

D. Akridge stated that the other issue was controlling the parking situation with the unit owners, so he asked the board members to take a look at purple tab #6. He stated that each unit owner will be issued two parking stickers for their own vehicles and also rental parking permits. It will be the responsibility of each unit owner to have the renter put them in their vehicles and making sure that they use the specifically issued rental parking sticker with the units #'s. D. Akridge stated that he has met with Steve Cotran with regard to the Commercial side of the property and he seems to be ok with requiring these permits.

Howe stated that the front desk will be open on a limited basis, but what is your idea of a limited basis. D. Akridge stated that it would be 4 days a week from 12-4; but that they will also have Rick Vericho on site all of the time and both his and Great North's telephone numbers are posted. Also, there will be a website which is accessible by D. Andrade.

R. Vericho and Great North Property Management aren't the same, but how available are they asked A. Howe. D. Akridge replied that there would be two ways and the first one is that R. Vericho a unit owner who is there more than 40 hours a week and always has his cell on him, so if you call him he there within minutes. Then the second way would be to get in touch with Shawn Donahue from Great North.

Howe asked if there will be a schedule for someone to be there certain days and certain hours of the week. D. Akridge stated that R. Vericho will probably be there 12-4pm, 4 days a week and that he is the maintenance person, so he's always on site.

Howe stated that his concern would be that if the variance is granted we don't want the town spending a lot of time over there and it is our hope that there will be a system in place that will work.

A. Howe asked if there were any members of the public that wished to speak.

A. Howe asked the board for any questions or comments.

S. Nix asked how many units did D. Akridge own; only one replied D. Akridge

D. Akridge stated that the association and the board have adopted this policy and if you grant this variance subject to the association approving it, he knows that the unit owners will be in favor of the changes as well. There are numerous items within the declaration that we would like to change, but we were waiting to see if we could get this variance first, so that we could make all the changes at once. He also stated that all the lenders would have to approve the changes as well and this will all take about nine months or so to complete.

C. Donais stated that they have been working on the amendments to the declaration for a few years. He explained the situation to the members and repeated with D. Akridge stated that this is the last big issue that they've been working on, so that they can make all of the changes at once. If the variance is granted there won't be any objections by the unit owners.

S. Nix stated that his concern for the town is if the board makes a decision that you don't like than you have 30 days to appeal the decision and then it'll go to court. He thought; why not get the preliminary 2/3rds vote first before we make our decision. Maybe the Zoning Board of Adjustment is not the forum to solve this, maybe you have to go to the Planning Board for a Zoning Amendment request.

S. Nix stated that he was familiar with the property and in order for the board to grant a variance all of the criteria will need to be met. In looking at what is the uniqueness of this location and he doesn't think that there is a hardship.

A. Howe stated that he just hadn't heard a strong hardship case.

C. Donais stated that this property is unique because it is a residential and commercial mix and it is the only one like it in Gilford.

D. Belthmen stated that when it was first developed it was owned by one owner, but recently was changed into condos. He stated that he knows about 60 % of the unit owners will end up losing the units if not allowed to rent them out and if that's not a hardship I don't know what is.

C. Donais stated that in terms of the hardship, we are here acting on behalf of the association and that each of the units are part of this association.

B. Knightly stated that the venue is the Planning Board and that the Zoning Ordinance is the law and it needs to be followed, and he just can't support this application.

A. Howe asked if there were any closing arguments.

A. Howe stated that they could send a letter to the Planning Board supporting the change to the Zoning Ordinance.

A. Howe stated that the sentiment is against you right now, would you be interested in withdrawing the application at this time.

S. Davis stated that he still had some issues with the folio, which was just presented to them. There are a number of ways that these units can be rented, not anymore replied D. Akridge. A specific owner would need to be contacted to arrange a rental and the guests are required to sign the letter. S. Davis shouldn't the owner sign the letter as well. No, replied D, Akridge only the guest. D. Akridge explained the letter and how it would work.

A. Howe then called a break for 5 minutes at 8:00pm, so that applicant could make a decision.

D. Akridge stated that they decided not to withdraw and if the vote is in the negative he asked if the Board would still submit a letter to the Planning Board. Yes, replied A. Howe.

B. Knightly stated that he understands the economical issue and there are concerns with this property.

A. Howe closed the public portion of the application.

A. Howe introduced the second application.

**2. Stanley & Frances Meisser Application
#2012000053**

Variance request from Article 5, Section 5.1.4 & Table 2, Table of Dimensional Requirements to permit a 364 sq. ft. encroachment into the 25' sideline setback to allow construction of a Single Family Residence, Tax Map & Lot #223-454.000 located at 63 Varney Point Road, Left in the Single Family Residential Zone. *Application was tabled from the March 27, 2012 meeting.*

Motion made by B. Knightly, seconded by S. Nix to take the application off of the table.
Motion carried with all in favor.

Patrick Wood of Patrick Wood Law Office stated that he was representing Ashley Grant and Tyler Davis who have a contract to purchase this property from Mr. & Mrs. Meisser.

If you recall at the last meeting the board asked us to take another look at the location of the house on the property. Basically they modified the configuration of the building to be a rectangle that is approximately 35.8 ft. wide and 40 ft. deep and the encroachment to the setback is reduced by about 38%. He displayed the new plan and stated that it would still be for a two bedroom home with a two car garage. This is an alternative plan based on the recommendations of the board from the last meeting and that they have done what was asked.

The proposal meets the spirit and purpose of the ordinance. He explained the changed made to the setbacks on the new location plan.

This configuration would not be contrary to the public interest and this reduction reduces the total setbacks in front and in back of the house.

The variance would allow the construction of a moderately size residence on a very irregularly shaped lot.

The uniqueness is that this is not a rectangular lot and fitting a house on a lot of this size is very difficult without getting some assistance and waiver of the strict requirement of the zoning ordinance.

The spirit of the ordinance would be observed, because there will still be adequate room both on the southwesterly side and the northeasterly side between this house and any nearby house. All of the zoning requirements are met except on the northeast side.

Substantial justice would be done, because the trapezoid shape of this lot makes it very difficult to configure a house. A rectangular house is a reasonable alternative and if we had a trapezoidal house for example, we wouldn't be able to have a two car garage.

The values of surrounding properties would not be diminished, removing the additional encroachment and bringing it down to 225 sq. ft. means that that type of encroachment certainly won't have a negative impact on the values of surrounding properties. Being able to use this house for residential purposes and allowing a reasonable house to be built enhances the neighborhood. We believe that a refusal to grant the variance would create a hardship. The property itself to be built upon needs some flexibility and if it were a standard rectangular lot it wouldn't be problem but it's not.

There is no fair and substantial relationship between the setback requirement in the ordinance and the benefit by granting the ordinance. It makes logical since to have a rectangular house for construction purposes and to make it marketable for the future. A variance would be appropriate and we would request the Zoning Board to approve it.

A. Howe stated that it appears that the new design of the house has more square footage than the old design. Yes, that's correct replied P. Wood.

A. Howe asked if there were any members of the public that wished to speak.

Abutters

Samantha Jewett abutter of Varney Point Road stated that they didn't feel that this variance request has met the criteria. She was speaking for Ed and Wendy Curly, Ginger Jones, Brian Connolly, Bob and Mary Elliot and Deb Roy and their all here tonight.

The public interest behind this ordinance is to help prevent overcrowding of land. The lot at issue is a very small lot, as many others on Varney Point are, so this lot is not unique. She then handed the members a map of Varney Point, to help put this in perspective and to orient you the lot that's at issue here is #454.

If you look at the size of these lots, this lot is not unique and she referred to other similar lots. Building an oversized house on this lot will contribute to overcrowding. The proposed house is approximately 36' from her house and not 50' as previously stated and her house is preexisting non-conforming, she's 11' from the property line making the proposed house 25'. Granting the variance would allow the construction of an oversized house on a small lot, which is exactly what the ordinance was meant to prevent.

The applicant can build a house suited to the size of the lot without a variance, just not the oversized house that they want. There isn't an existing structure and now is the time to build a house that fits the lot. It would alter the essential character of the neighborhood if it is overcrowding of the lot. The applicant can change their plans, we can't change the neighborhood.

The spirit of the ordinance, we don't believe will be observed. To prevent the overcrowding of

land and to avoid over concentration of population, the Elliot's property is only 19.4' away; there is a double overlap on the variances.

The financial issue or burden should not be taken into consideration and has nothing to do with this.

The spirit is not observed if an oversized house is allowed to be placed on a small lot and where the driveway is going to be is a very sharp corner.

We have two abutters in a row that were denied a variance for garages, so it is interesting that part of the criteria that they are trying to put forth is that they need a garage. Many others abutters have come in for minor variances, but were all instructed to change their plans and build elsewhere without the need for a variance.

Substantial justice will not be done by granting this variance, because the applicant can build a house within the footprint just not the oversized structure that they want therefore the variance is not warranted.

The sellers had two competing offers for the property, so there isn't a financial hardship to the owners of this property. The reasonable use of the property is to build a home on the lot within the footprint or the seller can accept other offers.

The applicant's content that property values will not be diminished by building an oversized house on a small lot situated on a sharp corner close to its abutter has not been adequately supported. The applicant's further content is that there has not been any diminishment of surrounding properties similar in size over the past, because similar properties were not granted variances and had to comply with the strict Zoning Ordinance.

Literal enforcement of the provisions of the ordinance would not result in an unnecessary hardship to prove unnecessary hardship the applicant seeking a variance must show that the use for which they seek a variance is reasonable considering the property and its environment. There is no evidence that this property is different than the other properties on Varney Point, because there are many other small odd shaped lots. The applicant can build a home on this lot without a variance. We would love a home on this lot, but we want it to be within the setbacks.

The unnecessary hardship; applicants must show that the zoning restriction as applied to the property interferes with their reasonable use of the property; we don't believe it does because you can build a home there. The applicant must show that the hardship is a result of specific property conditions and the property must be burdened by the zoning restriction in a manner that is distinct from other similarly situated properties.

We've all had to deal with variances, but we were denied and we had to build accordingly. The burden cannot arise as a result of the zoning ordinances equal burden of all property in the district. The lot can be used in strict conformance with the ordinance, there is no undue hardship to the applicant and the variance should be denied, because they don't own the property. The dimensional requirement of the zoning ordinance is intended to prevent

overcrowding of the land and maintain adequately spaced buildings and rights of way.

A small lot equals a small house not an oversized house on a small lot. We conclude that the applicant has not satisfied all 5 requirements needed; therefore a variance is not warranted. We respectively request that the Zoning Board deny the request for a variance for all of the reasons stated. As S. Davis summed up in the minutes of the March 29, 2012 meeting the board has to apply the rules equally to each application and that's all we are asking you to do.

Barbra Aichinger stated that she was from 558 Edgewater Drive and that she knows a little bit about zoning. The role of zoning is health and safety. The role is not to abhor nonconformities; it is not the role of zoning to make everyone comply with the new rules. Smaller lots have vested rights. Those property owners have a right to have the best economic use of their property and to build a house on that property. The property is in a neighborhood that for decades had less than a 25' setback and as you heard, the abutters have less than a 25' setback on many of their structures. It seems to be ok for them, but possibly not ok for anyone else coming into the neighborhood. The proposed fits with the character of the neighborhood, because many structures within the neighborhood do not adhere to the 25' setbacks. The rights of the abutters never exceed that of the property owner when it comes to the subject property.

The abutters will benefit if the variance is denied, especially if the lot becomes somewhat unmarketable. Then the neighbors can say oh look we have a vacant lot that adds to the privacy and value of our properties, but we don't have to pay the property taxes, maintain the property or insure the property. The abutters gain a financial advantage when you deny these variances.

The role of the Zoning Board of Adjustment is to be a safety valve, because the current zoning ordinances can't handle all of the cases. This is a small lot in an older neighborhood and we have small lots all over Gilford in older neighborhoods. The shape of the lot on the side where there is nonconformity has an unusual angle and is the only location where there is nonconformity created and the only situation where their asking for relief from the zoning ordinance. The ZBA should be looking at protecting the rights of property owners to insure that they are not regulated so much that the value of the lot is rendered worthless or that the government regulations become so burdensome that the property becomes difficult to use. I would urge the ZBA to grant this variance as it would be unjust use of government regulations to deny a reasonable and the highest economic use of this property.

With regard with the zoning requests being denied by the other abutters, well that was then and this is now. She stated that they already had structures on their properties and she's hoping that since 2010 that we have more of an enlighten board and that they understand what the use of zoning is. I would urge the ZBA to always take the value, the property rights of the owner, which is paramount and #1 in our constitution and that should be your priority.

Stephan Nix stated that he was not familiar with where in the New Hampshire constitution that the property rights of the owner are paramount, as a matter of act in the New Hampshire constitution it states that the government can take the property for governmental purchase.

Ginger Jones stated that she wanted to repeat something that S. Jewett mentioned. She stated that we would love to have a new house built in our neighborhood and we'd love new neighbors, but we just want it to conform to the size of the lot not a large house on a small lot.

S. Jewett stated for clarification that they were denied a variance for a new garage. Just for the record B. Aichinger is a client of Pat Wood. P. Wood stated for the record stated that he did not ask B. Aichinger to be here, she made her own decision as a private citizen.

P. Wood stated that with regard to the tax map that was handed out and if the board would look at the various lots on the map, this is a unique lot. The thing that we want to keep in mind is that his clients do have a contract to buy this property to build a house that they want to live in, they don't own the property. If it looks like we are headed the other way and the variance is not to going to be granted we would like the opportunity to put the brakes on, because we don't want to jeopardize this property for the Meissers. The Meissers did own the property across the street, but for whatever reason the Meisser's did sell the shore front property separately, because they understood it was a buildable lot. We understand it is a buildable lot, with restrictions and we are asking the ZBA to consider whether those restrictions are unreasonable and whether some slight variance of those restrictions would be a reasonable alternative.

B. Aichinger stated for the record that she did not know that P. Wood was involved in this case until he walked in the door.

S. Nix asked P. Wood about the two stall garage and if it was creating part of the issue regarding the building and the size that is necessary for building. P. Wood then explained the amount of land needed to build a garage. They are looking to build a house that fits in the neighborhood, because it is an older neighborhood. P. Wood stated that every family he knows today has two cars and most prefer to have a garage. In fact most neighbors would like to have garages, so that cars are not parked in the driveway or on the street, so the idea is to have a two garage under the house, which is all one structure. I don't think the use of the structure is as important as the overall rights of the property owner.

A. Howe asked if there were any other members of the public that wished to speak.

Any further questions from the board, asked A. Howe.

Hearing none we will go into deliberations.

A. Howe stated that the public portion of the meeting was closed.

DELIBERATIONS

Paugus Bay Plaza Condominium Association

Application #

2012000051

Variance request from Article 3 under "Transient Occupant" definition to allow extended

stays at their motel beyond 30 days, Tax Map & Lot #201-001.000 located at 131 Lake Street in the Commercial Zone. *Application was tabled from the March 27, 2012 meeting.*

P. Kiely stated that he was wrestling with the same issue that A. Howe had brought up earlier with regard to the hardship and that it is really economic. He stated that he didn't think the board could consider that as a hardship. He stated that what the association has done and is trying to do is really good, but this is not the right board for it. There really should be a change in the Zoning Ordinance that allows for extended stays.

Motion

Motion made by P. Kiely, seconded by B. Knightly to deny the variance application, based on the lack of evidence for a hardship.

A. Howe asked if there was any discussion on the motion.

A. Howe stated that the board could forward a letter to the Planning Board, so that they can take up all of those issues.

S. Nix agreed that there is no hardship and the argument that there is a hardship because it's commercial/ residential making it unique, he disagrees with that. He stated that they do operate separately, so you can treat them as any other condo or hotel unit in the town.

A. Howe asked if the board was ready to vote on the motion to deny.

B. Knightly- Yes

P. Kiely- Yes

S. Nix- Yes

S. Davis - Yes

A Howe – Abstained

Motion carried with all in favor to deny the application.

Stanley & Frances Meisser

Application #2012000053

Variance request from Article 5, Section 5.1.4 & Table 2, Table of Dimensional Requirements to permit a 364 sq. ft encroachment into the 25' sideline setback to allow construction of a Single Family Residence, Tax Map & Lot #223-454.000 located at 63 Varney Point Road, Left in the Single Family Residential Zone. *Application was tabled from the March 27, 2012 meeting.*

Any discussion on the application

S. Davis expressed his opinion in the affirmative at the last meeting before it was tabled, but if you look at the Varney Point lay out; he sees the uniqueness in a different way. It's unique to probably 50% of the rest of the lots on that Island as far as the lot goes. If the abutters were applying for a building permit today they wouldn't have the structures on their lots that they enjoy at this time. The applicant's returned with changes at the board's request to minimize the

encroachment into the setback. They do have a minimum encroachment and by denying this variance it would certainly be imposing a hardship to the owner for further opportunity to sell the lot, by nature of the fact that it wouldn't support a structure that would be worth investing in that small of a footprint. The applicant has shown some creativity in how to put a building on there and afford the privilege of a garage with a minimum amount of setback encroachment. He stated that he was still in favor of granting the variance.

P. Kiely stated that he disagrees with S. Davis in a since that he felt you could get a reasonable sized, but smaller house on that lot in the buildable area. You could certainly get a 24' x 32' house in that area without a garage; however he can understand how some people would think that a garage is necessary.

B. Knightly stated that this proposal is not considered a big house; it's actually small and if you put an even smaller house on this lot it would be difficult as far as it being marketable.

S. Davis stated that he does respect the other board member opinion's, but in looking at lots # 2 and 6 that the developer built out every square inch of the buildable area and then came back and asked for a variance for a garage under the argument that it was reasonable to have a garage and the board granted them a garage. He presented the argument that this applicant could fully build out on this buildable area and then come back and ask for a garage. The consequence of that would be a considerably larger encroachment into the setback area.

B. Knightly stated that his other issue was the smaller lot on the corner and if they could purchase it then the setback would not be an issue.

S. Nix stated that 1360 appears to be the square footage of the ground floor and that the square footage of the two story house would be 2720, which is a pretty good size. He was struggling with whether a two car garage is really necessary and even if they used that small sliver of land as the setback they would still be encroaching.

S. Davis would also bring the history to the board of lot # 42 and that a variance was granted there for a brand new house that exceeded the setback requirements. Many of the houses on the lake side of Varney Point Left have been before us for variances with already existing large encroachments into the setback areas. The board may have not granted everything they asked for, but in some of those cases we were generous and allowed additional encroachment into the setback via variances when a reasonable hardship had been presented. So, the board has been fair to many people on Varney Point Rd.

A. Howe stated that residential use of this property is fair and reasonable and doesn't think that this board can deny that issue.

S. Nix stated that he was struggling with the way that it was presented. He stated that this is better than it was before from the encroachment stand point. He felt that this may have been presented this way to reverse it on us, so that we aren't looking at how much of an encroachment there really is here.

B. Knightly stated that the reason that they tabled this application and he was hoping that the applicant was going to get together with the neighbors for some compromise, but that didn't happen. He agreed with A. Howe and that this is a buildable lot and something needs to be built on it.

S. Davis stated that his garage is not counted as square footage of living space and believes that it would be the same here. A. Howe stated that it's not to say that someday the garage couldn't be converted into living space.

So, let's visit the argument of a hardship asked A. Howe, because it's always a tough one to satisfy. Does everyone feel that the applicant satisfies the hardship standard and if so, why?

S. Davis stated that the hardship is to the owner not the applicant. The applicant is making a variance request indirectly for the owner of the property. The square footage of what's being asked for is not unreasonably different than many of the cases that exist there now for that size lot. The board has consistently determined that not being able to have a garage is a hardship.

A. Howe stated that he would have a hard time approving the garage after they built the house. S. Davis stated that we have already done that for two other lots. A. Howe remembered the heated discussions over it, but we have bowed down due to the Supreme Court hearings.

S. Nix stated that they are arguing about a two car garage, you can argue about having one stall garage and you could use the width and still have a garage. It appears the theory here is to use the front setback line to its maximum.

A. Howe stated that the reality is that the house that they are proposing won't build out the entire buildable area, because of the shape of the side setback. The board discussed the dimensions of the property. S. Davis stated that whatever dimension you pick will be arbitrary and that's the problem.

A. Howe stated that what it comes down to is that the motion needs to pride in the affirmative or the negative in that we have or haven't met a hardship, building a house so many square feet or encroaching so many square feet into the setback in order for it to stand out.

S. Davis stated that not offering the same relief to the applicant of a lot of similar dimensions that we have offered other lots in this same area is a hardship.

A. Howe doesn't agree with S. Davis, because the characteristic of most of those older lots are substandard in that they were all cookie cut out and through changes in the Zoning Ordinance they are now all substandard. So, it is not unique and it has to stand alone in regard to its shape and size and it doesn't have that. Everyone in the neighborhood suffers the same situation, so each application has to stand alone and it should be based on what uniqueness it has within the neighborhood.

S. Davis asked if the board could all agree that the proposed use will not diminish surrounding property values. Yes, replied B. Knightly and P. Kiely. S. Nix stated that he wasn't so sure.

S. Davis asked if there were any other issues other than the hardship.

Is it contrary to the Spirit of the Ordinance? As presented it is not contrary stated P. Kiely. B. Knightly stated that everything that has been done there is contrary to today's Zoning Ordinance.

B. Knightly stated that substantially justice will be done and the values of surrounding properties are not diminished and he felt that it will enhance the value.

S. Nix stated that every property is marketable and what they are trying is to do is maximize the size and the value.

Motion made by S. Davis to grant the variance as proposed in the revised lay out, which is approximately a 225 sq. foot encroachment in the North East sideline of the property in the 25 ft. setback area.

The value of surrounding properties will not be diminished because: Granting this motion will not diminish any surrounding property values. The design of the house is consistent with other houses in the neighborhood.

Granting the variance would not be contrary to the public interest because: It would be in the public interest to grant this variance, which would allow for the reasonable construction of a house that would be built with parallel sides and not of a trapezoidal configuration, which would be required if the board were to require them to stay within the setback envelope.

The Spirit of the Ordinance is observed because: The ordinance is to prevent overcrowding, but he doesn't think that granting this setback encroachment is necessarily going to overcrowd the neighborhood. It is a buildable lot. It is a buyable lot to be built on. The encroachment is in the direction of the vacant parcel of land directly abutting it to the North East, which offers a reasonable buffer to the people on the adjacent property.

Substantial Justice is done because: The reasonable use of the property will be obtained and failure or denial of this variance as proposed would create an unnecessary hardship to the applicant's proposed use of this property.

Literal enforcement of the provision of the ordinance would result in an unnecessary hardship because:

If the unique shape of the lot is in strict conformance to the setbacks that are generated by the unique shape of the lot and would not be reasonable and that would be a hardship.

Seconded by B. Knightly

A. Howe asked if there was any discussion on the motion.

P. Kiely stated that it seem to him that you could put a smaller house on this lot, but does agree with S. Davis as far as that being arbitrary.

S. Nix agreed with P. Kiely, as presented he has issues, because the argument underling the size of this is for a two stall garage. If you take the argument and apply that to these dimensions and the dimensions don't work, it appears what they want to do is maximize the square footage, and that's the way that he's looking at it. Also, one thing that hasn't been discussed is that the Elliott house is very close to this property and that particular setback becomes important when you take into consideration how close the houses are there.

S. Davis stated that if you reduce the size of the house and the setback wouldn't there still be an encroachment? Yes, it appears that way the board replied.

S. Davis stated that he wouldn't build a standard size house and pay the taxes and everything else that this neighborhood demands. He stated that the neighborhood demands a house that will have more value than the bare minimum.

Any further discussion asked A. Howe.

A. Howe asked if there was any other discussion on the motion, hearing none do we have a vote on the motion.

Motion

B. Knightly - Yes

P. Kiely - No

S. Nix - No

S. Davis - Yes

A. Howe - Yes

The application has been approved 3/2, so the motion carries.

MINUTES

Motion made by S. Davis, seconded by P. Kiely, to approve the minutes from March 27, 2012 meeting. Motion carried with, S. Nix abstaining.

OTHER BUSINESS

D. Andrade brought up to the board that may need a refresher on the hardship issue. It may be important to have an update on the criteria.

A. Howe stated that they could bring in Town Counsel to discuss the hardship criteria. Maybe we could get Town Counsel here for 6pm and then we have our regular meeting at 7pm.

ADJOURNMENT

Motion made by S. Davis, seconded by S. Nix, to adjourn to the, Zoning Board of Adjustment meeting adjourned at 9:44 p.m. Motion carried with all in favor.

Respectfully submitted,

Sandra Hart, Secretary