

Minutes of the Antrim Board of Adjustment Meeting April 4, 1989

Present: Howard Humphrey, Sr.; Marianne Moery; Tom Curran; Patricia Hammond Grant, Clerk; Mary Allen, Chairman.

The Chairman opened the meeting at 7:45 P.M. This meeting is held to address an application for a rehearing presented by Attorney Lloyd Henderson for his clients Robert and Jerlyn Bryer, relative to case #135 an application for a variance to Article VI Section C.1.a and Article VI Section C.3.b.(1) to place a modular home on a sub-standard lot on Pleasant Street. This Public Hearing was held March 7, 1989.

Mary Allen opened the meeting to consider a request for a rehearing of Case #135 as prescribed under RSA 677:3. The Application was received March 27, 1989, and is considered to be timely filed. The Chairman outlined the procedure for a rehearing as stated in the Board of Adjustment and the N. H. Handbook for local officials 1988 page 40. The Chairman read RSA 677:2 as described in the handbook. Attorney Henderson was present for the Applicant and Donna Schofield and Ken Boucher were present for the Applicant in the matter of Case #135. Lloyd Henderson presented the case for the Bryers' Application for a rehearing. Henderson made reference to the minutes of the meeting clarifying that the application was for sideline Variances only. The Board took up the points made in Henderson's letter to the Board, (copy attached) dated March 27, 1989. Item 1. The consensus of the Board was that it was not something the Board considered. The Board granted the Variance for width. Henderson argued that the minutes reflect the fact that three Variances were considered. Mary Allen said that the Selectmen's Position is that this is a grandfathered lot. Allen stated that if there is a problem the Applicant can ask for an administrative decision. Henderson argued that abutters Joseph Cuddemi and James Cleary were not notified. Mary Allen polled the Board to see if this first paragraph showed any error on the part of the Board. The consensus was that it did not. Henderson argued that Schofield should have been asked if there was another use for the property. Allen stated that this was not a use Variance but a site Variance. After further argument the Chairman reiterated the Selectmen's opinion that this is a grandfathered lot and use. Henderson argued the status of the lot and building with the Board making the determination that this is a single family detached dwelling. Henderson argued that this lot would not be allowed under the present Zoning Ordinance. Mary Allen stated that the most compelling argument for hardship was the size of the lot. The Chairman polled the Board. Is there any new evidence or procedural error outlined in paragraph 2. The consensus being no. Henderson argued about previous cases. The Chairman stated that each case was considered individually. Henderson argued that if there was no trailer on the lot this would not be considered. The Chairman stated that this was not before the Board therefore there was no argument. The basis of the Board's decision is that this is a single family detached dwelling. The Chairman reiterated that the condition of the dwelling is not a part of the hardship. The basis of the Board's decision was that the hardship is in the size of the lot. The members were polled and asked if they wanted to reopen the case and do a site review of the property. The Board was of the opinion that there is no new evidence and that a site review is not necessary. Item 4 of Henderson's letter was discussed with the consensus being that this is out of the Board's hands as the Selectmen have determined that this is not an issue. Item 5 was discussed by the Board with the Board taking the position that they will rely on the Selectmen's interpretation that this lot is grandfathered. The Chairman made the observation that the Board cannot change the request of the Applicant.

The Chairman stated that there is no new evidence in paragraph 4. Henderson stated that he assumed that he had twenty days from April 3 to appeal the issuance of a building permit. Henderson's addendum was discussed with the Board and Attorney Henderson agreeing that in view of the present circumstances it is irrelevant.

Deliberations: The Chairman asked for the Board's pleasure. Marianne Moery expressed the opinion that there is nothing to consider. Tom Curran observed that the Board is looking at a unique and unusual request. Bryer has presented a lot of information but nothing new has been presented. Howard Humphrey, Sr. saw no new evidence. Patricia Hammond-Grant was of the same opinion. The Chairman referring to the Handbook for Board of Adjustment in N.H. stated that each case should be considered individually on the best judgement of the Board. There is no new evidence or technical error. Marianne Moery moved that the Board not grant a rehearing in the matter of case #135. Second Howard Humphrey, Sr. The vote was as follows: Tom Curran, yes; Howard Humphrey, Sr., yes; Marianne Moery, yes; Patricia Hammond-Grant, yes; Mary Allen, yes. Chairman, Mary Allen, informed the petitioner that either party has thirty days to appeal this decision to Superior Court.

The Board discussed the up coming Case #134 David Penny will chair this hearing as Mary Allen will step down. Tom Curran expressed the need for an on site inspection. The Chairman has asked the Planning Board for input and has received a note. The Chair expressed the need for more detailed information. It was reported that both the Chief of Police and the Road Agent have questions about access to this property.

Mary Allen asked about scheduling an annual meeting. She also informed the Board of a Workshop to be held by the Office of State Planning May 6 at Keene from 9A.M. to 3P.M.

Meeting adjourned at 9:10 P.M.

Respectfully submitted,

Barbara L. Elia

3/27/89  
8:35 PM.

LLOYD N. HENDERSON  
ATTORNEY AT LAW  
~~XXXXXXXXXX~~  
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TELEPHONE  
603-558-6004

March 27, 1989

Mary E. Allen, Chairman  
Antrim Board of Adjustment  
Town Hall  
Antrim, New Hampshire 03440

Re: Case No. 135 Donna Schofield  
Application of Robert Bryer and Jerilyn<sup>W</sup>Bryer for Rehearing  
Pursuant to RSA 677:2

Dear Mary:

Enclosed please find Application of Robert Bryer and Jerilyn Bryer for Rehearing Pursuant to RSA 677:2 in connection with the above-captioned Application for Variances which was decided on March 7, 1989.

Please advise me as to when the Board will meet to consider this request.

Thank you for your consideration in this matter.

Very truly yours,  
*Lloyd N. Henderson*  
Lloyd N. Henderson

LNH/lh  
cc: Mr. & Mrs. Robert Bryer

THE STATE OF NEW HAMPSHIRE

Town of Antrim

Board of Adjustment

Case No. 135

APPLICATION OF ROBERT BRYER AND JERILYN BRYER  
FOR REHEARING PURSUANT TO RSA 677:2

NOW COME Robert Bryer and Jerilyn Bryer, of Pleasant Street, Antrim, New Hampshire, abutters and persons directly affected by the decision of the Antrim Board of Adjustment granting the request of Donna Schofield for three (3) variances from the terms of Article VI, Section C.1.a. and Section C.3.b.(1) of the Antrim Zoning Ordinance, by their attorney, and respectfully request a rehearing on said application, specifying as grounds therefor that the decision granting the three (3) variances is unlawful and unreasonable for all of the following reasons:

1. In order for Donna Schofield to obtain the three (3) variances requested, one of which sought to erect a new single-family dwelling on a lot purported to contain 2750 square feet of area (1/16th of an acre rather than 1/8th of an acre as represented on her Application for Variances) where 20,000 square feet of area is required by the Zoning Ordinance (Article VI, Section C.1.a.); one of which sought to erect the dwelling on a lot having 25 feet of frontage where 100 feet is required; and one of which sought to locate said dwelling 2 feet, 11 inches from each sideline where 20 feet is required, she was required to prove the following:
  - a. That no diminution in value of surrounding properties would be suffered,
  - b. that the granting of the variances would be of benefit to the public interest,
  - c. that their denial would result in unnecessary hardship to the owner seeking it,
  - d. that by granting the variances substantial justice would be done, and
  - e. that the use would not be contrary to the spirit of the ordinance. Gelinas v. City of Portsmouth, 92 NH 248 (1952).
2. That said Donna Schofield failed to establish all five (5) of said requirements for variances with respect to each of the three (3) variances sought because the granting of the variance is not of benefit to the public interest and is contrary to the spirit and intent of the ordinance as follows:
  - a. As recited in Article I - General Provisions of the Antrim Zoning Ordinance, the regulations of the Zoning Ordinance are designed: "to prevent the overcrowding of land" (Section B.4.) and "to avoid undue congestion of the population" (Section B.5.). "Such regulations are also made with consideration to the character of the districts set forth and their suitability for particular

uses, and encouraging the most appropriate use of land throughout the Town." (last sentence of Section B.). The purposes set forth above are presumably the justification for the regulations which the Board of Adjustment's granting of the variances violates, i. e. the requirement of 20,000 square feet in area, the requirement of 100 feet of frontage and the requirement of 20 foot sideline setbacks. The public interest, as established by the adoption of the Ordinance by a majority of the Town's voters with these requirements contained therein, would be best served by the transfer and annexation of such a grossly non-conforming lot to an abutting property owner, mostly logically to the owners of the property located directly to the east and south, which property consists of 13.6 acres but contains only sixteen (16) feet of road frontage for access, and is owned by Joseph Cuddemi and James Cleary. In order to serve the public interest, the Board of Adjustment should have inquired of Ms. Schofield and abutters, Cuddemi and Cleary, if present, whether any consideration had been given to such a use, which would be more in the public interest and probably be the highest and best use of the Schofield property. Also, the Board could have inquired of abutter and Appellant Robert Bryer if he would be interested in purchasing said Schofield property for annexation to his property. The assessed value of the Schofield land, as determined by the Town of Antrim Board of Selectmen (Assessors) is \$2000, which when the 54% equalized valuation figure is applied, results in a fair market value of approximately \$3704, and it is believed to be likely than an abutter would be willing to pay said fair market value price to purchase said property. Clearly, the Board failed to thoroughly consider the benefit to the public interest of the proposed use of said property set forth above, and its granting of three (3) variances is of no benefit to the public interest.

- b. To grant three (3) variances for the erection of a new dwelling on such a grossly non-conforming lot is not only contrary to the spirit and intent of the ordinance, but grossly violates the spirit and intent thereof. The granting of such variances places the Board of Adjustment in a position where it would be hard-pressed to deny any future variances for lot size, side setbacks and frontage for the erection of a single-family dwelling anywhere in the Residential District. In light of the Board's prior decision to deny a variance for the erection of a single-family dwelling requested by Hickey Brothers Realty Trust on a substantially larger, more conforming lot, wherein the Board found that "the variance could not be granted without violating the spirit of the ordinance" (Case #106) and its prior decision denying the request of Sandra M. Grant and Arthur Holt for a variance to place new manufactured housing on a completely conforming lot, wherein the Board found that the proposal was "contrary to the spirit and intent of the ordinance" (Case #122), the Board cannot justify its decision in the Schofield case and its finding that the spirit and intent of the Ordinance has been satisfied.

3. The Board could not find unnecessary hardship to exist without in fact viewing and inspecting the Schofield property and obtaining further information concerning the alleged "hazardous" condition of the existing dwelling. The Board's Minutes indicate that an argument was made that Ms. Schofield is a single woman whose income does not preclude (sic) buying another piece of property. Evidence of financial hardship, which the Minutes suggest the Board considered, is, of course, not relevant to the establishment of a hardship for variance purposes, a fact which it is believed the Board has previously recognized in denying the request of Ms. Grant for a variance referred to in Paragraph 2.a. above. (Case #122), and the Board should not have taken it into account as it may have in considering hardship.
4. Although the Board found, as set forth in its Minutes, that there "will be adequate setbacks in the front and rear", an on-site of the property, which the Board clearly should have undertaken, suggests that this is not the case, and that one or more additional variances may be required by Ms. Schofield for the erection of the proposed new dwelling in its proposed location. Pleasant Street, which was laid out in 1787, is believed to have a two (2) rod (33 foot) right-of-way, and its travelled surface is 18 feet according to records in the Antrim Town Office. The Board was shown a sketch which shows the location of the proposed dwelling to be 25 feet back from Pleasant Street, but, in fact, in order for Ms. Schofield to comply with the front setback requirements of 50 feet as measured from the street right-of-way line (Article VI, Section C.3.a. of the Zoning Ordinance), the proposed dwelling would probably have to be located substantially further back on the lot than as shown on the sketch, potentially within 20 feet of the rear line of the property, thus requiring another variance from the rear setback requirements (Article VI, Section C.3.c.(1) of the Zoning Ordinance). It is also possible that when the portion of the property which is in fact within the street right-of-way line is deducted from the purported 110 foot depth of the lot, a variance from the depth requirements of the Ordinance (100 feet as set forth in Article VI, Section C.1.a.) will be required. In any event, the Board had insufficient and inadequate information to determine that the proposed location of the dwelling complied with front and rear setback requirements, and it should grant a rehearing to consider the information set forth herein and view the site to determine if one or more other variances are required. If, in fact other variances are required for the erection of the proposed dwelling, it is believed that the proposed use of the property would further be of no benefit to the public interest and further violate the spirit and intent of the Ordinance
5. In light of all the above, and specifically the fact that the Board had and used inadequate, insufficient and potentially inaccurate information in its consideration of the three (3) request for variances, it should grant the Applicants' request for rehearing so that the information previously presented can be adequately and appropriately re-examined by the Board and by abutters and interested parties, so that new and more accurate information not previously available can be presented and considered, and so that the Board and abutters and interested parties can view the property to see actual evidence relating to the property and the proposed use thereof not previously seen. To fail to grant a rehearing would create an injustice to the Applicants.

March 27, 1989

Respectfully submitted,  
Robert Bryer and Jerilyn Bryer  
By Their Attorney

*Lloyd N. Henderson*

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THE STATE OF NEW HAMPSHIRE

Town of Antrim

Board of Adjustment

Case No. 135

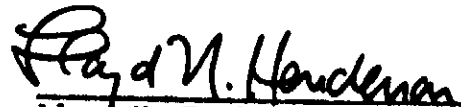
AMENDMENT TO APPLICATION OF ROBERT BRYER AND JERILYN BRYER  
FOR REHEARING PURSUANT TO RSA 677:2

NOW COME Robert Bryer and Jerilyn Bryer, by their attorney, and wish to amend, clarify and correct Paragraph 4. of their Application for Rehearing filed March 27, 1989, by providing the following new information concerning the Pleasant Street right-of-way as follows:

1. Eric F. Tenney, former Selectman of the Town of Antrim and believed to be the resident expert with regard to the history of the establishment of town highways in the Town of Antrim, has indicated to the Applicants' attorney that only that portion of Pleasant Street running from the present Route 202 (South Main Street) to approximately the intersection of High Street, Pleasant Street and Highland Avenue (near the Howard S. Humphrey, Sr. residence) was laid out in 1787 and is two (2) rods (33 feet) wide. The remaining portion of Pleasant Street, including that portion running past the Donna Schofield property, was laid out later, and is presumed to be three (3) rods (49.5 feet) wide, as are virtually all town highways in the Town of Antrim. As a result of this new information, Donna Schofield's proposed new residence would probably have to be located eight and one-half (8 1/2) feet further back than as suggested in Paragraph 4. of the Applicants' original Application for Rehearing, thus making it even more likely that Ms. Schofield requires additional variances from the front and/or rear setback requirements of the Zoning Ordinance.

April 4, 1989

Respectfully submitted,  
Robert Bryer and Jerilyn Bryer  
By Their Attorney



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