

May 10, 1977

The Board of Adjustment met on Tuesday, May 10, 1977 in the Antrim Town Hall to hear the petition of Gardner Marshall Owen and Madeline Elizabeth Owen (Case No. 29) for a variance to be allowed to place a mobile home on 6½ acres on Concord Road (old Route 202). The roll call was as follows:

Benjamin Pratt, Chairman	- Present
Carole Webber, Vice Chairman	- Present
Eugene Bried	- Present
Robert B. Flanders	- Present
Patricia Thomas	- Absent
Ralph Proctor, Alternate	- Absent
George McLean, Alternate	- Present
Catherine C. T. Dik, Clerk & Alternate	- Present

Also present were Mr. and Mrs. Gardner M. Owen, Patricia Thomas, Emery Doane, Mr. and Mrs. Kerwin Ellsworth. The Chairman called the meeting to order at 7:45 P.M. and called on Alternate George McLean to sit on the Board in the absence of Mrs. Thomas. The Chairman announced that we are required to keep accurate records so we have a recorder which will be running during the hearing and when the minutes are written the tape will be erased. We ask anyone who desires to speak to identify himself. The Chairman outlined the procedure for carrying on the hearing, and then the Clerk read the application and reported that notices were sent by certified mail, return receipt requested, to the petitioners and abutters Mrs. Patricia Thomas, Mr. Kerwin Ellsworth, Garold Rhoades, Robert Mulhall all of Antrim, and Mr. Maurice Parker of Hillsborough. All receipts have been received. Notices were sent by regular mail to all members of this Board, the Selectmen, Town Clerk, Town Counsel, and the Chairman of the Planning Board. Notice was published in the Peterborough Transcript on April 28, 1977 on page 12 and posted on the Town Bulletin Board.

Mr. Owen was then called upon to present his case. He said that because the lot is narrow he would like to have a narrow home with a front yard and trees along the road in the back. He does not want to cut down too many trees--just enough for the mobile home. He intends to put it on a foundation. At the time they bought the land they were told that there were no restric-

tions; that they could have a mobile home there. He does not know when this law was passed. The Chairman replied that zoning modifications were adopted this last March which require a variance to be granted, and the Owens remarked that they had bought the property the year before.

The Chairman asked if anyone would like to speak in favor of the application, and as there was no one he then called for anyone who would like to speak in opposition. Mrs. Thomas introduced herself as an abutter and a member of the Planning Board. She said she felt that the ordinance we passed is very significant in showing what we want in the Town of Antrim. She realizes there are two other mobile homes existing there, and this is one thing the town was taking into consideration at the time that this ordinance was passed. She thinks it would be very much in violation of the ordinance if this petition were granted. She does not feel that there is any hardship involved, or any cause for hardship, because there are six and one-half acres there upon which to build.

The Chairman asked if there were any questions. Mr. Flanders said he would like to pinpoint the land between Mrs. Thomas' and down the old road. There is a trailer on the old road going south. Is the land between that and Mrs. Thomas' house? The reply was yes.

Mr. Bried asked, have you bought the mobile home? Reply: No, I want to get the septic system and foundation in first.

Mr. Flanders: When did you purchase the land? Answer: Last July 1976 we made a down payment. Mr. Flanders: You made the statement that you were led to believe you could put a mobile home there. Could you tell me who made that statement? Reply: Bob Watterson. He said the only restriction was a house must have so many square feet and you could not cut down the trees for 25 feet from the road. Mr. Flanders: Were you led to believe that if you wanted to put a mobile home there you would have to come before the Board of Adjustment? Reply: We thought we could build a house or put a mobile home there. The Chairman pointed out that even at

that time a special exception was necessary. Mr. Flanders asked what function was Mr. Watterson's in the deal? Reply: He was the real estate agent. He showed us the property. The Chairman: I think that the point is that even at that time a special exception from this Board was necessary. It was not accurate that there were no restrictions. In order to have put a mobile home on that property at that time it would have been necessary to come before this same Board and get a special exception. In the meantime the law has changed and it is now necessary to get a variance for that. The ground rules are somewhat different from a special exception. Nevertheless there were requirements even at that time. I think it is important that you understand that.

Mr. McLean asked if Mr. Owen made any attempt to see the Selectmen, an attorney, or get a copy of the Zoning Ordinance to find out whether what you were being told was true? Answer: No, we were just up here on vacation for only a couple of days.

Mr. Bried remarked that they were misled. Mr. Flanders: It is safe to say that in 1977 the Ordinance was tightened up, but it is also safe to say there was an Ordinance in Antrim in 1976. The rules were there so that you would have had to come to this Board for a special exception. Mrs. Owen remarked that Mr. Watterson did say something about for every five houses there could be a mobile home. Mr. Flanders said he would like to have Mr. Owen explain more, if he can, what he means by a "hardship". You mention in your presentation building costs etc. means a hardship. When you bought the land you intended to put a mobile home on it? Answer: As far as building, it is a matter of travel back and forth overseeing it while still working. It is quite a distance. Mr. Bried asked if they had ever considered a modular home. Reply: No. In order to put one in it would require clearing a large area for the cranes to work.

Selectman Doane said that Mr. Owen came to the office several weeks ago inquiring about the requirements for putting in a septic system. I asked

if he intended to build and he said no he wanted a mobile home. At that time I told him the Zoning Ordinance had recently been changed and as a result a mobile home could no longer be put on that lot. I further explained that he had the right to appeal to this Board. I also pointed out to him that I made no statements to him regarding the possible outcome of this hearing. I also pointed out that the Ordinance was changed by Article 22 last March's Town Meeting Warrant by a majority vote of 184 to 120 prohibiting a mobile home within the Town of Antrim except in a duly licensed mobile home park. I did explain he had the right to appeal, but he wanted to try. I want to be sure he understands he was given the proper information. Mr. Doane asked Mr. Owen if he agreed with all these things. The answer was yes. The Chairman: Well, I guess that is perhaps what we have the responsibility of determining.

Mr. Flanders asked when the Owens would be retiring. Answer: In two years. What I want to do now is do the septic system, the foundation, and the lawn, and then the mobile home next year, probably in 1978 when I retire. Mr. Flanders said he had no further questions.

The Chairman asked if anyone else had anything else to say or ask. If not we will close the public hearing and adjourn to make a decision. I think that relatively soon we can determine whether or not we will have a decision tonight. The Board has 30 days in which to give an opinion, but if it appears we will have one tonight I will come out and let you know whether it is worthwhile to stick around.

The hearing was closed at 7:35 P.M.

The Board then met in executive session. Mr. Flanders remarked that he finds it very difficult to restrict mobile homes to a park and not have a park in which to put them. Mr. Pratt said that we have the responsibility of acting within the framework of the law. If the Ordinance is found

lacking in some respect then our decisions could be set aside on that premise.

Mr. Flanders said he thought he had given Mr. Owen every opportunity to explain the hardship and his only one was that it was too far to come back and forth to supervise any building. Mr. Pratt then reviewed the Ordinance and State statute regarding a variance and what constituted a hardship. Mrs. Webber said she has compassion for these people because she thinks they have been had. She is infuriated with these real estate people who mislead just to sell a little piece of land. Mr. McLean pointed out that as soon as any proposed zoning change is made public and published in the paper, from that time on until it is voted on by the town we cannot do anything. If these people had come in last November they still would have had to get a special exception from the Board even if they bought the land in 1976 with the intent of putting in a mobile home. Mr. Pratt said that if the condition of this man's lot were such that for some fluke in the topography the only way he could use that property would be to put a mobile home on it instead of a conventional house, that would constitute some grounds for the Board to make a variance. Mr. Bried said he could not see any such possibility. He went on to say that he was not in favor of the amendment to the Zoning Ordinance and, therefore, would abstain from voting in this case. He feels very bitter about the whole thing. Mr. Flanders remarked that under the ordinance we cannot do otherwise than deny. Mr. Bried: O.K. Then why do we let these people spend their money? Mr. Flanders: Wait a minute. These people had been warned by Mr. Doane, as he has just brought out, that they would not have a chance but they still wanted to try. Mr. Bried: It says in black and white that they cannot have a mobile home in this town. Why do we let them spend their \$35 and go through all this? Just refuse to take their application. I just think it is such a waste. Mr. Flanders: They were advised by the Building Inspector. We cannot refuse someone going before the Board of Adjustment. He thought he had a hardship case. He was encouraged by the

person who sold them the land and I suppose he thought that would have some bearing. Mr. Bried; I know very well that Bob knows the zoning as well as anyone in this town. I sat down with him one time and he explained the whole thing to me.

Mr. McLean asked if he could make a motion to vote, and the Board agreed they were ready. They returned to the public hearing and Mr. Flanders

MOVED: That the petition of Gardner M. Owen and Madeline E. Owen to place a mobile home on 6½ acres on Concord Road (old Route 202) be denied.

Resolved: That the applicants' claim of hardship was not sufficiently proven.

SECONDED: By Mr. McLean

VOTED: In favor: Benjamin Pratt
Carole Webber
Robert B. Flanders
George McLean

Abstained: Eugene Bried

In opposition: None

The Chairman then stated that the Board is somewhat saddened and troubled by this decision, but under the Ordinance and the State law regarding granting a variance it would seem that we had no choice but to render this decision. He suggested that Mr. Doane might like to let the Selectmen know that Mr. Owen was led to believe that a mobile home was permitted. Mr. Doane agreed that the real estate people should be notified of the Ordinance and reminded that it must be adhered to. The Chairman remarked that he would be troubled if this Board had to deal with this sort of thing in the future. He is not sure the Board could do anything--people must act individually. He would also hope that we could find some way so that any real estate dealer would make any purchaser, or potential purchaser, of real estate in the town aware that not only a careful scrutiny of the ordinance would be required but that a continuing familiarity is necessary as changes may occur. It is quite possible that the Zoning Ordinance in

Antrim may continue to change year by year for some period of time and other people might get caught in a similar change. Mr. Flanders suggested that all real estate agents operating in town be given a copy of the Ordinance, and Mrs. Webber suggested that all new property owners in town be given one also. Mr. Doane asked that a copy of the minutes be sent to the Selectmen.

The Chairman said that this concludes the public hearing.

Mr. Flanders then remarked that he was very disturbed by something he heard the other day. A tract of land of 30-40 acres (the Hettie Brown place) has been sold and the purchaser finds he has no access to it; it is landlocked. He was told that an old logging road was a right of way. Mr. Pratt remarked that he believed that if a piece of land is surrounded by only one abutter the owner would have the right to get to it, but Mr. Flanders said that the law requires that a logging road must be given a right of way but as soon as the logging is done then the right of way ceases. This logging was done many years ago and the right of way has not been used since. Mr. Pratt said that he thinks the law requires that one must provide access but one might refuse. Then one can get in someone to appraise how much it might depreciate the property of the abutter. He could get compensation for that amount and it might cost the purchaser a fortune to get the right of way. One could fight it indefinitely.

The Board then turned its attention to the minutes of the Kramer case. The Chairman asked if anyone had any corrections or additions. Mr. McLean felt that it was a mistake to base our decision on the fact that zoning ruled it out, which is not true. It was pointed out that we based our decision on the Planning Board's letter of not finding the site suitable in the light of the zoning amendment. Mr. McLean felt that the decision should have been based on the traffic problem. It was poor public relations not to give all reasons in the decision. No judge is going to say that sixty cars is not congestion.

The majority of the Board felt, however, that we should stick by our decision even if it seems pretty foolish. In any case the time for appeal is now passed. It was moved to accept the minutes by general agreement. The question was then raised about the balance due from Mr. Kramer for the expenses of the hearing. He paid \$30 in advance and was notified in writing that there was a balance due of \$5.22 but has not responded to this notice. The Clerk asked for instructions, and it was agreed to write it off as a bad debt.

Mr. Flanders then moved that the minutes of the Woods and Peterborough Oil Co. hearings be accepted, and it was so voted.

Mr. Flanders remarked that he is bothered by real estate agents. He referred to the Maude Robinson house on the corner of North Main Street and Elm Street. He wonders how it can be advertised for a three apartments place when there is obviously not enough land for parking for three cars. It was pointed out that they would have to come before the Board for permission for the third apartment. But Mr. Flanders repeated that it has been advertised that way; a man could come in and claim a hardship. Mr. Pratt said he had seen the advertisement but had not thought about the three apartments. He had thought about the parking. That is a big barn and maybe you could get three cars abreast. They would have to come to the Board for the third apartment. It was remarked that we require parking space for two cars for an apartment, so this might entail six cars in all.

The meeting was adjourned at 8:45 P.M.

Respectfully submitted,

Catherine C. T. Dik

Catherine C. T. Dik, Clerk