

**Zoning Board of Adjustment
Warner, NH
Meeting Minutes of February 9, 2011**

Members Present: Rick Davies; Janice Loz; Gordon Nolen.

Members Excused: Mike Holt

Members Absent: Eric Rodgers

Alternates Present: Kimberley Edelmann; Scott Hanwell

Alternates Excused: None

Alternated Absent: None

The Board agreed to give Eric Rodgers some more time to get to the meeting. The meeting was called to order at 7:20 p.m.

Since the Chairman and Vice Chairman were not in attendance it was decided to have the Full Board Members vote for a temporary chair per Zoning Board of Adjustment procedure. Janice Loz, Rick Davies and Gordon Nolen agreed.

Rick Davies asked if Janice Loz would like to be acting Chairman.

Janice said she wanted to nominate Rick Davies. Janice Loz made a **MOTION** to nominate Rick Davies as acting Chairman. Gordon Nolen seconded the **MOTION**. The Board was in favor to nominate Rick Davies as acting Chairman. Rick Davies accepted the position.

The roll call was taken.

Rick Davies elevated Scott Hanwell and Kimberley Edelmann to voting members.

1. MINUTES

Janice Loz made a **MOTION** to **APPROVE** the minutes of December 1, 2010 as **AMENDED**. Gordon Nolen seconded the **MOTION** and all were in favor.

2. Case 01-11: Variance (Rescheduled Due to Weather in January)

Applicant: Christopher Egan and Elaine Barse

Property location: 246 Cunningham Pond Road, Warner, NH, Map 9, Lot 38,
Zoning District OR-1.

Variance requested to the terms of Table 1, Use Regulations, Residential #2 of the Warner Zoning Ordinance to have a studio apartment above attached garage.

A. REVIEW APPLICATION

Rick Davies explained to Mr. Egan the Zoning Board of Adjustment would hear his case, the Board would ask any questions, a public hearing would be opened, the public hearing would be

closed at which time the Board would make a decision to get more information; to come to a decision whether to approve, deny etc, the requested variance.

Rick Davies said per the Zoning Ordinance Article XVII Item C #5 states:

Burden of Applicant: The applicant shall provide and bear the burden of presenting sufficient evidence to allow the Board to make findings pertaining to all conditions and findings of fact required in granting a Variance or Special Exception.

Rick Davies stated a Variance is being requested in this situation. He explained that there are five questions that Mr. Egan answered on his application that is the basis for the Board's decision.

Rick Davies verified the fees were all paid and the case was properly noticed. The secretary said yes.

Rick Davies asked Mr. Egan to describe his request as well as reading the application into record.

Mr. Egan introduced himself and stated that the apartment already exists and he is here tonight to come into compliance. Mr. Egan stated that he was given some incorrect information and did not realize he was not allowed to have a studio apartment over the garage. Mr. Egan apologized for the misunderstanding.

Applying for a Variance to terms of Table 1, Use Regulations, Residential #2 of the Warner Zoning Ordinance.

Property location and description: 246 Cunningham Pond Road, Warner, NH, Map 9, Lot 38, Zoning District OR-1.

Proposed Use: A studio apartment above attached garage.

Details of request: We are seeking a variance to allow a studio apartment above our attached garage. The primary purpose is to accommodate a person for the purpose for passive security and light caretaking of the property in our absence. Mr. Egan stated the property is a second home. He said he grew up here and in some point in the future would like to retire at the property. He stated they are not ready for retirement yet so they need to work and do not live close by. They thought it would be best to have someone at the property in case pipes freeze up or snow falls in front of the oil and propane tanks.

To Grant the Variance, the following conditions must be met.
(The applicant's responses are italicized)

1. Granting the variance would not be contrary to the public interest because *no changes to the footprint of general appearance of the building will be made. They occupy the main house periodically.*

2. Granting the variance will not be contrary to the spirit of the Zoning Ordinance because *no changes will be made to the appearance of the building. The caretaker on site will maintain the grounds which in turn will keep the esthetic value of the area.*
3. Granting the variance would do substantial justice because *an apartment provides housing for a person to provide passive security plus gives the property a lived in appearance. Since he and his wife are not at the property for several weeks at a time the house may begin to look abandoned and someone might take advantage of that. Problems will be averted such as snow removal for oil deliveries, pipes will not freeze, debris removal, etc.*
4. The granting of the variance will not diminish the value of surrounding property because *the remote nature of this community provides substantial space between homes, there will be no changes to the overall appearance of the property and the caretaker will maintain the property.*
5. Explain why Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

A. For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:

- i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and *the main house is only occupied by the applicants once a month due to the applicants both working out of town. There will be no changes to the footprint or general appearance of the building. The caretaker will provide passive security and ensure the building is safe as well as providing public safety by maintaining the grounds. If there were branches down on the property or power lines down the caretaker could let the correct person know of the problem.*
- ii. The proposed use is a reasonable one because *the applicants must live out of state due to their jobs. A caretaker will be able to maintain the large piece of property and ensure the home owners are immediately aware of any problems that may arise with the property. The apartment will be used more or less as trade for maintaining the property and will be low impact on the community.*

B. If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it. *Housing a caretaker ensures snow is removed so oil deliveries can be made. If there are any issues with power, water, safety of the building, etc they can be quickly identified and taken care of.*

Rick Davies asked Mr. Egan to explain the maps sketches he attached to the application. Mr.

Egan said the locus map is the shape of the entire property which is 78 acres with most of it in Conservation Easement. The 5.7 acres the house sits on is excluded from the easement. He stated the locus map more or less shows where the house is situated on the property.

The second drawing shows the house itself with the attached garage. Mr. Egan stated the garage is 24X31 and the apartment itself sits directly above the garage in the same space. He stated there was no change to the footprint of the garage.

Rick Davies asked if the apartment had its own kitchen. Mr. Egan stated it is a studio apartment that more or less is one big room with a divider wall for a sleeping area, with a small kitchenette and bathroom.

Rick Davies verified the main house has its own kitchen. Mr. Egan said that was correct.

Kimberley Edelmann asked if there was a separate entrance for the apartment. Mr. Egan said yes there is a separate entrance to the apartment.

Gordon Nolen asked if the apartment was above a 2 or 3 car garage. Mr. Egan stated it is a 2 car garage.

Rick Davies asked Mr. Egan to explain what he means by the passive security he is referring to. Mr. Egan said passive security means that there is someone there on the property. They are not there necessarily to guard the house but if someone were to pull up to the driveway they would look outside and turn on lights. He stated their responsibility is not to engage someone if they were to come onto the property (not a security guard) but they would let him know if something is occurring. Mr. Egan stated that just their presence would provide a deterrent. He stated that someone would not be walking around the house if there are cars there, fresh tracks, lights on at night, and any other type of activity.

Gordon Nolen asked how many people would be living in the studio apartment. Mr. Egan stated it is designed for one person; two people could possibly live in it but it would be tight. Mr. Egan stated it is a small space and is not designed as a full living area for a family. He said it is significantly smaller than the garage itself. The apartment is 31'X18'.

Rick Davies said Mr. Egan states that part of his reason for the request is to ensure snow removal the why couldn't he just hire a plow operator to be plowed out. Mr. Egan stated they do have someone plow but the problem they have run into is the property has a metal roof and the snow slides off the roof at different times where the oil fill and propane tanks are. If the snow falls off when the plow person is not around the deliveries cannot be made. Mr. Egan stated that a caretaker would be able to keep an eye on the situation and make sure the area is clear.

Gordon Nolen asked if the home is heated with oil or propane. Mr. Egan stated he heats with oil and wood. There is a propane dryer and stove on the premises. Gordon Nolen asked if the property has an underground propane tank then. Mr. Egan said no it is a bottle. Gordon Nolen verified the location to be right next to the house. Mr. Egan said yes they are and can be covered with snow falling off the roof.

Janice Loz asked Rick Davies if the Board at this point was determining whether to accept, reject, or continue the application. Rick Davies stated that at this point they are just asking some questions but before the Public Hearing they will need to make a decision on accepting the application. They could accept the application at any time if someone wanted to make the motion.

Janice Loz made a **MOTION** to **ACCEPT** the application as written. Scott Hanwell seconded the **MOTION**. There was no discussion on the **MOTION**. The application was **ACCEPTED** by a unanimous vote.

Kimberley Edelmann stated that the application did not show who received it. Rick Davies stated he would refer to the Chairman whether to have the application initialed by the receiver. The secretary stated the application is stamped received by the Land Use Office. Janice Loz noted that the application was stamped with the date received as well as stating received by Land Use Office.

Scott Hanwell asked if the point of having a separate apartment for the caretaker is to allow them to use the main part of the house when they want to come. Mr. Egan said yes they do have family visit the home at times and they like to come up when they can and would not be able to do so if they had the caretaker living in the main part of the house.

Rick Davies asked if they considered taking the kitchen out so it would not technically be considered an apartment therefore would not require a variance. Mr. Egan said he did not consider that because it would not make it practical for the caretaker who would live there. Mr. Egan stated it is a very small kitchenette with a cook stove, refrigerator and sink. He said it just enough space for them to live their lives comfortably. They are hoping that the caretaker would live there for a prolonged period of time. The goal was to make the apartment comfortable and homey.

Rick Davies stated he wanted to look at the five questions that the Board's decision is based on. He stated that if even one of the questions is not met then they are required by state statute to vote no. Rick Davies stated that there are two parts to question number #5. He stated that part B owing to special conditions of the property that distinguish it from other properties in the area, He stated that having an oil fill does not make it different from other properties in the area. He asked if other houses in the area have trouble getting oil to their houses. He stated that the question is looking to find what is different from his house as compared to the other houses in the area. Rick Davies stated that an oil fill does not seem like a distinguishable issue. Mr. Egan stated it is not necessarily distinguishable issue other than the fact that there is not someone there to maintain it.

Janice Loz said she could understand Mr. Egan's point.

Mr. Egan stated there are two homes beyond them and a couple others is relatively close proximity to them and those are all occupied. Those homes require regular frequent maintenance of all the access points but the difference is they are living at the home where he is not. Rick Davies stated that he just does not see it as a distinguishing factor. He said you could move an oil

filler to a different location; make a cover on top of it; alarms could be installed if the power goes off; he could hire someone to check on it twice a day. Rick Davies said he was trying to make the argument of how it differs from the houses in the neighborhood. Rick Davies said he does not see how it makes it a special situation.

Janice Loz asked Mr. Egan how often they are at the property. Mr. Egan stated they make every attempt to get up once a month but sometimes it is less frequent.

Rick Davies asked if they considered an electronic security system. Mr. Egan said yes they have but there are several problems with that. Primarily and foremost is that the remote nature of the property does not make it easy for someone to go out there and check on the property. He said he is pretty far off the beaten track. He stated that if there were a major ice storm where communication lines were down which happened a couple years ago and the power was out there would be no way of knowing what was going on.

Rick Davies asked how his home was any different from the houses up the street. He stated the variance question is looking for something that is unique to his property. Rick Davies said just because they are not there he does not see that as a reason to be granted a variance. He stated the houses up the street may be occupied.

Janice Loz asked if an argument could be made whether it is the Zoning Board of Adjustment's place to say whether or not he has a caretaker on his property. She stated if he wants a caretaker on his property instead of an electronic security system he can choose so. She stated the point is whether or not he can have an apartment above the attached garage. She stated she did not want the Board to go down the avenue of questioning whether or not he needs a caretaker when the issue is whether or not the apartment should be allowed.

Rick Davies said his questioning is more to see if Mr. Egan can prove security is unique on his property vs. others; then it makes sense to have an apartment for a caretaker. He stated that he cannot see how Mr. Egan's property is different from the others except for the fact that he is not living there. Rick Davies stated he is having trouble digesting that as a hardship. He feels it is a choice and not a hardship. Rick Davies said there are other options out there for security, plowing, maintenance and different ways to put in oil fillers. He stated that in the OR-1 District a two family dwelling is not permitted and not permitted by special exception on the Zoning Ordinance Use Table. He stated there is not anything in the Use Table that would be similar that is permitted in that District.

Janice Loz said a Lodging House or Bed and Breakfast is permitted. Rick Davies said that would be a little more formal than what the applicant is looking for. Rick Davies said that is the point of the ordinance. If there is a special situation that is a hardship which is unique per the Variance questions as compared to the other surrounding properties. Janice Loz said she understood his point.

Gordon Nolen said Rick Davies hit the nail on the head when he stated the necessary hardship is the fact that the applicant is living out of state. Although, it may be by choice he must have a valid reason for living out of state and that makes it a hardship in his mind. Gordon Nolen said

he can understand why living out of state would make it desirable by the applicant's standpoint as well as the communities to have a caretaker on the property. Gordon Nolen said everyone can relate to the fact that winter is a very special time when you need an extra pair of eyes and ears other than electronic. Gordon Nolen stated he has a second property that has an electronic surveillance system that calls him when the power goes out that did not do him much good when four weeks ago a tree fell on his property and took down the power lines, telephone lines, cable lines and the surveillance system could not work to reach him. He said fortunately a neighbor's power was knocked out and he contacted him. Gordon Nolen stated the battery backup on the surveillance system kept trying to call him but the phone lines were down and it wore out the lithium battery. He stated the electronic surveillance is only good as far as technology can take you. Gordon Nolen stated that he feels Mr. Egan has a valid point wanting a caretaker on the property.

Gordon Nolen stated that he feels living out of state may be a hardship of choice but it is still a hardship. Janice Loz agreed with Gordon Nolen.

Mr. Egan stated he would love to live here now however at this time he could not afford to do that. He stated that both he and his wife work out of state and they cannot move to the property until a later time. Rick Davies stated that the rule of thumb is that an expense (dollars) is not a valid reason for a variance. Mr. Egan said he understand and that is not what he meant by his statement. Mr. Egan said the passive security in general not just the shoveling of snow is unique to the property since he does live out of town. He stated things can occur especially when a home does not look lived in. He said if he did pay someone to stop by and walk in the driveway once in a while to check things out it is not the same as having someone there on a regular basis. If something occurred in between visits it could be days before they would find out anything has happened. Mr. Egan said they have already run into a situation when snow has fallen off the roof between the times they were there and they did not have a caretaker at the time and the oil company would not make a delivery. If the company cannot make a delivery they do not notify him of the situation and if they are unable to come back up to check on the house the house could run out of oil in turn causing a problem with the pipes.

Janice Loz asked which of the variance questions Rick Davies was having a hard time with. Rick Davies said initially he was talking about 5 B and then A i. that talks about: no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property;

Rick Davies said he feels the ordinance is pretty cut and dry as to what the ordinance and the application are and he does not feel it is a unique situation.

Janice Loz confirmed that if part A of question 5 is not met then part B would kick in. Rick Davies said yes, but if A and B don't kick in then it would be interpreted as a no. Rick Davies stated that the ordinance is literally out of the RSA of the State of NH.

Rick Davies asked if there were anymore questions from the Board.

Kimberley Edelmann asked Mr. Egan how many neighbors can see his property from their homes. Mr. Egan stated none of the neighbors can see his property.

Rick Davies asked approximately how feet away he is from the neighbors. Mr. Egan stated he believes the closest house is approximately just over ¼ mile.

Kimberley Edelmann asked how many residences are beyond his house on the road. Mr. Egan stated there are two others.

There were no further questions or comments from the Board. Rick Davies closed the meeting and opened the Public Hearing.

B. PUBLIC HEARING

Rick Davies stated the Public Hearing would be opened to abutters first then to the general public.

There were no abutters present.

There was no Public present.

Rick Davies stated a letter was received from an abutter in regards to the original hearing that was to be held in January however due to the weather the meeting was canceled. The abutter resent the letter to be read at the February meeting.

Rick Davies read the following e-mail into record:

To the Warner Zoning Board of Adjustment,

I am an abutter to the Egan-Barse property on Cunningham Pond Road. I am unable to attend the January 12, 2011 public hearing because of a schedule conflict.

My understanding is Cunningham Pond Road is classified as single family residential. Not being familiar with the plans for the studio apartment proposal, I hope that the intent of the apartment is familial usage and not the beginning of a seasonal or yearly rental situation or commercial development of the property. This area during the many decades of my family's ownership has been rural in nature with a few single family homes built and the occasional logging endeavor.

If the proposal is granted, does the property revert to single family residential status when the property is sold? If the proposal is granted, what precedent does this set for the area?

Respectfully,
Pamela A. Harvey

Rick Davies said he would give a quick answer to a couple of Ms. Harvey's questions in the last paragraph. If the proposal is granted the property does not revert back to a single residence status if the property is sold because a Variance stays with the land. Rick Davies stated he would leave the question if the proposal is granted what precedent does it set for the area to lawyer or someone else.

Gordon Nolen asked if Ms. Harvey was notified of the date change of the meeting. The Land Use Secretary said yes; Ms. Harvey resent the letter on February 4, 2011 since she could not be present for the February meeting.

There were no further comments or questions from the public; therefore the Public Hearing was closed.

C. CLOSE PUBLIC HEARING RE-OPEN MEETING

Rick Davies re-opened the meeting and asked the Board if they had any further discussions.

Scott Hanwell stated that Ms. Harvey also has an out of state address and was wondering if she has the same situation as the applicant. Rick Davies said that in that case they also could be in the same situation not living there and they do not have a full time person present as a caretaker.

Kimberley Edelmann asked what property Ms. Harvey owned. The secretary looked at the tax map and stated that Ms. Harvey is the Trustee to a Revocable Trust located Map 9; Lot 37. Mr. Egan stated there is no house on the property it is the tree farm next door to them.

Scott Hanwell confirmed with Mr. Egan that they intended to retire to the property and not sell it as a rental property. Mr. Egan said that is the intention. Rick Davies said things can change and a Variance goes with the land and if sold at any time the new owner could use it as an apartment.

Janice Loz asked if they could put a stipulation that it could only be used as a caretaker apartment. Rick Davies said that might be tough to enforce. Gordon Nolen agreed that would be hard to enforce.

Rick Davies stated the only time a Variance can revert is if there is a handicap accessibility issue. Once the handicap access issue is not there any longer it could be reverted to no longer having the Variance.

Janice Loz asked if the verbiage "studio apartment" could be added so it could not be changed to a 2-3 bedroom apartment. Gordon Nolen said the size of the apartment defines its usage anyway by only being 18'X31'. Janice Loz said she was just asking in case someone ever wanted to enlarge the garage to a 3 car garage and in turn enlarge the apartment.

Kimberley Edelmann asked if an apartment is permitted does the person pay taxes to the town. Rick Davies said that would need to go through the Accessing Clerk. Kimberley Edelmann asked if the renter themselves would be responsible for paying taxes. Rick Davies said the homeowner is responsible for taxes. Rick Davies said some of the arguments in the past have been if there is an apartment someone could move in with a kid and the kid goes on the tax roll as an expense for the Town, which is typically from a cost point of view that would be considered.

Gordon Nolen stated that Mr. Egan could move in with five children so he did not see how that should not be considered an issue.

Rick Davies said he is still having trouble seeing a hardship. He said he saw it as every house in OR-1 has the same situation being in a rural area. He said he was having trouble seeing how it was unique since there is nothing that distinguishes it from other properties in the area.

Kimberley Edelmann stated it is not visible by any other properties in the area. Janice Loz agreed. Rick Davies said the other properties are not visible from his property so it is not different.

Janice Loz stated that in the past they have not had an issue at all with someone putting in an apartment in a garage that is attached to the house; that has always been something that they tried to stick close to is that if they have an apartment it is either inside the house or in an attached garage. She said they have not had problems with that in the past and have usually granted the request.

Rick Davies stated it is not in the Zoning Ordinance. Janice Loz said the Zoning Ordinance states the Zoning Board of Adjustment can grant a Variance for it. Rick Davies said that from the RSA point of view if any one of the five questions is a no then the answer should be no.

Rick Davies went through the five questions again.

Rick Davies stated that in a previous meeting a request for a garage apartment was made in an area where the Zoning Ordinance allows two dwelling units in the particular District. Janice Loz said in one dwelling unit. Rick Davies said it was a different situation but a two family dwelling was allowed in that District. Rick Davies stated in this situation there is nothing unique to Mr. Egan's property. The spirit of the ordinance states it is not allowed and there is nothing unique about it per the hardship. Rick Davies stated that everyone would like security on their property and there are other ways to have security on the property as well as being able to hire a maintenance person, a plow person, etc.

Rick Davies said as far as granting the Variance substantial justice would be done they had a garage in the past that was too close to road because there was a ledge that forced the garage to be closer to the road which was considered a justice to move it closer to the road. He said there is nothing specific about Mr. Egan's property other than it is in a rural area just like all the other dwelling in the same area so it is hard to see how there is an injustice.

Janice Loz said she struggles most with the fact that they live out of state and she agrees with the statement that Gordon Nolen made about wanting to have a caretaker rather than depending on alternate security system. She said she feels it is a very logical request. She agreed it is a hardship of choice but it is indeed a hardship.

Gordon Nolen agreed it is a hardship. Gordon Nolen stated the big picture is that if these were houses on Main Street it would be a different story. He said when you are in a very rural setting not visible from any other house it makes sense to have a caretaker. Having a caretaker will not change the character of the neighborhood by having someone living over the garage taking care of the property as a maintenance person or if two people are living there taking care of it. The character of the house will not be changed at all. Gordon Nolen said he completely agrees with

Mr. Egan's reasons why he would want a caretaker. He said if he lived out of state he would like to have a person taking care of the place in his absence and he feels it is a very reasonable request.

Scott Hanwell said he could see it being a hardship when you are trying to depend on a plow guy, electrical guy and different people trying to coordinate everything from out of state. Rick Davies asked with that logic should everyone in the OR-1 District be allowed to have an apartment. Scott Hanwell stated that he feels the hardship is the fact that he lives out of Town and would have a laundry list of people to take care of things rather than just one person to care for it all and he considers that a hardship.

Rick Davies said the State RSA asks what distinguishes it from the next properties in the surrounding areas.

Gordon Nolen said a case was recently heard by the Zoning Board of Adjustment that had properties in the area that were exactly the same. Janice Loz said that some of the other properties in that case also had a road running through their property too but it was still approved. Rick Davies stated that a two family dwelling was permitted in that area. Janice Loz said yes but only one dwelling unit and they had two separate dwelling units. Janice Loz said the Board agreed that the road created a hardship therefore it was approved.

Gordon Nolen said nothing in Mr. Egan's request would change it into a commercial property or housing development.

Janice Loz stated she is very satisfied that the garage is attached to the house and that it would not change the look of the neighborhood and it does not seem to be contrary to the spirit of the ordinance.

Kimberley Edelmann asked how difficult it would be to change the Zoning District a property is in. Rick Davies said that to change a Zoning District it would need to be brought forward for Town vote in March by either the Planning Board or a citizen petition.

D. ACTION TAKEN – APPROVE/DENY/CONTINUE

Rick Davies made a **MOTION** to **DENY** the request for variance by Christopher Egan and Elaine Barse on 246 Cunningham Pond Road to have a studio apartment above an attached garage in an OR-1 Zoning District because the applicant has not by the Zoning Ordinance proven that:

1. Granting the variance is not contrary to the spirit of the ordinance. The ordinance is very clear that OR-1 District is single family.
2. There was no injustice because there is nothing unique in the property.
3. Per question number five on the variance application A and B there is nothing that exists on the property that distinguishes it from properties in the area. There is no relationship that exists between the public purpose of the ordinance provision and the specific application of that provision of the property. There is no fair and substantial relationship that exists between

the public purpose of the ordinance and the specific application of that provision of the property.

The MOTION was not seconded therefore the MOTION died.

Janice Loz made a **MOTION** to **GRANT** the request for a Variance by Christopher Egan and Elaine Barse on 246 Cunningham Pond Road to have a studio apartment above an attached garage in an OR-1 Zoning District because the applicant has met the following stipulations of the application for a Variance:

1. The granting of the Variance will not be contrary to the public interest.
2. By granting this Variance it would not be contrary to the spirit of the ordinance.
3. By granting the Variance substantial justice will be done.
4. Granting the Variance will not affect the values of the surrounding properties.
5. The applicant seemed to display sufficient evidence as to a hardship due to the fact that the applicants live out of state and are only at the residence once a month and would like to provide a residence for a caretaker that will live in the property full time to manage their affairs.

Gordon Nolen seconded the **MOTION**.

Rick Davies opened the motion for discussion.

Rick Davies said he has never heard of using the reason stated in the Motion that the person lives out of state as being a reason to grant a Variance. He said he feels it is changing the will of the voters. Just because someone lives out of state and they cannot get someone locally to plow and can't do a security system in this modern age boggles his mind how it could be considered a reason for approval for granting the Variance. He said that if that were the case everyone in OR 1 District would have a reason to have an apartment. He stated that the apartment is not just for security and feels there is no reason for it to be considered a hardship.

Rick Davies stated as per proper procedure according to Robert's Rules of Order he was going to Amend Janice Loz previous Motion.

Rick Davies made a **MOTION** to **AMEND** the previous Motion to **DENY** the request for variance by Christopher Egan and Elaine Barse on 246 Cunningham Pond Road to have a studio apartment above an attached garage in an OR-1 Zoning District because the applicant has not by the Zoning Ordinance proven that:

1. Granting the variance would be contrary to the spirit of the ordinance. The ordinance is very clear that OR-1 District is single family.
2. There was no injustice because there is nothing unique in the property. He does not understand that the applicant is in a situation where the ordinance is causing an injustice.
3. Per question number five on the variance application A and B there is nothing that exists on the property that distinguishes it from properties in the area. There is no relationship that exists between the public purpose of the ordinance provision and the specific application of that provision of the property. There is no fair and substantial relationship that exists between the public purpose of the ordinance and the specific application of that provision of the

property. He stated that it is very clear that the properties in the area are the same and there are no special conditions on the property that exist to distinguish it from other properties in the area. There is nothing unique.

Kimberley Edelmann asked Rick Davies if he was changing the Motion Janice Loz just made. Rick Davies said he is amending the MOTION which is proper procedure.

Janice Loz said Rick Davies is changing the whole tone of the Motion. Rick Davies stated that Robert's Rules of Order allow you to do that.

Janice Loz said she is confused because they never said there was anything unique about the property.

Rick Davies said the Amended Motion needs to be seconded before they can discuss it.

Rick Davies said that there has to be something that shows the property is unique in item B. He asked Janice Loz if they feel that question 5 item B does not apply and question 5 item A hardship does apply.

Janice Loz said that it is her understanding that if the criteria in subparagraph 5A are not established then 5B kicks in.

Rick Davies asked if Janice Loz feels that 5A is established.

Janice Loz said she feels that the proposed use is a reasonable use to have a caretaker apartment above an attached garage. Janice Loz said the special conditions of the property would be it is very rural and isolated, there is not a significant amount of traffic going by creating a high level of visibility and due to the nature of the rural property and the applicants not being at the property it is reasonable to have a caretaker on the property.

Janice Loz made a **MOTION** to **Amend** her original motion to read: to **GRANT** the request for a Variance by Christopher Egan and Elaine Barse on 246 Cunningham Pond Road to have a studio apartment above an attached garage in an OR-1 Zoning District because the applicant has met the following stipulations of the application for a Variance:

1. The granting of the Variance will not be contrary to the public interest.
2. By granting this Variance it would not be contrary to the spirit of the ordinance.
3. By granting the Variance substantial justice will be done.
4. Granting the Variance will not affect the values of the surrounding properties.
5. The applicant seemed to display sufficient evidence as to a hardship due to the fact that the applicants live out of state and are only at the residence once a month and would like to provide a residence for a caretaker that will live in the property full time to manage their affairs. No fair or substantial relationship exists between the general public purpose of the ordinance and the specific application of that provision for the property because the applicant has provided significant evidence that the property is rural in nature and that it is situated in an OR-1 District and is somewhat isolated and because of the nature of the property and the fact that there are not a lot of neighbors around it the applicant is more comfortable leaving

the property for a significant period of time, he is only in the residence once a month, and feels that he should have the right to have a caretaker apartment to provide the security for his property.

Gordon Nolen seconded the Amended Motion. There was no further discussion.

A vote was taken on the verbiage of the amended motion: Janice Loz yes; Gordon Nolen yes; Kimberley Edelmann yes; Scott Hanwell yes; Rick Davies no.

Rick Davies asked if anyone had any questions on the original MOTION with the Amendment. There were no questions.

A yes vote grants the request for Variance: Janice Loz –yes; Gordon Nolen –yes; Kimberley Edelmann –no; Scott Hanwell –yes; Rick Davies –no.

The **Variance** was **GRANTED** by majority of vote.

Rick Davies stated that within 30 days the decision can be appealed. Rick Davies stated that the Zoning Board of Adjustment can reconsider the decision.

Gordon Nolen asked if he disagreed with the vote that he could appeal the decision. He said he thought there was some finality and that was why they spent the time tonight to come to a conclusion. He said he understands the abutter appealing it but not a Zoning Board of Adjustment member. Rick Davies said yes the Board can reconsider its decision per RSA.

Janice Loz said the appeals process is not always a bad thing. She said it is like a check and balance and would have the Board rethink the decision before someone would take them to court. Rick Davies said it is proper procedure by RSA and ordinances.

Mr. Egan thanked the Board and left the meeting.

A brief discussion was held on a Board member appealing a decision.

3. COMMUNICATIONS AND MISCELLANEOUS

Rick Davies stated that on Monday February 14, 2011 the Planning Board will be hosting a joint meeting with the Conservation Commission and the Zoning Board of Adjustment members are invited.

Janice Loz suggested the Planning Board look at adding to the Zoning Ordinance apartments, in law suites, etc to present at the 2012 Town Meeting.

4. ADJOURN

Kimberly Edelmann made a **MOTION** to **ADJOURN**. Janice Loz seconded the Motion and all were in favor. The meeting adjourned at 8:40.