

TOWN OF WILTON
ZONING BOARD OF ADJUSTMENT

JULY 12, 1995

VOTING BOARD: Chairperson Neil Faiman; members Steve Blanchard, Tom Mitchell, and Carol Roberts; alternate member Joanna Eckstrom.

CLERK: Paula Spear

AGENDA: Grayson Parker - Variance.
Roger and Kent Chappell - Variance.

Mr. Faiman called the meeting to order at 7:36 p.m. and stated that since there were only 4 Board Members present at this meeting Mr. Parker wanted his hearing postponed until next month. Mr. Faiman further stated that there would be a discussion about Mr. Parker's case at the end of the meeting.

Case # 7/12/95-2 CHAPPELL

Mr. Barry A. Greene authorized to represent Roger and Kent Chappell, Lot E-28, Route 31, in the Industrial District, requested a Variance to the terms of Section 8.5 of the Wilton Zoning Ordinance to permit a residential dwelling on the lot.

Mr. Faiman stated that all Board Members except Mr. Blanchard looked at the site this evening.

Mr. Greene stated that this lot is two parcels that were merged in a subdivision that has since been de-subdivided. He stated that the property was zoned Industrial around 1989, that it was subdivided and unsuccessfully marketed as Industrial. He stated the property was then de-subdivided, returning it to the way it was originally was, no longer Industrial lots, still in an Industrial Zone. Mr. Greene stated that the prospective buyer of this property wants to build a single residence. Mr. Greene then discussed the Variance Criteria as were written in the Application for Appeal.

There was discussion about what the correct Lot Number is because of the fact that at one point the lot was subdivided. Mr. Faiman looked at the past files and found that on 8/18/94 the Wilton Planning Board revoked the approval of the subdivision plan of land for the Souhegan River Industrial Park. It was determined the parcel in question is Lot Number 27 and that there are papers on file which state it was reverted to being the two original parcels.

Mr. Mitchell stated that the spirit of the ordinance states there will be no residential development within this zone and he does not believe the criteria has been met. He stated he agrees with everything Mr. Greene stated but that it does not cut it with being able to give a Variance.

Mr. Faiman stated the lot may be unique in being close to the well but that doesn't appear to make it uniquely difficult to use it industriously. The problem with using it industrially is the lack of a market for industrial property, not the well, and the lack of a market for industrial property is universal throughout the town. He further stated he does not think there is a unique hardship.

Mr. Mitchell commented that this is the kind of case that belongs back into the town to rezone this area and perhaps this area does not deserve to be an Industrial lot. He further stated that the Zoning Board is not here to change zoning.

Mr. Faiman stated there does not seem to be any disagreement on the Board and asked if anybody would like to make any last comments and there were none.

MOTION: Mr. Mitchell moved to deny the Variance for Residential use on an Industrial lot, seconded by Mr. Blanchard with all in favor.

Mr. Faiman stated the Application for Variance has been denied and that Mr. Greene will receive written Notice of Decision in the mail. 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, August 1, 1995, and must fully specify all grounds on which the rehearing is requested. (N.H. RSA 677:22)

REASONS FOR DECISION

The hardship criteria was not met in that it was not unique. Mr. Faiman stated that when the Ordinance says specifically you may not do something, there has to be an obvious reason why allowed uses are impossible.

Case # 7/12/95-1 PARKER

Grayson L. Parker, Lot J-116, 42 Island Street, in the Residential District, requested a Variance under the terms of Section 5.3.7C of the Wilton Zoning Ordinance to continue parking and have turn around area within setback.

Mr. Faiman stated that this was not a hearing. He stated that Mr. Parker was given a Variance from two sections of the requirements for his proposed use and having given him the Variance proceeded to approve the Special Exception that he requested. He referred to a portion of the Minutes of the Planning Board Meeting when Mr. Parker took his Special Exception to the Planning Board. He stated the Planning Board said they couldn't approve his site plan because he did not meet Subsection C of the requirements for this Special Exception and therefore Mr. Parker has filed an Application for a Variance for Subsection C of this Special Exception which was on the agenda for this evening, however, he wants to be sure that he gets a full 5 member Board to hear his application. Mr. Faiman raised his concern to the Board that he thinks the Planning Board is out of line on this and he then passed out a suggested letter which he proposed that the Zoning Board should send to the Planning Board which explains why he believes the Planning Board is out of line. He stated the point is that the Planning Board is arguing that they cannot take the site plan because a requirement for the Special Exception has not been met, but the Zoning Board is the sole judge of whether the requirements for a Special Exception are met or not, and that the Zoning Board granted the Special Exception. He further

stated that the Zoning Board, having granted the Special Exception, it simply is not in the Planning Board's jurisdiction to say that Special Exception is invalid. Mr. Faiman stated that a Special Exception granted by the Zoning Board and not appealed is, by definition, a valid Special Exception. Mr. Davidson of the Planning Board felt that a letter from the Zoning Board is all that would be needed, stating that a Variance was also given for the parking and setback. Mr. Faiman suggested sending a letter from the Zoning Board to the Planning Board (copy attached).

MOTION: Mr. Blanchard moved to send the attached letter to the Zoning Board with an added statement mentioning parking and turnaround, seconded by Ms. Eckstrom.

VOTE: Mr. Blanchard - YES
Ms. Eckstrom - YES
Mr. Faiman - YES
Ms. Roberts - YES
Mr. Mitchell - ABSTAIN

NEW BUSINESS

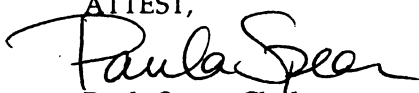
MINUTES - June 19, 1995

MOTION: Ms. Eckstrom moved to approve the 6/19/95 minutes as written, seconded by Mr. Mitchell.

VOTE: Ms. Eckstrom - YES
Mr. Faiman - YES
Ms. Roberts - YES
Mr. Mitchell - YES
Mr. Blanchard - ABSTAIN

A motion was made and seconded to adjourn the meeting. The meeting was adjourned at 8:30 p.m.

ATTEST,


Paula Spear, Clerk

Posted: 7/17/95 Town Hall

enc. (1)

To: Town of Wilton Planning Board

From: Town of Wilton Zoning Board of Adjustment

Date: July 12, 1995

Subject: Grayson Parker, J-116, Site Plan Review — Preliminary

cc: Grayson Parker
Silas Little, Town Counsel

Dear Sirs:

We have observed in the minutes of the June 21 Planning Board meeting that "Mr. Whitehill advised that the way the plan was, he [Grayson Parker] should have requested a variance from (c) and without a variance from that, he still had to comply with it."

Under state law, the ZBA has exclusive authority to determine whether a proposed use satisfies the requirements for a special exception as set forth in the Zoning Ordinance. The ZBA having granted a special exception, no other body (except the superior court, on appeal) has the authority to make an independent judgment that the proposed use does not satisfy the requirements set forth in the Zoning Ordinance.

Since the ZBA granted a special exception to Mr. Parker under the terms of section 5.3.7 of the Wilton Zoning Ordinance, for the use indicated on the plans submitted by Mr. Parker with his application, which included the location of the proposed parking spaces: therefore, the special exception granted to Mr. Parker includes permission to use the parking spaces as indicated on the submitted plans.

It is outside the jurisdiction of the Planning Board to reject Mr. Parker's application (or impose additional restrictions) on the ground that his proposed use does not meet the requirements of section 5.3.7, when the ZBA, in granting the special exception, has already found that the proposed use *does* meet those requirements. The Planning Board could have requested a rehearing of the ZBA decision, if it felt that the special exception should not have been granted; but having failed to do so, it can not now set aside the special exception.

If you have any questions on this matter, please consult with Town Counsel, who has already confirmed this to the ZBA Chairperson.

Sincerely,

Neil Faiman
Chairperson, Wilton ZBA