

TOWN OF WILTON

ZONING BOARD OF ADJUSTMENT

FEBRUARY 13, 1990

AGENDA: Kushlis continuation hearing, Burse hearings for two variances, Simek home occupation hearing, minutes.

ACTING CLERK: Diane Nilsson

Chairperson Tom Mitchell called the meeting to order at 7:30 p.m.

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

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

Mr. Mitchell stated that the Kushlis hearing is a continuation of the 1/9/90 hearing and reminded the audience that the ordinances state that there must be two hearing for a case involving wetlands.

This case is a request for a Special Exception for Robert Kushlis, Forest Road. The applicant proposes to subdivide his property and cross a wetland within the subdivision with a driveway. The Board must assemble evidence to attest that there will not be any detriment to the wetland.

John Sennott of Tom Moran's office represented Mr. Kushlis and stated that he feels that this is a reasonable request since only a very small amount of wetland will be filled. He provided a letter to the Board documenting the reasons why the impact to the wetlands will not be detrimental, and attached a copy of the State Wetlands approval.

Mr. Mitchell explained that the ordinance also provides that the Board hire a private consultant as well as the Soil Conservation Service to study the request. He then read into the record letters from: Weston Managers/Designers/Consultants which recommended waiting until Spring for a final recommendation; Gerald Rosenberg, Soil Scientist, U.S. Dept. of Agriculture, Soil Conservation Service who felt that the wetland crossing would be of minimal impact, based on studies provided by Moran, Inc. and abutters Pascal & Joan Covici who requested that the Board postpone its decision until early Spring.

Mr. Sennott reiterated that because of the minor nature of the wetland crossing, he does not feel that it is necessary to wait until Spring to make a decision.

Abutter Richard Bertram felt that the Board should wait until Spring to study the wetland area before making a decision.

At the request of Ms. Eckstrom, Mr. Mitchell read into the record the letter from the State of N.H. Dept. of Environmental Services, Wetlands Board describing the permit for 900 sq. ft. of fill and a 12" culvert for the wetland crossing.

Public debate closed at 7:45 p.m.

Board discussion:

Mr. Blanchard felt that the letter from the Soil Scientist and the State Wetlands permit are enough expert evidence to grant the Special Exception.

Mr. Parker felt that it would be nice to get an outside opinion before deciding. Ms. Eckstrom felt that Moran, Inc, the soil scientist and the State Wetlands permit provide ample expert evidence to render a decision. She also felt that the abutters in question were far enough away so as not to be affected by this request. Mr. Mitchell felt that he would like to see the case continued in order to get more opinions.

Mr. Mitchell summarized that the Town traditionally hires an independent agency to study cases such as this. Soil Conservation has looked at Moran's plans - but if we have an independent study then the Board can be well assured that we will have no problems. There are two concerned abutters and he doesn't feel that the Board should dismiss these concerns lightly. The Board does not know what the State looked at when granting the Wetland Permit.

Mr. Faiman undecided but felt that two months is not too long for Mr. Kushlis to wait for approval and this would provide the time for Weston to give their opinion.

Mr. Parker would feel more comfortable if the Board could see the property in the Spring since there are two abutter objections.

MOTION: Mr. Parker moved to continue the KUSHLIS hearing until the April 11 meeting at which time the Board can make a better analysis.
Mr. Faiman seconded the motion.

VOTE: Yes - Mr. Mitchell, Mr. Parker, Mr. Faiman
No - Ms. Eckstrom, Mr. Blanchard

Motion passed. Hearing continued to April 11, 1990.

Case # 2/13/90-1 BURSEY

David & Julie Bursey, Intervale Road, request a variance to Article VII, Section E. The Bursey's are requesting two curb cuts for their business in a commercial zone along Route 101. The current zoning ordinance only allows one curb cut.

VOTING BOARD: Neil Faiman, Cynthia Harris, George Infanti, Tom Mitchell & Grayson Parker.

David Bursey & Philip Tuomala present plans for the farmstand expansion showing new parking configuration required by the Planning Board. The Bursey's have met with the State Highway dept. and have expanded the frontage for the parking area and moved one of two existing curb cuts further East as State requested. They have received verbal approval from the State for these two curb cuts as presented. Basically, they are modifying the existing dual entrance.

Mr. Tuomala cited the criteria for the variance request:

1. The proposed use would not diminish the surrounding property value because **the two curb cuts are part of a plan to improve the existing conditions thus enhancing the surrounding property values.**
2. Granting this variance would be in the public interest because **the two curb cuts as proposed will allow safer ingress & egress to the farm stand.**

3. Denial of the variance would cause unnecessary hardship because of the following special circumstances which make this property unique from other properties in the same zone: **This existing farmstand is too close to the road to allow safe access without two curb cuts. The property presently has two access points.**
4. Granting the variance would do substantial justice because **the variance will allow the applicant to retain the two existing curb cuts, yet permit the expansion of the business by relocating and improving the access points as part of the proposed site plan.**
5. The use is not contrary to the spirit of the ordinance because **restricting the property to one curb cut would create an unsafe condition. The ordinance was created to improve traffic safety on Route 101.**

There were no comments from the audience and the public debate closed at 8:27 p.m.

The Board discussed the applicant's criteris and felt that every condition of the variance was met.

MOTION: Mr. Infanti moved to grant the variance to Article VII, Section E as requested. Ms. Harris seconded the motion. Motion passed unanimously. The variance was granted.

Mr. Mitchell stated to the audience that an appeal may be made by an affected person within 20 days by stating in writing, to the ZBA, the reasons why the Board should re-hear this case. The hearing ended at 8:34 p.m.

Case # 2/13/90-2 BURSEY

David & Julie Bursey, Intervale Road, request a variance to Article V, Section A, to permit a residential area behind the farm stand to be used as a parking lot. Current zoning ordinance does not allow parking lots in a residential zone.

VOTING BOARD: Same as previous case.

Mr. Tuomala explained that in order for the Bursey's to expand their commercial business, they must provide 20 on-site parking spaces for the expansion that they desire. Since there will be room for only three in the front of the property with the new entrance design, they must be placed in the back of the property. He further explained that there is a 90' strip of the parking area that appears to be in the residential zone, 15' deep at the East corner and 4' deep at the West corner, a total of approximately 850 sq. ft. of parking area in the residential zone. He added that the Bursey's own two tracts of land, both of which are intersected by a zone line dividing commercial & residential. He presented warrenty deeds and copies of tax cards showing that the farm stand pre-dates the zone line.

Mr. Tuomala then cited the criteria for the variance request. (See application.)

ZBA alternate Steve Blanchard pointed out that the location of the zone line is unclear in that it is not known if the distance is measured from the middle or the edge of Highway 101. There could be a 15' variation in the correct location.

There were no further comments from the audience. Public debate was closed at 8:53 p.m.

Board discussion:

Mr. Infanti felt that 850 sq. ft. is not a significant infringement into the residential zone.

Mr. Mitchell pointed out that the use of Mr. Bursey's property will not be denied if this variance is not granted, the building could be designed to be smaller, thus requiring fewer parking spaces.

Ms. Harris felt that the arbitrary zoning line presents a hardship.

Mr. Faiman felt that the hardship is shared by all lots in that area - not just the Burseys.

Mr. Infanti felt that both lots have always existed as commercial use and the Burseys should be allowed to continue that use.

MOTION: Mr. Faiman moved that the Board find that there has been an ongoing commercial operation on the entire site, including the residential portion thereof which is grandfathered with respect to the Town zoning ordinance and that therefore this is a permitted extension of this use without a variance. Mr. Infanti seconded the motion.

MOTION: Mr. Faiman retracted his first motion and moved that the Board find that the proposed parking use in the residential district is a permissible extension of an existing commercial activity in the residential district. Mr. Infanti seconded the motion.

VOTE: Yes - Mr. Parker, Mr. Infanti
No - Mr. Faiman, Ms. Harris, Mr. Mitchell

Motion was defeated.

The Board discussed findings of fact as listed below:

1. The value of the surrounding property will not be diminished because **there will be little or no effect on surrounding property.**
2. The granting of this variance is in the public interest because **it would allow a better and safer access and more parking.**
3. The hardship that makes this property unique is that **the farm stand pre-dates zoning, and the residential line going through the property is not a precise line, and the parking lot extends into the residential zone only approx. 15'. Also, there is no clear delineation of the commercial/ residential line.**
4. Granting this variance would do substantial justice because **it would allow expansion of a grandfathered commercial business and it would create a safer traffic situation.**
5. This use is not contrary to the spirit of the ordinance because **only 15' of parking lot is in the Residential district, the boundaries between commercial and residential are not clearly defined and it allows continued use and expansion of the farm stand.**

MOTION: Ms. Harris moved to grant the variance to Article V, Section A as presented. Mr. Infanti seconded the motion.

VOTE: Yes - Ms. Harris, Mr. Infanti, Mr. Parker
No - Mr. Faiman, Mr. Mitchell

Motion passed 3-2. Variance was granted.

Mr. Mitchell stated to the audience that an appeal may be made by an affected person within 20 days by stating in writing, to the ZBA, the reasons why the Board should re-hear this case. The hearing ended at 9:37 p.m.

Case # 2/13/90-3 SIMEK

Mike & Diane Simek, Robbins Road, Lot M-027, request a Special Exception according to Article V, Section C of the Wilton Zoning Ordinances. The Simeks wish to operate a Beauty Salon in their home.

VOTING BOARD: Same as previous case.

Mr. Simek addressed criteria for the Board. He explained that to make the Beauty Salon, their garage will be divided in half, a garage door removed and a window and door added. Mrs. Simek stated that it could easily be converted back to a garage if necessary. She also explained that she will be working alone and would not usually have more than two customers at one time. The Simeks have two parking spaces in the driveway in addition to one in the garage.

The Board felt that it appears to be a simple conversion with no change to the exterior and only a small sign over the door.

MOTION: Mr. Infanti moved to grant the application for a Special Exception according to Article V, Section C. Mr. Faiman seconded the motion.

VOTE: Motion passed unanimously. The Special Exception was granted.

Mr. Mitchell stated to the audience that an appeal may be made by an affected person within 20 days by stating in writing, to the ZBA, the reasons why the Board should re-hear this case.

MINUTES of January 9, 1990 meeting:

- Page 4, LICHTMAN - Legal language for re-hearing missing.
- Page 4, SAN SOUCIE - 4 criteria needn't be listed.
- Page 4, SAN SOUCIE - Legal language for re-hearing missing.
- Page 4 - Ms. Eckstrom requested that recording secretary record individual votes of Board members in future.
- Page 2, KUSHLIS - Ms. Eckstrom asked Mr. Mitchell if the ZBA or the Planning Board was responsible for setting up the escrow acct. with Mr. Kushlis.
- Page 1, KUSHLIS - Should be **Heavisides** not Heyvisides.
- Page 5, BY-LAWS - Should be **\$30**, not \$35.

Minutes for 1/9/90 unanimously accepted.

MINUTES of November 1, 1989

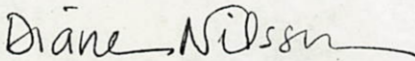
Board discussed confusion over two sets of minutes.

MOTION: Ms. Eckstrom moved to amend the minutes of 11/1/89 as posted by Ms. Eckstrom on 11/2/89 and replace them with the minutes as prepared by Ms. Harris. Mr. Parker seconded the motion.

Minutes for 11/1/89 unanimously accepted.

MOTION: Mr. Infanti moved to adjourn the meeting. Ms. Harris seconded the motion. Meeting was adjourned at 10:10 p.m.

Respectfully submitted,



Diane Nilsson, acting clerk