

Minutes of the Antrim Zoning Board of Adjustment Meeting July 16, 1991

Present: Mariann Moery, Chairman; Joseph Timko; Harry Page; and Boyd Quackenbush, Alternate.

The Chairman opened the meeting at 7:40 P.M. and outlined the procedure to be followed for the Public Hearings. She also introduced the Board sitting for these hearings: Joseph Timko, Harry Page, Boyd Quackenbush and Mariann Moery, Chairman.

Cheshire Oil Company concerning a Variance to Article XVII, Section C of the Antrim Zoning Ordinance. The Applicant proposes to replace the existing non-conforming 42 square foot sign with another non-conforming 32 square foot sign on property located on Route 202 in the Village Business District (Tax Map #1A Lot 202). The Chair outlined the procedure and the Secretary read the Application. Notice was published in the Peterborough Transcript and sent to abutters return receipt. All receipts returned. Arthur (Chip) O'Neil presented the proposal, which is for a 32 square foot sign advertising "EXXON". He argued that the price sign could be construed as a directional sign as it notifies motorists of the price before they turn into the station. O'Neil noted that he employed a number of residents of Antrim and that he needed the sign to identify the type of gas sold. There was not testimony for the proposal and no testimony against the proposal. Board member, Harry Page questioned the number of other signs on the property and asked about the size of the T-Bird sign. It was established that the sign would be lighted from within. There was discussion of sign illumination. David Penny, present for another hearing called the Applicant's and the Board's attention to the fact that a Variance had been granted to Texaco for a non-conforming sign in 1985. It was established that the Board will need more information, i.e. placement of the sign, distance from sidewalk, number and size of other signs on the property and a research of Town Records to establish whether or not a Variance had been granted in 1985 and how that would impact this hearing. Harry Page moved to continue the Public Hearing for a request for a Variance to Article XVII, Section C of the Antrim Zoning Ordinance made by Cheshire Oil Company, Inc. to August 6, 1991 at 7:30 P.M. Second Boyd Quackenbush. So moved unanimously. Public Hearing for Cheshire Oil Co., Inc. continued until August 6, 1991.

Kenneth Boucher concerning a request for a Variance to Article V, Section C.a.&c. of the Antrim Zoning Ordinance. The Applicant proposes to create a 1.1 acre lot by the subdivision of property located on Route 202 in the Highway Business District (Tax Map #7 Lot #693). Notice was published in the Peterborough Transcript and sent to all abutters. All receipts returned. Kenneth Boucher presented his proposal which is to create a 1.1 acre lot in order to locate a model home for sale. The proposed new lot size would be approximately 50,000 square feet in an area where the minimum lot size requirement is 90,000 square feet. The

Applicant argued that a large amount of square foot frontage was lost to highway improvement in 1950. As to the minimum lot depth the proposed depth is 195 feet in an area where the minimum depth requirement is 200 feet. The Applicant also used the highway improvement in 1950 as an argument in the case of the minimum lot depth. Mr. Boucher provided the Board with pictures of surrounding properties, indicating that there are other non-conforming lots and low cost housing in this area. The Applicant addressed the five criteria for granting a Variance, his arguments: a. No diminution of surrounding property would be suffered as this project would most likely increase the value and improve the quality of habitat; b. It would benefit the public interest as it will give the public a chance to see a model home built to tougher Canadian codes; c. Denial of the Variance would result in a hardship to the Applicant because his business will not flourish unless he can show new products and stay competitive; d. If the Variance is granted substantial justice will be done as the Applicant contributes to local community businesses by sub-contracting and the additional lot would increase the Town's tax revenues; e. The use if not contrary to the spirit and intent of the Ordinance and the land will still be in the Commercial District in a neighborhood which is already populated with mobile homes, undersize lots and lots with insufficient road frontage. The Applicant provided the Board with copies of his arguments and the Chair explained "Hardship" as it is defined in the Handbook for Local Officials - The Board of Adjustment in New Hampshire, distributed by the New Hampshire Office of State Planning and pointed out that a Variance cannot be granted on the basis of profit. There was no testimony for or against the proposal. Harry Page asked about the need to subdivide for a model home. It was established that at some time in the future Mr. Boucher would like to sell the model and the Town does not allow two residences on one lot. It was pointed out that there was adequate frontage for two lots. The Board suggested that the Applicant explore other possibilities and asked him to return with another plan. Joseph Timko made the motion to continue the Public Hearing concerning a Variance to Article V, Section C.a.&c by Kenneth Boucher until August 6, 1991 at 7:30 P.M. Harry Page second. So moved. The public hearing is continued until August 6, 1991 at 7:30 P.M.

David and Dorothy Penny concerning a request for a Variance to Article VII, Section D.l.e. of the Antrim Zoning Ordinance. The Applicant has a garage and dwelling closer to the sideline than permitted by the Ordinance on property located on Gregg Lake Road in the Rural District (Tax Map #5 Lot #323). Notice was published in the Peterborough Transcript and sent to all abutters. All receipts returned. There was no correspondence. David Penny testified that the garage was built in 1970 by the previous owner 4.7 feet from the property line. Penny had a water problem as the garage was poorly designed and in 1986 he made application to the Selectmen for a building permit to rebuild to correct his problem and conform to the design of the existing house. At that time the Zoning Officer and Selectman

determined that a Variance was not needed as the plan did not increase the non-conformity. I became necessary for Penny to seek this Variance when, in the process of refinancing, a certified plot plan was required and because of the non-conformity with no Variance the surveyor would not certify the plan. Penny addressed the five criteria for granting a Variance. a. There is no diminution of the value of surrounding property as the action improved the appearance of the property. b. Granting this Variance will be a benefit to the public interest as the building did not encroach further into the setback and permits were granted during the same period to other property owners using the reasoning that they did not increase the non-conformity. c. Denial of this permit would constitute a hardship to the property owner because of the configuration of the lot and the location of the building on the lot the garage needed to be located thus. d. If this were granted substantial justice would be done because the existing house and garage was located 4.7 feet from the lot line which presents the hardship when complying with the setback requirement, one of the reasons that relief by Variance was built into the Ordinance. e. This is in the spirit and intent of the Ordinance as this is a residential garage and will remain as such. There was no testimony in favor and none against. There was discussion whether this should be heard under the Ordinance in force in 1985 or the Ordinance in force at the present time. Harry Page observed that the building did not get closer to the lot line and it was established that the garage built in 1986 is 10.6 feet from the lot line. The setback from the road was also questioned and it was established that meets the 50 foot requirement. The Chair summarized the proposal: The garage was originally built in 1970 and redesigned in 1986 with a building permit issued by the Selectmen in whose opinion it was less non-conforming therefore no Variance was necessary. An approved plot plan was needed, therefore, the problem surfaced. On review of the 1985 Zoning Ordinance this was acceptable logic at that time and many permits were issued using the same logic. Shawn Hickey, who arrived late established that the present setback is 10.6 feet as opposed to the required 20 feet. Public Hearing was closed.

Deliberations: David & Dorothy Penny Variance to Article VII, Section D.1.e. Harry Page stated that he would need legal advice before he could vote for this Variance because of the number of permits issued using the same logic and any decision would set a precedent. Joseph Timko was of the opinion that it should be considered under the 1985 Ordinance. Page argued for the legal opinion as there will be other cases before the Board because the bank requirement for Title Insurance requires a certified plot plan. There was argument about the need for the Variance. Tom Curran a property owner who will be effected by this decision suggested that a legal opinion should be sought. David Penny stated that the Selectmen granted a building permit therefore the building was legally built. There was further discussion of the need for a Variance, legal opinion, and whether or not it should be considered under the 1985 Ordinance or the one presently in

effect. The Chair suggested that the Board address the five criteria. a. diminution--The consensus was that it was not built closer but farther away from the property line and that it clearly improved the property. b. The consensus of the Board was to agree that granting the Variance would be of a benefit as this did improve the appearance of the property and if the Variance is not granted the Town could be open to a suit as a permit was obtained before the garage was built. c. The Board agreed that denial would present a hardship as the Applicant will have difficulty mortgaging or selling this house without Title Insurance. Harry Page noted that the property was large enough to locate a garage elsewhere but because of the proximity of the house to the property line the garage was located thus. There was further discussion of the definition of "hardship". d. The Board agreed that by granting the Variance substantial justice would be done as it was a benefit to the Applicant with no loss to the public. e. The consensus was that to grant this Variance would be in the spirit and intent of the Ordinance as the expansion of a non-conforming use can be accomplished by a Variance. There was discussion of whether or not the Applicant should have approached the Board of Adjustment at the time the building permit was issued for an administrative decision if he had doubts about the permit. Chairman, Mariann Moery outline the questions raised by this hearing.

1. If Selectmen were enforcers of the Ordinance at the time the permit was issued does it make their decision legal?
2. If the Board needs to grant the Variance, what Ordinance is in force, 1985 or 1989?
3. How do you define hardship, under which Ordinance, and is the proximity of the building to the boundary a factor?

Harry Page reiterated that a legal opinion would be needed before he could vote for this Variance although his inclination would be to grant it. Dorothy Penny requested that the Board grant the Variance and then get the determination from the attorney. The Chair asked the pleasure of the Board. The consensus was to vote prior to talking to the attorney. Boyd Quackenbush suggested that maybe the Board does not have a right to grant the Variance as the permit was issued by the Selectmen. Joseph Timko went through the list of criteria and saw no reason why the Variance could not be granted as the case had been reviewed on its own merit. Page continued to argue that while he is in favor of granting the Variance the Board should have a legal opinion in hand before it is done. The Chair commented that the criteria had been met and the vote should be on the evidence submitted. Harry Page moved to continue the public hearing for David and Dorothy Penny concerning a Variance to Article VII, Section D.l.e. of the Antrim Zoning Ordinance be continued until August 6, 1991 at 7:30 P.M. Second Joseph Timko. So moved unanimously. Public hearing continued until August 6, 1991 at 7:30 P.M.

Respectfully submitted,
Barbara Elia, Secretary