

TOWN OF WILTON
ZONING BOARD OF ADJUSTMENT
JULY 15, 1993

Chairman Neil Faïman called the meeting to order at 7:00 p.m. with members Tom Mitchell and Jim Tuttle in attendance along with alternate Cynthia Harris.

**Re-Hearing Request
LaRue/Hussey**

Mr. Faïman explained that the Board of Adjustment was meeting to consider a request for a re-hearing on the variance granted to Mr. & Mrs. James LaRue and Mr. Forrest Hussey to the Intervale Road property. He further explained that the meeting was a public one, as all meetings were under State Statute, however, it was not a public hearing as was the original one. The Board would not take any further input. They would be making a decision on what was filed with the Board of Adjustment and that there may result in a new hearing based on what was discussed that evening. Mr. Faïman pointed out that the same members who heard the original application were in attendance. He said that he would not be reading the entire "Motion for Rehearing" filed by Attorney Michael Iacopino, since it contained a great deal of information, however, it would be part of the file.

He briefly explained the procedure the Board would follow and further informed everyone that on a request for re-hearing, the State law provided that when someone felt that the ZBA had made a mistake on the original application, that Board had the opportunity to see if they made the mistake in re-hearing the application. If they declined to do so, it would then be closed on the Town level and the next step was to appeal the ZBA's decision in the State Court. If the ZBA did decide to re-open the case, it would proceed as before. There were several areas in which a re-hearing could be requested, such as a mistake had been made where there was a legal error or that the ZBA had alleged to misunderstand the ordinance or State regulations and also there was new evidence that was presented which would be expected to change the outcome of the hearing. If it went to court, he said, the court would have the first opportunity to change its own mind and then they would go no further.

The members discussed whether Lot 29 owned by Gill Hargrove and Lot 30 owned by Matthew and Arthur Hodgen were considered abutters. Mr. Faïman said it was very clear to him that based on the tax map, they would not be considered abutting properties. "It is true that the actual land, Lot 30, appears to be more or less across the street at its tip", however he said, the physical land had to be taken into account. Mr. Faïman informed the Board that he had spoken to Town Counsel, who advised that when there was an absence of boundaries, the procedure was to follow the tax map. He suggested that there was no bearing on the argument that an error was made.

Chairman Faïman said that the second point was that the ZBA misapplied the State's criteria for the granting of a variance in the decision that was made. It pointed out that the State had held that the concern was characteristic of the

land and it was not characteristic of the construction or the building on the land. It was his feeling that it was the Board's interpretation that the existing building made it unsuitable for the zoned uses and that was the hardship in the first place. The other Board members concurred.

Relative to the point that it was an existing non-conforming use which did not render the land unique, Mr. Faïman felt that it was irrelevant to the case.

A point was made that the Merit Tool Building had in the past been used for residential purposes, Mr. Faïman said that he saw no evidence to that fact and that it was not suitable for residential purposes.

It was also pointed out in the Motion that the ZBA had previously denied a variance that was similar on the same site. Specific reference was made to Alvara Pabon whose proposal was for a used car lot. Mr. Faïman felt that the fundamental use of auto sales was an outdoor use with the current proposal being minimal activity with minimal outdoor parking behind the building. The Board also concurred. Mr. Faïman pointed out that part of the grounds for denial of the Pabon application was because of traffic. He felt the issue of traffic impact was very different in nature from the occasional drop off and picking up of vehicles and the ongoing visiting of clients to the car lot. The exterior fundamental use was different than the interior use of repair work.

Relative to the school bus lot, Mr. Faïman indicated that this matter came out at a Planning Board hearing during the time when the bakery was considering the site, that it was the job of the School District to put the school bus stops in appropriate places. "Basically you can't tell a landowner he can't use his property because we want to use it for a school bus stop", he said. Mr. Tuttle stated that the bus could travel through Intervale Road and stop at some other point, other than at this particular one.

Mr. Faïman said the seventh point was that the lot did not meet the requirements for a commercial use as stated in the Commercial District Zone because of frontage. He felt that this particular point may or may not be valid since the variance was granted for usage and not frontage. The lot was presently Residential, he said. Mr. Mitchell asked if it wasn't grandfathered? Mr. Faïman stated that the frontage was grandfathered, however, he didn't know if it would hold or not if someone chose to argue that the use was not permissible because of the frontage. He further pointed out that the applicant could go to the Planning Board and they could say there wasn't adequate frontage for a commercial use or they could say that it was grandfathered, and if this was the case, it would come back to the ZBA. Mr. Mitchell felt that it was inclusive one within the other for a grandfathered use. "The whole package is grandfathered for industrial use. All we are doing is looking to see if this commercial use needs a variance."

The eighth point was that the applicant failed to establish that the variance would not result in diminishment of property values in the area. Mr. Faïman stated that in every case one party says property values would not diminish and the other says they will. In all the years he served on the Board, this had never been attested to, he said. It is an area in which, if the ZBA

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decides their judgment was one way, the Court could always say the ZBA was wrong. Mr. Faïman felt that what was presented, there would be no diminution of values. He further stated that "I think the comment in here would be that it could not be proven one way or other whether property values will be affected". Mr. Mitchell pointed out that if it could not be proven one way or the other, it was not going to decrease.

Point number nine being that the Board was misled concerning the existence of other commercial type uses in the neighborhood, specifically a real estate office, kennel and a trucking business. Mr. Mitchell felt that the Board did not place any credence on that part of the argument. Ms. Harris agreed. Mr. Faïman said that was his decision as well. The kennel was as offensive at the other end of the road.

Chairman Faïman asked the Board if there was any further discussion relative to the arguments that were raised and reviewed? There being no further debate, Mr. Mitchell moved that based on the fact that the Board did not have sufficient grounds for a re-hearing, that they do not grant one. The motion was second by Ms. Harris. The vote was unanimous - four to zero.

Chairman Faïman informed those in attendance that the next step in the process for those who felt the decision was still incorrect, had the opportunity to appeal to the State Superior Court within thirty days. The basis being what was passed during the July 15th presentation. A formal letter of the Board's decision would be sent to Attorney Iacopino as representative to the Landry's and various abutters, along with one to the LaRue's and Forrest Hussey. He pointed out that a site plan review was scheduled with the Planning Board on July 21st.

In response to a question raised by Richard Rockwood, Mr. Faïman pointed out that the law basically stated that everything that was going to be argued had to be here and that it was his belief that the Superior Court hearing the case had the right to accept additional information if they wanted to. Mr. Rockwood asked if it could then be returned to the ZBA for another re-hearing? Mr. Faïman indicated that "yes" that was the case and it could be endless.

A question was raised by a member of the audience as to whether the members met together in advance of the meeting to discuss the re-hearing. Mr. Faïman stated that the Board had read the contents of the "Motion for Re-Hearing" but did not discuss it prior to the meeting, as it would have been in violation of the law.

Minutes

Mr. Mitchell indicated that he had some reservations about the minutes of the June 14th meeting. Too much had been abbreviated and summarized, as there was a great deal more that happened at the meeting than was indicated in them. Mr. Faïman stated that he tended to like more detail, but it cost time. Mr. Mitchell felt that should not be an issue for a case such as this. He requested that the minutes be redone, since they might go to court. Mr. Faïman agreed with Mr. Mitchell in that the minutes should give the information that was presented


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at the meeting. Mr. Mitchell felt that the process of the Board's deliberation was important and wondered if the tape was still available, since the Board had asked the Secretary not to destroy them until the minutes had been approved. He then moved that the minutes, if possible, be redone. Mr. Tuttle second the motion with all in favor.

The Board held a brief discussion on whether they could have elaborated more on the Findings of Fact relative to the building being unsuitable for residential use and expensive to do; that the variance was given from residential zoning and not from industrial use and that they could have stated they did not find any substantial impact of property values on the neighboring properties.

Mr. Mitchell moved to adjourn the meeting at 7:40 p.m. The motion was duly second with all in favor.

ATTEST:



Sharon Frydlo, Acting Recording Clerk