

POST

TOWN OF WILTON

ZONING BOARD OF ADJUSTMENT

MAY 11, 1994

VOTING BOARD: Chairman Neil Faiman; members Steve Blanchard, Tom Mitchell & Jim Tuttle; alternate member Joanna Eckstrom.

CLERK: Diane Nilsson

AGENDA: Carolanne Sargavakian - Special Exception
Marguerite & Robert Landry - Variance
Marc McCalmont - Special Exception

Chairman Faiman called the meeting to order at 7:30 p.m. and stated that he, Mr. Mitchell & Ms. Eckstrom had visited all three sites under consideration earlier in the evening.

Case 5/11/94-1 SARGAVAKIAN

Carolanne Sargavakian, Lot H-034, 505 Abbot Hill Road, in the Residential/Agricultural District requests a Special Exception under the terms of Section 5.3.6 & 6.6.1 of the Wilton Zoning Ordinance to allow a preschool in her home.

Ms. Sargavakian stated that she presently has a preschool in her home with 7 children, ages 3.5-5 years. The preschool operates Tues - Fri, 8:30 a.m. - 12 noon. She currently has one co-worker, uses 50% of her home, has a large yard and a large paved area for parking. She wishes to increase the size of her preschool to 12. She stated that with 12 students, there would most likely be between 8 & 10 cars at drop-off & pick-up.

Mr. Faiman read Section 4.4 of the Wilton Zoning Ordinance concerning Special Exceptions and questioned whether enough off-street parking exists.

Mr. Faiman then read a letter from Olga S. Brigham & Theodore F. Brigham of 476 Abbot Hill Road expressing much concern regarding increased traffic on Abbot Hill Road and on-street parking at and near the Sargavakian home, which they have observed. They expressed their concern that increasing the preschool operation would make these problems worse.

Mr. Faiman stated that it is necessary that there is enough off-street parking and that it is up to the applicant to be sure that all cars coming to the home know that they must not park on the road and that they use the off-street parking.

Dick Rockwood, Abbot Hill Road, expressed concern about more traffic on Abbot Hill Road and stated that he is against the increase in size.

Mr. Mitchell asked Ms. Sargavakian if 12 cars can park in the driveway. She stated that she thought they could if she showed everyone where to park.

Mr. Rockwood stated that Ms. Sargavakian does keep her driveway well plowed and he has not seen more than 2 or 3 "strange" cars parked in her driveway at any one time.

Ken Sargent, Abbot Hill Road, suggested painting parking slots on the driveway. The Board felt that staggering arrivals & departures might be a better solution. The parking issue and the traffic issue were considered as concerns and were addressed by the Board. The remaining standards were found to be met.

MOTION: Mr. Blanchard moved to approve the application with the following stipulations: that a staggering arrival & departure plan be in place so as not to create undo traffic problems, and that clients be clearly notified in writing of the fact that all parking must be off-road. The motion was seconded by Mr. Mitchell with all in favor.

Mr. Faiman stated that the application was approved with the attached stipulations and the applicant will be receiving written notification of approval from the Board. 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, May 31, 1994 and must fully specify all grounds on which the rehearing is requested.

Case # 5/11/94-2 LANDRY

Marguerite & Robert Landry, Lot L-026, 31 East Intervale Road, in the Residential District, requested a Variance to the terms of Section 5.2.3 of the Wilton Zoning Ordinance to legitimize an existing shed within the lot setback, eight feet from the property boundary.

Ms. Landry stated that they purchased the property, with an existing shed, in 1983. In 1985 the shed collapsed. They then rebuilt the shed, doubling its size, on approximately the same spot. They did not obtain a building permit and were unaware that they were required to do so. In 1988 they received a complaint that the shed was too close to the property line. In 1993 they received a similar complaint from the Town.

The shed currently sits 8' from the property line. The ordinance requires a 15' setback.

Building Inspector Frank Milward presented court documents: Town of Wilton vs Robert Landry, dated 3/22/94. Mr. Faiman read the document aloud.

Mr. Faiman stated that the Board could find a variance not needed in this case because of a grandfathered use clause referring to the shed, however, the Zoning Ordinance states that a grandfathered use cannot apply when a structure has either been enlarged or rebuilt after damage exceeding 50% of its market value.

Mr. Faiman reviewed the five criteria that must be met in order for the Board to grant a variance. He further stated that the Board has no statute of limitations. therefore, the Board tries to consider the variance request as if, in this case, the shed were not yet built.

Jack Skelly, Intervale Road, stated that he felt criteria # 3 was not met in this case.

The Board felt that the best way to look at this request is to disregard the history of the shed and look at it as if it were a brand new shed.

In discussing the hardship criteria (#3), Mr. Landry stated that if the shed is moved to the right to allow a 15' setback, he would have no way to drive his truck to the back of his property.

Dick Rockwood, Abbot Hill Road, stated that if the shed had remained the size that it was originally, possibly the Landry's could have put it 15' from the setback and it would not infringe on the driveway. They also could have put the shed where the pool is. He also stated that the setbacks were voted on by the Town and should be adhered to.

Ms. Eckstrom felt that because the lot is long and narrow, strict enforcement of the setback requirement would restrict the use of the property & would create a hardship.

Mr. Faiman stated that the State courts have held that there isn't a fundamental right of property owners to have a garage on their property. ie - not having a garage does not constitute a hardship. On the other hand, this Board has a history of bending over backwards to allow people a reasonable placement of garage-like buildings on their property. We have tended to find that if someone wants to have a garage they should be able to do that, and we have allowed them to go into setbacks to accomplish that.

Marc McCalmont, 57 Stiles Farm Road, wondered if there was a current complaint from an abutter, and if not, why do anything?

Mr. Rockwood responded that the Town has voted in these setback requirements for the good of the entire community, not just abutters.

Mr. Faiman stated that the zoning ordinance is supposed to be a set of uniform rules. It is admittedly true that infractions of the ordinance tend to go ignored until someone complains about them. You can draw your own conclusions whether that's a deficiency of the enforcement process or whether that's a sign of good common sense, arguments could be made either way, but in principle the ordinance ought to be enforced regardless of whether there's someone complaining about the violation of it. If you don't enforce the ordinance, it means you don't believe in the ordinance. And the abutter who is protected is not only the one who lives there today, but the one who may live there in the future. That's the argument. Not simply whether a neighbor cares today.

The Landry property is 82' wide in the front, 88' wide in the back and 400' deep. There is one foot between the house and a Town easement on the right side of the house.

Ms. Eckstrom felt that the property is narrow and therefore there exists a hardship in this case in that the shed, placed within the setback, is in the best possible place.

Mr. Rockwood stated that there is room to move the shed 8' to the right and back some.

Ms. Eckstrom stated that moving the shed closer to the house could decrease the property value. Mr. Rockwood concurred. She also stated that moving it would affect the aesthetics of the neighborhood.

Mr. Faiman stated that the argument would be that if having the shed in a legal place would be such a disadvantage to the property and the neighborhood, then the appropriate thing to do would be not to have a shed.

Mr. Faiman further stated that it is extremely hard to find within the language of the law, the ordinance, the statutes & the court rulings etc. a justification for granting the variance. So we have to ask ourselves whether we can manage to

stretch the interpretation of the law enough to convince ourselves that this is an appropriate thing to do and that it would also stand up in court.

Ms. Eckstrom reiterated that the property owners have a reasonable right to put up a shed in order to enjoy the full use of their property and in fact there is no other reasonable place on the property to put this shed.

Mr. Rockwood questioned the use of the shed. If it is for the storage of items for the Landry's business, it would not be considered a reasonable right.

Ms. Landry responded that they store lawn, garden & pool items in the shed.

Abutter Helen Egan asked why we are having these problems. She has no problem with the shed where it is.

Mr. Faiman reiterated that the motivation behind the enforcement action is irrelevant to this Board. The question is whether a variance is legally justified. Our only question is whether there is justification for granting a variance.

MOTION: Mr. Blanchard moved to grant the variance as presented, seconded by Mr. Tuttle.

VOTE:	Ms. Eckstrom	yes
	Mr. Tuttle	yes
	Mr. Blanchard	yes
	Mr. Mitchell	no
	Mr. Faiman	no

Mr. Faiman stated that the variance was approved 3-2 and that the Board will now come to an agreement on the grounds for granting the variance. 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 May 31, 1994 and must fully specify all grounds on which the rehearing is requested.

VARIANCE CRITERIA AGREED TO BY THE MAJORITY

1. The proposed use would not diminish the surrounding property value because **a shed has been on this exact site for over 15 years without any diminishing of property values in this neighborhood.**
2. Granting this variance would be in the public interest because **moving the shed the extra 7' would place it too close to the house and make it an eyesore and possible fire hazard.**
3. Denial of the variance would cause unnecessary hardship because of the following special circumstances which make this property unique from other properties in the same zone: **The lot is 82' wide in front & 88' wide in back and 400' deep. On one side there is 1' between the house and the Town's right-of-way. The applicants are allowed a building as accessory use in the Residential zone. The current placement is reasonable because of the uniqueness described above.**
4. Granting the variance would do substantial justice because **the property owner is allowed reasonable use of his property as a residential lot.**
5. The use is not contrary to the spirit of the ordinance because **granting the setback variance allows reasonable use of an allowed accessory building.**

Mr. Faiman wanted it noted that he does not find argument #3 (hardship) compelling because he does not find the right to a shed argument compelling.

Mr. Rockwood made a public statement: "This is one of the most absurd decisions ever made by the ZBA in the Town of Wilton in its history."

Case # 5/11/94-3 McCALMONT

Marc McCalmont, Lot A-014, 57 Stiles Farm Road, in the Residential/ Agricultural District, requested a Special Exception under the terms of Section 6.6.1 of the Wilton Zoning Ordinance to permit the design, testing & assembly of hifi loud-speakers as a home occupation.

Mr. Faiman repeated that three Board members did visit the property earlier in the evening.

Mr. McCalmont explained that he wishes to use two rooms on the first floor of his home for an office and a demonstration room. He will use the basement for proto-typing, final assembly & testing. At this point he works alone. He stated that if his business grows beyond the limitations of home occupation standards, he would move it to a more appropriate location.

UPS usually comes 2-3 times a week. All business is done inside the house. His home sits on 11 acres.

Mr. Faiman stated that he felt the assembly, a couple of demos & a couple of UPS deliveries a week is no problem for the area, but if it became more than that it could be excessive. If the operation changes, it must be made clear that the applicant must again come before the Board for review.

Mr. Faiman asked Mr. McCalmont if he felt "client visits by appt. only" was too restrictive. Mr. McCalmont said no, that would be fine.

MOTION: Mr. Blanchard moved to approve the application with the following restrictions: a.) client visits to be by appointment only, b.) use to remain strictly secondary & incidental to residential use. The motion was seconded by Mr. Tuttle with all in favor.

Mr. Faiman stated that Mr. McCalmont would be receiving written notice of approval in a few days. He also 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, May 31, 1994, and must fully specify all grounds on which the rehearing is requested.

NEW BUSINESS

MINUTES - February 9, 1994

MOTION: Mr. Blanchard moved to approve 2/9/94 minutes as written, seconded by Mr. Tuttle with all in favor. Mr. Faiman & Ms. Eckstrom abstained.

MINUTES - April 13, 1994

MOTION: Ms. Eckstrom moved to approve the 4/13/94 minutes as written, seconded by Mr. Tuttle with all in favor. Mr. Mitchell abstained.

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NEW BUSINESS

Mr. Faiman introduced Carol Roberts to the Board. She has applied to the selectmen for the position of ZBA alternate member.

A motion was made and seconded, to adjourn the meeting. All were in favor. The meeting was adjourned at 9:25 p.m.

Diane Nilsson

Respectfully submitted,

Diane Nilsson. Clerk

Posted: 5/17/94