

TOWN OF WILTON
ZONING BOARD OF ADJUSTMENT
AUGUST 8, 1990

Vice Chairman Grayson Parker called the meeting to order at 7:30 p.m. Members present were: Tom Mitchell, Steve Blanchard, Herb Klein and Alternate Jim Tuttle.

Case No. 8-8-90-1 - Variance

Marilyn A. Warner, Lot D-143, Wilson Road

Vice Chairman Parker explained that the applicant was requesting a variance from Article 6 Section 2 to permit a reduction of Lot 143 by approximately one quarter of an acre by selling a strip of land to the owner of Lot 144 which would allow the owner of Lot 144 sufficient space to install an inground swimming pool within the 35' setback.

Howard Watson presented: They would like a reduction of Lot 143 as depicted on the plan (see file) to allow a pool to be put in within the new setback lines. Under the old ordinance, the placement of the pool would have been sufficient. He pointed out that by an on-sight inspection, the Board was aware of the situation - the placement of the rock and flower gardens, etc. required the pool to be placed near the lot line.

Mr. Mitchell requested Mr. Watson go through the criteria and elaborate upon them. (See file for the "Application" which Mr. Watson read.)

1. Mr. Watson explained there is more room on the side of the house where the pool will be placed (even with the old lot line there is more room there.) The worse scenerio would be on the other side. The Board had no questions or problems with this.

2. In response from a question from Mr. Mitchell as to why a larger lot, in Mr. Watkins' opinion, would be in the public interest? Mr. Watkins responded he didn't write the application. Mr. Mitchell then pointed out that it was in the public interest because it is an attractive pool.

3. Mr. Watkins added that they feel a hardship had been created by a change in the Zoning Ordinance now requiring 35' setback which in itself, the reduction, is some indication of hardship.

Mr. Mitchell questioned the argument in the application that obtaining an easement was a cumbersome process and that he didn't see the connection with the definition of a hardship or was there something inherent in the process itself?

Mrs. Warner explained that in the definition of the variance, they would have to seek an easement which they didn't want to do. "If the acreage was created, when the lot line was created and if it was reversed", stated Dennis Warner, "we wouldn't have to go through this".

The Board briefly discussed the old regulation in which an inground pool could be installed within a setback; the age of the dwelling; size of the lot that was subdivided; the changes in the Zoning Ordinance which has restricted this type of installation since it has been classified in the same category as a foundation.

Mr. Tuttle thought that by placing an easement on the property, it might create a hardship during resale as a new owner might be reluctant to purchase the property with an easement attached.

The Board requested HCCD information on the property in question. Although Mr. Edmunds had some information, it was incorrect material.

Mr. Watkins indicated that the property had moderate soil.

Mr. Edmunds told the Board they had laid string down to see what line would be best appearing to both lots and came up with what was on the plan. The run off on his property would now be running to the back of his parcel instead of the lot next door.

After a brief discussion, Mr. Blanchard, felt the mentioning of "the pool" in the application was immaterial.

"You want a variance to allow less than a standard area lot - and you want to adjust the line to change it. The hardship, in a way, is that you don't have a conforming lot in the first place and you are making it even more conforming than it is. You are improving the situation. The hardship is that the lots are not the right size in the first place and that is a uniqueness in the lots" pointed out Mr. Mitchell. "Remove the mention of the pool and setback, it doesn't make an argument".

In light of the changes, Mr. Mitchell suggested the Board revisit the hardship criteria with a brief discussion following.

Mr. Watkins then modified point number four on the application stating that "Granting the variance would do substantial justice because equalizing the size of the lots would bring Lot 144 closer to the minimum size set by the Zoning regulations.

Mr. Mitchell modified point number five stating that "In the spirit of the ordinance are the septic systems and soil types. There is no impact on the septic systems already set up (it is working fine). You are not increasing the density, you are not in violation of the spirit of the ordinance because the septic systems are not being impacted".

The Board once again touched upon point number one in that the physical differences will not affect surrounding property values.

The Board then went into deliberation coming up with the following:

1. There would be no diminuation of property by changing lot lines and there will be no visible differences if the property lines are changed from what already exists.

2. Granting this variance would be in the public interest because the lots would be improved, making them more conforming to the Zoning Ordinance.

3. Denial of the variance would cause unnecessary hardship because the lot is non-conforming and a change in lot line makes the lot closer to conformance by allowing compliance with Section 6.2.2.

4. Granting the variance would do substantial justice because there will be equalization in the size of the lots making them more conforming.

5. The spirit of the ordinance is not violated because the septic systems are not impacted and gives the smaller lot more acreage which is better for septic drainage.

Mr. Blanchard moved to grant the variance for the above stated reasons. Before the motion was seconded, Vice Chairman Parker told the owners that "when the Board goes up to visit something like this and finds it already in place, it rubs everyone the wrong way and you are lucky. You are suppose to have a building permit and come before this Board". The motion was then duly seconded by Mr. Mitchell with all in favor. The variance was granted by a unanimous vote.

Vice Chairman Parker reminded those present that written notification would be received within a few days; that there is 20 days for an appeal and that if they do not hear anything within this time frame, the owners can be assured no one will contest the granted variance.

The Board came out of deliberation at 8:15 p.m.

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David Cotzin of Academy Real Estate in New Ipswich appeared before the Board with a few questions regarding the Merritt Tool Building on Route 101 and potential uses. He has two interested parties in the building. One proposes to change its use to an oriental restaurant and the other, Albert Kalhori of Temple (who was present) purchases auctioned cars, would like to use the building for a body shop coupled with the sale of the reconditioned vehicles.

Mr. Mitchell explained in his opinion, it is a grandfathered use and allowed in this particular zone to continue as such and to change it one would have to ask for a variance and go through the criteria. He further explained that one of the

hardest things is hardship, since in this particular case, one would have reasonable use of the building as a light industrial area. This was, before the zoning change, allowed.

Mr. Tuttle pointed out that the specific use of the restaurant could get considerable resistance from the neighbors while Mr. Klein indicated there were several instances within the last four years where a commercial venture wanted to use Industrial Zoned land and it was denied.

Mr. Parker read from the Ordinance the uses allowed in an Industrial Zone.

Mr. Cotzin then introduced the Board to Mr. Kalhori who explained his proposal. Mr. Klein pointed out if Mr. Kolhori did the mechanics and the conversion of the vehicles, it would be permitted but the minute one used the word "sale" it becomes a commercial use not an industrial one.

Mr. Cotzin asked the Board a few questions in which they explained the variance and notification of abutters process; that a grandfathered building's dimensions cannot be altered; and their concerns about toxic materials and the storage of them.

Mr. Cotzin asked the Board what their feeling was and should he pursue it? Mr. Mitchell pointed out that Mr. Cotzin was asking them to make a decision before he made an application and Vice Chairman Parker stated he didn't feel the Board should give out any more information unless Mr. Cotzin formally presented an application.

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Minutes

Mr. Blanchard moved the Board approve the minutes as submitted of the June 13, 1990 meeting, seconded by Mr. Mitchell with all in favor.

As only one member present at this evening's meeting was also present at the meeting of July 17th, and approval of three members present at that meeting is required, the Board will approve the minutes at a later meeting.

Mr. Blanchard, seconded by Mr. Mitchell, moved to adjourn the meeting at 8:40 p.m. with all in favor.

Respectfully submitted,

Sharon Frydlo

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Acting Clerk