

TOWN OF WILTON  
ZONING BOARD OF ADJUSTMENT

AUGUST 9, 1995

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

CLERK: Paula Spear

AGENDA: Victor Lushear - Variance.  
Barbara J. Walcott - Variance.

Mr. Faiman called the meeting to order at 7:40 p.m. and stated that in theory the Lushear case should be heard first, but since Mr. Lushear was not there that the Walcott application would go first. Mr. Faiman stated that all Board Members except Mr. Blanchard visited both properties just before the meeting.

Case # 8/9/95-2 WALCOTT

Barbara J. Walcott, Lot H-110-01, 392 Captain Clark Road, in the Residential/Agricultural District, requested a Variance to the terms of Section 6.1 of the Wilton Zoning Ordinance to permit two buildings on one lot with separate dwelling units in each.

Mr. Faiman stated that since the noticing on this may have been a little vague he would like it to be noted that what the issue involved in the Variance is that the Zoning Ordinance in the General Residence and Agricultural District, which is the district in question, says any use is permitted which is permitted in the Residential District under the same provisions as in the Residential District; and the requirements for the Residential District say only one dwelling per lot is allowed except as provided by the Cluster Development Ordinance. He stated the question here is the desire of the applicants to put two dwellings on a single lot, which is not allowed by the ordinance, subject to Variance application. He further stated that there is written approval from Mrs. Walcott for her daughter Brenda Creighton to present the case.

Brenda Creighton stated they are seeking to convert an existing barn into housing for herself, her husband, and daughter. She stated the current house has 3 children and 5 adults living in it and that it is too crowded, and they don't have the money to move. She stated they would like to convert the barn a little at a time as they got the money.

Mr. Faiman asked if there were any questions from anyone. He stated that legally for the Zoning Board to grant a Variance it is necessary for the board to be able to find that the use will not diminish surround property values, that it will be in the public interest that denial of the Variance would cause unnecessary hardship because of unique conditions of the property, that granting the Variance would do substantial justice, and would not be contrary to the spirit of the ordinance. He further stated that it is the Board's job to find whether they think the above conditions are satisfied, but that if Ms. Creighton would like to present arguments why she believes they are satisfied it would simply the Board's process of trying to find them. Ms. Creighton stated she felt this would not diminish the surrounding property values. Mr. David Creighton, Brenda's husband, stated he has been living at his mother-in-law's home for 5 years. He stated the 2-story barn is just standing there and that it has a concrete floor and that it wasn't

being used. He stated his sister-in-law has moved in with her 2 children and boyfriend and the house has gotten way too crowded because the house technically is built for only one person. He stated the attic was converted to 2 bedrooms. Mr. Creighton stated the barn has electricity in it, it is pre-metered and it has been there for 12 years. He stated John Staiti has been there to do a perk test. He measured the frontage as asked, and it measures 279 feet. Board members looked at the Site Plan Map and confirmed the measurement as being correct at 279 feet.

Mr. Blanchard stated the hardest criteria to meet is the hardship criteria without using personal reasons; it has to be addressed to the property itself which makes it unique from others. He further stated the hardship listed on the application was strictly personal and asked if Ms. Creighton could address that in a different manner to her benefit. While Ms. Creighton was thinking about this Mr. Faiman asked if there were any questions or comments. Ms. Eckstrom asked if test pits were done and Mr. Creighton said Skip Watkins did perk tests and soil samples and has all the information; and Mr. Watkins was waiting to hear what the town was going to do before he submitted the results to the State for the septic system. Mr. Creighton was told by Mr. Watkins that all the tests passed and the test pit was left open for further testing. Mr. and Mrs. Creighton then pointed out on the map where the proposed septic system would be located.

There was further discussion about what makes this situation unique for granting a Variance. Mr. Faiman stated that to grant a Variance the Board has to find something about the property which means that using it as the Zoning Regulations require would be an unreasonable restriction and that to restore justice we should alter the Zoning Regulations, or the Zoning Restrictions in this particular case--what is different about this property that makes the Zoning inappropriate or unfair as it is applied to that property. There was further discussion to see if there was any other way of looking at this situation. Mr. Faiman stated there doesn't appear to be anything exceptional about the property to justify a Variance. Mr. Blanchard stated that, in essence, the zoning isn't hurting the use of the property being used as residential. He stated he personally could relate to wanting to keep the family together but there are guidelines the ZBA has to follow and be able to justify in a court of law if it came to that.

Mr. Faiman stated the property could be used for 2 family use if the existing house were converted into a duplex, for example, by adding on to it. He stated duplexes are allowed, but that 2 separate independent dwellings on the same property are not. The Board determined that the lot is not subdividable.

There was more discussion about the options available and many suggestions were given -- from adding on to the existing house to making the barn into a duplex and tear down the house -- all of which would require the input of the Building Inspector. Ms. Eckstrom suggested applying for a Variance to reduce the lot size requirements to allow a subdivision. Mr. Faiman stated that is an avenue that may be taken and the Board cannot say what the results would be if they came in for such a Variance. The Board pointed out they would have to submit a plan considering frontage and wetlands and that it would involve survey costs, all with no guarantee.

MOTION: A motion was made by Mr. Tuttle to deny the application for the second dwelling, seconded by Mr. Blanchard, with all in favor.

### REASONS FOR DECISION

The hardship criteria and spirit of the ordinance criteria were not met.

Case # 8/9/95-1 LUSHEAR

Victor Lushear, Lot D-106-3, 15 Seagroves Street, in the Residential District, requested a Variance to the terms of Section 5.2.3 of the Wilton Zoning Ordinance to permit an addition to his house which is within the set back requirement.

Mr. Lushear feels the current state the house is in is not habitable for 2 people. Mr. Lushear stated he wants to add a room where the patio is now, so he could make the current living room/dining room/laundry room into a bedroom so he wouldn't have to use the attic, which only has enough room for a mattress. He stated the lot is shaped like a V with the house stuck in the middle, 6 feet on one side is the Seagrove property and then it abuts a 20 foot right of way with the property line right in the middle. He further stated that a 10 x 16 foot addition would make it without infringing on the right of way and it won't stick out further than the existing patio. Mr. Lushear stated the house is only 630 square feet and is not big enough in his opinion for 2 people to live in.

Mr. Faiman asked if there were any questions. Mr. William Abbot, an abutter, expressed his concern and Mr. Faiman showed him the map and explained what Mr. Lushear wants to do. Mr. Abbot stated he has no land to speak of on that side and feels it would crowd right up to the line. There was more discussion and Mr. Faiman stated the important thing is that Mr. Lushear is not proposing to build into the right of way and that the right of way will stay intact. Mr. Abbot said he has no way of knowing of how it will be until it is built and that is the only access he has of getting to his barn and expressed his concern about cordwood being piled there. Mr. Abbot stated he would not be in favor of it.

Mr. Pete Setaro, also an abutter, stated he lives in the mobile home across the street and feels any upgrade to the property will be a big improvement to the whole street. He stated he has been trying to sell his house for 2 years.

Mr. Faiman stated there is a clause in the Zoning Ordinance which has been used in the past: Section 16.3, which allows a Special Exception for reduced setbacks in situations where the dimensions of the non-conforming lot would otherwise prevent compliance with the setback requirements of the underlying district and the proposed development is in keeping with the existing development of the neighborhood. Mr. Faiman stated he did not know if they could grant a Special Exception when the application was for a Variance. There was a discussion among the abutters about the care of the road.

Mr. Faiman stated the house is a subminimal house which could be made more adequate if it were not for the configuration of the lot. He further stated that as far as the spirit of the ordinance is concerned, that clause about Special Exceptions for Reduced Setbacks, even though we do not grant that particular Special Exception, indicates that the spirit of the ordinance is to vary setbacks where there are unique lot configurations. That is, he stated, we are not going against the spirit of the ordinance, the ordinance specifically addresses the issue of unusual lot configurations in another section.

Mr. Faiman stated the only issue he sees as being a question is impact on Mr. Abbot's access to the back of his barn. He stated that was defined as a 20 foot right of way being adequate to provide that access and so long as the proposed construction does not impact on the right of way, that access should be adequately protected. Ms. Roberts clarified with Mr. Lushear that his plans were for a 16 x 16 foot addition, and no larger. Mr. Lushear stated that is almost the same size as the existing patio. At this time the Seagroves, also abutters, stated that the addition is all right with them.

MOTION: Mr. Blanchard moved approve as per the submitted plan for a 16 x 16 foot addition which will not impinge on the adjacent right of way, seconded by Mr. Tuttle with all in favor.

Mr. Faiman stated that Mr. Lushear will receive written Notice of Approval in the mail. He further stated that the Selectmen, any party to the action or proceeding, 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 Monday, August 28, 1995, and must fully specify all grounds on which the rehearing is requested. (N.H. RSA 677:22)

#### VARIANCE CRITERIA

1. The proposed use would not diminish the surround property value because it could improve surrounding property values.
2. Granting this variance would be in the public interest because it will allow a reasonable use of the property.
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: It is a subminimal house which could be made more adequate of it were not for the configuration of the lot.
4. Granting the variance would do substantial justice because it would allow a reasonable use of the property with no corresponding impact to anyone.
5. The use is not contrary to the spirit of the ordinance because Section 16.3 explicitly recognizes the need to make exceptions in cases of unusual lot configurations.

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NEW BUSINESS

MOTION: Ms. Eckstrom moved to refund Mr. Grayson's fees for his Variance application last month, seconded by Mr. Blanchard, with all in favor. Mr. Faiman stated he will pass a note along to the Town Office asking them to refund his fees.

MINUTES - July 12, 1995

MOTION: Ms Eckstrom moved to approve the 7/12/95 minutes as written. The motion was seconded by Mr. Blanchard, with all in favor.

A motion was made and seconded to adjourn the meeting. The meeting was adjourned at 8:53 p.m.

ATTEST,

A handwritten signature in cursive script that reads "Paula Spear".

Paula Spear, Clerk

Posted: 8/14/95