MOTION: Mr. Faiman moved to grant the variance to Louis and Marcia Lichtman to allow building on a sub-standard lot, Lot B-145 which is adjacent to another parcel in common ownership thus varying Article XV Section C. Mr. Parker seconded the motion. Motion carried 3 to 2.

REASONS: 1. The value of the surrounding property will not be deminished because there will be no changes to the property if granted a variance.
2. This is in the public interest because it does provide a usable and taxable property that is of more value taxwise than as one lot.
3. The hardship that makes this property unique is the large tract of land, 9+ acres, that makes this property more than exceed other regulations for a useable lot. The property's existance as a lot of record makes it unreasonable to not allow it continued status as such. This property also has a 50' right of way to make an actual frontage of over 200'.
4. Granting this variance would do substantial justice because it would allow both lots to be used by owner. The useable frontage is in excess of 200' because of a 50' right of way.
5. This is not contrary to the ordinance because the ordinance has conflicting and unclear information and the lot can handle development.

Mr. Mitchell closed the Lichtman hearing.

Case # 3-90 (1/9/90-3) SAN SOUCIE

Paul and Susie San Soucie, 18 Maple Street, request a special exception to Article V, Section D-2. Applicants want to put in a second dwelling unit in their house on Maple St.

Mr. Mitchell explained that 4 criteria need to be met in order to grant Special Exception:

- a. Lot is less than 1/2 acre with Town water and sewer.
- c. 2 9X18 parking places needed per unit.
- d. Applicant must show that the open space is equal to 2 times the total of all parking and structures.
- e. Is the applicant using an existing old, larger structure located in Town to provide economical housing?

Mr. SanSoucie responded to criteria c. and stated that they have 1045 sq. ft. of driveway space and are required to provide 648 sq. ft. of parking. He suggested that tenants park 2 cars on left side and 2 cars on right side of driveway. Road agent Charlie McGettigan suggested removing single curb cut and paving a wider driveway all the way to the street. Mr. SanSoucie responded that he is willing to do this but would prefer not to for aesthetic reasons. Representatives from the American Legion - Abutters, stated no objection to the Special Exception.

MOTION: Mr. Parker moved to grant the application for the Special Exception as requested. Ms. Eckstrom seconded the motion.

The Board deemed that all criteria have been met except for c. in that parking places have not been adequately marked. It was agreed that the Planning Board will decide, in their Site Plan Review, how and where parking places will be placed and drawn on plan.

VOTE: Motion passed unanimously.

Mr. Mitchell noted that the SanSoucie's must go before the Planning Board for a Site Plan Review. He then adjourned the case.

MINUTES of 11/1/89

Mr. Mitchell proposed to ammend the minutes of 11/1/89...

Page 1 - strike underline under the word **against**.

Page 4, halfway down - strike **gas lines and electric lines**.

Mr. Parker moved to accept minutes as ammended. No Board members present who could second the motion. Minutes tabled until at least three members present who attended 11/1/89 meeting.

MINUTES OF 12/13/89 - Case # 12/13/89-1 BALLOU

Mr. Faيمان moved to accept minutes of 12/13/89. Mr. Parker seconded the motion. Motion passed unanimously with Ms. Eckstrom abstaining.

BY-LAWS REVISIONS

Ms. Eckstrom stated that she feels the Selectmen should appreve the raising of the application fee to \$50 from \$35.

Mr. Faيمان moved to table further discussion of the By-laws revisions until such time as a single document representing all proposed changes to the existing by-laws is available for the Board to study.

Ms. Eckstrom seconded the motion. Motion passed.

APPLICATION REVISION

The Board studied a revised application presented by Mr. Mitchell. It was pointed out that the signiture line was missing from page one.

Mr. Parker moved to accept the application. Mr. Faيمان seconded the motion and ammended it to state that acceptance is dependent upon the Selectmen's approval of the increased \$50 application fee and with the signiture line added at the bottom of Page 1.

Ms. Eckstrom seconded the motion. Motion passed.

The Board gave Mr. Mitchell permission to make a cover sheet with the four items as written, available with the application.

Mr. Parker moved to adjourn the meeting. The motion was duly seconded and the motion passed unanimously.

The meeting was adjourned at 10:45 p.m.

Respectfully submitted,

Diane Nilsson

Diane Nilsson, acting clerk