

TOWN OF WILTON
ZONING BOARD OF ADJUSTMENT
FEBRUARY 13, 1991

Chairman Neil Faiman called the meeting to order at 7:30 p.m. Members present were: Grayson Parker, Tom Mitchell, Arlene Laurenitis and Herb Klein.

Case No. 2-13-91-1

Catherine and Franklin Wheeler, Lot K-25, Maple Street

Chairman Faiman explained the applicant was seeking a variance to the terms of Section 5.2.4, to permit the construction of a garage less than 15 feet from the interior lot line.

Mr. Wheeler, who was also joined by Alan Preston, his contractor, stated he had previously rented the property from Mr. Nelson which they are now purchasing. They never had a place to put their cars. They are getting older and it is getting more difficult to shovel snow off vehicles. He can afford to put the garage up and he would like to do so.

Chairman Faiman pointed out there is a proposed revision of the Zoning Ordinance in which garages, as well as houses, would have to sit back 35 feet from all streets, as well as the 15 foot setback from the back lot line. Under the present Zoning Ordinance, as written, a garage may be placed 25 feet from the side lot line. He also stated that the existing building permit was not legal.

Mr. Faiman then asked Mr. Wheeler to address the five criteria.
(See the file for the information Mr. Wheeler read.)

James Nelson, Nelson Funeral Homes, spoke to the Board. He was formerly a resident and owner of the property. "I would like to ask the Board to grant the variance. I have known Frank and Cathy for many years. They are good neighbors and I think they are an asset to that neighborhood. They have to park their cars on a lawn during a snowstorm. It is hard to plow your front yard without making a mess. If they do have a garage attached to the building, they would be able to access the building from the inside".

He also pointed out that he "had lived in the neighborhood for 43 years. The former Vallencourt home was built when we had no Zoning Ordinance. It was very close and neighborly. I think it is the atmosphere

in which I would like to live and not worry about fences, barriers, etc. because of the written Zoning Ordinance. I don't believe the problem would be alleviated by the next owner. Given the hardship that exists and given the uniqueness of the property, it would be good for the neighborhood to grant this variance." Mr. Nelson also stated he didn't believe any abutters had any objection and personally he thought it was a good idea.

Mr. Faiman wanted the record to reflect that abutter, Steve Blanchard, (who was not in attendance) had no objection.

The Board briefly discussed grandfathering clause as questioned by Mr. Nelson - the proposed garage would be closer to the road than any other houses on the street - while Building Inspector, Frank Millward, pointed out he measured from Prince Street 24 feet and felt he was in line.

Mr. Mitchell asked Mr. Millward why he issued the building permit in the first place?

Mr. Millward explained, "they had their 35 feet from Maple. I was under the assumption of 25 feet from Prince Street. I figured it would be under the grandfather law where it was in line with the original barn. Mr. Lord's garage would be the same distance from the lot line".

In response to a question by Mr. Mitchell, Mr. Millward said there is "nothing like this in Town. This is the problem we have with the downtown lots. In the rest of the neighborhood, you don't run into these kinds of situations".

Chairman Faiman pointed out why the permit was granted was a separate issue.

Mr. Mitchell felt "if we make a mistake, the mistake is made and through no fault of the applicant, they went ahead in good faith and all of a sudden someone says, we have made a mistake. They have already invested thousands of dollars. Seems to me we have to make some sort of allowance because the applicant had not tried anything subversive."

Mr. Faiman stated that "by law, the applicant doesn't get any rights at all by virtue of the Building Inspector's mistake" and cited the case "Hermes v. Dow 1965"

The Board questioned Mr. Wheeler's use of the barn as a garage. Mr. Wheeler said it didn't lend itself to a garage because the angle of

the foundation. It had hardwood floors and beams. There is a finished room in the barn and they intend to finish the upstairs as a bedroom. They were looking to use the second floor of the garage as storage space.

It was pointed out by Mr. Mitchell that he had no problem with the criteria except hardship. He cited "Vanna v. Bedford 1970" and "Carter v. city of Nashua 1973" from the "Planning and Land Use Regulations Guide" for the Board's interest.

Mr. Faiman wasn't convinced there was no diminuation of property values since the people next door would be looking at a 24 foot high building straight in front of their porch.

Mr. Parker suggested a compromise: "To build a one story garage from the barn, two stories where it lines up with the existing house from the street and drop it down from the end of the garage to one story so that the main line of the building would be in line. It doesn't give them as much space on the second floor but it gives more light and not block the view from the house next door as much".

Mr. Faiman found it difficult "to separate the issue of the building permit already granted from the question of pretending the foundation was not on the lot, given that circumstance, I can't imagine voting for a variance. It would be completely inappropriate - it is a gross violation of the setbacks. As for the building permit and the foundation already poured, it seems like a dreadful unfair law, I can't see any rights are gained by having relied on that mistake".

The Board and members of the audience briefly touched upon the hardship issue - uniqueness to the property - fire codes - length and height of the garage - spirit of the ordinance.

"Given the height", Mr. Faiman said, "I would prefer a one story all the way back to the barn. Clearly, there is a need. As for the storage, there is the barn which is a lot more than most people have". Mr. Parker concurred.

Ms. Laurenitis asked Mr. Wheeler how he feels about the suggestion for altering of the plans. He said "he was limited to how much he can alter because of the construction of the barn - I need a garage. I'm going in for surgery on my back and I'm physically not able to clean off cars. If I have to sacrifice the storage space, I will but I need the garage".

The Board then briefly discussed the reference to the subdivision in the application - the property's use when built in the 1800's - the criteria that must be met - and that the line on Mr. Lord's is being infringed upon because buildings are suppose to be line up equal distances.

"I don't feel the distance from the side lot would be a big problem", stated Mr. Wheeler, "otherwise Mr. Lord would be here complaining".

Chairman Faiman explained that "the Zoning Board of Adjustment is often influenced by the absence or presence of the abutters. The law says there is a setback ... there may be an inclination to close one's eye when the abutters don't care".

Chairman Faiman then asked for a consensus of the Board: Mr. Mitchell felt the plan violates too many of the criteria. Mr. Klein said it was a two story structure that entirely violates not only the ordinance but the property line setback. Mr. Parker said he would be in favor of a one story garage or the proposal he suggested before and felt there is definitely a hardship. Ms. Laurenitis felt there was some feasibility to the unique argument. Allowing the proposed garage was very important to the comfortable use of the property, the existing barn is not suitable for a garage. There are a lot of older homes that have barns and use them for garages, however, she did not see another location for the garage on the property. Mr. Klein said he felt he would be free to compromise if it still fit the basic need of the applicant. "If he is willing to sacrifice half the storage space to get the garage, if he isn't willing to do that, he will end up with nothing". While Mr. Faiman wondered if reducing the height to one story, would it compromise to get a variance?

Upon motion made and duly seconded, the Board voted to go into deliberation.

Chairman Faiman reminded the Board that the approach that they are taking is to entertain a motion to either grant or deny the variance. Grant with restrictions or modifications. If it passes, they will draft the language to justify the decision and vote to approve.

Mr. Parker moved that the variance be granted with the following amendment: that the second story is to conform to the 35 foot setback from Prince Street allowing the first story to be placed on the foundation, which is already in place, to a maximum height of 12 feet. Seconded by Ms. Laurenitis.

There was no further discussion. The vote cast: Messrs. Klein and Parker in the affirmative with Messrs. Faiman and Mitchell and Ms. Laurenitis in the negative.

Mr. Parker then moved to grant a variance for a one story building set on the foundation that has already been poured, to a maximum height of 12 feet. Seconded by Mr. Klein.

There was no further discussion. The vote cast was three in favor with Ms. Laurenitis and Mr. Faiman in the negative.

The motion passed granting a variance to allow a construction of a one story 12 foot garage on the existing foundation.

The Board came out of deliberation at 9:05. Chairman Faiman 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 then discussed the "Findings of Fact" and came up with the following:

1. The surrounding property values would not be diminished.
2. Granting this variance would be in the public interest because it will remove vehicles off the street and provides garage storage of such vehicles which is preferable to open storage.
3. Denial of the variance would cause unnecessary hardship because of the small unique size of the property, the owner has no other place to put the garage.
4. Granting the variance would do substantial justice because it would allow fair use of the land, and a building permit has already been issued for a foundation.
5. The spirit of the ordinance is not violated because it is not making it any more non-conforming, and the intent of the ordinance was to preserve the existing character of the neighborhood which includes many buildings which do not meet the legal setbacks required.

Mr. Mitchell moved to adopt the "Findings of Fact", seconded by Mr. Klein with all in favor.

Upon motion made and duly seconded, and all in favor, the meeting
adjourned at 9:30 p.m .

Respectfully submitted,

Sharon Frydlo

Sharon L. Frydlo

Acting Recording Clerk