

**DOVER ZONING BOARD OF ADJUSTMENT
MINUTES OF PUBLIC HEARING
MAY 16, 2002**

MEMBERS PRESENT: Dean Trefethen, Chairperson; Bill Colbath, Co-Chairperson; Richard Callaghan, David Ruoff, Doug Cummings, Art Corte (alternate), Frank Landford (alternate)

MEMBERS ABSENT: Tom Dolbec (alternate)

STAFF PRESENT: Steve Bird, City Planner; Tom Clark, Building Official; Kate Pelletier, Recording Secretary

ITEM #1: NEW BUSINESS

A. Approval of minutes for regular meeting of April 18, 2002

MOTION:

Rick Callaghan made the motion to accept the minutes.

Doug Cummings seconded the motion.

Vote U/A

ITEM #2: OLD BUSINESS

- A. Z02-19 Douglas J. & Lucia H. DeDe, 143 Locust St., A/K/A Assessor's Map 12, Lot 37, zoned RM-10, requests a variance from the terms of 1) Article V, Section 170-16 to construct an attached garage onto a three family dwelling within three (3) feet from a side property line where a minimum of six (6) feet is required and within approximately four (4) feet from a rear property line where a minimum of fifteen (15) feet is required; and to construct a roofed front porch within approximately eight (8) feet from a front property line as it abuts a street where a minimum of twenty (20) feet is required; and 2) Article X, Section 170-41-A to increase a non-conforming structure.**

Dean Trefethen stated that this case was being heard as a result of a motion for re-hearing which was granted in April 2002.

Attorney Steve Roberts represented the applicants. He explained the variance sought for the front porch, the variance sought for the garage, and the variance for the enclosed deck. He stated that there are many other homes in the surrounding area that had garages that did not conform to the 6' side setback or 15' rear setback. He asked the Board to consider if the setbacks interfered with the reasonable use of the property given the unique nature of the neighborhood. He stated that granting the variance would not change the character of the neighborhood and that there is no fair and substantial

relationship between the setback restrictions and the general purpose of the zoning requirements. He added that the abutters have no objections to the proposal and that denying the variance requests would create an unnecessary hardship.

Dean Trefethen asked Attorney Roberts what portion of the tri level deck would be enclosed.

Attorney Roberts stated it would be the 1st floor of the deck only that would be enclosed.

David Ruoff asked what it's use would be.

Attorney Roberts stated it would be an entry, mudroom and part of the kitchen.

Dean Trefethen asked Attorney Roberts who owned the landlocked lot to the rear of the applicants' lot.

Attorney Roberts stated that Josephine Mitchell owned the lot.

Rick Callaghan asked what the height of the garage would be.

Douglas DeDe stated that the height of the garage had not been determined yet, but that there would be some storage space on the second floor of the garage.

Attorney Roberts stated that the home was 4 stories and that the garage would be lower than the roof of the main house.

Dean Trefethen stated that the five regular Board members would be sitting on the case.

MOTION:

David Ruoff made the motion to accept the case.

Rick Callaghan seconded the motion.

Dean Trefethen asked if the revised plans submitted at the meeting was the applicants' plan of record.

Douglas DeDe stated that they were.

Vote U/A

Dean Trefethen asked if the applicant was using their original plan for the farmer's porch.

Attorney Roberts stated they were.

Dean Trefethen asked if there was adequate parking in the driveway for tenants should a garage be constructed.

Attorney Roberts stated that parking would not be decreased because of the garage.

Public hearing opened.

None.

Public hearing closed.

Dean Trefethen asked for staff recommendations.

Steve Bird stated that the Planning Department's recommendation had not changed since the last hearing. He stated that the lot was non-conforming in terms of size and frontage, in a densely developed neighborhood, and the front setback was in keeping with neighboring properties. He stated that because there are no neighbors to the rear of the property, there are no separation of structure issues. He stated that the Planning Department supports the variance request.

Rick Callaghan stated that he was concerned as to how the applicant would maintain the garage, being two stories, with only a 4' setback.

Bill Colbath stated that even though there were no structures abutting the property at present time, if there ever were, it was his opinion that their rights would be obstructed.

Dean Trefethen agreed that it could pose a problem in the future, but that he did not have a problem with the proposal.

David Ruoff stated that, given the unique nature of the lot, it is not unreasonable for the applicant to desire a garage.

FIVE CRITERIA (FOR FRONT PORCH):

1. It is the Board's conclusion that, if the applicant complies with the strict letter of the ordinance, he does face an unnecessary hardship. The front porch would be similar to others in the neighborhood and an extension of the existing porch.
2. It is the Board's conclusion that, if granted, the variance will deliver substantial justice. It allows for a reasonable use of the property enjoyed by their neighbors.
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. The proposed set back for the porch is similar to others in the neighborhood and to the existing porch.
4. It is the Board's conclusion that, if granted, the variance will not result in a diminution of value of surrounding properties. The proposed porch is likely to enhance the value of this property and the neighborhood.
5. It is the Board's conclusion that, if granted, the variance will not be contrary

to the public or private interests or rights. The proposed porch allows equitable use of the property, as others have in the neighborhood.

Therefore, based upon the foregoing, it is ordered that the application for the variance for the front porch be granted.

FIVE CRITERIA (FOR SIDE SETBACK):

1. It is the Board's conclusion that, if the applicant complies with the strict letter of the ordinance, he does (Rick Callaghan voted does not) face an unnecessary hardship. The proposed 3' setback in effect exists now. The proposal is a reasonable use of the existing structure.
2. It is the Board's conclusion that, if granted, the variance will (Rick Callaghan voted will not) deliver substantial justice. The enclosing of the existing deck and the addition of the garage is a reasonable use of the existing structure.
3. It is the Board's conclusion that, if granted, the variance will (Rick Callaghan voted will not) be in harmony with the spirit and intent of the zoning ordinance. Given the general setbacks existing in the neighborhood, this is a reasonable proposal.
4. It is the Board's conclusion that, if granted, the variance will not (Rick Callaghan voted will) result in a diminution of surrounding properties. The proposed setback and structure does not, in effect, change the existing setbacks therefore not impacting adjacent property values.
5. It is the Board's conclusion that, if granted the variance will not (Rick Callaghan voted will) be contrary to the public or private interests or rights. The proposal allows for expanded use of the land without adversely affecting abutters.

MOTION:

David Ruoff made the motion to grant the variance with the condition that the setback for the enclosed porch be 3' and the setback for the garage be 4'.

Bill Colbath seconded the motion.

Vote U/A

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

FIVE CRITERIA (FOR THE REAR SETBACK):

1. It is the Board's conclusion that, if the applicant complies with the strict letter of the ordinance, he does not (Dean Trefethen & David Ruoff voted does) face an unnecessary hardship. There are other options for the proposed garage that

- would lessen or eliminate a need for relief. Also, the magnitude of the proposed garage is more than others in the neighborhood.
2. It is the Board's conclusion that, if granted, the variance will not (Dean Trefethen & David Ruoff voted will) deliver substantial justice. The proposed garage would grant more rights to the applicant and possibly infringe on the rights of others.
 3. It is the Board's conclusion that, if granted, the variance will not (Dean Trefethen & David Ruoff voted will) be in harmony with the spirit and intent of the zoning ordinance. The proposal does not allow for a reasonable setback for safety and maintenance.
 4. It is the Board's conclusion that, if granted, the variance will (Dean Trefethen & David Ruoff voted will not) result in a diminution of surrounding property values. The proposed garage takes away possible use of abutting properties.
 5. It is the Board's conclusion that, if granted, the variance will (Dean Trefethen & David Ruoff voted will not) be contrary to public or private interest or rights. The proposed garage effectively removes the rights of the abutter to the rear.

Therefore, based on the foregoing, it is ordered that the application for the variance for the rear setback be denied.

ITEM #3

Z02-14 Bellamy River Village, LLC, Spur Rd. & Deborah Ln., A/K/A Assessor's Map L, Lot 50, zoned RM-12, requests a variance from the terms of Article IX, Section 170-33A to maintain a fence with a height of nine (9) feet where a maximum of six (6) feet is allowed.

Stephen Hallett represented the applicant. He stated that during completion of the project at Bellamy River Village, it was discovered that the builder had constructed a fence that was 9' above the berm instead of 6'. He stated that Witcher Builders, the builder, had been working with some of the residents that had concerns about headlights and traffic noise of the turnpike. He stated that Witcher Builders erected the fence without the knowledge that there was a code governing the height of fences. He explained that a 6' fence would allow headlights to shine into the units and that the 9' fence promotes privacy and noise reduction for the residents.

Dean Trefethen asked Tom Clark if there was a fence proposed on the site plan.

Tom Clark stated the plan went to the Planning Board for site approval and there was no fence on the approved plan.

Dean Trefethen stated that the off ramp was in place before construction of the development and that the fact that there are headlights shining onto the property should not be a surprise. He asked if Witcher Builders erected the fence as opposed to fence company.

Stephen Hallett stated that was correct.

Bill Colbath asked if there was meant to be vegetation between the buildings and the roadway.

Stephen Hallett stated that there was no vegetation there to begin with in that general area.

Bill Colbath disagreed. He stated that, at some point, that area was intended to be vegetation and not open space.

Doug Cummings stated that if the only purpose of the fence was to filter out headlights, the same could be accomplished with a vegetation buffer.

MOTION:

David Ruoff made the motion to accept the case.

Rick Callaghan seconded the motion.

Vote U/A

Dean Trefethen asked how much room was left between the front of the building to the base of the berm.

Stephen Hallett stated there was approximately 50'.

Dean Trefethen stated that he sympathized with Mr. Hallett because the properties are being marketed as high-end condominiums, but the State of NH designed that intersection long before the condominium project was designed or constructed.

Stephen Hallett stated that by reducing the fence to 6' would do no one any justice.

Public hearing opened.

None.

Public hearing closed.

Dean Trefethen asked for staff recommendations.

Steve Bird stated that despite the manner in which the fence came to be, he agreed the height of the fence has no impact on any abutters and it does serve a need in terms of screening this project from noise. He stated this case falls under the needless and unnecessary restriction clause and the Planning Department supports the variance request.

Rick Callaghan stepped down from the case. Art Corte (alternate) and the other four regular Board members sat on the case.

FIVE CRITERIA:

1. It is the Board's conclusion that, if the applicant complies with the strict letter of the ordinance, he does not (Art Corte voted does) face an unnecessary hardship. There are other alternatives to achieve the goal of a 9' fence, i.e. vegetation.
2. It is the Board's conclusion that, if granted, the variance will not (Art Corte voted will) deliver substantial justice. The proposal is for a 50% increase in the allowable height and other alternatives are available to achieve the same effect.
3. It is the Board's conclusion that, if granted, the variance will not be in harmony with the spirit and intent of the zoning ordinance. The intent is to limit the height of fences to six feet in height and other alternatives not requiring relief are available.
4. It is the Board's conclusion that, if granted, the variance will not result in a diminution of value in surrounding properties. There are no other immediate properties impacted by the proposal.
5. It is the Board's conclusion that, if granted, the variance will be contrary to the public or private interests or rights. The proposed fence, at 50% higher than allowed, is a gross violation of the ordinance passed to protect the public's rights.

Therefore, based on the foregoing, it is ordered that the application for the variance be denied.

ITEM #4

Z02-15 Thomas P. Hart, 10 Baldwin Way, A/K/A Assessor's Map L, Lot 40-7, zoned R-20 requests a variance form the terms of Article X, Section 170-16 to construct a farmer's porch addition within approximately thirty-two (32) feet from a front property line as it abuts a street where a minimum of thirty-five (35) feet is required.

Thomas Hart, 10 Baldwin Way, stated that he was submitting letters from two of his neighbors in support of his variance request. He stated that his existing deck is 6' X 23', centered across the front of the house. He stated that he is requesting a variance to construct a farmers porch with a hip roof. He noted that several of his neighbors have farmers porches and for weatherization purposes, covering the deck would protect the house. He stated that his hardship was that he purchased the home after the foundation was in and did not have any control as to where it was located when the house was being built. He explained that a farmers porch would compliment the neighborhood and increase the value of surrounding properties.

David Ruoff asked if the farmers porch was attached to the house.

Mr. Hart stated that it was.

MOTION:

Rick Callaghan made the motion to accept the case.

Doug Cummings seconded the motion.

Vote U/A

Dean Trefethen stated that the five regular Board members would sit on the case.

The Board and Tom Clark discussed decks encroaching into setbacks.

Public hearing opened.

Letter from Jennifer Brown, abutter, stated that she was in favor of the variance request.

Letter from Vincent St. Louis, Jr., abutter, stated that he was also in favor of the variance request.

Public hearing closed.

Dean Trefethen asked for staff recommendations.

Steve Bird stated that in order to be consistent with the Planning Department's prior recommendations on similar requests, the Planning Department could not support the variance request.

The Board discussed the positions of homes on their lots on Baldwin Way.

FIVE CRITERIA:

1. It is the Board's conclusion that, if the applicant complies with the strict letter of the ordinance, he does face an unnecessary hardship. The proposed encroachment is not significant; therefore upholding the ordinance to the fullest would be a needless and unnecessary restriction.
2. It is the Board's conclusion that, if granted, the variance will deliver substantial justice. The proposal allows a reasonable expansion of the property consistent with the neighborhood.
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. The intent is to have a reasonable front setback and this proposal achieves that goal.
4. It is the Board's conclusion that, if granted, the variance will not result in a diminution of value in surrounding properties. The proposal is likely to enhance property values, or have no effect either way.

5. It is the Board's conclusion that, if granted, the variance will not be contrary To the public or private interests or rights. The proposal allows a reasonable use of the property without affecting anyone else's rights or interests.

Therefore, based on the foregoing, it is ordered that the application for the variance be granted.

ITEM #5

Z02-16 Bow Street Realty Trust (Roger Groulx), Dover Point Rd., A/K/A Assessor's Map L, Lot 105B, zoned R-20, requests an appeal from an administrative decision regarding Article X, Section 170-39 to determine if a lot is buildable.

Attorney Arthur Hoover represented the applicant. Attorney Hoover gave an overview of the layout of the lots located off Dover Point Road. He then gave a history of how the lots were created. He stated that Map L, Lot 105B was deemed a buildable lot by Tom Clark, but the applicant disagrees with that decision for several reasons including the fact that there is no access to the lot. He stated that the applicant notified Mr. Londres, the owner of Map L, Lot 105B, when it went on the market that it could not be sold as a separate lot. He referred to the merger provision of the zoning ordinance, stating that all building lots must have frontage on a public street or road and stated that lot 105B did not have frontage, making the lot non-conforming. He again referred to the zoning ordinance stating that if two or more non-conforming lots that are adjacent are in single ownership and are of record at the time of the passage or of the amendment of the chapter, the lots shall be considered one undivided parcel. He stated that since 1997, lots 105B and 98 were held in single or common ownership and because of that, lot 105B could not be conveyed as a separate lot. Attorney Hoover stated that Tom Clark cited several reasons why lot 105B was a buildable, non-conforming lot of record. The first being that the merger ordinance was adopted before the Londres' owned the lots in question. However, Attorney Hoover disagreed stating that his interpretation of the ordinance was that when the lots were created was what was relevant to the ordinance and not when the Londres' took possession of the lots. He stated that Tom Clark also stated that at the time the Londres' purchased the lot, the City did not advise them of the merger provision. Mr. Hoover stated that the City had no responsibility to advise the Londres' of the merger provisions. He stated that Tom Clark's third reason why the merger ordinance did not apply was that at the time the Londres' sold lot 98, the City took no action pursuant to Article X, Section 170-39. Attorney Hoover again stated that the City had no responsibility to advise the property owner and therefore, did not take any action. Attorney Hoover stated that contrary to Tom Clark's opinion, there is no access to lot 105B through a deeded right of way from Dover Point Road. Attorney Hoover explained that the deed to lot 105B did not convey any rights of access and that the City permits access over City private right of ways provided that access is limited to four lots, however, there are already four lots that have access over the private driveway already in place. He stated that if lot 105B had access over Wheel Way, it would be described in the deed. He explained that prior to 1970, lots 105F and 105B were one lot, however

once subdivided, lot 105B no longer abutted Wheel Way and could no longer be accessed. He stated that when lot 105F was conveyed, the grantors reserved a right of way across the westerly portion of lot 105F for the benefit of lot 105B. However, there is no deeded access from Wheel Way to the right of way on lot 105F, making lot 105B inaccessible. He concluded by offering several solutions, including that the current owner of lot 98 purchase lot 105B or that the owner of lot 105B purchase a right of way.

Bill Colbath requested a copy of the deed from lot 106 and asked how the Planning Department created a lot with no access.

Dean Trefethen asked if the right of way was defined and did the right of way now conform to what was defined in the deed.

Attorney Hoover stated the property survey described the right of way.

Tom Clark stated that he did not believe the Planning Board would have created a lot, even in 1970, with no access.

Attorney Hoover presented the Board with a survey from 1970 showing the right of way.

Dean Trefethen stated that the survey only showed the road, as it existed at the time of the survey, and did not necessarily show the right of way where the deed states it should be.

Attorney Hoover stated that it would be nearly impossible to find anything that describes exactly where Wheel Way is.

Dean Trefethen agreed and stated that all of the lots originally had a right to pass over the land and eventually created a road by doing so. He then stated that he believed the merger ordinance to mean that the lots only merge together if they're owned, in single ownership, at the time of the passage of the ordinance and it's amendment and only when the ordinance was amended which was in 1987.

Attorney Hoover agreed that was one interpretation of the ordinance, but that it was not the way contiguous lot ordinances are typically interpreted.

Doug Cummings asked if the lots were being taxed as two separate lots.

Tom Clark stated that they are and stated that lot 105B had been taxed as a buildable lot with access to it.

Dean Trefethen stated that if the lots had been taxed separately all this time then there was no merging of the lots. In this case, the merger never occurred because of the interpretation of the ordinance, so it was not necessary.

Attorney Hoover stated that how the City taxes the lots had nothing to do with the interpretation of the ordinance, and even if it did, Tom Clark did not cite that as a reason for his decision.

Tom Clark asked Attorney Hoover if there was anywhere the metes and bounds of Wheel Way were described.

Attorney Hoover stated that it was probably developed by common usage over time.

Dean Trefethen then asked if there was nothing defining Wheel Way, how was it possible to assume the right of way across lot 105F did not connect with Wheel Way.

Attorney Hoover asked how, given the same information, it was possible to assume that it did connect.

The Board discussed with Attorney Hoover the location of the right of way and the lots it services.

Dean Trefethen stated that when he drove through the properties, down Wheel Way, the road looked different than what was depicted on the plans.

Dean Trefethen asked Tom Clark for his explanation of his decision.

Tom Clark read Section 170-39 and stated that all criteria must be met in order for the two parcels to be combined, and at the time of the amendment to the zoning chapter, the Londres' owned neither of the lots. Both lots were purchased at different times, subsequent to the amendment of the ordinance. He also stated that an individual and a couple did not constitute "single ownership." He stated that despite the fact that the abutter notified the Londres', they never notified the City to take any action. He explained that the only requirements of 170-14, are that a lot only support a land area of at least 5,000 square feet and a minimum width of 50', which lot 105B clearly does. It does not reference non-conforming lots requiring access on a public right of way. He concluded by stating again that in his opinion, lot 105B is a buildable lot.

Rick Callaghan stated that he would like to see more information regarding this case.

MOTION:

Rick Callaghan made the motion to accept the case.

Bill Colbath seconded the motion.

Rick Callaghan stated that he would like to see the deeds to the adjacent properties, confirming that there is no language in them establishing the right of ways.

Doug Cummings stated that it was the applicant's responsibility to prove that Tom Clark was in error and that he had not done so.

Vote U/A

Public hearing opened.

Chris Wyskiel, Attorney for the Londres', stated that Jeff and Carolyn Londres own lot 105B as joint tenants with rights of survivorship. He stated that he agreed fully with Tom Clark's decision that lot 105B was a buildable lot. He explained the legalities of different types of ownerships and gave a brief history of the subdivision of the lots, and the ways to access them.

David Ruoff asked Attorney Wyskiel if he had found any description of Wheel Way, describing the metes and bounds.

Attorney Wyskiel stated he had not found any. He then went on to say that the Londres' purchased lot 105B in 1997 for \$150,000 and speculated that Mr. Groulx is only disputing that the lot is buildable so that he or someone else could purchase the property for a fraction of it's worth. He stated that the City of Dover currently assesses that lot at \$199,600 and that the assessment and the past purchase prices of the lot is a valid point and should be taken into consideration.

Roy Josselyn, abutter, stated that he did not have any direct interests in any of the lots discussed. He stated that the issue of access is not a concern of the City's, but one of private parties. He explained that he was a previous owner of the lot Wheel Way runs across and that his Grandfather granted the right of way. He explained that though the branch off of the right of way that accesses the westerly side of lot 105F had never been used, it had never been contested either.

Jack McKenna, abutter, invited the Board out to look at the existing Wheel Way. He stated that he did not believe there was access to lot 105B given the steep topography and old pines. Accessing the lot would require the leveling of too many trees.

Public hearing closed.

David Ruoff agreed that a merger would only take place at the time of passage and there was not unity of ownership to merge the lots. He stated that he supported the decision made by Tom Clark.

Dean Trefethen stated that whether or not the right of way could be used was not the Zoning Board's decision to make.

MOTION

Bill Colbath made the motion to uphold the administrative decision.
Rick Colbath seconded the motion.

Vote U/A

ITEM #6

Z02-17 Earle & Virginia Goodwin, 34 Arch St, A/K/A Assessor's Map 11, Lot 14B-1, zoned RM-10 requests a variance from the terms of Article X, Section 170-16 to reduce the frontage of a non-conforming lot from approximately forty-eight (48) feet along a street to thirty-three (33) feet where a minimum of eighty (80) feet is required.

Chris Wyskiel represented the applicant. He first stated that he did anticipate some objections from the abutters, the Catalfo's. He explained that the applicants discovered, after their driveway was paved, that it was encroaching over Jack & Sharon Buckley's property line. He acknowledged the problem could be fixed by an easement, but it would preferably be resolved by swapping a small amount of property with the Buckley's. He explained how the Goodwin's first acquired the lots through subdivision and that the Goodwin's lot was approved with 48' feet of road frontage in a zone where 80' is required. He then explained the easement granted to the Catalfo's. He addressed the anticipated concerns of the Catalfo's and stated that by expanding the Buckley's side yard by 15', it would allow them to have a single stall garage if they chose to in the future, and perhaps even a two-stall garage if they expanded their driveway. However, none of these things would infringe on the Catalfo's easement rights. He stated that reducing the frontage of the Goodwin's lot would be unobtrusive to all neighbors, including the abutters, and that there would be no further development of either lot, with the exception of a garage. He then read letters from, Otis Perry, Matt Mayberry, and Darlene Colwell-Ellis, all stating that the addition of a garage on the Buckley's property would not diminish property values of the surrounding properties.

David Ruoff stated that the Planning Board approved the two-lot subdivision and squared off the lots, and asked Attorney Wyskiel why they would want to depart from that.

Attorney Wyskiel stated that at the time of the subdivision, it was Mr. Goodwin's choice and preference to square off the lots.

Doug Cummings asked Attorney Wyskiel if the Buckley's would need a variance if they wanted to build a two-car garage.

Attorney Wyskiel stated they would not if the variance request was granted.

MOTION:

Bill Colbath made the motion to accept the case.

David Ruoff seconded the motion.

Vote U/A

Public hearing opened.

Attorney Gail Catalfo, abutter at 20 Arch St., stated that she and her husband are opposed to the variance request. She stated that a variance isn't necessary as an easement could be obtained or Mr. Goodwin could purchase a piece of the lot to correct the problem. The variance is only being sought so that Mr. Buckley could build a garage and Mr. Goodwin could correct his driveway encroachment, and granting the variance would infringe on her easement rights, as Mr. Buckley's garage would have to be built right up to the easement. She stated that the variance request was simply an inexpensive way for Mr. Buckley and Mr. Goodwin to cure two problems

Chris Wyskiel stated that the applicant was not seeking a variance solely to cure the encroachment problem, and agreed with Attorney Catalfo that it was, indeed, an inexpensive way to cure two problems.

Public hearing closed.

Dean Trefethen asked for staff recommendations.

Steve Bird stated that the Planning Department supports the variance request and that the restriction on frontage serves no practical purpose. He stated that the access won't change no matter how the lot frontage is divided up among the two lots and that there would be minimal impact on the neighborhood.

The Board discussed the future and possible uses of the Catalfo's easement

David Ruoff stated that he did not think there was a hardship and that they got what they wanted when they originally went to the Planning Board for the subdivision.

FIVE CRITERIA

1. It is the Board's conclusion that, if the applicant complies with the strict letter of the ordinance, he does not face an unnecessary hardship. The problem with the driveway encroachment can be solved without the need for relief, therefore, no hardship exists.
2. It is the Board's conclusion that, if granted, the variance will not deliver substantial justice. With 48' of frontage, the applicant already enjoys more rights than his neighbors, therefore, creating an injustice to abutters.
3. It is the Board's conclusion that, if granted the variance will (Bill Colbath and Rick Colbath voted will not) be in harmony with the spirit and intent of the zoning ordinance. The intent is to control density and the proposal does not change the current density.
4. It is the Board's conclusion that, if granted, the variance will (Doug Cummings and Dean Trefethen voted will not) result in a diminution of value of surrounding properties.
5. It is the Board's conclusion that, if granted, the variance will (Doug Cummings voted will not) be contrary to the public or private interests or rights.

Therefore, based on the foregoing, it is ordered that the application for the variance be denied.

MOTION:

Rick Callaghan made the motion to adjourn
Doug Cummings seconded the motion.

Vote U/A