

August 1, 1978

There was a meeting of the Board of Adjustment on Tuesday, August 1, 1978 at the Town Hall at 7:30 P.M. to hear the petition of Richard L. Watterson (Case No. 44) on an appeal from an administrative decision of the Board of Selectmen of June 19, 1978.

The roll call was as follows:	A. George McLean, Chairman	- Present
	Eugene Bried, Vice Chairman	- Absent
	Carole Webber	- Present
	Patricia Thomas	- Absent
	Robert B. Flanders	- Present
	James Dennison, Alternate	- Present
	Catherine C. T. Dik, Alternate & Clerk	- Present

Also present were Richard L. Watterson and his attorney Silas Little III of Brighton, Fernald, Taft, and Hampsey, Mr. and Mrs. McCabe and their attorney, Larry Smith of Sulloway, Hollis, Godfrey & Soden, Emery S. Doane, Selectman, and Lloyd N. Henderson, Town Counsel.

The meeting was called to order at 7:35 P.M. and the Chairman announced that Carole Webber, Robert B. Flanders, James Dennison, Catherine C. T. Dik and himself would serve on the Board with Mrs. Dik as Clerk. He then outlined the order of procedure, and the Clerk read the petition and accompanying letters and exhibited an accompanying plan. Notices were sent by certified mail, return receipt requested, to the petitioner and all abutters and those within 200 feet of the bounds of the petitioner's land, and that all receipts had been received; by regular mail to all members of this Board, the Selectmen, Town Clerk, Town Counsel, and Chairman of the Planning Board. Notice was published in the Peterborough Transcript on July 20, 1978 on page 18 and posted on the Town Bulletin Board.

Mr. Silas Little, representing Mr. Watterson and taking the place of Mr. Falby who had another meeting that evening, then presented the case. He said that Mr. Watterson has a construction business and presently stores his equipment at his place of residence on Summer Street. He wishes to

move it to a lot on Route 202. Although he has not actually done a title on it, it is a lot of record for the last twenty years of 100 feet deep with frontage of 300 feet. The application sets forth what he proposes to do--to erect a building 36' x 40' with a cement foundation with super-structure of barn board to be used for indoor storage of equipment. He has three trucks, a back hoe, a loader and two dozers. He would use the building to work on this equipment. As shown on the accompanying sketch the property presently has small hardwoods and softwoods on either side of the proposed building which he would leave along the road for a screen. He proposes to develop this area more or less in the center, put in a gravel driveway, and put in this building of one level. Storage of some materials will be behind a stockade fence as noted on the plan. The building would be placed 69 feet from the center of Route 202 or 44 feet from the edge of the pavement and would have a 20 foot rear setback with approximately 130 feet from each side line. The complaint and reason for the appeal is that the applicant feels there is an inconsistency and contradiction in the Zoning Ordinance. Article V specifies 1/2 acre in the Water District (the Precinct), with a minimum depth of 100 feet and a minimum frontage of 100 feet. It seemed to Mr. Little that if you try to apply that particular stated minimum depth (100 feet) to the catchall of permitted uses of Article V, A, 1a (permitted uses (1) through (5a-h), then it is impossible to have anything on a lot this size. This seems to be an unreasonable and inconsistent application of the Zoning Ordinance because anything that falls outside the first four paragraphs for the Business District as stated by the Town for small businesses etc., in order to carry on the spirit of small businesses and industries, to impose 150 feet setback to a small lot restricts the space for development and raises problems with side lot lines and rear lot line setback because if you are allowing, as you do in the first part, 36,000 square feet interior, then it makes it impossible to get maximum use in the Water

Precinct given these restrictions. In other words, Mr. Little thinks you have legislated an impossibility. He thinks this Water District with a minimum of 1/2 acre you have to go to a 50 feet setback from the center of the road to allow a business to build with only a 50 feet setback. To illustrate, if your minimum lot size is 1/2 acre and you allow 36,000 square feet interior it would require a building 60' x 600' or somewhat smaller that would not occupy more than 50% of the lot area and comply with all restrictions you cannot make the maximum use allowed under the Zoning Ordinance in the Water District. As this is a Business District and not a Rural District, say, with conservation restrictions, it only makes sense to have some continuity in the whole Ordinance to allow Mr. Watterson to erect his building with 50 feet setback from the center of the road. In fact the applicant's setback as shown on the plan is 69 feet from the center of the road which gives the maximum setback for a lot only 100 feet in depth; he is short only 6 feet from the edge of the paved road. It is an important consideration to try to carry out the spirit of the Ordinance to allow business in this area and to have some sensible setback in the light of an existing lot. For that reason he appeals the Selectmen's decision. He feels that the Selectmen made an error in denying the building permit.

The Chairman galled for any questions, and Mr. Flanders said he was curious why the hearing notice read as it did. Everything you said requires a variance. Why did you make it read as it does? Mr. Little replied that Mr. Falby made it out first. He felt that this is a matter of right interpretation and a variance is a matter of some discretion of the Board. If the applicant does not get an interpretation he is applying for he can come back and apply for a variance. Mr. Flanders asked if Mr. Falby was advised that he should probably apply for a variance? Mr. Little replied that Mr. Falby is an attorney and he advised Mr. Watterson.

Mr. Dennison remarked that Mr. Little implied that the Ordinance is improperly written. Why apply for an appeal? The way the Ordinance reads now the Selectmen properly interpreted it. Mr. Little replied that the question is whether it is a 50' setback or a 150' setback. Mr. Dennison answered that that would be a rewriting of the Ordinance not an interpretation of the way it is written. You are saying that you want to put an article in the next town warrant and that you are entitled to do. Mr. Flanders said that he agreed that there are several portions of this land outside the Precinct that do not qualify, but Mr. Little averred that the land was within the Precinct which Mr. Flanders questioned. Mr. Doane, Selectman, corroborated that it is within the Precinct. Mr. Flanders repeated that he felt that it would have been much simpler to have come in for a variance of the setback requirement and not with an appeal from an administrative decision. Mr. Dennison remarked that a lot being in the Precinct requires 1/2 acre with not less than 100 feet frontage and 100 feet depth but that did not contradict and negate the part that the building shall be set back 150 from the edge of the road.

Mr. Henderson said there is no doubt that the form (building permit application) that Mr. Watterson got did say 50 feet on it. That was erroneous because 50 feet is for only certain uses. The crucial thing to look at here is basically Article V, A, sections a through (h) under 5. You have all those conditions regardless. Mr. Watterson said that before he bought he asked what was the building code and Mr. Doane said there was none. Mr. Dennison pointed out that the requirement of 50 feet from center line was changed to 50 feet from edge of road by the March 1978 Town Meeting vote. Mr. Henderson, who happens to represent the seller of this property, said he checked to make sure the property was in the Precinct. The State requires 33 feet setback. He also said that Mr. Watterson had not bought the property at the time of his application, and Mr. Watterson replied that he had a gentlemen's agreement and a deposit on it and as far as he was concerned he has purchased the land.

The Chairman asked if there were any other questions or if anyone else wished to speak, and as there were none he called for those in favor to speak. As there were none he called for those in opposition and Mr. Smith, representing Mr. and Mrs. McCabe, said they were opposed to granting any building on this property not only because of setback problem but because it does not meet other requirements. He found that the setback does not satisfy the requirement. There is obviously a safety hazard with trucks that would have to back out on the highway. It is filled in wetland which could not support a septic system. Does he have proper State permits? Has there been any percolation test made? Drainage of oil and septage could go into the brook and right into the Contoocook River. Is there ample parking for all the trucks and equipment? Any trucks should be parked beside or behind the building. There should be plants or shrubs for screening. The Chairman asked if he had seen the plan and handed it to him.

The Chairman asked if there were any questions, and Mrs. Webber asked Mr. Watterson how many employees he had. Answer: "Two." Would there be any sinks or toilet facilities? Answer: "No." What are the working hours? Would you be out early or late? Answer: "From 7 A.M. to 3:30 P.M." Not working late at night? Answer: "Possibly in the winter if I had a breakdown. I plow for the State."

Mr. McCabe asked if this proposed use had been checked with the Environmental Control people, and pointed out that it is all in the flood control. Mr. Little said he believes the Town designated it for flood control under flood insurance, and that was confirmed. He continued with the remark that we all know how Mr. Watterson handles his vehicles now in town and that he was sure he is just as anxious to continue to handle them well and will not have any traffic problems.

Mr. Dennison said he sticks to favoring that the applicant should have applied for a variance under the Zoning Ordinance. Mr. Flanders agreed; and asked that Mr. Little convey to Mr. Falby this feeling. Mr. Watterson replied that it does not require a variance--"the paper says 50 feet." Mr. Flanders said that we have to interpret what is in the Ordinance. We have no power to rewrite the Ordinance. A variance would have been much simpler to go for. He did not think the application was proper the way it was written up. Mr. Little said he would relay this information to Mr. Falby.

Mr. McCabe said that that job should have 100,000 square feet instead of the 30,000. The trucks will have to either back in or back out. The whole lot is not big enough for the job. What they are trying to do is copy Harriman down the road and it cannot be done.

The Chairman then summarized the hearing by saying that there seems to be a difference of opinion as to why Mr. Watterson is here tonight, and whether he should not be here asking for a variance instead of an appeal from an administrative decision. We have heard satisfactorily both sides of the story. We will now go into executive session. We hope to have an answer for you very shortly. We will come and tell you if it will be delayed and you can determine whether you will wait for the decision. He declared the hearing closed at 8:05 P.M.

In executive session Mr. Henderson, Town Counsel, said that the case fits under 5 (a) through (h) of Article V, Section A and 80% of what you have heard is irrelevant,--all of Mr. McCabe's remarks in particular. Mrs. Webber remarked that what we should be deciding is an appeal from an administrative decision. Mr. Henderson agreed with Mr. Falby that the Ordinance is inconsistent enough to call for an appeal. Mr. McLean asked if he is turned down on this will he appeal to the court? As an administrative decision? Mr. Henderson replied that one can always appeal. If the Board upholds the decision he

can appeal its decision or come in for variance. Because Mr. Falby feels very strongly there are inconsistencies and contradictions he made this appeal. Mr. Doane gave him some wrong information (the form). Nothing wrong with what he did. Mr. Henderson added that the Board did not write the Ordinance and you have to decide whether there was wrong in what the Selectmen did. As there were no further questions for Mr. Henderson he was dismissed, but remarked before leaving that in Lot Sizes and Areas (page 9b of the Ordinance) if the applicant fits under that and if he comes under the Water Precinct then scrap the other part.

Mrs. Webber pointed out that in Article V, Section A it gives lot sizes and areas for those within the Precinct, and asked just how the Precinct is defined. Mr. Flanders replied that anybody who is a user of town water is in the Precinct. If they complain that they do not use town water they get an abatement. There are many in the Precinct who do not use the town water and he, therefore, felt they really are not in the Precinct. He cited the Cook property opposite the cemetery on Rte. 202 and thinks the Precinct line should be there because he does not pay the Precinct tax.

Mr. McLean said that Article V, Section A, 1 through 5(a) to (h) (pages 9 and 9a of the Ordinance) very clearly states 150 feet from the edge of the pavement. Referring to page 9a and the rest of 9b Mr. McLean contended that he cannot be set back 150 feet. Therefore, according to Mr. Little he could not put a maximum building on it; he would not have enough land. If he comes back what will be his argument; in fact, what was their argument in the first place? Mr. Flanders said that is what he was trying to find out. If they do not have 150 feet what was their argument for appealing the administrative decision in the first place? He hated to say it on the record but he thought some attorney in Peterborough would like to rewrite the Zoning Ordinance of the Town of Antrim.

Mr. Dennison said he was more charitable. He thought the attorney was misled by the form Mr. Watterson had. He was told by the Selectmen which route to take but he chose to take his own route. Mr. McLean said he felt that there was absolutely no reason stated as to why the application was in the form of appealing an administrative decision. They have not given us a reason except they do not agree with the way the Ordinance is written and, therefore, no matter what it says the Selectmen should have granted it because it was incorrectly written. Mr. Flanders did not think he had a very good argument. He tried to say that because of the lot size the 150 feet should be applied to a lot outside the Precinct of two acres; within the Precinct you are foolish to ask for 150 feet setback. Mr. Flanders continued that you can build on a half acre lot but you have to come to the Board of Adjustment for a variance for the setback, and Mr. McLean asked if everyone agreed with that. There was general consent. Mr. Dennison thought we should refer this confusion to the Planning Board, but that this has no bearing on this particular case. Mr. Flanders said that during the hearing he tried to pin them down to the fact that the problem is setback. According to Mr. Little the Selectmen interpreted the setback incorrectly. He qualifies on lot size. Anything less than 150 feet must require a variance. He cannot meet the setback of 50 feet from the edge of the road required for a lot in the Precinct; he has only 44 feet. Mrs. Dik remarked that the Contoocook Development Corp. across Rte. 202 from this site and within the Precinct has in place a foundation with a setback of 150 feet from the edge of the pavement. They had no trouble interpreting the Ordinance.

The Chairman announced that he understands that Mr. Lo Castro (Franklin Pierce Inn) will get an attorney and appeal.

The Board then returned to open session and Mr. Flanders



MOVED: That the Selectmen's interpretation of Article V,  
Section A be upheld.

SECONDED: By Mr. Dennison

VOTED: In favor: James Dennison  
Robert B. Flanders  
A. George McLean  
Carole Webber  
Catherine C. T. Dik

In opposition: None

The meeting was adjourned by unanimous consent at 8:45 P.M.

Respectfully submitted.

*Catherine C. T. Dik*

Catherine C. T. Dik, Clerk