

Dover Zoning Board of Adjustment

Thursday, September 16, 2004

MINUTES

Members Present: Richard Callaghan, Bill Colbath, Frank Landford, Ruth Gorton, John Levasseur, Masi Denison

Staff Present: Thomas Clark; Building Official, Steve Bird; City Planner, Jean Glidden; Recording Secretary

ITEM # 1: CALL TO ORDER

Richard Callaghan brought the meeting to order at 7:05 p.m. and explained to the general public how the cases should be represented to the Zoning Board of Adjustment. He stated that a new member, Masi Denison, is present and was appointed as a regular member of the ZBA.

ITEM # 2: APPROVAL OF MINUTES

A. Approval of the minutes for regular meeting of August 19, 2004.

Motion: Bill Colbath made the motion to accept the minutes as amended. Ruth Gorton seconded the motion. **VOTE: U/A**

ITEM # 3: OLD BUSINESS

A. Z 04-14 Charlotte Wood, 256 Knox Marsh Rd., a/k/a Assessor's Map H, Lots 40-C & 40-C-1, zoned B-4, requests a variance from the terms of Article IV, Section 170-12, Table I, Part A, to construct a multi-family project.

Richard Callaghan read a letter submitted by Ryan Lewis requesting that the Board table to next months meeting in order to prepare for the case.

Motion: Ruth Gorton made the motion to table the case to next months meeting. John Levasseur seconded the motion. **VOTE: U/A**

B. Discussion and possible vote on proposed application changes.

Richard Callaghan suggested that they review the proposed application changes at the next meeting.

Motion: Ruth Gorton made the motion to table this item to next months meeting. John Levasseur seconded the motion. **VOTE: U/A**

Richard Callaghan stated that six members are present and would need five members to vote on the case. Masi Denison volunteered to be an alternate member.

ITEM # 4: NEW BUSINESS

- A. **Z 04-25 Lillian Fisher, (Applicant: Mark G. Phillips), Shaws Ln., a/k/a Assessor's Map I, Lot 2-A, zoned RM-12, requests a variance from the terms of Article V, Section 170-16, to establish a twenty-five (25) foot front setback in a proposed three-lot subdivision, where a minimum of thirty-five (35) feet is required.**

Mark Phillips stated that he is representing the applicant and Lillian Fisher is present. This property is located on a dead end road and has four single-family homes located at the end. Mrs. Fisher's father owned all of the land including where the Garrison School is located. In 1952, Public Service acquired a 100-foot easement for their high-tension wires that run through the land on the south side of Shaws Lane. In 1973, Public Service expanded the easement from 100 to 150 feet wide and that is when Mrs. Fisher acquired the home from her father, the land discussed tonight is a two-acre piece on the south side of Shaws Lane. It is one piece of land with 400 feet of frontage, 200 feet deep and is not serviced by water or sewer. City utilities end at the cul-de-sac, feed Tideview, and do not go down to Shaws Lane. He stated that Bill Belanger at Public Works said that you could not use land under a public service easement for septic system of the two acres, only approximately 23,000 square feet is not impacted by the power lines, and renders this land entirely unusable. In New Hampshire if you have on site well and on site septic you need a minimum of 30,000 square feet of useable land and this is only 23,000 square feet. To make this land useable the applicant is willing to extend the sewer down to the proposed three-lot subdivision. He stated that the City is strongly recommending that he also bring down City water to these lots, which would be a public benefit as far as fire protection. The present setback is 35 feet from the road, which would leave a building envelope of 20 feet deep. The applicant stated that he is here to seek relief of the 35-foot setback to 25 feet, which would allow reasonable use of the land; it is zoned RM-12, low density, and multi family. He stated that he is not looking to build multi-family units and is keeping with the single-family neighborhood.

Ruth Gorton confirmed with the applicant the allowable buildable space located on the property.

Frank Landford confirmed with the applicant the location of the poles on this piece of land and that the test well was a UNH water well and it was not used for contamination reasons.

Steve Bird asked the applicant about a well house located on the side of the lot.

Mark Phillips stated that it is a common artesian well, which is being used by lots I-2B, I-2J, and I-2C.

Frank Landford asked where the well house is located.

Gerald Avery, abutter at 10 Shaws Lane stated that it was located on the proposed third lot.

Steve Bird stated that since the artesian well is the primary source of water for those three existing homes, is part of this development plan to extend water available to the existing three lots.

Mark Phillips stated that it was not discussed with the landowners. He stated that the City would suggest through the Technical Review Committee how the water and sewer lines would be engineered to City standards and would have public water for whoever would want to tie into it.

Steve Bird asked if the applicant had an easement of record for the well location.

Mark Phillips stated that the deed refers to the well on this property and is underneath the power line easement so it would not impact the buildable area.

Frank Landford stated that it is on one of the lots to be sold and would need to be part of the deed.

Steve Bird asked the age of Mrs. Fisher's house and the age of the septic system.

Mark Phillips stated it was built in 1957 and in 1988 when Tideview went in, the Fisher's owned some of that land, and in negotiations, she was allowed to have an easement so her water and sewer could go into the municipal system.

Bill Colbath asked how far the sewer systems would have to be pumped up to for the individual houses and how does the existing well and water system affect the building envelope on the third lot.

Mark Phillips stated that the elevation might be 10 to 12 feet. He stated that what ever is built it would be located in the corner closest to water and sewer on the 3/4-acre lot.

Bill Colbath asked the applicant if he expected the existing lots to tie in to the utilities at their own expense.

Mark Phillips stated that they would not be obligated to tie in to the utilities. The City water would be available for them but if they wanted to tie into the private forced sewer main, it would be up to them to share in the cost.

Bill Colbath confirmed with Gerald Avery that the right of way shown on the plan is located on his land that is not developed.

Motion: Bill Colbath made the motion to accept. John Levasseur seconded the motion. **VOTE: U/A**

Public Hearing Open

Gerald Avery abutter at 10 Shaws Lane stated that he is here to speak against this request. He stated that there are rights of way, power lines, and water lines underground with easement for repair and the taking of the water from the well. He confirmed with Tom Clark that the variance tonight is a request for setback relief for a proposed four-lot subdivision that would have to go to the Planning Board if the variance is granted. He stated that the current owner created the situation of a non-useable lot by granting a 50-foot right of way for the City. The current owner's late husband and Mr. Avery thought it was a good idea to get it as a City street in order for it to be maintained and plowed. A 150-foot right of way granted to Public Service was probably not Mr. Shaw's desire but he had an easement on it, Mr. Shaw is the current owner's father. This has been taxed as one lot and has been deemed by the Tax Assessor's as unusable land. The granting of this variance for the proposed three lots would be an insult to the area. The street is 18 feet wide and is not sufficient for a fire truck and a car to pass at the same time.

Barbara Sturrock abutter at 245 Shaws Lane stated that she does not recommend that the Board allow the variance. Changing the setback would change the character of the neighborhood. She stated that she has some concern with the well and access to it and does not feel a hardship is involved with this case.

William Sturrock abutter at 245 Shaws Lane stated that he is against this variance. If the applicant were allowed to have less of a setback than other homes in the area, others may feel they would be allowed to have the relief of the required setback.

Emily Murphy abutter at 4 Shaws Lane stated that she is against this variance request. Her concerns are regarding the well and the reason why she purchased this property was based largely on the appearance of this road.

Lillian Fisher owner of the proposed subdivision stated that she is for this variance request and that the two wells on the property have not been condemned but they can only be used for washing cars or for watering gardens. The three homeowners went in together to put in an artesian well and she let them use the pump house because there is a new holding tank for the water in it. She stated that she would like to see the wells covered up so that they cannot drink the water.

Mark Phillips commented on the width of the road and stated that the width with the setbacks do allow him to build within the 20 feet an 18 foot wide house but it would look like a single wide trailer. He stated that he would like to build a Colonial style house instead of three shacks that would be 18 feet wide and allowed in the buildable area. He stated that the opposition shown tonight is because the trees on this lot share the view of the Public Service easement. He stated that the Planning Board can impose conditions and he cannot do anything without Planning Board approval; he stated that the abutters would be welcome to come to the Board and ask that trees be planted as a buffer if they are interested. He is here tonight to ask for relief of the front setback.

Bill Colbath asked about the well on the third lot and what deed or item gives anyone the right to use that well. It would affect that buildable lot with the water line and power line easement going through it.

Mark Phillips stated that it may be in the deed, but could not find it to present to the Board.

Lillian Fisher stated that when her father had the wells put in he had a farm, it was all family and everyone was to use the wells until such time as another well or water was provided. The three homeowners asked if they could place the artesian well on her land and she said no, but did agree to the use of the holding tank and she has the deed that says that they have water rights until they can provide their own water.

Steve Bird confirmed with Mrs. Fisher that the well is not used for drinking water. Mrs. Fisher stated that it was inspected and it was recommended to them not to drink the water and that is why they have the artesian well on Mr. Avery's land.

Masi Denison confirmed with the owner that the water should only be used for washing cars and for gardens.

Gerald Avery stated that several deeds state that they have access for repair and use of the water. Instead of trying to improve the water that is contaminated, they installed an artesian well.

Steve Bird stated that the Planning Department is in favor of this variance request. Many issues may not be resolved tonight and may have to be researched by the TRC at the Planning Board level, but the 20 foot width of buildable area is not a reasonable building envelope for this lot. This is in a multi family district and the applicant is proposing single-family homes on this property. The Board could argue that 10 feet relief is too much and the Planning Department would support some relief to make it a reasonable building envelope. Whether it is one lot or four lots the issue before this Board is relief from the front setback for the land on this side of Shaws Lane. The shape of the lot, the Public Service easement, and the location of the pavement make the front part of this lot not buildable. If the variance were granted, the homes on this side of the street would be 45 to 50 feet from the pavement and the homes on the other side street are 40 feet

back from the right of way. Single family use is more in keeping with the neighborhood than an alternative plan of multi-family use and the Department supports this variance but recommends the condition that only single family homes be allowed. The number of homes that they would be able to build will be dictated by a subdivision that goes before the Planning Board. Wetlands and steep slopes would limit the number of homes that could be built here.

Discussion ensued regarding density and wetlands on this property.

Public Hearing Closed

Bill Colbath stated that he is concerned with the third lot and what is on the deed.

Steve Bird stated that even if the variance is granted tonight, you are not approving three lots. They may only have two buildable lots when it goes to TRC when they review the easement, wetlands, and other issues.

Richard Callaghan stated that they could put in conditions regarding the Boards concerns.

Bill Colbath stated that right now the lot does not have vested right at this time to be built on despite the fact that they are on two sides of the street. The applicant is asking to divide the piece. It should be listed as a four-lot subdivision not a three-lot subdivision.

Tom Clark stated that the setback is for the three new lots because the fourth lot on the other side of the street does not need the relief.

Bill Colbath stated that he would be in favor of a reduced setback knowing that it could only become three single-family homes.

Discussion ensued regarding conditions that may apply if the case is granted.

FIVE CRITERIA:

1. It is the Board's conclusion that if the applicant complies with the strict letter of the ordinance he/she does face an unnecessary hardship. This conclusion is based on the following findings of fact: Based on configuration of lot and easement. Vote U/A
2. It is the Board's conclusion that, if granted, the variance will deliver substantial justice. This conclusion is based on the following findings of fact: Allows for more marketable and normal size housing. Vote U/A
3. It is the Board's conclusion that, if granted, the variance will be in harmony with the spirit and intent of the zoning ordinance. This conclusion is based on the following findings of fact: Will not impact density or congestion towards roadway. Vote U/A
4. It is the Board's conclusion that, if granted, the variance will not result in diminution in value of surrounding properties. This conclusion is based on the following findings of fact: Allows for building consistent with abutters and will be single family. Vote U/A
5. It is the Board's conclusion that, if granted, the variance will not be contrary to the public or private interests or rights. This conclusion is based on the following findings of fact: Proposed design as presented as well as going to TRC and Planning Department will make this location as suitable as possible. Vote U/A

Therefore, based upon the foregoing, it is ordered that the application for the variance be granted with the following conditions.

1. Maximum of four lots.
2. Each lot shall have a single-family home only (forever).
3. Setback allowance only applies to southerly-proposed Shaws Lane lots.
4. All structures be located as far back as practicable.
5. Footings shall be certified before further construction.

Mark Phillips asked if the Board was placing a condition on the 40,000 square feet that is available on the other side of the street.

Richard Callaghan stated that the Board was asked to make a variance to this property and the Board has the ability to place restrictions on this land.

Mark Phillips stated that he could build 18-foot wide homes tomorrow with Planning Board approval, but is trying to place something reasonable on the South side of the street. He stated that he does not know if he wants to go along with a single family home on the other side of the street.

Bill Colbath asked if his intention was to build three single-family homes on one side and then demolish the other home and turn it into a multi family.

Mark Phillips said not necessarily but he would like to have those options available to him, which is permitted in this zone. He stated that it is categorized as one lot but in fact, it is two parcels.

Bill Colbath stated that it is not two lots; it is one parcel with a road through the middle of it. He stated that the Public Hearing is over and the applicant could table this to the next meeting.

Richard Callaghan stated that the applicant has the option to appeal, or ignore and build what you would like to, or reapply with a new plan.

Steve Bird stated that part of the Board approving the variance was the proposal of single-family homes. To turn around, take that single-family lot, and turn it into multi family he believes it would be against the spirit and intent of the variance.

Motion: Bill Colbath made the motion to approve the conditions. Frank Landford seconded the motion.
VOTE: U/A

John Levasseur announced that he would be stepping down on the next case in order to let Masi Denison vote.

- B. Z 04-26 Motiva Enterprises, LLC, (Applicant: Business Partners, Inc.), Old Rochester Rd., a/k/a Assessor's Map A, Lot 1-1, zoned B-3, requests a special exception as provided by the terms of Article VI, Section 170-19, and Article VII, Section 1709-52.C (3), to construct two multi-family dwellings (eleven units total).**

Daniel Gabriel representing Business Partners, Inc. stated that surveyor Kevin McEneaney is present along with a representative from Motiva Enterprises. He stated that if the Special Exception were granted tonight more meetings would follow with the Planning Board, TRC, and Site Review. No sketches are available until they receive approval for special exception, the next step would be to hire an architect. The site was

described to the Board and he stated that at one time this was one parcel and was granted approval for subdivision by the Planning Department in year 2000. The site had to receive a special exception to put the carwash, convenience store, and gas station. The ZBA approved that request for the gas station in 1999. This proposal is for eleven units, they will be designed to be condominium type apartments. He stated that they were not sure of the configuration of the buildings at this time. It may be, one building with eleven units or two buildings that would amount to eleven units. He stated that they meet all conditions of units per living area, and will provide the required parking spaces. The property has been on the market for several years, surveyor Kevin McEneaney discussed the project with the Planning Department, and it was suggested that the entrance be as far away from the intersection as possible. The other comment from the Planning Department asked that they consider a combination of apartments and multi-use such as retail on first floor and apartment's up above. He stated that he was not sure at this time if the eleven units will have first floor retail space or not and would be part of the demand for use. The applicant proceeded to read through the criteria that was submitted with the application. The road is in good condition and it is mostly vehicular traffic. He stated that he was told by the Planning Department that within the next year or so, there is going to be proposed improvements to the intersection.

Bill Colbath confirmed with Kevin McEneaney that the future right of way is included in the total of 55,000 square feet shown on the plan and that the corner of the lot shown will not be the applicants but it is being included with the parcel area of 55,000 square feet to determine the number of units.

Kevin McEneaney stated that it is currently owned by Motiva and has not been acquired by anybody at this time.

Daniel Gabriel stated that they asked the Planning Department and it was discussed that they were entitled to apply for as much land as they have since they still own it.

Discussion ensued regarding the special exception granted in 1999 and if they had any conditions with the granting of the case.

Richard Callaghan asked if the applicant had anything in writing from the City that agrees with the eleven units that can tie in to the water and sewer. He stated that part of the criteria of special exception is to supply information of no burden on utilities.

Daniel Gabriel stated that he does not have anything in writing at this time because they have not applied to the City.

Steve Bird stated that he is not aware of any capacity issues with the sewer or water line. Indian Village has been after the City for years to increase water pressure in the area but does not feel that they have any capacity issues.

Richard Callaghan asked how many bedrooms and what size are the units. He asked the applicant if he had a particular age group that he was targeting and asked if he considered the increase in traffic from certain age groups or pedestrian traffic and how accommodations for schools and buses might impact the community.

Daniel Gabriel stated that they did not go that far and did not want to spend money on architects and designs without getting the special exception granted.

Richard Callaghan stated that the applicant mentioned the mixed usage of mercantile or a type of business on the first floor, but it was not mentioned on the application and the abutters would need to be aware of the mixed usage.

Dan Gabriel stated that this was just mentioned today when they asked the Planning Department for comments on the application. He stated that the department would like to see something with a commercial component. The applicant stated that his first choice would be to put a total commercial component on this parcel but because it is on the back road and not Route 108, nobody is interested in it because it does not lend itself to a retail operation and Mr. Atkins can confirm that comment.

Kevin McEneaney stated that a retail use does not require any action from the Board and if it were a mixed use, the only special exception would be the residential portion of it and asked the Board to vote on the application, as it exists.

Frank Landford stated that before he will vote he would need to know at least a maximum amount of bedrooms in the units and it would be helpful to know the information.

Dan Gabriel stated that the units might be 1,200 square feet with a combination of two to three bedrooms, no more than three.

Bill Colbath stated that the amount of parking spaces would change if you were going to add a commercial application to this plan.

John Levasseur confirmed with the applicant that the lot space is 51,000 square feet without the right of way.

Richard Callaghan stated that he was uncomfortable with what was advertised and what is being discussed.

Tom Clark stated that part of the issue is that any of the other allowed use does not require a special exception. If they were to get it for the eleven units or fewer and then decide to go with retail or office space on the first floor, the whole package would have to go to the Planning Board, which would require additional public hearing and abutter notification.

Frank Landford confirmed with the applicant that the maximum amount of units would be eleven.

Kevin McEneaney stated the parking requirements are two spaces per unit regardless of the number of bedrooms.

Dan Gabriel stated that they are willing to add more spaces if the Planning Department requires them to do so.

Motion: Ruth Gorton made the motion to accept. Maci Denison seconded the motion.

VOTE: 4 to 1 (Richard Callaghan opposed)

Public Hearing Open

Gordon Smith, owner of Conifer Commons stated that he does not believe this is the best use in this area, he stated that he does not have a problem with it being commercial. He feels that the amount of bedrooms in the proposed units would have an affect on sewer, water, and schools. He stated that it is a hazardous

intersection with half a dozen accidents every year and no sidewalks are available in this area. He stated that he is opposed against residential use.

Randy Mayo, abutter at 73 Old Rochester Road stated that he does not know if he is against it or for it. He stated that he has a landscaped, peaceful lot and is concerned with the positioning of the proposed buildings next to his property. He stated that he is also concerned with the removal of trees and snow removal.

Richard Callaghan stated that these are all issues that TRC would address.

Tom Clark stated that depending on how this goes, abutters would be notified for any new public hearings in front of the Planning Board and that would be specific as to what the actual request is. The request asked of this Board is to approve up to eleven residential units.

Brant Atkins stated that he is with NH Real Estate and has been an agent for Motiva and is trying to sell their property since they purchased the land. It has been their intent to attract a compatible business next to them and in the past four years their have been very few businesses that have come forward, a majority of them found that it was undesirable and the traffic count on 16B was not conducive toward retail. Mr. Gabriel's plan has been the only thing that had any sort of viability over the past four years.

Steve Bird stated that the Planning Department recommends approval of the special exception, although it is preferred to see a business, multi family is not out of character in the neighborhood. The use is allowed by special exception and many of the detailed issues will be addressed at the Planning Board, site plan review process.

Public Hearing Closed

Bill Colbath stated that he recalls the meeting in 1999 and is concerned with the vegetative screening that is supposed to be between Motiva's property and any residential property and is concerned with how that is going to take place, how do they control that being constructed on Motiva's property now that the subdivision took place.

Tom Clark stated that was a condition of approval and this is a residential property so they would make sure that they have screening between the carwash and the apartments. He stated that you could make this a condition of approval to have screening.

Frank Landford stated that he would be voting against this case because the applicant cannot give a maximum of bedrooms in the eleven units and feels it is too many people regarding safety and utilities.

Masi Denison stated that she would like to see information in writing from Engineering regarding the impact of sewer and water.

Steve Bird stated that if you compare this request with other uses, such as a restaurant the traffic could be a greater impact on the neighborhood.

Kevin McEneaney stated that the traffic generation with residential use whether it is two, three, or four bedrooms would be far less than commercial use such as retail space or a restaurant establishment. By moving the driveway as far away from the intersection as possible, it was indicated today by Steve Stancel that within twelve to eighteen months they would have a signal light at this intersection. Regarding the utilities, as Steve Bird stated he was not aware of any impacts or inadequacies in the utilities. He stated that

the Board could place in the conditions of approval that they get that assurance from the Engineering Department.

Richard Callaghan stated that he was opposed because he feels that the Board does not have enough information to accept this case. He stated that he agrees with the need of additional housing, in addition if it was a mercantile space below the apartments become less desirable with lower rent and a different quality of people. Traffic congestion and pedestrian safety is an issue and if they have storefronts, you would have children walking through a regularly traveled commercial lot. He stated that he does not have enough information himself to vote to either accept or approve this case.

Dan Gabriel asked if he could table to the next meeting in order to gather the information that the Board is requesting.

Richard Callaghan suggested that the applicant show how many people are going to live there, are they going to have mercantile space below and how many bedroom units are being proposed. He would like to see how it would be screened between the gas station and the abutter's houses.

Dan Gabriel stated that what is before the Board tonight is strictly for an eleven-unit apartment building and this is what they need approval on, he stated that the units would have a combination of two and three bedrooms. They will have some type of screening, either a fence or vegetation, whatever the Planning Board requires and would be the whole line behind the carwash and gas station. He stated that the Board could also make a condition that they supply a letter from the Engineering Department stating that the utilities are adequate to service eleven units. If this addresses your concerns, they would like to get approval with those conditions. If it goes to a commercial component, he stated that he agrees to come back before the Board.

Richard Callaghan stated that he is not comfortable with approving this case with all of those conditions, he stated that he needs a clear picture of what is going in and would be interested in having more information, one of them being if the units will have garages or not.

Kevin McEneaney stated that the special exception criteria is supposed to be a first level of review by this Board and the second level would be the Planning Board. If you look at a variance versus special exception these are minimal requirements. It would be much easier to table this item and give the Board the information they are requesting instead of coming back for a rehearing of denial.

Motion: Frank Landford made motion to table the case to next months meeting. Ruth Gorton seconded the motion. **VOTE: U/A**

John Levasseur will be voting on the next case.

- C. **Z 04-27 Ruth Wiggin Revocable Trust,(Applicant: Kevin McEneaney), Cataract Ave., and Sunset Dr., a/k/a Assessor's Map 14, Lot 11-A, zoned R-12, requests a variance from the terms of Article V, Section 170-16, footnote 34, to create two lots, one with approximately 11,600 square feet of uplands, where a minimum of 12,000 square feet is required.**

Kevin McEneaney stated that he is representing Ruth Wiggin Revocable Trust. In order to facilitate the overpass on Cataract Avenue they created a new right of way that cut the Wiggin parcel in two parts. In 1994, Mrs. Wiggin agreed to convey a small portion of her parcel to Mr. & Mrs. Puth in order to facilitate them constructing a garage on their small, triangular shaped lot. Mrs. Wiggin conveyed a piece of property,

35 feet wide, 3500 square feet in area and she went to the Planning Board and received a lot line adjustment. Mrs. Wiggin retained 24,021 square feet in order to subdivide the parcel into two building lots. The ordinance was amended in 2003 to provide that wetlands cannot be counted as part of the minimum square footage. One of the lots contains 395 square feet of wetlands, which falls below the minimum lot size of 12,000 square feet. Total uplands would be 11,610 square feet because the owner had to subtract the wetlands this creates the need for a variance in order to subdivide the lot.

Masi Denison asked the applicant why Mrs. Wiggin did not try to divide the lot at that time when the small portion was conveyed to Mr. & Mrs. Puth, and asked if she tried to purchase the piece of land that is owned by the Methodist Church.

Kevin McEneaney stated that she did try to acquire it but according to Mrs. Wiggin's conversation with the Church, they indicated that it is quite the lengthy process. He stated that he believes that she did not subdivide a few years back because she probably did not want to pay taxes on two vacant lots.

Bill Colbath confirmed with Kevin McEneaney that Mrs. Wiggin is in the process of trying to sell all of her property.

Richard Callaghan confirmed with the applicant that the driveways would come off on to Sunset Drive.

Motion: Frank Landford made the motion to accept. John Levasseur seconded the motion. **VOTE: U/A**

Public Hearing Open

Steve Bird stated that it is clear that the applicant had some development expectations when they did the lot line adjustment in 1994; they specifically left the 24,021 in the remainder lot with the intent to subdivide it in the future. The amount of non-wetland area on that one lot is 97% of the required area. The Planning Department is not opposed to this variance request.

Public Hearing Closed

Discussion ensued regarding the small area of wetlands.

FIVE CRITERIA:

1. It is the Board's conclusion that if the applicant complies with the strict letter of the ordinance he/she does face an unnecessary hardship. This conclusion is based on the following findings of fact: Changes in zoning and wetland regulations since purchase produced an unnecessary hardship. Vote U/A
2. It is the Board's conclusion that, if granted, the variance will deliver substantial justice. This conclusion is based on the following findings of fact: Allows building on valuable property. Vote U/A
3. It is the Board's conclusion that, if granted, the variance will be in harmony with the spirit and intent of the zoning ordinance. This conclusion is based on the following findings of fact: Allows building on vacant land of single-family homes, which is consistent with neighborhood. Vote U/A
4. It is the Board's conclusion that, if granted, the variance will not result in diminution in value of surrounding properties. This conclusion is based on the following findings of fact: Development of the land should be an improvement to the neighborhood. Vote U/A

5. It is the Board's conclusion that, if granted, the variance will not be contrary to the public or private interests or rights. This conclusion is based on the following findings of fact: Lots will be similarly sized to neighbors and will use City utilities. Vote U/A

Therefore, based upon the foregoing, it is ordered that the application for the variance be granted with the following condition.

1. Driveways shall enter from Sunset Drive.

Motion: Frank Landford made the motion to approve the conditions. John Levasseur seconded the motion. **VOTE: U/A**

ITEM # 5: OTHER BOARD BUSINESS

No business to discuss on this item.

ITEM # 6: ADJOURNMENT

MOTION TO ADJOURN

Frank Landford made the motion to adjourn at 10:25 p.m. and was seconded by Masi Denison.
VOTE: U/A

List of Members

Term Expires

Richard Callaghan-regular member	04-13-06
William Colbath-regular member	10-23-06
Frank Landford-regular member	04-10-05
Ruth Gorton-regular member	11-12-06
John Levasseur-alternate member	11-12-06
Masi Denison-regular member	09-08-07