

Minutes of the Antrim Board of Adjustment Meeting August 6, 1991

Present: Mariann Moery, Chairman; Patricia Hammond-Grant; Joseph Timko; Helene Newbold; Harry Page. Boyd Quackenbush arrived late.

The Chairman opened the meeting at 7:35 P.M. and explained the procedure to be followed for public hearings. She announced that, inasmuch as, everyone who sat on the Board hearing those cases continued until tonight, August 6, 1991, was not present, the Board would hear the Russell case while waiting for a full Board for those continued hearings.

Lester H. Russell: Concerning a Variance to Article VI, Section C.3.a of the Antrim Zoning Ordinance. The Applicant proposes to build a garage closer than 50 feet from the edge of the right-of-way on property located on West Street in the Residential District. (Tax Map #1A & C lot #1279) Chairman Moery introduced the Board sitting for this public hearing: Patricia Hammond-Grant, Harry Page, Joseph Timko, Helene Newbold, and Mariann Moery, Chairman. Mr. Russell presented his proposal which is for a 24 x 24 garage setback 35 feet from the edge of the road right-of-way. Russell stated that he was handicapped by the location of the brook in siting this building. As the garage is placed farther back on the property it gets closer to the brook, (Slaughter Barn Brook) and encroaches into the wooded area of the property. Harry Page cited Article XIV, Section A.15.c.(2).ii of the Antrim Zoning Ordinance and asked if a Variance was necessary as other properties in the neighborhood are located closer than 50 feet from the edge of the right-of-way. After much discussion it was determined this property did not meet the requirements of this Article and Section. Russell explained that it was not feasible to locate the garage on the other side of his house as it is encumbered by the septic system. The Board referred to the EPA FIRM Maps to determine that this property is not located in the flood plain. The maps only show the brook running through the property. Mr. Russell explained that he cannot fit the garage on this property and meet the setback requirement from the brook. After further discussion Patricia Hammond-Grant moved to continue the public hearing and to set a time to view the property. Second Harry Page. So moved unanimously. The Public Hearing was continued until Tuesday August 13, 1991 at 6:00 P.M. when the Board will met to view the property, after which they will return to the Town Hall for deliberations.

Cheshire Oil Company, Arthur (Chip) O'Neil, Jr., Vice President, Marketing: Continued public hearing concerning a Variance to Article XVII, Section C of the Antrim Zoning Ordinance. The Applicant proposes to replace the existing sign with another sign 32 square feet on property located on Route 202 in the Village Business District. (Tax Map #1A Lot #202) The Chairman opened the continued public hearing and introduced the Board: Joseph Timko, Harry Page, Boyd Quackenbush and Mariann Moery, Chairman, the same Board that heard the original presentation. The

Chairman outlined the points to be addressed in this continued hearing. Number and size of other signs on this lot, determination of the location of the proposed sign on the lot and the result of the Chair's consultation with Attorney, Bart Mayer, relative to the status of the Variance granted 7/22/85, Case #84. The Chair apprised the Board of her conversation with Attorney Mayer in which he expressed the opinion that this application must be considered; as this is a new sign and therefore brings into play the new Zoning Ordinance. Harry Page expressed his opposition to this point of view and expressed the opinion that a Variance goes with the property. There was further discussion of this premise and David Penny, present for his own continued hearing, confirmed that Cheshire Oil Company is the Applicant in both cases. The Chair referred to Article XVII, Section G.2. of the Antrim Zoning Ordinance as it applies to non-conforming signs. At this point O'Neil informed the Board that there is one other sign on the building which is 19 square feet. There is also an price sign seven feet by three feet, six inches which Mr. O'Neil considers to be an informational sign and stated that the State of New Hampshire has the same interpretation. O'Neil did not have the setback information but assured the Board that he will comply with the requirements of the Ordinance. It was established that the sign that has been removed is six feet by seven feet or forty two square feet and he argued that the Variance granted on 7/22/85 was still in effect. He plans to replace that sign with one approximately six feet by five feet six inches or 32 square feet. It was established that there are no signs on the canopy. The Chair summarized the public hearing. Mr. O'Neil had some problems as the Chair referred to the sign as non-conforming and he believes that the Variance makes it in conformance. O'Neil suggested that the hearing could be continued so that he could consult his attorney. Joseph Timko questioned the need for attorneys and there was discussion on whether or not a Variance was needed. Harry Page again expressed the opinion that a Variance goes with the land and argued that this sign is smaller in size. Boyd Quackenbush pointed out that there is no change in public interest and argued the point of equity. Joseph Timko was in agreement with the arguments put forth. Harry Page moved that no action be taken on the Application of the Cheshire Oil Company for a Variance to Article XVII, Section C (Case #91006 BOA) based on the fact that a Variance was granted July 22, 1985 (Case #84) granting a Variance for an oversize sign. It is the Board's understanding that the Variance goes with the property. Second Boyd Quackenbush. The vote: Joseph Timko, yes; Boyd Quackenbush, yes; Harry Page, yes; Mariann Moery, yes. So moved unanimously.

Kenneth Boucher: A continued public hearing concerning a Variance to Article V, Section C.a. & c. 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) The Chair introduced the Board: Joseph Timko, Harry Page, Boyd Quackenbush, and Mariann Moery, Chairman. She outlined the procedure and summarized what has transpired in the course of the

public hearing. Kenneth Boucher presented a revised proposal which involved using the existing right-of-way for both lots and increasing the lot size from 1.1 acres to 1.35 acres. He commented that he purchased the land in 1985 with the intention of subdividing and addressed the same arguments as he used in the public hearing held July 16, 1991. Harry Page established that if a model home was placed on this lot the intention was to sell it at some point. The Applicant agreed that this is his intention. Page also pointed out the requirement for a 75 foot well radius and the need for State approval of a septic system and a well. It was pointed out that the Applicant was asking for a Variance on a plan not drawn to scale. Boucher commented on the cost of a survey with no guarantees for approval. He also commented that this lot is located in an area in which many non-conforming lots are located, and stressed the fact that the neighbors have no problem with this plan. The Chair summarized the case noting that there is a five foot deficiency in the setback and that the lot size has been increased to 64,000 square feet. Public hearing closed.

Deliberations: The Board consulted the FIRM Maps and established that this property is located in the Flood Zone. It was determined that, on the basis of the information provided, the Board can consider a Variance for frontage and lot size but there are so many problems with the proposal it will be a difficult decision. The Board referred to the property records to see when the building was built. There were comments to the effect that the intent of the Zoning Ordinance is to lessen density not increase it and Page asked if the Board would want to grant a variance reducing the lot size requirement. Boyd Quackenbush spoke to the Wetlands Ordinance requirement which is 75% contiguous dry land. They referred to the Board of Adjustment handbook and established that in test cases "Hardship" refers to the special characteristics of the land and not the financial status of the owner. The Board addressed the five criteria for granting a Variance.

1. Diminution in value--this is a small lot in an area of small lots and it would not diminish value. The Board voted "no" unanimously.
2. Benefit to public interest--Harry Page stated that not to grant a Variance for a substandard lot would be in the public interest.--The Board voted "no" that it is not in the public interest unanimously.
3. Denial of the permit would be a hardship to the Applicant--Joseph Timko stated that it is hard to define "hardship" and that it has been determined that it must be inherent in the land. The Board voted "no" unanimously.
4. Substantial Justice--The Board voted "no" unanimously.
5. Is it contrary to the spirit and intent of the Ordinance--The consensus of the Board that this proposal, which would create a substandard lot in the Highway business District, is not the intent of the Ordinance. The Board

agreed that to grant this Variance it would be contrary to the spirit and intent of the Ordinance unanimously.

Joseph Timko moved that the Board deny the Application of Kenneth Boucher for a Variance to Article V, Section C.a.&c. of the Antrim Zoning Ordinance to create a lot with less than the required acreage in the Highway Business District, on the basis that it fails to meet the five criteria for granting a Variance. Second Boyd Quackenbush. The vote: Joseph Timko, yes; Boyd Quackenbush, yes; Harry Page, yes; Mariann Moery, yes. So moved unanimously.

David Penney: Continued public hearing 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 in the Rural District. (Tax Map #5 Lot 323) The Chair introduced the Board sitting for this continued hearing: Joseph Timko, Harry Page, Boyd Quackenbush, and Chairman, Mariann Moery. The Chair conveyed the information that she has received from Bart Mayer, Town Attorney, who has determined that it is not lawful for the Selectmen to create a violation and he advised that the case be treated as a new application under the existing Zoning Ordinance, adopted March 1989 and amended March 1990 and March 1991. He also advised that the motion be clearly outlined and treated as an individual case. The consensus of the Board was that this case had previously been heard at the July 16, 1991 public hearing and on the basis of the previous deliberations the Chair made a summary of the case. Harry Page commented on the other violations that have been allowed under the building permit process. There was some discussion of the "hardship" point after which Mariann Moery moved that the Board grant the Variance as requested by David and Dorothy Penny to Article VII, Section D.l.e. Considering the request under the current regulations as if it were an original application, the Board finds that all five criteria for granting a Variance have been met. Second Harry Page. Mariann Moery discussed the motion expressing the opinion that the reference to the five criteria made the motion specific enough as the uniqueness of the Application is defined by these criteria. The vote: Joseph Timko, yes; Harry Page, yes; Boyd Quackenbush, yes, and Mariann Moery, yes. So moved unanimously.

Meeting adjourned at 10:30 P.M.

Respectfully submitted,  
Barbara Elia, Secretary