

ADDENDUM
ZONING BOARD OF ADJUSTMENT
JUNE 14, 19943

This Addendum to the June 14, 1993 minutes of the Zoning Board of Adjustment has been added upon the unanimous vote of the members at their July 15, 1993 meeting. Since the first half of the tape, on side one, had been erased and the quality of the audio portion was minimal, upon consultation with Mr. Mitchell who made the original motion, it was his request that only the deliberation portion of the hearing be elaborated upon. It should also be noted that even portions of the deliberations were also inaudible.

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Chairman Faïman explained to those in attendance that they would close the hearing, however, they would like to have the opportunity to ask further questions if it seemed necessary, but that they would go into deliberation on the application and come to a conclusion.

There was concern relative to fencing, etc. Mr. Faïman stated that those concerns, as conditions, could be made part of the variance since the extent of the property values that were affecting the neighbors was a central issue in the case, he felt that any approval would be appropriate to include a "strong set of conditions".

Mr. Tuttle mentioned that not all of the homes were single family ones where it would be relatively quiet. The character of the neighborhood in general lent toward suburban.

Mr. Mitchell said that he was in favor of it because of the LaRue's, but his problem would be if they decided they did not want to have their business any more or move elsewhere to expand, what would happen if someone else who did not have the same integrity, decided to add body work for example? "No body work" could be a consideration for a condition, he said. He felt that body work added a whole lot of new dimension with painting and banging things out and whatever else was associated with it. Mr. Faïman stated that there were classes of uses which were appropriate.

In answer to a question raised by someone in the audience and inaudible to this listener, Mr. Faïman responded that it was purely speculation and that he would tend to speculate that it would probably not, since once the variance had been granted, the tendency would be to say "we considered it and this is what we decided was appropriate". Mr. Mitchell explained that once a variance passed with conditions, the new owners did not have to come back to the Board since the variance stood with the property unless they wanted conditional variances.

In response to a comment made by Mrs. LaRue, Mr. Faïman stated that the ZBA,

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in looking at a variance had to consider that they were making a decision on the use of the property and not the people who were proposing the use. He also stated that his first reaction was that of fairly strong conditions because of the discussion they heard from the residents such as fencing, indoor use only, no body work, and parking in back. Mr. Mitchell added interior sound deadening insulation.

Mr. Faiman mentioned that it was an interesting property and that on previous variance requests, he had commented that "it was about the only place in town I can think of where the hardship is the easy part to prove. The building creates a pretty obvious hardship, most of the other criteria are fairly straight forward and this is one where the property value and affect on the neighborhood isn't explicit in the ordinance but I think it is pretty much implicit in determining criteria".

The Board held a brief discussion relative to conditions and whether or not they could make someone stick to the rules imposed.

In response to a comment made from someone in the audience, Mr. Faiman stated that they had to keep in mind that it was not a vacant lot and they were not replacing a vacant lot with a double garage but rather replacing an empty cinder block building on a parking lot with a garage. After several (inaudible) comments made by two Board members, Mr. Faiman stated that it did not prove the case, but the issue was what the building was being used for. The building was there and he felt that an empty cinder block building was not a good contributor to the neighborhood property values or otherwise.

Chairman Faiman stated that he felt there was a consensus from the Board and asked for a motion which they could construct and come to a decision on. Ms. Harris moved to grant the variance with restrictions:

(a) Stockade fencing six feet in height. Discussion: Mr. Faiman felt that it might be unreasonable to fence in the entire property as there was basically a forward portion which was the parking area, then the building, the work area and a back area which dropped down back into the woods. There was no reason to ask that it be fenced down to the river. He did not feel it unreasonable to ask that it be fenced on three sides. The motion was amended to stated that it be a solid wooden stockade fence at least six feet in height from the sides and rear of the property and that it be maintained in good condition.

(b) Relative to vehicles being stored behind the fence. The condition agreed upon was that they be inside the fence and behind the building.

(c) Regarding parking: There was a brief discussion regarding deliveries, parking for salesmen and customers dropping their vehicles off in the morning. The condition decided on was: Temporary parking only in front of the building (deliveries, salesmen, customer vehicle drop off).

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(d) Relative to exterior work and after comments from the audience, the Board made the condition that there be no exterior work except as was necessary to make it possible to move vehicles inside. Mr. Mitchell stated this would probably be a ten to fifteen minute situation.

(e) There would be no body work or paint.

The condition of some type of insulation panel was discussed. Building Inspector Frank Millward's point of view was asked by the Board. After a brief discussion with the audience and Mrs. LaRue, Mr. Mitchell suggested withdrawing the condition. He, however, reiterated to Mrs. LaRue that she should not take what they were discussing personally, as the Board was trying to build a variance that applied to her and anyone else that came after. Mr. Faiman informed the audience that the town had as part of the Zoning Ordinance, unless it was specifically waived, a nuisance ordinance having to do with odors, noise, bright lights, etc. He stated he was unsure how it was enforced but as part of the Zoning Ordinance it was enforceable. This might become relevant in a situation such as this, he said, if the owners did not show due care.

(f) Hours of operation were 8:00 a.m. to 6:00 p.m. Monday through Friday and 9:00 a.m. to 3:00 p.m. Saturdays. There was a brief discussion relative to summer hours but the Board elected not to include that as part of the condition.

Relative to hazardous waste, it was Mr. Faiman's feeling that they might include something about all wastes being disposed of according to appropriate standards, but he indicated that it was implicit in the operation of running a business of that type. It was his understanding from the Building Inspector, that they would not be in business very long if they did not dispose of their hazardous waste properly. They did not need the Zoning Board to regulate that, as they had the State and EPA.

A discussion was held regarding outdoor lighting. Mr. Faiman stated that he too might be concerned if there was a large lamp in the backyard to light up the parking lot or something all night long and his backyard at the same time. Mr. Mitchell asked about a condition of no lighting in the rear towards the residents. After a brief discussion he suggested placing a light on the fence side shining towards the building which would solve the problem of not shining towards the neighbors.

Mr. Millward pointed out the nuisance ordinance regarding light. Mr. Mitchell stated, therefore, the neighbors had a recourse under the nuisance ordinance if the light shined too brightly and if it affected them. Again he reiterated to Mrs. LaRue, that she was not the only one they were discussing, the variance was forever.

Mrs. Nilsson read the motion back (see original minutes). Chairman Faiman asked if anybody in the audience saw anything blatant that they had missed or gotten terribly wrong since they wanted to get it right the first time.

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A question was raised about hours of operation and dropping off vehicles earlier. Mr. Mitchell pointed out that the ZBA was not an enforcing agency and they would not be strict at all. Mr. Faiman said if it happened once, who would do anything about it? If it happened regularly, somebody would be in the Selectmen's Office and they would take appropriate action. The enforcement of the conditions was the responsibility of the Selectmen.

Chairman Faiman asked if there was any further discussion on the motion which had been second by Mr. Tuttle. The vote was unanimous with the conditions listed. Written notices of the approval would be sent out within the next week. He explained the procedure that any abutter or person affected by the decision or any party of the decision, the Selectmen or anybody else who could make a case had the right to request a re-hearing of the decision within twenty days of the time the decision was made. In the absence of such a request, the decision of the ZBA became final and there would be no further legal review possible after that time. It also was their recommendation that no construction begin on a variance until that time period had expired.

Mr. Faiman also explained that this was not the last step in the process. The third Wednesday in July there would be a site plan review before the Planning Board. That Board was basically responsible for reviewing the site plan, and their particular concerns might be items such as traffic, parking, signs, doors, public safety issues and generally to review the plan to make sure the ZBA did their "job right".

ATTEST:

Sharon Frydlo
Sharon Frydlo, Acting Recording Clerk

DATED: 7/20/93