

**TOWN OF WILTON
ZONING BOARD OF ADJUSTMENT
JUNE 10, 1992**

Chairman Neil Faiman called the meeting to order at 7:30 p.m. Members present were Tom Mitchell, Herb Klein, Steve Blanchard and alternate Joanna Eckstrom. He explained the Zoning Board of Adjustment process and indicated that because of the short duration expected to hear the case being presented by Linda LaDouceur, the other applicants agreed to allow her to proceed first.

**Case No. 6-10-92-3 - Special Exception
Linda LaDouceur, Lot J-026, Whiting Hill Road**

Chairman Faiman pointed out that all the members of the Board, with the exception of Steve Blanchard, had visited the site prior to the meeting and they had copies of the minutes, dated in 1986, granting the special exception.

Ms. LaDouceur informed the Board she was conducting a preschool on the site. Currently there are eight children and it was her desire to add four more. The hours would run from 8:00 to 11:30, four mornings a week, instead of the previous three. In answer to questions from the Board, Ms. LaDouceur said they never had a sign; some families were dropping off children at 8:00 and needed her to start earlier than she had previously; there are car pools which have staggered arrivals; parking is approximately five to ten minutes; the driveway had not been "good" for the past eight years but now there is "plenty of room" to turn around and go out; there is only one other employee which she has had for the past four years; they do not anticipate going any higher than twelve children since there is an entirely different safety code system for above that number. She briefly described the ratio required under State licensing, upon a question raised by Mrs. Eckstrom.

Mr. Blanchard moved to approve, second by Mr. Mitchell with all members in favor. Chairman Faiman reminded Ms. LaDouceur that written notification would be received shortly; that there is a 20 day requirement for an appeal and that if she did not hear anything within this timeframe, she could be assured no one would contest the special exception granted by the Z.B.A.

**Case No. 6-10-92-1 - Variance
Marcel Trepanier, Lot C-99, Wilton Center Road/Route 101**

Chairman Faiman explained Mr. Trepanier was seeking a variance from the requirements of four acres per lot in the Res/Ag District in the aquifer overlay.

Richard Maynard of Maynard & Paquette, Inc. presented the case. There is a total of 10.87 acres in which they would like to put a three lot subdivision on Lot C-99. He presented the Board with a subdivision plan and topographies. There would be two four

Case 6-10-92-1 - Trepanier Continued

acre lots and one 2.87 acres (99-3). Because of the location of the property, the ordinance requires four acres rather than the required two. Mr. Maynard showed the Board the USGS aquifer map on which the red arrow represented the property, light blue areas were listed as the recharge area and the dark blue the high yielding areas. He pointed out where the proposed water supply would be located and indicated it would be approximately 3,000 feet away from the dark blue area. "This, he said, is one of the smaller aquifers and might be good enough for a 500 gallon per minute well".

He also presented a groundwater elevation map which was superimposed on the colored map along with text dealing with the Wilton area. The elevation on the site varies from 580 feet on Route 101 and Wilton Center Road to a high of 694 feet on lot 99-3 in the vicinity of the proposed house and leachfield - a difference in elevation being 110 feet from the street to the house. He also pointed out that the vertical separations between the USGS map and the groundwater map indicated them as being 70 feet. He further indicated that the ordinance under Section 12.3 permits human waste and septic systems associated with commercial and industrial uses in the district. "No matter what the property is, no matter what the vertical separation, there are no restrictions for standard septic systems for residential uses". He felt the property was unique in that in the Aquifer Protection District there is a recharge area which is 3,000 feet away from where the well would be located and the State standards only require 400 feet of protected radius from a water well. The other unique point is the comparison of ground elevation to groundwater elevation is 70 feet of separation with the State standard being only eight feet with on-site wells. "We have 70 vertical feet and we have quite a few protections".

Relative to the five criteria of proving hardship: Under the two acre zoning, the 10.87 acre property would yield five house lots but in the Aquifer Protection District, it can only be divided into three house lots with the average size being 3.87 acres or ten percent less than the normal requirement. The relief being requested is "relatively minor". It is a "rugged" piece of property, the driveway construction would be long and need a good deal of grading and is substantially higher than Route 101 and Wilton Center Road. They are proposing a three lot subdivision, with three to four bedroom homes, in character with the neighborhood and there would be no diminution of property. Under the public interest, the aquifer would be protected since there is 70 feet to groundwater and 3,000 feet away with the request of ten percent relief of the area. In the spirit of the ordinance, all of the criteria have been met except for the Aquifer Protection District. However, under the ordinance, septic systems are allowed without restriction and commercial and industrial uses could be placed on this property each with two acre zoning. "We are not asking any more than what is permitted for other uses". In granting the variance for 2.87 acres, would allow the applicant minimal relief and meets the criteria for health and safety.

Case 6-10-92-1 - Trepanier Continued

Mr. Blanchard pointed out that Wilton's lots are set up by soil types and that most are severe as indicated by Hillsborough County soils map. Mr. Faiman also pointed out that most are medium to severe except at the top of the hill where there is farm land. "State standard and Hillsborough County are different and the ordinance specifically refers to Hillsborough County", said Mr. Blanchard.

To clear up a matter of technicalities on a question raised by Mrs. Eckstrom, Mr. Maynard stated that ground elevation is where the house will be situated and it is 690 feet above sea level. The ground elevation at Route 101 is 580 feet or a difference between the two of 110 feet. "Vertical feet is a large hill or small mountain. USGS in their mapping, wherever they had well information, measured depth of the ground surface and went below it".

Chairman Faiman opened the discussion up to the abutters and audience. Al Litchfield, Wilton Center Road, said the land was "anything but flat" and drains down into the brook. He felt that the septic system would also drain into that area. Water runs into Blood Brook which then flows into the Souhegan River. It was his opinion that upon acquisition of the property, the owners should have known about the four acre zoning and did not feel there would be a hardship by not allowing the third lot. The important matter, however, should be the protection of the aquifer and the brook.

Lois Ross, Wilton Center Road, asked how the three properties were going to be accessed from Wilton Center Road and wondered how three separate driveways could be put in without disturbing the groundwater and soils? Mr. Maynard informed her that the driveway would be from the center of the property and up and over the hill with a shared driveway. Mrs. Ross pointed out it is a very steep hill from the road, always with water drainage and ice in the winter.

Mr. Litchfield felt because the 110 feet elevation between the road and the long driveway was that high, if in a rainstorm like the area experienced on Monday, half of Wilton Center Road would be in the roadway. Mr. Klein questioned the road bed and road surface? Mr. Maynard indicated they had not yet made a definite decision but that at the entrance it would be asphalt and the one inside the property could be gravel or asphalt with the decision being the homeowner's. He further said "if it is material to the consideration, it could be a stipulation". Also in answer to a question from Mrs. Eckstrom, Mr. Maynard said the road would never be accepted as a town road.

Mr. Maynard addressed the questions relative to the septic system and stated the distance from the proposed area to the brook is 700 plus feet with the State standard being 75 feet and they have ten times the distance. The reason the State established those standards, is that they made a determination that after effluent percs into the soil and travels 75 feet horizontally,

Case 6-10-92-1 - Trepanier Continued

anything beyond that is protected and that is how leachfields are suppose to work. They also made estimations on vertical feet and came up with eight vertical feet - in this instance there is 70 vertical feet "which will not result in any pollution or harm to the brook". He also addressed the statement relative to purchasing property, knowing the restrictions placed upon it. The property was purchased in 1979 and the Aquifer Protection District is a recent ordinance. The driveway issue will go before the Planning Board in two or three weeks, if the variance is granted. He pointed out that he was sure the Planning Board will also have the same concerns regarding steepness, etc. Mr. Maynard also explained that it was their feeling that two people sharing a driveway is reasonable but three would be cumbersome and, therefore, the two curb cuts.

The Board discussed the spirit of the ordinance: The ordinance states a requirement of four acres of density per dwelling unit in the area. Are there circumstances in the area to justify this, asked Mr. Faiman and that the concern goes beyond particular septic systems and overall density of septic fields in the A.P.D. Mr. Blanchard said the subdivision placed the soils type of poor, medium or low and that by State standards the soils are very good. There is a contrast, with the State using a different standard. "Based on test pit information, which has to be verified at some point, by State standards the soils are excellent." In the spirit of the ordinance, the property was not in the Aquifer Protection District when purchased. That, he said, was applicable to half the Town and does not create a unique situation.

Mr. Faiman indicated he would put the variance request in the classification of someone who "almost" has enough acreage for another lot and that the extra "little bit" doesn't make a lot of difference to the town but it would to him. He asked the Board to appraise whether this was a valid point? Mr. Blanchard's personal opinion that the driveway to the road, was very steep. Mrs. Eckstrom felt the drive was like many others in the area. However, if the Board was to uphold the aquifer regulations, she would have to vote against it.

In answer to several questions raised by Board members, Mr. Maynard said the distance from lot one to the existing brook was 150 feet. One driveway becomes cumbersome and there is a preference for everyone to own their own driveway since joint driveways mean everyone is responsible for the maintenance. The distance side by side between the two drives, is twenty feet.

Chairman Faiman pointed out there are two claims for uniqueness: (1) it is in the Aquifer Protection District and would be satisfying the topographies, which was different than what was contemplated and (2) there is not that big of a difference to have one more lot. "If we agree it is a very special case because it is 70 feet above the groundwater level, it would be reasonable to say rules are not serving a purpose. If the rules are applicable, it would be such a trivial size."

Case 6-10-92-1 - Trepanier Continued

However, he said, the grounds for hardship could be applied differently but he was not sure they could be applied in this case. Mr. Faïman pointed out five lots could be had if not in the Aquifer Protection District, ten lots if on town water and sewer and one if in the Watershed District.

Mr. Mitchell felt there was a reasonable case for hardship. In the spirit of the ordinance, all the safeguards have been demonstrated and the only real problem might be possible erosion damage during construction. It was his suggestion if this occurs, to minimize it and prevent it.

Mr. Mitchell then moved to grant the variance, Mrs. Eckstrom second. Mr. Klein, Mrs. Eckstrom and Mr. Mitchell were in favor, Mr. Blanchard and Mr. Faïman voted in the negative.

Mr. Faïman informed Mr. Maynard that written notification would be received shortly; there is 20 days for an appeal and that if he does not hear anything within this timeframe, he would be assured no one will contest the variance.

The Board, upon motion made by Mr. Blanchard and duly second unanimously voted on the following "Findings of Fact":

1. The proposed use would not diminish the surrounding property value because the homes and lots will be compatible with the surrounding property values.
2. Granting this variance would be in the public interest because soils, depth of groundwater, lot location are such that the public interest would be protected and there is no impact to the aquifer.
3. Denial of the variance would cause unnecessary hardship because of the following special circumstances which make my property unique from other properties in the same zone: The aquifer protection requirements become moot to the property and, therefore, the restrictions do not serve any useful purpose.
4. Granting the variance would do substantial justice because it would allow the owner reasonable development of the property.
5. The use is not contrary to the spirit of the ordinance because no aquifer impact, proposed lot and house exceeds all ordinance requirements except lot size, there is absolutely no impact on public health, safety and welfare.

Case 6-10-92-2 - Variance

Horseshoe River Corporation, Lot D107, Highland Street

Chairman Faïman informed the Board that Horseshoe River Corporation was seeking a variance from Section 5.1 of the

Case 6-10-92-2 - Horseshoe River Corp. Continued

ordinance which would result in two residences on a single lot which is contrary to the Wilton Zoning Ordinance.

Barry Greene presented the case. He explained that the map he gave the Board was not the subdivision but "representative of it". He drew the plan on the board and pointed out the location of the two homes and the proposed lot line. The property is a separate deed tract and a house could be sold by granting an easement. They would like to create two lots but by doing so in the proposed way, it put them in violation of Section 5.1.d. The land is six to seven acres and is zoned residential - the requirement is one acre with one hundred feet of frontage. With a "bowling alley" type lot, they could achieve the frontage. Mr. Greene briefly explained the history of the house and cottage. He further indicated that it would be difficult to get a mortgage on the property since financing needs to be on owner occupied properties. The lot is 3.5 acres with a requirement of two.

Mr. Greene addressed the five criteria: There is no change in surrounding properties, it will increase the value because it will be in control of the same owner. In the public interest, there are two violations of the zoning ordinance, volume and density. By granting the variance, it will be in combination and bring it more into conformance. Under hardship, the fact that 6.71 acres with 400 feet of frontage allows one to make two existing lots (perhaps even three or four) but the intent is only two good lots leaving the two houses intact and the hardship is the uniqueness of the land. Under point four, it would allow the landowner a more stable ownership and this would serve the public interest. In the spirit of the ordinance, it would bring it more in conformance to the zoning ordinance.

Upon a question raised by Mrs. Eckstrom, Mr. Greene briefly explained the financing of owner occupied single family dwellings. He further explained that the difference on the map which he gave the Board is that the purchaser had since decided she would like some river frontage. "It is up higher than at the Horseshoe River and is very spectacular".

Mr. Klein asked if the septic system was shared? Mr. Greene indicated that on the real estate listing sheet, it is listed as an older type and he suspected it might be dry wells. He further mentioned that he had owned it five years and had never had a problem.

Chris Anderson, abutter, pointed out it had been rental property with the same person and it didn't make any "common sense to not do what Barry Greene is looking to do". It is the same driveway being shared, it is not going to affect anything in any demeaning manner". He further mentioned that the septic system, which had been there forever, would be checked on by the bank.

Mr. Blanchard asked if he were planning to go to the Planning Board for a third lot since he personally only wanted to see two lots. Mr. Greene said, "if I build on this or would build on

Case 6-10-92-2 - Horseshoe River Corp. - Continued

this, we are going to give an easement from one driveway to the other lot". Mr. Blanchard reiterated his question and Mr. Greene said, "no", he was not planning on creating a third lot.

Mr. Blanchard pointed out that since the parcel already had two dwelling units on it, allowing the proposal wasn't going to change anything. The logical approach was to allow the creation of two lots equal in size rather than one ill-shaped. He further indicated that he would support it. Mr. Faiman said he would like to see a requirement that there not be subsequent subdividing. However, Mrs. Eckstrom asked why put a restriction on a future use. Mr. Greene pointed out he would be "more than happy to make the frontage 195 feet", but as a developer he would be against the restriction. He would have no problem to restrict it to conform with the zoning request, but would not like to restrict it forever.

Mr. Blanchard moved that the variance be approved as presented, second by Mr. Klein with all members in favor.

Chairman Faiman informed Mr. Greene that written notification would be received shortly; there is 20 days for an appeal and that if he does not hear anything within this timeframe, he would be assured no one would contest the variance.

Upon motion made and duly second, the Board unanimously voted to accept the following "Findings of Fact" as written by Mr. Greene:

1. The proposed use would not diminish the surrounding property value because the houses already exist, and the variance would constitute no change, with the exception of an additional 4.5 acre lot along with the two existing houses on a new 2.195 acre lot.
2. Granting this variance would be in the public interest because allowing the variance is in harmony with the intent of the zoning ordinances as intended by the public (the Town) and, as the two houses already exist on two separate deed tracts, one of them non-conforming, this variance would bring the two houses more into conformance with the zoning intent.
3. Denial of the variance would cause unnecessary hardship because of the following special circumstances which make my property unique from other properties in the same zone: Denial of the variance would be a hardship in the owners of 6.721 acres having over 400 feet of frontage, would not otherwise be allowed the full potential use of his 6.721 acres, due to the unique circumstance of there already being two existing dwelling units in close proximity to each other on the tract, making a subdivision with the two houses on one lot the only logical way to subdivide the subject parcel.

Case 6-10-92-2 Horseshoe River Corp. - Continued

4. Granting the variance would do substantial justice because the landowner would be allowed a logical, full use of his land in light of the unique existence of two existing houses in close proximity, which should also maintain a more stable ownership and control of these houses in the public's best interest.
5. The use is not contrary to the spirit of the ordinance because the variance request for one 2.195 lot with two dwelling units conforms to the density and frontage requirements, and will not thus oppose the intent of the zoning; and due to existing old deed tracts, will be more conforming.

Minutes

Mr. Mitchell moved to accept the minutes as written, the motion was duly second with all in favor.

Upon motion made by Mr. Blanchard and second by Mr. Mitchell, and all members in favor, the meeting adjourned at 8:50 p.m.

ATTEST:

Sharon Frydlo
Sharon Frydlo, Recording Clerk