

September 19, 1978

There was a meeting of the Board of Adjustment on Tuesday, September 19, 1978 at the Town Hall at 7:30 P.M. to hear the petitions of Richard L. Watterson (Case No. 44a) for a variance of setback requirement, and George A. McNally (Case No. 46) for a variance to allow additional apartments.

The roll call was as follows:

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

Also present were Miss Evelyn Perry, Mrs. Philip Lang, Mrs. John McCabe and her attorney Larry Smith of Sulloway, Hollis, Godfrey & Soden, and Mrs. and Mrs. John Shea, Emery Doane, Dr. Alfred Chandler, Lloyd Henderson Wayne Nichols and Robert Stebbings.

The meeting was called to order at 7:30 P.M. and the Chairman announced there would be two hearings that evening. He outlined the order of procedure for the hearings, and announced the Board members serving on Case No. 44a Richard L. Watterson as:

A. George McLean, Chairman
Carole Webber
Robert B. Flanders
James Dennison
Catherine C. T. Dik

Mrs. Thomas disqualified herself so the Chairman appointed Mrs. Dik to take her place and also serve as Clerk.

The Clerk then read the petition and exhibited an accompanying plan and reported that notices were sent by certified mail, return receipt requested, to the petitioner and all abutters 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 September 7, 1978

on page 17 and posted on the Town Bulletin Board. The Clerk read a letter from Mr. Falby regarding the former appeal submitting the application for a variance. The letter was placed on file.

Mr. Watterson was then called on to present his case. He first explained that his attorney, Mr. Falby, was not able to be there because of another meeting. He said that when he originally bought the land he checked with the State for setback requirement and called the Antrim Building Inspector to make sure that it was in the Water Precinct and what the requirements were. The State setback is 33 feet; the building permit of the Town setback is 50 feet in the Precinct. He asked at that time if there were other codes and was told there was no building code, but he probably overlooked nonconforming buildings which seems to be what he is building. The depth of the property is only 100 feet. The minimum setback from the center of the road is 50 feet, with 20 feet from the sides and back. This applies to all in the Precinct except in the Business District outside the Precinct a greater setback is required. This is what I went by and checked at that time. Since then it has been changed in the building permit. This mistake does not mean anything because it is a mistake by the Town. Since then I found out that it does not go from the center line of the road. The property is only 100 feet deep so I cannot comply with the 150 feet setback requirement. It is in the Business District; it is in the Precinct. After going through the Zoning and all that and finding out what I come by it is what is considered a nonconforming building. Keeping everything out of sight so far as zoning requires is all right. Things will be stored out of sight at the side. The only thing he has any problem with is with the setback. So far as comparing with others in the construction business he does not think that is fair either. The main reason for moving from his house where he is now is to get out of town and get better police protection and better advertising. He does not intend to have a lot of equipment around. He needs a place where he can work inside and to keep tools. 90% of the time most of the equipment is out of town at work.

What he has is all registered. He tries to keep everything on the road. He cannot go 150 feet for setback; if he could he would. There is no land to be purchased behind it. For his type of work there is room for it, and it will not be a detriment to the Town.

The Chairman asked if there were any questions from the members of the Board. As there were none, he called for those in favor to speak. Mr. Watterson said that at the last meeting he did not know before that he could have people come in and speak in favor. There is nobody at the cemetery who objects, nobody in that whole area; he does not know who he could get to come down so he did not bother to ask anyone. He could not find anybody who would object to it.

Wayne Nichols said that he did not know whether it was in favor or not, but if all his equipment is registered he could park it all down there anyway without any permission.

Mr. Smith asked Mr. Watterson whether or not money and deed have changed hands, or is there just an agreement in case he gets a variance then he will close? Mr. Watterson said he owns it, has a deed, and has paid for it.

Mr. Henderson, as a private citizen, asked Mr. Watterson if he had actually made any efforts to acquire any property behind this lot. The reply was, "No. It was evident that Mr. McCabe was not in favor." Mr. Henderson: "You feel that you are restricted to this lot of land," and Mr. Watterson replied that Mr. McCabe would not sell to Mr. Lane who bought it from Fred Proctor twenty years ago. He was mad that Mr. Proctor sold that piece of land to Andy Lane to begin with. He made inquiries but there was no way to get in touch with Mr. McCabe. When he turned up with a private lawyer and said it was a traffic hazard it seemed hopeless. He was in opposition.

Mr. Smith said he represented Mrs. McCabe. Their opposition was that they felt the variance for this use will be obnoxious, offensive and

injurious to the community. Mr. Watterson would have large construction vehicles backing up into traffic. There possibly would be a wetlands violation. He produced a letter from the Conservation Commission which indicates that there may be a violation of RSA 48:3-A, placing a building on filled wetlands adjacent to State water boundaries. A determination of this situation should be made before the variance should be granted. The Chairman asked the Clerk to read the letter who then placed it on file. The Chairman asked the Town Counsel what authority the Board has in regard to the wetlands act. If there is a violation of the Wetlands Act does the Board of Adjustment have any authority to turn something down? He replied that probably it has none directly. He thought that it might be relevant on the issue of the Zoning Ordinance where it says the use shall not be obnoxious, offensive or injurious to the community, and if there is a variance of the wetlands act then that might be relevant in that respect. Mr. Watterson remarked that the property is a long way from the river--it must be a thousand feet down to the river. There is a stream about a couple of hundred feet from the end of the property. That is no problem. It is not a bird sanctuary; it is swamp and mosquito breeding ground. When he filled there there was not much water. It is the same land as one end of the cemetery where they filled and covered. There is nothing in there as far as bird sanctuaries or anything else. The State had no objections. He did not check the Commission. What does that do? What is wetlands? Mr. Flanders replied that one cannot fill in any places where there is any water. The way they interpret it if there is ever any water there then it is wetlands. It has been interpreted very strictly. Mr. Flanders asked if the Town has a map and the Chairman asked Mr. Doane (Selectman) if the Town has a map showing where the wetlands are and Mr. Doane said he could produce a map of the flood hazard area. After examination of the map it was agreed that the property was not in the flood hazard boundary. Mr. Henderson remarked that the flood hazard boundary map is not necessarily conclusive for wetlands. Mr. McLean sa

then we have not proved anything.

Mrs. Webber asked if the area where Mr. Watterson has filled in is where he would place the building, on the so-called wetlands? He replied yes, that what water might be there is due to the brook. The river is much lower than that. Mrs. Thomas asked whether his trucks will be coming in around 3:30 P.M., and will the trucks be going out at 7:A.M.? Mr. Watterson replied that if they were coming in for repairs they would be coming in then or when they broke down. Mrs. Thomas went on to say that these are times of day when the children will be being bussed. There has recently been a bad accident because of a school bus. Mr. Watterson replied that there is no need to back in or out; there is adequate room to turn around in there. As far as traffic is concerned there is 300 feet frontage, adequate to leave screening and to drive straight in. If 300 feet deep there would be no problem at all.

Mr. Henderson, as a private citizen, asked Mr. Smith whether there was any possibility that Mrs. McCabe would want to sell additional land. Mr. Smith replied that there was not. Mr. Henderson asked how far away is Mrs. McCabe's house, and Mrs. McCabe answered that she did not know how many feet, but that was not a factor.

Mr. Flanders addressed Mr. Watterson saying that if he understands correctly, you would still have a vehicle at your home. Would you go down there and start for the job from there? Would the others do that too? Or would the equipment be left on the job? Reply: "There is only one other driver besides myself, possibly two. The dozer or backhoe would be left on the job." Mr. Flanders said in other words each one of your drivers would get into that truck and go to the job. Every single morning cars would not be going to the garage and drivers transferring to the equipment and then going to the job. The answer was no. Mr. Flanders said that he understands that what you have at your home now would be in the building, and Mr. Watterson replied that he had said

everything could be kept in the building or behind the fence. There would be no great hubbub at the site. Not every truck would be there every day; they would be on the road, hopefully.

Mr. Flanders remarked that he knew of someone who tried to use wetlands and the Fish and Game and Conservation Department observed it and took the person to court. Have you heard from Fish and Game? Mr. Watterson replied that he did not think wetlands was the question; that is up to me to find out whether it is or not. He is trying to find out if he could build.

Miss Perry said that she drives on 202 by this site almost every day. A quarter of a mile north the road widens. If the State should widen 202 will they take abutting property, and if so will it narrow this piece of property too much? Mr. Watterson replied that the road right of way is wide enough to take care of widening. There is a 50-foot right of way; the road itself is only about 25 feet. Mr. Flanders asked if he had anything in writing from the State approving the site. Reply: "No, the driveway was already there." Mr. Flanders asked if he puts a 36 x 40 building with a stockage fence on the north side will all storage be behind this fence? and Mr. Watterson replied yes, and behind the building. Mrs. Webber asked if he would put up a fence on the back, and he replied not the first year but probably would later to prevent stealing my things and fuel, etc. Mrs. Dik asked how much gasoline would be stored there and the answer was none. Mr. Watterson said he could make the building smaller (narrower) if necessary, but the proposed one he feels would be sufficient and he would not have to add on to it later.

The Chairman then summed up the hearing as follows: Mr. Watterson who has come to us for a variance and has explained that basically it is the setback he would like the variance on. We have heard the opposition. If there are not any more questions he believes we can bring the hearing to an end. The hearing was declared closed at 8:10 P.M.

At 8:12 P.M. Case No. 46 George A. McNally was called. The Chairman announced that the same order of procedure would be followed, and that the following would serve on the Board:

A. George McLean, Chairman
Patricia Thomas
Robert B. Flanders
James Dennison
Catherine C. T. Dik

Mrs. Webber disqualified herself, so the Chairman appointed Mrs. Dik to take her place and also serve as Clerk.

The Clerk read the petition and reported that 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 property, 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 September 7, 1978 on page 17 and posted on the Town Bulletin Board.

Mr. McNally then presented his case. First, he cited RSA 31:71 where it says all applicants and all abutters should be notified and asked where does it mention those within 200 feet? Mr. Flanders replied that that is in the Town by-laws. The Chairman said that would supersede the State. Mr. McNally then asked to have the application for a variance read again and said that that stated his case. He added that the lot is two and one-half acres.

The Chairman called for those in opposition to speak. Wayne Nichols asked to have the boundaries read again. He did not think they made the acreage stated but he may have missed one. Mrs. Lang asked how many apartments are there now and how many did he wish to put in. Mr. McNally replied that presently there are four and he wishes to put in two more. Mr. Stebbings asked about parking facilities on the property. Mr. McNally said he thought that within two and one-half acres he could find enough room for the tenants. He asked if there was space available, and the

answer was yes. How many spaces at the present time? At least for 12 vehicles. Mr. McNally said he went before the Selectmen and they denied, saying they have to go by the rule. So far as I know there is more parking than I need. It has town water so that is no problem, and the septic system is all right. As far as depreciating the property around him, no way whatever. That is my case and I feel I should be granted it.

Mrs. Lang asked the Board, if you grant this variance does it stop there or can he continue on and add one or two more? The Chairman replied that he would have to come back to the Board for anything more. Mrs. Thomas remarked that he has a business there now. Is the majority of the parking to be in the rear of the building where you have so much space? The reply was no, it could be in many places. Mrs. Thomas went on to say that at the beauty shop one has trouble in backing up and turning one's car to get out. Do you feel the driveway is wide enough for that? Mr. McNally asked if she had done that herself, and she replied that that was why she brought up the question. Mr. McNally said he has driven there many times and did not have any problem. Dr. Chandler asked if the new apartments are to be on the third floor. The reply was yes, with proper fire escapes and exits. They have been there before, but unfortunately the governing board never knew. They have been used for a number of years, used continuously but not at the present time--not since I bought. Just a few months before I bought the person left. Mr. Nichols asked, if one applies to make additional apartments in one's home does not one have to get permission from the State Water Pollution Board? The Chairman said he believed that it depended upon whether it was an existing building then one does not have to. He assumed he was referring to the leach field. He asked Mr. Nichols if he knew the answer and Mr. Nichols replied that he could not quote it but was pretty sure one has to. Mr. Watterson said it may be required in some instances. If you need to put in a leach field they would come in and require it, but they do not push it because of the pending town sewerage system. At the present time he does not know of any requirement.

Mr. Henderson remarked that he knew of a situation where plans have been approved for a house with two bedrooms but the person finally built four. If people do that and are caught they are in for trouble. He does not know of any enforcement on an existing house. Miss Perry remarked that she thought that that location would be on the new sewer system. It was agreed that it would be. Mr. McNally commented, "This citation is just something handed down in 1949 in Concord -- the variance may be granted for change from four to six apartments where such operation would not depreciate the value of surrounding property and such operation would not depreciate the value of property already existing in the district, and the proposed operation will be entirely consistent with the district and the character and structure shall not be changed..." I, therefore, tell you I am not going to change anything. In fact I will keep that property better than it has been. There will be two more apartments, granted, but it will be kept well, the grounds will be kept well. In order to do what I want to do I feel I should be granted the variance." Mrs. Thomas asked, "What is the hardship?" Reply, taxes, etc. Mrs. Webber asked how many people would be accommodated in these new apartments? Answer: "Me, for one. Both would be one bedroom. Mrs. Webber asked how many apartments now? Mr. McNally replied one for business, not there in the evenings, basically two rooms. There is a small studio, and another on the second floor is a large two-bedroom; on third floor there would be two one-bedroom. How many presently living there? Answer: One.

Miss Perry said she thought it only fair to say that whether Mr. McNally or anyone else owned it, originally that was a one family house. It is the beginning of a residential street. It is at the approach to Antrim. If it has four apartments now with only one person living there, if it goes to six and has outside fire escapes we are only going to proliferate the unsightliness of Main Street. One house on Main Street has fourteen

cars all over the lawn. She does not know why four apartments don't support what was a one family house. How will two more do so? We do have an ordinance that you can have only two apartments in a house. To have two more in addition to the present four would be a mistake. The Church is interested because someone else might some day own it and they might not be good neighbors. We cannot discriminate against tenants so there might be problems like those on Main Street and the Church might be unhappy. Mr. Stebbings remarked that parking was the problem and that is probably the problem with the Ordinance restricting to two apartments and not restricting such things as parking, etc. If the Town does not allow apartments a lot of these old homes will get run down. Just right now the Ordinance says you can only add in one more. In many cases one more will not support the big house. Parking is the biggest problem. Mr. Nichols said he believed there are parking requirements in the Ordinance, but Mr. Flanders said only "adequate parking."

Mr. McNally said if he can refer to Anderson-Nichols report four or five years ago as to the growth of Antrim, Peterborough and southern New Hampshire and southern Vermont Antrim does not appear to be larger than Hillsborough in X number of years. If you try to inhibit growth you cannot show him that the Town is not going to grow. It is whether you like it or not.

Dr. Chandler asked if these two apartments are granted is it possible to attach conditions that require fire escapes to be on the side and parking on the back? If on the front, these deteriorate the appearance of the property. The Chairman replied that any such conditions are possible.

The Chairman asked if there were any other questions or comments. As there were none, he gave a summary of the hearing as follows: Mr. McNally is asking for two more apartments; we have heard his hardship by way of the application and his other comments; and also some people who are opposed. If there are no other questions we will go into executive session. We will not guarantee a decision tonight but we will try. He declared the hearing closed at 8:40 P.M.

In executive session the Chairman asked if everyone had read the minutes of the Davis case (No. 45). If so, he moved that they be accepted as read, and the members so agreed. The Chairman said that it had been brought to his attention that we have five members on the Board. If alternates are present but not called to serve they should sit with the audience. We have always felt it was well to have alternates present to learn. They may ask questions during the hearing, but should not partake in the executive session. The executive session is like a quasi jury. It listens to the case then retires to its chambers. He has been talking with his brother in New Jersey who is on the Board of Adjustment there and he says that whenever a case is appealed the judge goes directly to the tapes (which are not even mandatory), listens and makes his decision.

The Chairman referred to a letter from the Town Counsel. There was some question about Mrs. Dik's status. She is an alternate so if a regular member is absent she can fill in. She is erroneously listed as a member in the Town Report. If there are five regular members of the Board present they must serve before an alternate is called.

The Chairman referred also to a letter from Mr. Falby with regard to Mr. Watterson's petition in which he says if we deny the variance then he will appeal the initial hearing and the variance also. For the appeal we merely vote on whether we want to hear it again. If we vote not to hear then he goes to court.

The Chairman reported in regard to the Davis situation that an appeal for a rehearing from Mr. Fernald of the Brighton office has been received; but then it says that Mr. Davis is trying to buy more property from the Butterfields. Then the Butterfields have to go to the Planning Board. If allowed to subdivide, Mr. Davis will go to the Planning Board with enough land to make the Board's first decision (Case No. 9) stand. We had that huge argument for nothing!

The Board then took up the Watterson case. Mr. Dennison began the discussion saying that at the last hearing on this case the matter of his asking for a variance was the 150-foot setback which applies whether he is in the Water District or not, and that is the part of the Zoning Ordinance which he does not abide by and, therefore, is asking for a variance. He has been asking himself why is there a 150-foot setback. Why is that setback in other towns in the United States, and he answers himself that there are two reasons,--one is esthetic and the second is pragmatic,--safety, space, parking space, turnaround space. Esthetically one is preserving the outlook of one's town and streets without building right up on the street. If one does there is a safety hazard, etc. If we grant a variance on this we should grant it on the basis that in a particularly unique situation the setback is not a necessity. He, personally, cannot feel that this is a unique situation, or that this particular case with these particular conditions and circumstances that the reasons for a variance in setback do not apply. So, he was not enthusiastic about it.

Mrs. Webber said she had been thinking about where Mr. Watterson has his equipment presently where the school children walk back and forth all the time. She personally thinks it would be good to get it out of that area which is a school area and a residential area. Second, if we do not let him build the building he still owns the land; who is going to stop his putting his equipment there? That would be more unsightly than having the building there. Mr. McLean said he disagreed with Mrs. Webber's thinking. The first reason has nothing to do with this variance. If we go to court it would look bad. But Mrs. Webber replied that that is exactly the way she felt--the safety of little children. It is much more hazardous than on the highway where they do not walk. That is the way she felt, and she will stand by it.

Mr. Flanders felt that Mr. Henderson, as a private citizen, presented the case very well by stating that he could not buy any more land. Second, it is in a Business District. He feels this is what the Town wants for these

small businesses to grow to the point where they can put up a building in this District. If, indeed, Mr. Watterson went to another town people would be upset. He will keep it neat, and there is room enough to turn his vehicles around.

Mrs. Webber said that at the present moment he cannot buy more land, but who knows what will happen to the McCabe property in the future. Mr. McLean said that he did not think that should be pertinent to our decision. He then referred to page 15 of the Zoning Ordinance where there are three reasons for permitting a variance. All three of these have to apply.

Mr. Dennison rebutted Mr. Flanders by saying that if it appears that he cannot buy more land and this is the hardship then we should grant the variance for the land he now has; if this is so then anyone can buy a piece of land knowing he cannot use it but intends to use it in such a way that it is in variance, then we should grant a variance. Mr. Watterson is a nice man, but he bought a piece of land not suitable for what he wants to use it for according to the Town Zoning laws. He bought a piece of land where he cannot have 150-foot setback. He did not do this with his eyes closed. The hardship is not that he cannot use the land; the hardship is that he bought a piece of land he cannot use in the first place.

Mr. Flanders replied that he would agree 100% had he bought only this lot from a hundred acre tract but he bought the land as it was for many years, long before zoning. If he bought this land from a five acre lot and he only bought half of it, I would have no sympathy for him whatsoever. That one piece of land cannot be used unless a variance is granted. It is in the Business District. We cannot penalize the buyer of it now for what was done twenty years ago.

Mrs. Dik said that if the variance is granted she would like to restrict it to no parking in front of the building--all to the rear or

the sides. He will need all that space in front for turning his trucks. In the winter snow banks will take up a lot of that space. Mr. McLean agreed with her.

Mr. Flanders moved that the variance be granted as presented on the application. Mr. McLean said he would like to put some restrictions on it. That all heavy equipment should be parked to the side of the building and to the rear, or in the building; and that there will be no inoperable equipment in sight for more than six months at a time; that it is understood that he will use a natural barrier or a fence; and that snow removal be sufficient to make good visibility for entrance and exit. Mr. Dennison pointed out that such restrictions are already contained in the Zoning Ordinance. The motion was then made to read: That the variance be granted with strict attention being given to Article V, A, 1 (Permitted uses), section 5, g, and that it is acknowledged that there may be a problem with wetlands that the owner must contend with. Mr. Dennison then moved the question.

The Board then took up the petition of Mr. McNally for a variance to allow him to make two additional apartments in his property on Concord Street. Mrs. Thomas opened the discussion by saying that his hardship as stated was taxes. If one adds on to a building or makes improvements one is putting on more taxes. If you live in one of the apartments, especially, one is not getting any additional revenue. Also, she has been in there to the beauty shop and has had difficulty with turning her car and getting out onto the street.

Mrs. Dik asked if anyone knew when all the extra apartments were put in? It seems to her there are already two illegal apartments there. Mr. Flanders said he thought it was after the Zoning Ordinance.

Mr. Dennison remarked that in his opinion the applicant has completely failed to establish a hardship; that he needs more money to pay his taxes and maintain his building and that is why he needs more apartments. To him this is not a hardship. The Town has legislated twice against cutting up the old

houses into apartments. It seems to be the concensus of the Town that they do not want multiple apartments in these buildings.

Mr. Flanders, laughingly, said that if having apartments will help one pay taxes and a variance will allow it he wants one. He went on to say that he did not feel that the lay of the land and the building would support six apartments, one with a business. We have a very dangerous intersection there, and the lay of the land and the situation does not warrant it. Monetary considerations do not constitute a hardship.

Mr. McLean then quoted RSA 31:72 Hardship, and said he did not think this was an unnecessary hardship case.

The Board returned to open hearing and presented the motion on Mr. Watterson's case. Mr. Flanders

MOVED: That the variance be granted.

SECONDED: By Mr. Dennison

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

In opposition: None

Conditions: (1) That strict attention be given to Article V, A, 1 (permitted uses), section 5, g.
(2) It is acknowledged that there may be a problem with wetlands that the owner must contend with.

Mr. Dennison MOVED: That the appeal for a rehearing of the appeal from the administrative decision of the Selectmen be denied.

SECONDED: By Mr. Flanders

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

In opposition: None

The motion on Mr. McNally's petition was then read. Mr. Flanders

MOVED: That the variance be denied in accordance with
RSA 31:72 hardship.

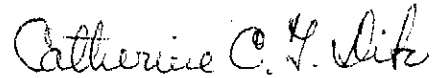
SECONDED: By Mr. Dennison

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

In opposition: None

The meeting was adjourned by unanimous consent at 10 P.M.

Respectfully submitted,



Catherine C. T. Dik, Clerk