

TOWN OF WILTON  
ZONING BOARD OF ADJUSTMENT MINUTES  
OCTOBER 9, 1991

VOTING BOARD: Acting Chairman Grayson Parker; members Herb Klein & Tom Mitchell; alternates Cindy Harris & Jim Tuttle.

CLERK: Diane Nilsson

AGENDA: Gary A. Crosby - Application for a Special Exception.

Mr. Parker called the meeting to order at 7:35 p.m.

MOTION: Mr. Mitchell moved to table the Crosby case hearing until Mr. Crosby arrived. Mr. Tuttle seconded with all in favor.

Mr. Parker read a letter from Linda J. Wells (see LADD file) in reference to the LADD hearing of last month. In the letter she asked for a rehearing. The Board discussed whether there was any new evidence presented or whether any technical error had been made.

MOTION: Mr. Mitchell moved not to grant a rehearing because no new evidence was presented and no technical error that would have denied due process was committed. Ms. Harris seconded the motion with all in favor.

Mr. Parker will notify Ms. Wells of the Board's decision.

MOTION: Mr. Mitchell moved to untable the CROSBY hearing. The motion was seconded with all in favor.

Case # 10/9/91 - 1 CROSBY

Gary A. Crosby, 191 Captain Clark Road, Lot H-125 in the Residential/Agricultural District, requested a Special Exception under the terms of Section 5.3.1 of the Wilton Zoning Ordinance to permit a classic car restoration business as a home occupation in an existing garage.

Mr. Parker stated that he and Mr. Mitchell visited the site before the meeting and they found four unregistered vehicles and three registered vehicles on the property.

Mr. Crosby stated that he works a job at night and works on cars during the weekdays and weekends. He uses an air compressor sometimes and prepares cars for their final painting but does not do the final painting there.

Mr. Parker read Sections 4.4, 4.5 and 5.3.1 from the Wilton Zoning Ordinance, which criteria apply to Special Exceptions and Home Occupations.

Mr. Crosby stated that the distance from the rear of his garage to the property line is 35'. He stated that there would be no changes to his residence or garage and there would be no employees hired.

Mr. Mitchell pointed out that Section 5.3.1 states that exterior storage of materials is prohibited and that would include "parts" cars.

Mr. Parker pointed out that there exists a Town ordinance limiting the number of unregistered vehicles but was not sure of the number.

Jeff Crocker, attorney representing Richard Keilig, Sr. and Richard Keilig, Jr., both abutters, spoke next. He stated that the use proposed by Mr. Crosby has been ongoing, on that property, for the past two years. He also stated that in legal terms, this use cannot be considered a home occupation. For a use to be defined as a home occupation, it must be customary to a residential use. This use presented here is normally found in a commercial or industrial zone. He also stated that this use is not incidental or secondary to the use of the dwelling as a residence.

He further stated that the Keilig's can attest to the noise level and the odor of paint and he felt that a larger operation is going on there than Mr. Crosby lets on.

He contended that this business is an auto/body repair facility and should be located in a commercial or industrial zone.

Mr. Crocker presented the Board with a summary letter and copies of four Supreme Court cases relating to Home occupation with specific reference to TOWN OF MILFORD V. BOTTAZZI which refers to an auto/body repair business. (See file) He also presented photographs taken by the Keilig's which show 9 vehicles in Mr. Crosby's yard. (see file)

He stated that he understood that the Building Inspector for the Town of Wilton had also taken photographs of the property.

Mr. Crocker submitted a copy of Mr. Crosby's building permit dated 6/29/87 for a garage/workshop, and noted that on the permit, the distance from the nearest property line is recorded as 24'. He then pointed out that Section 6.2.4 of the Wilton Zoning Ordinance requires a 35' setback. (See file)

Mr. Crocker stated that even if the Board does consider this use a home occupation, it does not meet all the criteria for a home occupation:

5.3.1a The use is not incidental or secondary to the use of the dwelling as a residence.

5.3.1f Materials are being stored outside.

5.3.1h This business has outgrown the standards established for a home occupation (if it ever met them) and should relocate to a commercial or industrial district.

Mr. Crocker further stated that the application does not meet all the criteria for a Special Exception:

4.4b The character of the neighborhood is adversely affected.

4.4c loud noises are present (4.5.2), fumes and materials from spray painting are being directed by a fan toward Mr. Keilig, Jr.'s residence (4.5.3), motor oil; transmission fluid, gasoline, paint materials and other hazardous materials are present (4.5.5).

4.4d The application will diminish property values.

Mr. Crocker then presented the Board with a letter from Realtor Donna Hoover, stating that any use operating outside the parameters of what is allowed within a particular district does affect property values in a negative way. (See file)

Mr. Crocker then presented a letter from Philip LaFlamme and Joyce LaFlamme, neighbors of Mr. Crosby, stating their concerns about this use of the property. (See file)

Abutter June Keilig stated her concern for the health of her grandchildren who live next door to Mr. Crosby's property. The paint fumes are terrible. Four to six weeks ago, she continued, Mr. Crosby was spraying for two days and she had a terrible headache because of it. The smell is all over the neighborhood, she stated. She also stated her concern about what these materials might be doing to her garden, her water supply and her son's water supply.

Abutter Richard Keilig, Jr. stated his extreme concern for his children in relation to the spraying, the fumes and the heavy metals such as chromium, cadmium, etc. He was also very concerned about his water quality because the heavy metals do go into the ground and into the water table. He read from the U.S. Army Environmental Hygiene Agency's Guidelines in Controlling Health Hazards in Painting Operations and listed some of the symptoms that can result from exposure to the types of paints and solvents used in an auto/body shop: eye irritation, dizziness, nausea, headache and other symptoms.

Mr. Crosby stated that it seemed strange that Mr. Keilig had brought his car to him for work and now is complaining about the business.

Mr. Keilig stated that he took his car to Mr. Crosby when he was first in business and the business was smaller. Since that time the business had grown and become more difficult to tolerate.

Mr. Parker closed the meeting to public discussion at 8:30 p.m.

Ms. Harris felt that this business fits into the Res/Ag zone and is appropriate for home occupation.

Mr. Mitchell worried that this business was too big for home occupation. Abutters objected to noise, odors and possible disposal of waste problems. The objections are being raised by those people who experience the noise and the odors. He cited four problems: a.) exterior storage of materials, b.) noise objections, c.) odor objections and d.) hazardous materials objections.

Mr. Klein felt that because there is no regulating body such as OSHA which would watch over a commercial or industrial operation, this use goes beyond what is appropriate for a home occupation. He also gave great consideration to the objections of the abutters in relation to noise, odors and hazardous wastes.

Mr. Tuttle was concerned about the odor but also concerned about the fact that there are other one-man auto repair operations in Town and was it fair to deny one when others are granted the use.

Mr. Parker's main concern was the storage of unregistered vehicles on the property.

MOTION: Mr. Mitchell moved to deny the Special Exception for a Home Occupation on the grounds that the application does not meet the performance standards for a Special Exception, specifically noise (4.5.2), odor (4.5.3) and discharges (4.5.5). In addition, the application does not meet the criteria for a Home Occupation in that there exists exterior storage of materials which is prohibited in Section 5.3.1f. The motion was seconded by Mr. Klein.

VOTE: Ms. Harris - NO  
Mr. Klein - YES  
Mr. Mitchell- YES  
Mr. Parker - YES  
Mr. Tuttle - NO

Mr. Parker stated that the motion carried and the Special Exception was not granted. He further stated that Mr. Crosby will be receiving a Notice of Denial in the mail. He stated that the Selectmen, any party to the action or proceedings, or any person affected thereby may apply for a rehearing of this decision. A request for a rehearing must be filed in writing with the Zoning Board of Adjustment on or before Tuesday, October 29, 1991, and must fully specify all grounds on which the rehearing is requested.

MOTION: Mr. Mitchell moved to approve the 9/11/91 minutes as written, seconded by Mr. Klein with all in favor.

MOTION: Mr. Klein moved to adjourn the meeting, seconded by Mr. Tuttle with all in favor.

The meeting was adjourned at 9 p.m.

Respectfully submitted,

Diane Nilsson  
Diane Nilsson, Clerk

Posted: 10/15/91

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