

**Zoning Board of Adjustment
Warner, NH
Meeting Minutes of July 8, 2009**

Members Present: Martha Thoits, Chair, Mike Holt, Eric Rodgers, Rick Davies and Alternate Gordon Nolen (voting for Janice Loz). (Jean Lightfoot recording)

Excused: Janice Loz

Not present: Alternate Ted Young

The meeting was called to order at 7:10 p.m. The roll call was taken.

1. CASE 02-09: AREA VARIANCE

- a. Applicants: Albert and Maryann Plass, 44 Southgate Road, Newbury, NH 03255
- b. Property Location: 88 West Main Street, Warner, NH, Map 34, Lot 20, R-1 zoning district.
- c. Proposed Use: Subdivide one parcel into 4 lots, with 2 lots lacking 25 feet of frontage as required.
- d. Variance to Zoning Article V, Section C of the Warner Zoning Ordinance. Request Variance of 25 feet less than the required frontage of 100 feet for each of two lots of a proposed four lot subdivision.
 - a. Review Application – Accept/Reject/Continue
 - b. Public Hearing
 - c. Action Taken – Approve/Disapprove/Continue

Ms. Thoits recognized Maryann Plass and Raymond Critch of Lake Sunapee Survey. Ms. Plass said that they are requesting the variance because of the shortage of two of the lots. She said they need 100 feet of road frontage and they only have 75 feet on two of the lots. She said because the location of the existing house the lines could not be drawn in a fashion that would give each of the four lots the 100 feet required. She said that there is 400 feet of road frontage for the original lot, but because of the placement of the house the lot lines could not be drawn with 100 feet of frontage.

She presented the application:

- A. No diminution (decrease) in value of surrounding properties will occur. Although the values of most properties in today's real estate market have diminished due to the economy, the inclusion of three (3) new land parcels which eventually will be built upon with brand new construction will only help to improve the surrounding property values even with the road frontage of proposed lots 3 and 4 having 25 ft. less road frontage than required.
- B. Granting the variance will not be contrary to the public interest. Because proposed lots 3 and 4 will have a shared driveway access via an already existing driveway (currently being used with the house in proposed lot 2) allowing the reduced road frontage for these two lots would pose no additional issues to, or jeopardize, the public. In addition, the fact that additional lots with buildings will be created will help grow the village water and sewer districts and potentially help reduce

the impact of future tax increases which benefits the public. In addition, if shorter road frontage was against public interest, there would not be the 15 lots already on West Main Street that have less than 100 feet of road frontage.

- C. Denial of the variance would impose unnecessary hardship upon the applicant. Applicant's criteria for demonstrating hardship for an Area/Dimensional Variance are as follows:

(a) An Area/Dimensional Variance is needed to enable the applicant's proposed use of the property given special conditions of the property.

There is currently 409.58 ft. of road frontage, however, if lot 1 were to have only 100 ft. road frontage, then the next 100 ft. would land in the middle of the existing house and garage area. In order to give the existing home at least 100 ft. road frontage, the frontage for lot 1 had to be moved and ultimately had to extend to 140 ft. This leaves only 150 ft. road frontage for the remaining lots 3 and 4. There is no other way to do that, other than asking for a variance on the existing house lot.

(b) The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an Area Variance.

Other lot configurations were explored to achieve similar results (4 lots) but were not met with favor due to the odd shape involved. We had initially proposed at a conceptual hearing in December, 2008, that lot 1 would have 100 ft. of road frontage, then the next 50 ft. of road frontage on both sides of the house would make the next 100 ft. but would not be contiguous (rules state it must be contiguous). Then, the driveway on lot 4 would give a right-of-way to the parcel in back of the house. Doing this made the lot appear to have a tuning fork shape which was not well received. Changing lot 1 to 140 ft. of road frontage and splitting the remainder of the 150 ft. of road frontage (75 ft. each lot) with a shared driveway provided the most appealing way to subdivide with a much better appearance to all.

- D. By granting the variance, substantial justice will be done.

It would not be an injustice in that the Town would benefit from the three additional lots and they would help the water and sewer district. According to the Master Plan, that is one of the benefits of trying to develop the in-town lots. The Master Plan encourages development in town to help reduce the tax rate. So, it would not be an injustice; it could only help and not hurt. All local and state requirements would be adhered to.

- E. Granting the variance will not be contrary to the spirit of the Ordinance.

In the spirit of the Ordinance and the Master Plan, which appear to promote growth in the Town in a controlled, equitable, and fair manner, we are trying to follow all the requirements but are lacking 50 ft. of road frontage due to the current placement of the house and garage and cannot make the frontage conform perfectly to the requirements of the ordinance. We are trying to keep it in the spirit of the ordinance and appealing to the neighborhood. By using the existing driveway instead of applying for another driveway would not add any egress issues for the town since it is already being used.

Mr. Davies said that he did not have the statement for D on his copy of the application.

Ms. Plass apologized and said she had forgotten to type that answer and presented it just

now. Ms. Lightfoot said that the only ones received included all but D and she had mislabeled E in the application.

Mr. Rodgers said that he understood Ms. Plass to say that if the number of houses in town were to be increased, it would help the tax burden. He asked if she was implying that if there are more residences, our taxes will go down. He asked her to back it up with some empirical data because, he said, everything that he has read shows that residential growth equals higher taxes. He added that he understands that commercial growth equals lower taxes for the residents. Ms. Plass said that they would be utilizing the existing water and sewer, so nothing additional is being added but there is a significant fee to tap into that. She said that she has no empirical data, but was trying to use common sense in figuring that if you have more people, the value per person ends up being less per person. She said that the budget increases slightly each year, so it could help. Mr. Rodgers replied that it does not because families live in houses and families have children, and so the tax burden goes up. He said that commercial development lowers the residential tax per capita. He said that every house that is built in town increases the tax base, but it also increases the needs. He said that every study that he's read shows that. He said that the statement seemed very factual the way it was stated and he wondered if she had some data to back it up. Ms. Plass said no, she really believed that that is the way that it was.

Mr. Nolen asked if the plan presented represent suggestions or recommendations from the Planning Board. Ms. Thoits said that they had gone for a conceptual before the Planning Board as the Zoning Board had suggested and no official comment was provided back from the Planning Board. Mr. Critch said that suggestions from the Planning Board were that the pitch fork idea with 50 feet on either side of the house was not acceptable because it was not contiguous. He said another idea was to make one of the lots 100 feet, and then only have 50 feet on lot number 3, for example. He said they decided to make them both 75 to make them as conforming as possible and it also helps to center the driveway. He said that any of the possibilities would require that they appear before the Zoning Board for a variance.

Mr. Rodgers said that he understands them to say that the only way to do this is with four lots and getting variances. He said that he saw nowhere in the paperwork that they had considered three lots which would require no variances of any kind. He asked why, other than getting an extra lot, they did not look at only three lots. Ms. Plass said that in keeping with the way they understood that the Master Plan encourages growth within the town. Mr. Rodgers said that they said in their letter, "In the spirit of the ordinance, which appears to promote growth in the Town" – actually, he said, it says "preserving the values and charm now attached to the Town." He said in his opinion, these are two very different statements. He said if there were three lots, there would be no need for any variances and there is plenty of land. He said that the variances that are being requested are unnecessary for three lots and he asked why they would bother. Ms. Plass said that the three lots were not considered because they were trying to avoid leaving the big four-acre lot because if that were left, they would want to build some kind of condos or townhouses or some low-income, affordable housing, which she did not think the abutters would like. She said that they tried to propose what they thought the abutters would like instead. She said if the amount of building space were limited by splitting the larger lot up, then most likely only a one or two family home would be built there. She said that if they have to go back to the larger lot with 150 feet of road frontage, then they will probably go toward getting approval for condos or townhouses. Mr. Critch said it did not

seem unreasonable since the frontage is over 400 feet and there are almost six acres of land, which gives more than enough building area for 4 lots. Mr. Rodgers said that he was only responding to what was written and added that it said nothing about condos or low income housing. Ms. Plass said she did not want to approach it in that respect since she did not think that, given that there are 15 other houses on West Main Street with less than 100 feet of frontage, asking for 25 feet would be a big issue. She said that she thought a bigger issue would be to upset people by going for the full-blown townhouse/condo idea. She said they did not want to bridge that discussion because she thought it was better for the town to go this route.

Mr. Davies asked when they purchased the property. Ms. Plass said August 2008. Mr. Davies asked if they had reviewed the town ordinances prior to purchasing the property. Ms. Plass said yes. Mr. Davies asked if there was any indication to them at the time that four lots were going to be available there. Mr. Critch said that they thought because they had 400 feet of frontage, they thought it could be done. He said that it wasn't until they started laying out where the 100 feet fell that they realized that one fell right in the middle of the house. He said if the house was not an issue, they could do four 100-foot segments and not have to apply for the variances. Mr. Davies said that in theory the house could be moved – albeit at a substantial cost. Mr. Critch said yes.

Ms. Thoits said that one question she understood was a problem was the drainage and asked if that will be a problem to the abutters. Mr. Critch said the first he'd heard of it was tonight. He said that they are trying to develop single family residential lots. He said the areas now are fields that slope very gradually from the back of the street to the middle of the lot, it probably drops only a foot and a half and then from there it drops 12 to 15 feet to a small stream beyond the tree line. He said that the drainage issues are to the south of the property. He said that the property between their property and the one who has the drainage issue slopes quite a bit, so he said there are some minor things they could do to slow the water down, but he said he does not think that the water generates as much pond on lot 4 as it does on the neighboring property. So, he said he does not know if whatever they do will make any change at all on the drainage issue.

Ms. Thoits asked where the driveway would be on lot 1. Mr. Critch said it will be an issue with the State DOT, but he said as far as sight distance is concerned, it could go almost anywhere on the front of the lot. He said their preferred location would be to keep it as far north as possible to keep as far as possible from the large tree. Ms. Thoits asked what happens if DOT denies the permit for lot 1. Mr. Critch said that decision is premature. He said that he does not think it will be an issue for lot 1 and the other two driveways already exist. Ms. Thoits said she understood that there was another plan considered and that this is the better one for the driveways and she had read this in the minutes of the Planning Board. There were no other questions.

Ms. Thoits closed the Zoning Board Meeting and opened the Public Hearing. She asked if there were abutters who wished to speak.

She recognized Charles Albano. Mr. Albano explained where his property is located relation to the lot in question. He said they have lived there for 35 years and it has been a quiet neighborhood and that is why they stayed. He said they have had no visual or noise impacts. He said that he thinks that any kind of development would affect their peace and quiet which is one of their concerns about the development and how large it is. He said

there is also the stream that separates their property from the Nichols property. He said his concern is that it is a seasonal stream and he wants to know exactly what has been done to consider what effect any one of the configurations would have on the stream. He said his property had over 40 flags on it because the wetlands extend around the corner. He commented that no one had ever asked him to put flags on his land. He said he removed them. He said it was not the stream that was on their property, but the part of it that was on his property. He said that Patton Corporation had wanted to put 30 "spaghetti" lots above the toll booth on Kearsarge Mountain. He said that NH and Vermont have talked about eliminating "spaghetti" lots and he said that two of the lots on this plan are "spaghetti" lots with minimal frontage and land in the back. He said this is not the type of subdivision that is wanted, either visually or practically. He added that it does not meet the spirit of the rules, regulations and laws that have been created by thoughtful people in the past. He said to grant a 25-foot variance on either one of the lots makes no sense at all. He also asked if there has been a traffic study because he said that in the past this area has had a history of traffic issues. He said it is a dangerous area with the slope presenting a danger to both vehicles and pedestrians. He said if more driveways are to be opened up, there will be more traffic. He said that it sometimes takes quite a while to get out of Roslyn Avenue onto Route 103/Main Street. He said he can't imagine having more driveways which would add to the congestion that is already there. So, he said, in the spirit of the planning for the development of the Town of Warner, you cannot necessarily apply it to this. He said, in summary, he wanted to know if there has been a traffic study and he wanted to know about any environmental assessment of the stream. He added that the stream flows into the Warner River and he knows there are signs along the road saying that this is a protected water zone. He said he doesn't know if that plays into any of the environmental considerations. He said he wants to know if anyone is thinking if the house could become condominium-ized. He asked if it were, would that add more traffic to the existing layout. He said that without a driveway being identified on lot 1, if there were another driveway plus the old Nichols double driveway, plus two more, and if there were condominiums, you could have who knows how many cars coming out of that space. He concluded by saying that he would not be opposed to having, say, one house there, but to make it four is somewhat unreasonable. He said that he hoped the Board would consider the neighborhood and the other neighbors who have also enjoyed the quiet of that parcel the way it's been forever. He said he thought to change it drastically would be a disservice to the community and to the neighbors.

Ms. Thoits recognized Ron Piroso. He said he wants to address the flooding issue which comes from the field. He said it's only when there's frost in the ground. He said if there is a heavy rainstorm in the winter or a quick melt off, the water has no place to go except downhill and it goes right through his property. He said if it is not redirected, it will go in and over his bulkhead. He said it has flooded his cellar in the past. Mr. Rodgers asked exactly where his lot is. Ms. Thoits said there is a house between the current lot and Mr. Piroso's house. Mr. Piroso continued, saying that the water goes through the O'Neil property through their garage and onto his property. He said he has re-directed it around the back of his property toward the brook. He said that this has been a long-time problem. He said that he has no problem with the subdivision. He said he thinks the precinct needs to grow. He said his thought is that if and when this happens, he would like the drainage issue to be addressed so it can go someplace else. He said he took pictures last March and submitted them.

Ms. Thoits recognized Ken Milender. Mr. Milender said that even though there may be 15 houses with shorter than 100 feet frontages, they may well have all been developed long before the Zoning Ordinance was enacted or the road was paved, so he said he does not think that is a valid point. He said he also had had surveyors putting flags on his property and did not receive a courtesy call which he would have appreciated. He said his main point is that the Zoning Ordinance says that it is instituted to preserve the values and charm now attached to the Town. He said that the addition of 3 houses would pack the houses in pretty closely and he thinks that directly contravenes the spirit of the Zoning Ordinance.

Ms. Thoits recognized Eric Allard. Mr. Allard said that he had moved to this town because of its New England charm. He asked if the town would support two lots sharing a driveway. He asked how it is maintained. He asked if the driveway directly across the street from the proposed shared driveway is an issue.

Ms. Thoits recognized Mary Cogswell. Ms. Cogswell said that it is her driveway that is directly opposite the proposed shared driveway. She said she is concerned because the possibility of adding a couple of additional driveways to a State highway that is sometimes dangerous. She said on May 2, 1985, a young child on a bicycle was killed on the hill just before you get to the Nichols' driveway. She said on November 20, 2007, a car coming up the road at 8:30 a.m. crossed the street, side-swiped her mailbox and knocked it off, side-swiped the rear of her car parked in the driveway and knocked the three-cornered fence out. She said it is a very dangerous highway and that should be taken into consideration, especially with a lot of young children around that area. She asked if the town had to approve a shared driveway or can it just be done. She said that one of the other plans had a split driveway and it has now been turned into a shared driveway. Ms. Thoits said that the shared driveway would be a Planning Board issue. Mr. Davies said it would be an easement that would come to the Planning Board. Mr. Critch said that the plan would be to have 50 feet or so that was shared and then the driveways would split. He noted that there is an outline of a potential driveway easement on the drawing. He said that DOT actually looks in favor of a split driveway. He said that they will only allow three driveways across frontage like this at any rate. Mr. Rodgers asked why they would insist on only three driveways. Mr. Critch said that unless you have a certain amount of frontage, they will only allow you a certain number of permits. He said that because there are already two, they will only allow one more. He explained that a road, even, that enters a State highway is still considered a driveway, even though there may be 50 houses back on that road. He said that DOT will have to come and inspect the area anyway.

Ms. Thoits recognized Janice Cutting. Ms. Cutting said she lives across the street from where another driveway will be. She said she worries about the traffic on the road now. She said on a Saturday morning, she heads for the post office and the bank before heading to the Market Basket or the Transfer Station because she cannot back out to head west. She said it is the same at 4:00 p.m. She said when fire engines come up the hill, they put their sirens just as they're coming up the knoll because people cannot see them coming. She said that the u-shaped driveway was good for the Nichols because they could drive in and go around and come out without having to back onto Main Street. She said that option would be removed from the main house with this proposal. She said she knows that there was a variance granted some years ago on Kearsarge Mountain Road for less than 100 feet of frontage for the Lords. But, she said, that did not take away from the integrity of the existing property. She said that because it is set back so far, you don't

even see where the driveway goes. She said that removing the beautiful side lawn of the house is going to take away from the character of the neighborhood.

Ms. Thoits asked if there were other abutters wishing to speak. There were none. She asked if there were other members of the public who wished to speak. She recognized Martha Mical. Ms. Mical said that she is also opposed to this proposal. She said she thinks it takes away from the integrity of the neighborhood because of trying to cram four houses into the one lot, even though one would be toward the back. She added that the other issue she is concerned about is that the two entrances of the horseshoe driveway are not both used 90% of the time. She said that one of the entrances is used once a year during the Festival. She said that a car coming out of that one entrance cannot be seen by a car coming from the village to the Market Basket because of the slope. She said that the applicants have not received their driveway permits from the State. She said that they will have to have permission to improve that driveway that currently exists. She said that she thinks that that driveway was put in without permission because it was put in before the State was issuing driveway permits. She said she is opposed to granting the variance, primarily because of that one entrance that will serve lots 3 and 4. She added that one child has been killed in the area and we do not want it to happen again.

There were no other members of the public wishing to speak. Ms. Thoits closed the public hearing and re-opened the Zoning Board Meeting. Mr. Rodgers asked if Ms. Thoits would read the letters that the Board received. Ms. Thoits said yes, and said there were two letters received, and read them, as follows:

"I am very much opposed to this subdivision – it would destroy those nice fields that we're privileged to have right here in town. Also, I'm concerned about the impact 4 houses would have on the little stream that runs behind Roslyn Avenue.

"Please deny.

"Jane Labelle /s/'"

"Zoning Board of Adjustment

"Town of Warner

"Town Hall

"Main Street

"Warner, New Hampshire 03278

"SUBJECT: Case 02-09, Area Variance

Application for Zoning Variance

88 West Main Street (Map 34, Lot 20)

"Dear Honorable Board Members:

"We have lived at 98 West Main Street (Map 34, Lot 19) since purchasing the property in 1995. We are direct abutters to the subdivision being proposed by Albert and Maryann Plass (88 West Main Street, Map 34, Lot 20); the Plass' have applied for an area variance from the Warner Zoning Ordinance.

"Granting the requested variance will:

1. Allow for an increase in the local population density, thereby causing harm to the rural character that attracted us to this neighborhood. This, in turn, will directly cause a diminution of our property value.
2. Disregard the public interest, as expressed through adoption of the zoning ordinance, which sought to balance the interests of landowners, their neighbors, and the Town.
3. Contravene the spirit of Article I of the Warner Zoning Ordinance, which states (in part) ' . . . the purpose of promoting the health, safety, and welfare of the inhabitants, and preserving the values and charm now attached to the town, . . .'

"We respectfully urge the Board to reject the Applicant's request for variance from the Zoning Ordinance.

*"Very truly yours,
"Kenneth W. Milender /s/
"Kathleen A. Milender /s/"*

Mr. Rodgers asked Ms. Plass if they have anything from any abutter that is in favor of this variance. Ms. Plass said there was a letter that was sent to her directly. Ms. Thoits read the letter from Katherine and Peter Savlen as follows:

"We wanted to let you know that we feel having three additional building lots available to build upon in this town is a very positive thing and we strongly approve, even though you are 25 feet short in the road frontage for two of the lots. In our view the shortage does not affect the surrounding properties, as there are other properties on West Main Street that do not have a 100 foot required. Plus, water and sewer access is already at the street and the Fire and Police Departments are very close.

"There is also need for additional housing in the town. Several sections of the Town's Master Plan mention the Town's objective to meet current and future housing needs and even encourages development in the village area.

"Finally, having additional development within the town and water precinct will also help to minimize tax burdens to us personally and to the other citizens of Warner.

"Many thanks to you for doing something that this town sorely needs.

*"Sincerely,
"Katherine and Peter Savlen /s/"*

Mr. Rodgers asked where they live. Ms. Thoits said they live across the street in the new house at 103 West Main Street.

Ms. Thoits said that Mr. Nolen will be voting for Janice Loz.

Ms. Thoits asked if there were any other comments or questions from the Board. There were none. Mr. Piroso asked if the Board would re-open the public hearing. Ms. Thoits

asked if the Board had any objection to re-opening the public hearing. There was none. She recognized Mr. Piroso.

Mr. Piroso said that he had written a letter in favor of the subdivision. Ms. Lightfoot said it was sent to the Planning Board. She said that she has a copy of it. He said that he was in favor of the subdivision and the variance, although he said he would not say he was in favor of a condominium. However, he said, he would be in favor of single family housing. Ms. Thoits read his letter as follows:

"First of all I have no problem with a subdivision at 88 West Main Street. The Precinct needs to grow!

"My concern is Storm Winter surface water run off, from the rear of 88 West Main Street (the old board field). For decades water (after ground has frozen) passes thru 88 West Main to my property, 72 West Main. If not redirected, the water will flow into my cellar over and down my bulk head.

"It is my desire, when lots, homes are built, that proper consideration is applied to drainage, and direct it to the woods in the rear of the lots.

"Enclosed are pictures taken this March 2009, of water flowing on and off my property.

"Thank you.

"Ron and Carol Piroso /s/"

Mr. Piroso asked if condominiums or low-income housing is allowed in this part of town. Mr. Davies said that one- and two-family dwellings are allowed; multi-family dwellings are allowed by Special Exception. Ms. Thoits asked if there were more comments. There were none. She re-closed the public hearing and re-opened the Board meeting.

Mr. Davies said there were some comments that raised issues that are not Zoning Board issues. He said the number of lots is not the Zoning Board's responsibility, but it is the Planning Board's. Mr. Holt said that traffic count was brought up and that is not in the Zoning Board's authority. He said it is DOT's responsibility. He said he agrees that this is a rather congested area, not only for cars, but also for bicycles. He said there are a lot of children who ride in that area and it requires a lot of caution. Mr. Rodgers said that he understands everyone's concerns about the traffic and the driveways and the wetlands, but there is a 75-foot wetland setback which is within the rules and regulations. He said there is plenty of land for building within the rules and regulations. He said if they want to put two more houses with 100-foot plus of road frontage, it is within their legal right to do so. He said his concern is that he does not agree with what was written in the application about how wonderful it will be for the district and the town to have these extra houses. He said they can legally put three houses on the lot. He said he does not think that it goes with the spirit of the ordinance to "shoe-horn" in road frontage. Mr. Critch said that they do have 400 feet of frontage, but the concern is trying to make it into four lots. He said that if they demolished the house, then they could make the frontage for all four lots, although that is not economically feasible. Mr. Rodgers said that economics are not a

hardship issue. He said he thinks that allowing four lots with the variances is going against the spirit of the ordinance.

Mr. Davies said that his concerns are similar. He said that they had the opportunity before they bought the property to sketch out the possible lots, adding that some people actually buy lots, pending approval by the various town boards.

Ms. Plass asked why the Master Plan says that in the Village area, high density, residential development should be encouraged, where services are readily available. She asked why these 25-foot variances would not be approved if the goal is to develop in the area. She said that just because the other houses on West Main Street have less than 100-feet of frontage have been there for many years, does not mean that going forward, you can't expand your thinking. She said that the issues that were brought up about the traffic, the slope, the driveways, and the drainage were disconcerting because she wondered why those issues had not been brought up to the Nichols before. She said that now they have to do what someone else perhaps should have done and she said she thinks that is a hardship to them. She added that she wants to apologize to any of the abutters who had flags on their properties and were not called. She said she was not aware that they were going to go onto other people's property when they were flagging. She said she does apologize to everyone.

Mr. Davies said there is talk about looking at the ways housing is done in the Zoning Ordinance and the Master Plan is always looked at every 10 years or so. He said that there are some items that the Planning Board is considering now. In regard to consolidating the housing in the downtown area, the Zoning Board is charged with looking at hardships, justice and the five questions required to be met for a variance. He said that to take into consideration what may or may not happen would not be appropriate.

Mr. Rodgers asked if it wasn't possible for anyone to put before a public meeting a proposed change to any ordinance in town. Ms. Thoits said yes, they can go before the Planning Board when they are working on the Zoning Ordinance. She asked Mr. Davies how many people come to those meetings. Mr. Davies said not as many as were there that night. He added that an individual can petition to add items to the ordinance. Mr. Rodgers said that if the Master Plan says there should be increased growth downtown, then why is there a 100-foot road frontage requirement. He said if that is the goal, then he thinks the frontage requirement should be 50 feet. Ms. Thoits said that she did not think there was anything wrong with this proposal. She said there are beautiful fields everywhere, but people own them and they have a right to work with their property. She said that these people own this property and they have rights, too.

Mr. Davies asked about the shape of the lots. He said that other odd-shaped lots have been accepted in other areas of town. Mr. Nolen said that he does not personally like the way the proposed curb-cut is done. He said he thinks this is a natural for three lots. He said there is such a thing as trying to squeeze too much out of a piece of land. He said there is a lot of acreage and a lot of wetlands that require serious consideration. He said he thought they were trying to do too much with what is there. He said that the fact that they have a total of 400 feet is irrelevant because, unless the house is demolished, it cannot be made into 4 100-foot (contiguous) frontages. He said that he has heard nothing tonight about there being an existing hardship. He said that he believes that the Plasses are creating their hardship by doing something that the existing zoning ordinance

does not allow. He said that they knew about this before they bought the property. He said that the Board is looking at what the townspeople have voted on and he said that he does not see that a hardship exists that could not have been foreseen.

Ms. Thoits said that some people had concerns about adding a driveway. But, she said, if there are three houses put in, they still have to add the driveway for lot 1.

Mr. Critch said that the area is not a problem. They have 4 times the required buildable area on the lot, but it is the frontage that is the problem. He said that it also has sewer and water, so no septic and well is required for each lot. He said the impact on the land is minimal. He said someone would have to build beyond the tree-line and inside the wetland setback to be over the slope that leads into the stream at the back of the property.

Mr. Davies suggested going through each of the five questions to see if the members have specific comments on them. He read item A.: "No diminution (decrease) in value of surrounding properties will occur." He said he thinks this is neutral – either way 3 or 4 houses would have little impact on surrounding property values. Mr. Rodgers agreed that he did not think it would affect the valuation of the properties either way.

Mr. Davies continued with B.: "Granting the variance will not be contrary to the public interest." He said he thinks the public input has been mixed. Ms. Thoits agreed. Mr. Davies said that contrary would be significant in the immediate area. Mr. Rodgers said that we have heard comments on both sides, but he said that he thinks that a great majority of the abutters are not in favor of this particular design. Ms. Thoits said that we need to consider the whole town, and not just the public opinion. She said that if this were being done on the other end of town, these abutters would not care. She said that this needs to be considered by the Board and remember that they represent the whole town. She said she understands that the abutters want the grass to remain, but the Plasses own the property and they have a right to put something on it.

Mr. Davies continued with C. which relates to the hardship consideration: "Denial of the variance would impose unnecessary hardship upon the applicant. Applicant's criteria for demonstrating hardship for an Area/Dimensional Variance are as follows: (a) An Area/Dimensional Variance is needed to enable the applicant's proposed use of the property given special conditions of the property." He said that the special conditions are the existing house which was known ahead of time and the ordinances were known ahead of time. He continued with C. "(b) The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an Area Variance." He said, again, they knew the ordinance.

Next, Mr. Davies read D.: "By granting the variance, substantial justice will be done." He said this is always the hard one. He asked what the injustice to them is right now. He said if they knew there were four lots at one time and they were reduced to three, then that would be an injustice. He said if they were closer to the frontage requirements, then justice could be done by granting the variance. Mr. Holt said that the 25% reduction represents quite a large variance. He said if it were 10 feet, then he might be more favorably inclined to it. He added that he is not in favor of the narrow funnel type of lot that would be created.

Mr. Davies concluded with E.: "Granting the variance will not be contrary to the spirit of the Ordinance." Mr. Rodgers said that the ordinance encourages growth, but then sets a 100-foot road frontage. Mr. Davies said this could go either way.

Mr. Nolen MOVED to deny the request for the variances of 25 feet from the required 100-foot frontage on the two lots based on the fact that there is no injustice (paragraph D) and there is no hardship (paragraph C.(a)). Mr. Holt seconded.

Mr. Davies MOVED to amend the motion to include paragraph B regarding the public interest. Mr. Rodgers said he did not think it will affect the public interest in the larger scheme of things and Ms. Thoits agreed. There was no second.

There was no further discussion. The vote was taken, with a yes vote denying the application and a no vote accepting the application. Mr. Davies, yes; Mr. Holt, yes; Mr. Nolen, yes; Mr. Rodgers, abstain; Ms. Thoits, no. The motion was PASSED. The application for the variances was denied.

Ms. Thoits told Ms. Plass that they have 30 days to appeal this decision which will entail asked the Zoning Board to reconsider the decision.

Ms. Plass and Mr. Critch departed.

2. MINUTES

Mr. Rodgers MOVED to approve the minutes for the April 8, 2009 minutes. Mr. Holt seconded. Mr. Davies said that on page 3, it says that Mr. Rodgers nominated Janice Loz, and he said that he had nominated Janice Loz. Ms. Lightfoot agreed to correct it. Mr. Davies said that on the last page it says it was agreed that a member of the Planning Board could be on the Zoning Board. He said that is in the RSAs, so there is no need for the Board to agree to it. Ms. Thoits said it was still what was said and that the Board agreed with the RSA, so no change is to be made.

Mr. Rodgers MOVED to accept the minutes as corrected. Mr. Davies seconded. The motion was PASSED unanimously.

3. COMMUNICATIONS AND MISCELLANEOUS

Mr. Davies said there is Senate Bill 147 which was passed recently and he thinks it says that the hardship item is not going to be an Area/Use and it will just be hardship. He said based on the Simplex decision, this is changed. He said that there will have to be a new application form by January 10th to comply with this. He said that applicants in November and December should have the new form. He said that there is no place to sign on the application form, unless the applicant is having someone represent them. He suggested that there should be a signature line added to the front of the form.

Mr. Davies said that he has a suggestion for the bylaw changes, as a result of the last meeting in regard to the unavailability of the Chair or Vice Chair. There was a short discussion about the 3 possibilities for wording in the rules of procedure.

Mr. Davies MOVED that the following wording be added after Paragraph 2. under OFFICERS in the Rules of Procedure: "In the absence or unavailability of the Chair and Vice Chair the members present shall select a Regular Member to exercise the duties of the Chair." Mr. Rodgers seconded.

There was no further discussion. The vote was taken and the motion was PASSED.

After further discussion, Mr. Davies MOVED to amend the above motion to place the new paragraph as # 3. under OFFICERS in the Rules of Procedure. Mr. Rodgers seconded. The motion was PASSED.

It was agreed that this was the first required meeting under which the change is to be discussed. It was noted that the change must be considered for two consecutive meetings and this was considered to be the first meeting. The final vote will be taken at the meeting after the August meeting, as contained in the current Rules of Procedure.

Ms. Thoits said that there is an application in, so there will be an August meeting.

Mr. Rodgers MOVED to adjourn the meeting. Mr. Nolen seconded. The motion was PASSED unanimously. The meeting was adjourned at 8:45 p.m.