

MARIA DIENHART, M.D.
99 Pokonoket Avenue
(Lot 5B Indian Ridge Road)
04-44

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, NOVEMBER 9, 2004

The Board consisted of:

Jonathan G. Gossels, Chairman
Elizabeth A. Taylor, Acting Clerk
Thomas W.H. Phelps
Jeffrey P. Klofft
Richard D. Vetstein, Alternate

Notice was published in the Sudbury Town Crier on September 30 and October 7, 2004, posted, mailed and read as required.

This meeting was rescheduled from October 19, 2004 at the request of the petitioner's attorney who asked for a hearing before a five-member Board. Four members were present on October 19th.

Mr. Gossels, Chairman, explained the requirements necessary to substantiate the granting of a variance. He also explained that if anyone is not satisfied with the Board's decision, they have the right to appeal to Superior Court or District Court within twenty days after the decision has been filed with the Town Clerk, and that possible other appeals may exist under current law.

Attorney David Wallace was present, representing the petitioner, Maria Deinhart, also present, in a petition for a variance to allow the creation of a building lot having insufficient frontage and area. The lot on which the existing house is located contains approximately 334 feet of frontage on Pokonoket Avenue and 125 feet of frontage on Indian Ridge Road.

Mr. Wallace said in 1955 there was a subdivision created which included Pokonoket Avenue and Indian Ridge Road resulting in many buildable lots which conformed to the zoning in 1955, which was 150 feet of frontage and 30,000 s.f. of area. He contended that through many ownerships going back to 1955, that Ms. Deinhart is the owner of basically two valid building lots as they were in 1955, that have now merged.

The property as shown on Exhibit C, submitted with the application, is currently comprised of Lots 11, 12 and 5B. The existing house has been there for many years. It is sited mostly on Lot 12 with a small portion on Lot 11. Those two lots have merged.

The area of Lots 11 and 12 which contains the existing house comprises over 57,000 s.f. of area and 334 feet of frontage on Pokonoket Avenue. Therefore, what Ms. Deinhart has exceeds the existing present Zoning Bylaw of 40,000 s.f. by 17,000 plus, and 180 feet of

frontage by 50 feet. What she is left with is what was Lot 5, and now is Lot 5B which in the 1970s was carved out and reduced to its present 26,000 s.f.

In response to a question from Mr. Gossels as to the motivation for taking Lot 5A, Mr. Wallace said he believed this was done in the 1970s, for some reason, with the next door neighbor (Vannerson) who still lives there. He said basically it reduced what was a valid pre-existing grandfathered lot that had over 30,000 s.f. and it made it useless.

Mr. Klofft asked when the property was acquired by Ms. Deinhart. Mr. Wallace said it was purchased in 2000.

As a result Ms. Deinhart has a lot that contains the present home which is oversized by almost 1 ½ times. Then she has this other lot (5B) that has frontage on another street. Currently Ms. Deinhart lives with six members of her extended family which include her niece, her niece's husband, grandnephew, grandniece, nephew and sister-in-law. She would like to build another house on Lot 5B to be occupied by her niece, her niece's husband and their two children.

Mr. Wallace said Lot 5B has been engineered (Exhibit D). A house on that lot would conform in all other respects to zoning setbacks and will support a 3-bedroom house. The house would be in scale with other homes in the area.

Mr. Wallace believed there to be a hardship with the lot. The three lots together are T-shaped. There is an odd elongated section on Pokonoket Avenue and then a shorter section on Indian Ridge Road, where all the other lots when they were originally laid out in 1955 were pretty much conforming rectangular lots with 30,000 s.f. or more. Through time and through previous actions of previous owners the lot has become very dissimilar and odd looking, and Lot 5B has no use whatsoever at present.

Mr. Wallace felt this would be a wonderful use for this family. There would be no impact on the neighborhood and no additional traffic. It would essentially involve moving four people from one house to the new house with access from another road.

Mr. Gossels said that would be the case if this was an accessory dwelling unit. However, there's no guarantee that the house won't get sold. He said it's really not the same.

Taking a snapshot of the property, Mr. Wallace said one is really looking at 26,000 s.f. of land that has really no use and little value. It's assessed at \$7,776 and doesn't add value to the town. If this were to become a valid building lot one would be adding value to the town without creating any impact at all. No demand on services, no increased traffic, no change in the character of the neighborhood. Lot 5B, which was originally Lot 5, was always intended to be a residential building lot. There will not be any harm to the town.

Mr. Wallace felt there is a hardship in the sense that we have all those people who are living together and would like to create a new household who have a piece of land that is available. It is not being done for commercial gain. No sale is involved. Getting back to the statute dealing with soil, shape or topography, he said the shape really is the thing. It's odd and does not conform to any other similar lots in the neighborhood.

Mr. Taylor said she heard what Mr. Wallace was saying about the extended family and the hardships. However, she felt the Bylaws already have a provision that allows that sort of hardship to be alleviated, which is the Accessory Dwelling Bylaw, rather than creating a nonconforming lot from scratch.

Mr. Klofft said that many times the Board is placed in positions to balance the rights of the property owner to effectively use the property vs. the property rights of the neighborhood, and all of that has to be balanced within the context of the Zoning Bylaws. He would disagree with Mr. Wallace in his notion that this would not impact the neighborhood on Indian Ridge Road. He said he went by there when this case was originally put forward in October and went back by there again today to look at it one more time. In his opinion, given where this lot would be, given the spacing of the other houses in the neighborhood, he felt this would have a detrimental impact on the neighborhood relative to the character of the neighborhood that exists there today. Especially given the unique placement of the Vannerson's house, he felt the problem is further complicated in that the property was acquired "as is". This wasn't a case where Ms. Deinhart was the property owner who swapped with the Vannersons. The purchaser of the property in 2000 knew what the existing situation was. It should have been readily apparent, given the low assessed value of the property that it wasn't intended to be a separate lot.

With regard to Mr. Wallace's point about no financial gain, Mr. Klofft said there would be financial gain because in time the two houses are going to be sold and there would be financial gain at that point.

Lastly, Mr. Klofft believed that the intent of the lot area and road frontage aspects of the Zoning Bylaw are designed to create a certain space and character of the neighborhood; this actually changes this with a smaller lot with less frontage. This was not the intent of the Zoning Bylaw.

In response to a question from Mr. Vetstein as to frontage in the area compared to this property, Mr. Wallace replied that the frontage of Lot 12 is 152 ½ feet, the frontage of Lot 11 is 163 feet. In general, it generally runs about the same on Pokonoket Avenue. On Indian Ridge, he referred to the plan submitted with the application which shows property frontage along Indian Ridge ranging from 150-152. Mr. Klofft saw frontages in the 200 ft. range on that plan. Mr. Wallace said there is really not a material difference. If one builds a home which is conforming in all other respects, you really are not imposing on the neighborhood.

Mr. Vetstein asked about the nature of this neighborhood in terms of additions and reconstructions. Mr. Gossels said this is a very stable neighborhood.

Ms. Deinhart said she is adding a sunroom addition to her home. She was not aware of additions to other houses in the area.

Mr. Phelps said he agreed with Mr. Klofft comments. He said the owner of the property was aware of the status of the property when she purchased the property. He felt that any perceived hardship was self-imposed.

Mr. Vetstein how is case is this different from the variance granted earlier this evening. (Case 04-47)

Mr. Klofft felt there was a significant difference in frontage in addition to the fact that for the previous case both lots had sufficient area. For this case, the four lots closest to this one have 234, 233, 216 and 183 feet of frontage vs. 125 for Lot 5B.

Ms. Taylor pointed out another significant difference was that an error was made on the assessors maps for the previous case which resulted in insufficient frontage for those lots. Ms. Taylor felt it obvious that this is not a buildable lot.

Mr. Vetstein disagreed. He felt this lot had potential to be a buildable lot.

Mr. Phelps said that reasoning would allow anyone with a marginal piece of land in Sudbury to come in expecting a variance because they could put a nice house on an undersized lot with insufficient frontage.

Mr. Gossels asked for comments from abutters.

Nancy Rubenstein, 57 Winsor Road, neighbor was opposed to this petition. She said this is an older neighborhood, very wooded, with houses evenly spaced. There is not a lot of new construction but the houses are well maintained. She felt that this petition proposes squeezing in a house on Indian Ridge Road and that Ms. Deinhart was aware of the status of the property when she purchased the property.

Daniel Cinicola, 76 Indian Ridge Road, direct abutter to the property, said he purchased his house in 1994. Prior to purchase he spoke with the town specifically as to whether there could be an additional house constructed on that property. He was told that the lot was unbuildable which was the deciding factor to purchase his house as it afforded more surrounding

open space. Mr. Cinicola said his house would be severely impacted should this variance be granted.

Mr. Wallace said Mr. Wallace said one of the inducements to Mr. Cinicola's purchasing his property was the vacant lot next door which afforded him more open space. Mr. Wallace did not think that was fair to his client. He emphasized that if this was a valid building lot, Mr. Cinicola would still be looking at a new house.

Mr. Gossels felt there to be a difference because there is a deficiency in frontage that exacerbates the problem. Mr. Klofft felt the deficiency in area affects the character of the neighborhood.

Ms. Deinhart said her plan was to deed the property to her niece and nephew who plan to live in the area indefinitely. She said she would realize no gain.

Mr. Wallace said when Lots 5A and 5B were created, the person who owned Lot 5 at the time also owned Lots 11 and 12. Because there was a dispute about where a fence was located between the Vannerson's house which was Lot 13, and Lot 12 which is his client's house, the land was reconfigured so that the previous owners of Lot 12 picked up a little bit of space on Lot 12 but lost 5,000 s.f. on Lot 5. In essence, what was a dispute about a fence ultimately resulted in land being taken away from Ms. Deinhart.

Ms. Deinhart said when she purchased the property, the previous owner had cut down all the trees on Lot 5B and it's appalling just to look at it. It was not something she would have done. She said if it were still a wooded area and a natural environment she would have taken that into consideration. It's just chopped down trees.

There were no further comments or questions from the Board. The hearing was closed.

After deliberation the following motion was placed and seconded:

MOTION: "To grant Maria Dienhart, MD, owner of property, a Variance from the provisions of Section 2600, Appendix B of the Zoning Bylaws, to allow the creation of a building lot having insufficient area (26,000 s.f.±) and insufficient frontage (124.5 feet), property located at 99 Pokonoket, shown on Town Map 309 as Lot 5B fronting on Indian Ridge Road, Residential Zone A-1."

VOTED: In favor: 1 (Vetstein) Opposed: 4 (Gossels, Taylor, Phelps, Klofft)

PETITION DENIED

MARIA DIENHART, M.D.
99 Pokonoket Avenue
(Lot 5B Indian Ridge Road)
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REASONS: The petitioner seeks a variance to create a buildable lot which is deficient in area and frontage and would be created from an existing lot which contains the petitioner's dwelling. In order to grant a variance, four specific criteria must be satisfied. Failure to meet any one of the four criteria will cause the variance to be denied.

The Board finds that the petitioner does not meet the criteria for hardship in that the constraints of the property were known at the time of purchase. Action taken by previous owners which resulted in the current lot configuration were known to the petitioner in that the Plan of Land prepared October 29, 1973 (Exhibit C) defines the lots and includes a notation "Lot 5B to be held in common ownership with Lots 11 and 12." implying one buildable residential lot. Further, given the low assessed value of Lot 5B, it was apparent that this lot was never intended to be a separate lot. The Board therefore considers any hardship with regard to the property to be self-imposed.

With regard to a claim of hardship of quality of life because of an extended family situation, the Board finds that the intent of the Accessory Dwelling Bylaw is to address such situations; therefore, this is not considered to be a valid hardship under the criteria for a variance.

The Board finds that there would be a substantial detriment to the public good if this variance was granted in since the creation of an undersized lot with deficient frontage would impact a neighborhood where the frontages in many instances are above the required 180 feet. As a result the immediate abutters would be more visually impacted by a new structure because of the decreased frontage and area.

The Board finds that the variance would nullify and substantially derogate from the purpose of the Ordinance or Bylaw which is to create space and character within neighborhoods through zoning of lots by area, frontage and setback requirements. To allow the creation of a buildable lot in this case would run contrary to the intent of the Bylaws and would set a harmful precedent for future development of undersized lots with the potential for increased financial gain beyond the constraints of current single residential lots.

Jonathan G. Gossels, Chairman

Elizabeth A. Taylor, Acting Clerk

Thomas W.H. Phelps

Jeffrey P. Klofft

Richard D. Vetstein, Alternate

MARK SIEVER & CONSTANCE FARB

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, NOVEMBER 9, 2004

The Board consisted of:

Jonathan G. Gossels, Chairman
Elizabeth A. Taylor, Acting Clerk
Thomas W.H. Phelps
Jeffrey P. Klofft
Richard D. Vetstein, Alternate

Notice was published in the Sudbury Town Crier on October 21 & 28, 2004, posted mailed and read at this hearing.

Mr. Gossels, Chairman, explained the requirements necessary to substantiate the granting of a special permit. He also explained that if anyone is not satisfied with the Board's decision, they have the right to appeal to Superior Court or District Court within twenty days after the decision has been filed with the Town Clerk, and that possible other appeals may exist under current law.

Mark Siever and Constance Farb were present to represent a petition for special permit to allow demolition of an existing residence and construction of a new residence at 14 Arborwood Road. The lot is nonconforming; the existing residence is 890 s.f. and the proposed new residence would be 2,200 s.f.

Mr. Siever would like to purchase the property and construct the house in another location on the lot. The new house will conform to all setback requirements. He explained that the existing house is located at the beginning of a steep slope and the new house will be sited more towards the top of the hill.

In response to a question from Mr. Vetstein regarding wetland issues, Mr. Siever explained that there is a vernal pool on the property. He met with Conservation Coordinator Debbie Dineen who flagged the high water mark. This was also verified by the (Mr. Siever's) engineer as shown on the plan submitted with the application.

In response to a further question, Mr. Siever said he has not spoken with the neighbors with regard to the proposed reconstruction.

Mr. Klofft asked whether the existing house was sound, noting the Board's demolition guidelines suggest applicants consider donating the house for affordable housing.

MARK SIEVER & CONSTANCE FARB

Mr. Siever said he would be open to consider a donation, if appropriate, when he moves into the new house. Plans calls for living in the house until the new one is constructed.

Ed Newkirk, 71 Willis Lake Drive, abutter, had questions with regard to the new house location, conservation issues and the 50-foot strip between the properties which is owned by the Conservation Commission. The applicants reviewed with Mr. Newkirk the plans submitted with the application which dealt with those issues.

Mr. Gossels asked whether there was room on the north side of the property to enhance the vegetative screening. Mr. Siever believed there was within the 20 feet side yard setback. He added that he anticipated a minimum amount of tree cutting. The house will have a walk-out basement. It will be two stories with an estimated height of 24 feet above ground level.

Mr. Gossels suggested the applicants maintain a dialog with Mr. Newkirk.

Michael Dunne was present on behalf of his mother, Mary Dunne, owner of the property. He said he spoke with the Conservation Coordinator who explained that 30 years ago there was a pond on this property. It dried up and there is now a vernal pool.

With regard to the 50-foot strip, Mr. Dunne explained that the strip was once a road with a house at the end. The house burned down, the owner stopped paying taxes, and the property went to Tax Title. It was then given to the Conservation Commission.

The Board reviewed the proposed house plans. Mr. Gossels gave an overview of the demolition guidelines and the conditions generally imposed with regard to reconstructions. The applicants had no problems with the conditions.

No other abutters were present to speak to this petition. The public hearing was closed.

After deliberation the following motion was placed and seconded:

MOTION: "To grant Mark E. Siever & Constance H. Farb, applicants, Mary A. Dunne, owner of property, a Special Permit under the provisions of Section 2460 of the Zoning Bylaws, to allow demolition of an existing residence and construction of a new residence not to exceed 2,200 s.f., which will exceed the area of the original nonconforming structure, said residence to conform to all zoning setback requirements, property located at 14 Arborwood Road, Residential Zone A-1, provided that:

1. The vegetated screening will be increased along the northerly property line within the 20-foot side yard setback and will include, if allowed, additional screening within the conservation area.

MARK SIEVER & CONSTANCE FARB

2. This approval is subject to compliance with conditions as may be imposed by the Conservation Commission.
3. This Special Permit shall lapse if construction has not begun, except for good cause, within 12 months following the filing of the Special Permit approval, plus such time required to pursue or await the determination of an appeal under M.G.L., Chapter 40A, Section 17.
4. The new dwelling will be completed with 12 months from issuance of a Building Permit, and the old structure will be demolished within 6 weeks from the issuance of a Certificate of Occupancy for the new residence.”

VOTED: In favor: 5 (unanimous) Opposed: 0

REASONS: The petitioners require a Special Permit due to the nonconforming nature of the property. The Board finds that the proposed construction of a new residence, which will exceed the area of the original nonconforming structure, will not be substantially more detrimental to the neighborhood. The new structure will conform to all setback requirements. The proposed location is sensitive to environmental issues and will improve the situation with regard to the vernal pool which is located on the property. The design is appropriate in scale and design and will enhance the property and the neighborhood.

Jonathan G. Gossels, Chairman

Elizabeth A. Taylor, Acting Clerk

Thomas W.H. Phelps

Jeffrey P. Klofft

Richard D. Vetstein, Alternate

CHRISTOPHER & SUSAN CLANCY
67 Great Road
04-46

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, NOVEMBER 9, 2004

The Board consisted of:

Jonathan G. Gossels, Chairman
Elizabeth A. Taylor, Acting Clerk
Thomas W.H. Phelps
Jeffrey P. Klofft
Richard D. Vetstein, Alternate

Notice was published in the Sudbury Town Crier on October 21 and 27, 2004, posted, mailed and read at this hearing.

Mr. Gossels, Chairman, explained the requirements necessary to substantiate the granting of a special permit. He also explained that if anyone is not satisfied with the Board's decision, they have the right to appeal to Superior Court or District Court within twenty days after the decision has been filed with the Town Clerk, and that possible other appeals may exist under current law.

Christopher and Susan Clancy were present to represent a petition for a special permit to alter and enlarge a nonconforming structure by constructing a 21.6X20.6 foot garage which will result in a 4-foot side yard setback deficiency at 67 Great Road. Mr. Clancy explained that he is constructing an addition to his house, but the garage portion would encroach on the side setback.

In response to a question from Mr. Gossels with regard to the size of the garage, Mr. Clancy said a small garage would not be able to accommodate two cars. He presented a model of the proposed construction describing the interior house layout as well as the garage portion. He added that the construction will have no impact as there is no house on that side.

The Board reviewed the property map and design plans for the proposed construction asking questions for clarification.

Because a portion of this property is located in Maynard, even though all construction will be in Sudbury, Mr. Gossels suggested the applicants contact Maynard to determine whether any permits may be needed from that town.

There were no further questions from the Board. No abutters were present. The hearing was closed.

After deliberation the following motion was placed and seconded:

CHRISTOPHER & SUSAN CLANCY
67 Great Road
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MOTION: "To grant Christopher & Susan Clancy, owners of property, a Special Permit under the provisions of Section 2420 of the Zoning Bylaws, to alter and enlarge a nonconforming

structure by constructing a 21.6 X 20.6 foot garage, which will result in a 4-foot side yard setback deficiency, property located at 67 Great Road, Residential Zone A-1.”

This Special Permit shall lapse if construction has not begun, except for good cause, within 12 months following the filing of the Special Permit approval, plus such time required to pursue or await the determination of an appeal under M.G.L., Chapter 40A, Section 17.

VOTED: In favor: 5 (unanimous) Opposed: 0

REASONS: The petitioners require a special permit due to the nonconforming nature of the property. The Board finds that the proposed construction, which will result in a side yard setback deficiency, will not be substantially more detrimental to the neighborhood than the existing nonconforming structure. The construction will be architecturally compatible with the existing house and is of a size and design in keeping with other homes in the neighborhood. Further, the Board finds there will be no impact since the proposed construction will face the side on which no other house is located. Additionally, the resulting setback deficiency is minimal and will provide the ability for the owners to garage their vehicles.

Jonathan G. Gossels, Chairman

Elizabeth A. Taylor, Acting Clerk

Thomas W.H. Phelps

Jeffrey P. Klofft

Richard D. Vetstein, Alternate

EVERGREEN REALTY TRUST
Lots 26-1 & 26-2
Old Framingham Road
04-47

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, NOVEMBER 9, 2004

The Board consisted of:

Jonathan G. Gossels, Chairman
Elizabeth A. Taylor, Acting Clerk
Thomas W.H. Phelps

Jeffrey P. Klofft
Richard D. Vetstein, Alternate

Notice was published in the Sudbury Town Crier on October 21 and 28, 2004, posted, mailed and read at this hearing.

Mr. Gossels, Chairman, explained the requirements necessary to substantiate the granting of a variance. He also explained that if anyone is not satisfied with the Board's decision, they have the right to appeal to Superior Court or District Court within twenty days after the decision has been filed with the Town Clerk, and that possible other appeals may exist under current law.

Attorney Nick Carter was present, representing the property owner for a variance to allow the creation of two building lots, each having a frontage deficiency: Lot 26-1 has frontage of 182.19 feet and 88,233 s.f. area; Lot 26-2 has frontage of 182.18 feet and area of 88,167 s.f. The lots are located in Residential Zone C-1 which requires 210 feet of frontage.

Mr. Carter displayed a drawing of the two lots. By way of explanation of this situation, Mr. Carter said he represents the owner (Mahoney) who purchased agricultural land and was interested in selling off a piece west of Old Framingham Road which wasn't going to be useful for the agricultural purpose he intended. Because of that conversion the town took the position that it was entitled to purchase the land and a lengthy, complex lawsuit ensued which went all the way to the Supreme Court, came back down, the litigation continued and eventually there was a settlement.

The Settlement Agreement states explicitly that the owner of this parcel is entitled to develop two lots. The reason for the two lots is that the assessors plan indicates the frontage is 440 feet, which was wrong. This was discovered during a recent field survey. As a result, there are now two lots with deficient frontage.

From the plan Mr. Carter pointed out the area which would be deeded to the town and which is accessed by a 20-foot wide strip on the northern edge of these two lots.

EVERGREEN REALTY TRUST
Lots 26-1 & 26-2
Old Framingham Road
04-47 Page 2

Town Counsel Paul Kenny was present and, at Mr. Gossel's request, spoke to the variance criteria as pertains to this case.

Mr. Kenny confirmed that the lot configuration was based on the assessors map which was incorrect. He said in addition to the lots there was a 20-foot right of way. Had it been known that the map was in error, a different configuration would have resulted. He said everybody honestly thought there was 440 feet.

Mr. Kenny said this not an unusual situation. He said some of the old assessors maps were done from aerial photographs. He gave as another example the Cutting property in which there was found to be a difference of three or four acres between the assessors maps and the on-ground survey. His guess was that in the old days the assessors maps erred on the side of more acreage because they really didn't asses the way we do now. They assessed on acreage because it was all farmland. Now we assess on lots.

When the problem was discovered the town was originally going to receive 20 feet for a right of way plus a 10-foot easement. Now the town, if the variance is granted, will get a 30-foot strip of land that it will own in fee without any easement.

Mr. Kenny said in order to grant a variance, hardship must be demonstrated. Financial hardship alone is not a consideration, but it doesn't mean it's not part of a hardship. He said the whole particular piece of property must be looked at with regard to the hardship. In addition the Board must look at the Settlement Agreement because of the nature of the lawsuit.

The configuration of the land and the soil conditions must also be taken into account. Mr. Kenny said the land is a long narrow strip, and in order to accomplish the Settlement Agreement and to accommodate both parties a variance is needed that would set off these lots the way that they are shown on the plan. Also, when the percolation tests were done through the Board of Health there were problems with percolation resulting in the current configuration. There are also wetlands including perhaps a vernal pool. He pointed out those areas on the plan as they affect the portion of land the town will receive. He said any other configuration will affect not only the property owner but the amount of usable land the town will receive. He believed that taking all of this into consideration results in a hardship that is affecting the soil conditions, the topography and the shape of the lot.

Mr. Klofft said the plans show each lot having two acres. He asked whether Mr. Kenny was saying that there is only a small area that perks on each of the lots.

Mr. Kenny replied in the affirmative. He said these lots had to be configured the way they are because they couldn't get a perc test.

EVERGREEN REALTY TRUST
Lots 26-2 & 26-2
Old Framingham Road
04-47 Page 3

Mr. Klofft suggested that in the interest of completeness it would seem that this problem could be solved in a more direct way by producing a subdivision plan, although he recognized this would be an additional hardship on the property owner.

Mr. Kenny said this was not desirable from the standpoint of a number of things. One is that the town would lose some of its back land. In addition, he said the owner is entitled to the lots. Secondly, it would affect what would be usable land back because of various wetlands.

The hardship would not only affect the applicant but would be a more significant hardship to the town.

Mr. Gossels understood Mr. Kenny to be saying that in exploring the alternative of the subdivision there are really two hardships – there are increased costs on the part of the applicant to create the subdivision and there is an additional hardship on the part of the town that would reduce the usable land the town would receive.

Mr. Vetstein asked whether the two buildable lots were critical to the Settlement Agreement.

Mr. Kenny replied in the affirmative.

Mr. Vetstein asked about a scenario for creating one lot.

Mr. Kenny said two lots were critical in establishing their value, adding that the owners would surely want to recoup their costs which are significant. He said a lot of time was spent to arrive at this configuration.

Discussion followed on other scenarios for the lots, one of which might result in the need for only one variance.

Mr. Phelps felt there would still be problems with one variance. He asked whether it was oversimplification to say that the whole reason for this variance is because the assessors map was wrong. Not only did the owner not have it right, but the whole town didn't know it. The town went through this whole process and the courts didn't respond. That alone seemed to him to be reason enough to justify hardship.

Mr. Kenny said the problem with that is that one could make the argument that this is self-imposed. He said it's not. This is not self-imposed because everybody was going along in good faith. He said it's a mistake and has some overriding financial hardship.

Mr. Gossels felt there are special conditions. There are soil conditions, percolation, and the long narrow shape of the parcel. He believed that criteria had been satisfied.

EVERGREEN REALTY TRUST

Lots 26-1 & 26-2

Old Framingham Road

04-47 Page 4

Mr. Vetstein was not comfortable. He felt the Board needed to be sure the lot was unique and satisfied the standards.

Mr. Gossels said it sounds like during the negotiations there was an assumption on everyone's part that there was 440 feet of frontage. The agreement to make two lots made perfect sense – they were both going to be conforming lots. It was only after the fact that it was discovered there was only 394 feet. Also, there is still the need for access to the town land.

Mr. Vetstein said a mistake was made and now it requires a variance. He said variances should not be easy to obtain.

Mr. Gossels said the Board has always been reluctant to create lots which do not conform to zoning.

Mr. Kenny said a nonconforming lot has special privileges. If the Board grants this variance, it is not creating a nonconforming lot. It is creating a lot with less frontage under a variance; it never becomes nonconforming.

Mr. Kenny reiterated that this land has many ramifications – wetlands, soil conditions, topography, and the necessity for access to the back lands, which makes it unique. There is also the financial hardship which standing alone isn't justification but is a very significant item. There is also the Settlement Agreement. If this can't be resolved, there is a hardship to the town and the owner. He said everyone would have to go back and litigate it again. This is a major piece of the Settlement Agreement.

Selectmen Lawrence O'Brien said in the final negotiations the Selectmen looked at the lot configuration in order that the town receive enough usable land.

There was no further input or comments from the Board. No abutters were present. The hearing closed.

After deliberation the following motion was placed and seconded:

MOTION: "To grant Evergreen Realty Trust, owner of property, a Variance from the provisions of Section 2600, Appendix B of the Zoning Bylaws, to allow the creation of two building lots, each having a frontage deficiency; Lot 26-1 (frontage 182.19 feet) and Lot 26-2 (frontage 182.18 feet), property located on Old Framingham Road, shown on Town Map L07 as parcel 26, Residential Zone C-1."

VOTED: In favor: 4 (Gossels, Taylor, Phelps, Vetstein) Opposed: 1 (Klofft)

EVERGREEN REALTY TRUST
Lots 26-1 & 26-2
Old Framingham Road
04-47 Page 5

REASONS:

1. This variance can be granted due to circumstances relating to the soil conditions and shape of the land and especially affecting such land but not affecting generally the zoning district in which the land is located. First, the lot is more trapezoidal in shape as compared to other lots in the immediate area. The narrow end of this trapezoid is located at the road frontage, thereby limiting said frontage. Second, while this is a rather large parcel, 4+ acres, there is a limited amount of land that will support a septic system for the size and style of single family homes that

are located in this district. That land is located in the center of the parcel making it difficult to effectively divide the lot.

2. A literal enforcement of the provisions of the Zoning Ordinance would involve substantial hardship to the petitioner. Prior to the petitioner bringing this case before the Board of Appeals there was a lengthy legal action and settlement discussions with the Town of Sudbury. An agreement was reached between the petitioner and the town and that agreement included the creation of two apparently conforming building lots. It was only after an accurate survey of the land that the frontage issue arose. These two lots are conforming in all other aspects and the frontage deviation is quite small. Additionally, the Town of Sudbury will be receiving a large parcel of land behind these two lots as well as a strip of land leading from the road to that parcel. Given the preceding legal action and agreement, the small frontage deviation, and the other generally conforming aspects of the lot, literal enforcement would create a substantial hardship.

3. Desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Zoning Ordinance. These are two large and generally conforming building lots in a sparsely developed area.

Jonathan G. Gossels, Chairman

Elizabeth A. Taylor, Acting Clerk

Thomas W.H. Phelps

Jeffrey P. Klofft

Richard D. Vetstein, Alternate

