

TOWN OF WILTON

ZONING BOARD OF ADJUSTMENT

NOVEMBER 13, 1991

VOTING BOARD: Chairman Neil Faiman; members Tom Mitchell. Herb Klein, Grayson Parker and alternate Jim Tuttle.

CLERK: Diane Nilsson

AGENDA: Elmer A. Santerre - request for two variances.  
Gary A. Crosby - rehearing of Case # 10/9/91-1.

Chairman Faiman called the meeting to order at 7:30 p.m.

Case # 11/13/91-1 SANTERRE

Elmer A. Santerre, Main Street, Wilton Village, Lots J-044 & J-045 in the Commercial District, requested Variances to Section 7.2.3 to permit a lot coverage of 94% and Section 7.2.2c to permit a rear setback of one foot.

Dawn Tuomala of Monadnock Survey represented Mr. Santerre and presented plans for a Lot Line adjustment which would add 1,150 square feet to Lot J-044 and allow the existing barn and right-of-way on Lot J-045 to become part of Lot J-044. She further stated that there would be no additions or changes made to either lot and there would be no physical changes made to the total amount of impervious area.

Mr. Santerre stated that he now owns both lots but would like to have the ability to sell Lot J-045 and keep the barn and right-of-way as part of Lot J-044 where he resides.

Resident Steve Blanchard stated that in the past there have been problems with tenants of Lot J-045 using the barn for activities that created problems for the town. Approving these variances would assure that these activities would not happen again.

Abutter Stuart Draper stated that he thinks the lot line adjustment is a good idea.

Abutter John Keefe stated his approval for the lot line adjustment via a letter to the Board read by Chairman Faiman. (See file)

MOTION: Mr. Parker moved to grant both variances as requested with Mr. Klein seconding. The motion passed with four in favor and Mr. Mitchell abstaining.

Mr. Faiman stated that the motion carried and both variances were granted. He further 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, December 3, 1991, and must fully specify all grounds on which the rehearing is requested.

MOTION: Mr. Tuttle moved to adopt the reasons for granting the variances as presented in the application, seconded by Mr. Klein with all in favor. (See file).

Case # 10/9/91-1 CROSBY REHEARING

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. Faiman explained that this case was being reheard because of a technical error in the original proceedings - one of the abutters was not notified. He further explained that the original evidence presented in this case is still part of the record in this case and need not be represented. This rehearing is an opportunity to hear new evidence which was not presentable at the original hearing.

Steve Blanchard assisted Mr. Crosby in his presentation and stated that the majority of finish painting work is not done at Mr. Crosby's shop although he does do priming and some painting.

**Waste disposal:** He continued that regarding disposal of chemicles, Mr. Crosby generates approximately two gallons every three months, which is picked up on site by an EPA-licensed facility.

**Property values:** Mr. Blanchard stated that Mr. Crosby's operation has been going on for more than ten years, and it has not affected property values so far, nor should it in the future.

**Outside storage:** In relation to exterior storage of materials, Mr. Blanchard stated that Mr. Crosby does not keep cars for parts on the property but buys parts individually when needed. Parts are kept inside the garage.

**Increased traffic:** Mr. Blanchard stated that the claim of increased traffic because of Mr. Crosby's business is unsubstantiated and minimal.

**Fumes:** Mr. Crosby stated that in relation to the residue & fumes blowing from the fan in the garage toward Mr. Keilig's home, the residue is minimal & Mr. Keilig's home is 300' from the fan behind a thickly wooded area.

**Noise:** Mr. Blanchard stated that an air chisel, which is the tool making the most noise, makes less noise than a chainsaw.

In relation to the four unregistered vehicles the ZBA found on the property in October, Mr. Crosby explained that he was not aware of the Town ordinance allowing only two unregistered vehicles. There are now only two on the property.

Mr. Blanchard stated that Mr. Crosby has done no more than thirty jobs in the past year.

Abutter Paul Cody stated that his home is very close to Mr. Crosby's garage. He has not experienced any paint fumes. He has heard the air chisel but finds that it is not as loud as a chainsaw. He had no concerns re: Mr. Crosby's business and requested that the Board grant his request.

Abutter Dianne Smith agreed with Mr. Cody and supports the applicant in his request. She stated that she was at home for a six-week period this fall and couldn't tell that the business was even there. It generates no more noise than anyone else and she has not smelled any paint fumes.

Neighbor Donald Flourant stated that Mr. Crosby's business is an asset to the neighbors.

Jeff Crocker, attorney representing abutters Mr. & Mrs. Keilig, Sr. and abutters Mr. & Mrs. Keilig, Jr. stated that his clients remained opposed to Mr. Crosby's request. He further stated that he has heard no new evidence to alter the viability of the Board's concerns that led to the decision on 10/9/91.

He continued to say that this decision should not be made according to how many abutters are in favor or against the project. This application is for a home occupation that can only be approved legally according to NH law, if the occupational use is a home occupation. If it is not a home occupation, as a matter of law, then this Board does not have the power to approve this use - even if it meets the criteria outlined in the zoning ordinance. In this case, the use that Mr. Crosby is proposing is not a home occupation under NH law. That being the case, this proposal cannot be approved.

He ended by saying that he felt the decision the Board made on October 9, 1991 was the correct decision and urged the Board to make the same decision tonight.

Mr. Faiman stated that the issue of what is and what is not a home occupation rests fairly heavily on the historical tradition within the particular town. If you have a number of comparable uses which have been approved as home occupations in Wilton in the past - that would be relevant.

Mr. Blanchard stated that Mr. Dion's business was given a Special Exception by the Board, but he is no longer there. There were no more comparable businesses mentioned which had been approved as home occupations by the Board.

Mr. Blanchard also reiterated that there are 35' of trees between Mr. Crosby's vent and Mr. Keilig's property line.

Neighbor Robert Willett stated that he questions how much the fumes from Mr. Crosby's vent blow into Mr. Keilig's yard as he has watched the air come out of the vent and sink to the ground.

Abutter June Keilig, Sr. stated that Mr. Crosby has only had his full-time job for perhaps two months. Before that time he was working full-time at home, on cars. The paint fumes are the worst problem but the noise from the compressor is also very bad.

Abutter Richard Keilig, Jr. stated that on a still day the fumes do go North toward his house. The 35' barrier of trees is in fact 25'. He also stated his concern about increased traffic from Mr. Crosby's operation, which would affect him much more than the other abutters.

Mr. Faiman closed the meeting to public input at 8:30 p.m.

Mr. Klein stated that he has heard no new evidence.

Mr. Mitchell stated that the previous evidence has been clarified.

Mr. Faiman stated that there is a long line of legal opinion both in NH and throughout the country that a home occupation is something that is traditionally done in the home, such as professional offices or beauty salons. Certainly a car restoration business, if it falls in that realm, is way on the outer edge of it. Also, the basic principle of a home occupation is a use which is utterly unobtrusive to the neighborhood, with the possible exception of the sign announcing that it is there. If the business has been going on and abutters complain about it - that amounts to a demonstration that it is not meeting the basic character of a home occupation.



Mr. Mitchell stated that there is a tremendous potential for the occupation to become abusive in the areas of performance standards, even with the best intentions on the part of the applicant. The use just doesn't fit in a residential area.

Mr. Tuttle asked what similar cases have come before the Board. Mr. Mitchell answered that the DION case was the only one that the Board approved and there were many problems for the Town as a result of that decision. The Board did deny an application for a motorcycle repair facility near Abbot Hill Road for similar potential problems as this case has.

Mr. Parker felt that the Keilig's were in some way railroading Mr. Crosby, however the laws are written to protect everyone. He also felt that an auto repair shop in that zone did not fit the requirements for a home occupation. He saw no new evidence to change his opinion.

MOTION: Mr. Mitchell moved to deny the application for a Special Exception with Mr. Klein seconding. The motion passed with four in favor and Mr. Tuttle against.

Mr. Faiman stated that the application for a Special Exception is denied. Mr. Crosby will receive a formal letter from the Board stating reasons for the denial within a few days. The decision, as it is a decision on a rehearing, is not appealable to the ZBA. It may be appealed to the Hillsborough County Superior Court which is the only route for further appeal of this decision as specified in the NH State RSA's.

The Board accepted the following grounds for denial:


- Auto repair work does not fall within the definition of a home occupation.
- The potential for violation of the performance standards with respect to fumes, noise & exterior storage of materials is inherent in the nature of an auto repair and restoration operation.

APPROVAL OF MINUTES - October 30, 1991

MOTION: Mr. Parker moved to accept the 10/30/91 as written, seconded by Mr. Mitchell with all in favor.

A motion was made and seconded to adjourn the meeting.  
The meeting was adjourned at 9 p.m.

Respectfully submitted,

  
Diane Nilsson, Clerk

Posted: 11/19/91

11/19/91 D.N.