

**Zoning Board of Adjustment
Warner, NH
Meeting Minutes of December 1, 2010**

Members Present: Mike Holt; Eric Rodgers; Rick Davies; Janice Loz and Gordon Nolen.

Members Excused: None

Members Absent: None

Alternates Present: Kimberley Edelmann

Alternates Excused: Scott Hanwell

Alternated Absent: None

The meeting was called to order at 7:00 p.m. The roll call was taken.

1. MINUTES

Rick Davies made a **MOTION** to **APPROVE** the minutes of November 10, 2010 as **AMENDED**. Gordon Nolen seconded the **MOTION** and all were in favor.

2. Case 04-10: VARIANCE

Applicant: Tom Baye & Louise H. Brown

Property location: 81 Dimond Ln, Warner, NH; Map 28, Lot 47

Zoning District R-2

Variance requested to the terms of Article IV Section L of the Warner Zoning Ordinance to have a one bedroom apartment/dwelling unit above detached garage.

A. REVIEW APPLICATION

Mike Holt confirmed that the application would be accepted first then the Public Hearing would be opened if the application was accepted.

Property owners Louise “Sissy” Brown and Tom Baye introduced themselves. Ms. Brown read the application into the record:

Applying for a Variance.

Property location and description: 81 Dimond Ln, Warner, NH; Map 28, Lot 47; Zoning District R-2

Proposed Use: One bedroom dwelling unit located above 3-car garage (1-2 Adults only, no children).

Details of request: Variance requested to enable proposed use of property given the special conditions of said property: 2+ acre lot is bisected by Dimond Lane preventing the garage from being connected to the house. Both structures share same electrical connection, septic system and well.

To Grant the Variance, the following conditions must be met.

1. Granting the variance would not be contrary to the public interest because a two-family dwelling is permitted in the R-2 Zoning District Table 1 USE REGULATIONS.
2. Granting the variance will not be contrary to the spirit of the Zoning Ordinance because the underlying rationale of R-2 Zoning appears to allow more than one dwelling unit on a lot, as well as multi-family and conversion of an existing dwelling.
3. Granting the variance would do substantial justice because the property meets all qualifications of the requested use except that the garage could not be built in any other location on the land/lot because of the road going through the property.
4. The granting of the variance will not diminish the value of surrounding property because no existing structures or homes are adjacent to the garage and the use is allowed in the R—2 Zoning District.
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 special condition that the lot has a road running through it requiring a (area) variance to enable the proposed use.
- ii. The proposed use is a reasonable one because no other method is feasible, other than a variance. The lot cannot be changed or subdivided as stated in the deed. There was no way of physically attaching the garage to the house because of the road running through the property. The house is situated on the pond side of the property to take advantage of the pond view which is the reason for purchasing the property on the pond however due to setbacks the garage had to be built on the other side of the road.

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. Garage and house share electrical service, well, and septic system.

Rick Davies said if you are looking for a Variance you would need a Variance from a specific part of the ordinance. He said he thought what was discussed at the previous meeting while mulling over the previous application that Article IV paragraph L-not more than one permanent structure containing residence shall be permitted on a single lot. He asked the applicants if that was the paragraph they needed relief from.

Ms. Brown said that's what she thought the Board referenced that ordinance for them to come back for. She said at the first hearing there was no problem with the request overall except that she needed a variance due to the way the lot was situated and there was no way of complying with the ordinance. She said the Board talked about the fact that the garage is not attached and if a breezeway could be built or another way to attach it a variance would not be required.

Rick Davies asked if he could interrupt Ms. Brown. He stated that they need to identify a specific paragraph or section to write the variance to. He said it is permitted in the Use Table as Ms. Brown identified so it is not an issue with the table.

Janice Loz said at the top of the application on page it states that the undersigned hereby requests a Variance to the terms of Article IV; Section L.

Rick Davies said he did not notice that in the application.

Gordon Nolen said as he recalls for the record he believed that at the last hearing on November 9, 2010, it was stated that when the applicants got the building permit to build the structures they discussed their plan to live in the second structure (3 car garage) while they were building their house.

Ms. Brown said originally years ago they spoke to the Planning Board about it but it did not turn out that way because they could not sell their house on Kearsarge Mountain Rd first. The plan was to sell the house and build the garage to live on top of while the house was being built, however because of the Shoreline Protection Act changes that came, plans changed. She said the plans and permit came about later that show the house and space and bathroom above the garage as well having a 4 bedroom septic design.

Rick Davies asked if they were going to rent or lease the apartments. He confirmed with the applicants that they could not sell it as a condo. Ms. Brown and Mr. Baye said no it can not be sold as a condo. Ms. Brown said the deed states the lot can never be subdivided.

Rick Davies said 5-6 years ago the applicants came before the Planning Board and asked for a letter regarding the lot. Ms. Brown said that had to do with the lot being non-conforming lot due to the width and she was not sure how it would be taken with the Shoreline Protection Act. Ms. Brown said it had nothing to do with this situation.

Rick Davies said he had a question that an abutter might ask. He said in theory they could have built a house with an attached garage across the street. Ms. Brown said yes but the point of living on the lake was to have lake front property.

Rick Davies asked if there were any houses adjacent to them on the lake. Ms. Brown said yes. She stated they bought the land in 2001 with the idea of eventually building a house.

Janice Loz asked if other owners on Dimond Lane had garages on the other side of the street. Ms. Brown said a lot of the lots do not have land on both sides. She stated that two abutters have a couple of buildings (garage and barn) across the street. She stated that Laurie Hart has one across from her house too.

Janice Loz asked if they use the garage. Mr. Baye said yes it is full. Janice Loz asked if they can park by the house. Ms. Brown said yes there is a driveway they can park in at the house.

Mike Hold asked if the Board had any further questions.

Rick Davies made a **MOTION** to **ACCEPT** the application. Eric Rodgers seconded the **MOTION**. There was no discussion on the **MOTION**.

The **MOTION** to **ACCEPT** the application was unanimous.

B. PUBLIC HEARING

Mike Holt stated the Public Hearing would be opened to abutters first then to the general public.

An abutter asked if the Variance was accepted. Mike Holt stated the application was accepted.

Eric Rodgers stated that the abutter should give her name and address for the record.

Diane Sullivan introduced herself; she stated that she lives next door to the applicants on a part-time basis. She said she wanted to thank everyone in the Warner Town Hall Offices that provided her with the information that was available to the Public. She confirmed that the Land Use office had her correct mailing address. She stated there was a problem with receiving a separate abutter letter by mail for the November 10, 2010 meeting. She said she was told that if two people own the property only one certified letter is mailed. She stated that the Land Use secretary notified her through e-mail that only one notice is sent. She stated that she and her sister do not live at the same address so she sent the Land Use office an e-mail the other day with her address. She also stated that the letters were mailed Monday, November 22, 2010 and she did not receive it (her sister did not receive it) until November 24, 2010. Ms. Sullivan stated the abutters that live out of State would have received them later then that. She said since the deadline was Monday, November 29, 2010 for responses in her opinion it did not give enough time for people to respond. She thought it was a big time crunch and that the meeting should have been held Wednesday, December 8, 2010 in her opinion.

Rick Davies verified the date of the notice.

Ms. Sullivan said as a concerned abutter her goal was to review information and to find out some facts about Tom and Louise's property and question any discrepancies. She asked the Board to bear with her and forgive her because she is new at this. She just wanted some information about the Variance and the procedure going on.

Ms. Sullivan stated that she received some information from the Town Office regarding the applicants permit. Ms. Sullivan stated she was not sure if the Board would need copies of the information she had. Mike Holt asked if she had additional copies. Ms. Sullivan said no, she did not. Gordon Nolen stated they had a copy of the map of the area.

Ms. Sullivan said she had questions about language and fine print. Ms. Sullivan states she is just a concerned abutter. She stated that the checklist for the building permit was not dated.

Eric Rodgers verified that Ms. Sullivan was talking about the building permit. She said yes. Eric Rodgers stated that the building permit has nothing to do with the Zoning Board of Adjustment. Ms. Sullivan asked if she could bring it up at this meeting. Mike Holt and Eric Rodgers both stated yes but it has nothing to do with the Board and they can not resolve any issues pertaining to permitting since that is handled through the Board of Selectmen.

Rick Davies suggested explaining to Ms. Sullivan the role of the Zoning Board of Adjustment.

Mike Holt stated the Zoning Board of Adjustment is a process set up by the State that provides the citizens of the United States with an opportunity to request a change (variance) in good faith from the Zoning Ordinance. The Zoning Board of Adjustment is made up of 5 members and 2-3 alternates that are appointed by the Selectmen. The Zoning Board of Adjustment listens to the request and they try to align their response according to what is written in the Zoning Ordinance. The Zoning Board of Adjustment tries to provide the public an opportunity to voice their concerns/opinions on the particular situation being heard. The Zoning Board of Adjustment is not a form of Police that would go around looking for situations but rather it is brought before them. Mike Holt used the example of being like an Appellate Court.

Janice Loz said the Zoning Board of Adjustment is similar to a legal body.

Gordon Nolen stated that the Zoning Board of Adjustment deals with the Zoning laws and many times people with unique situations fall between the written rules since no rules are totally perfect. He said what special conditions, circumstance, etc that place a situation in between the given rule they can request a relief from the written rule. He stated the purpose of the Zoning Board of Adjustment is to make an adjustment where an adjustment is deemed appropriate after it has met the criteria (conditions) of the request. Gordon Nolen said he hoped the explanation helped clarify things for Ms. Sullivan.

Ms. Sullivan said it did not really, because she had some questions that pertained to the entire situation. She said the Board could tell her is she was off base.

Eric Rodgers said just as an example the date or lack of date on the building permit information is handled by the Selectmen's Office and not the Zoning Board of Adjustment. Eric Rodgers gave the example of a person having 90 feet of road frontage and the Zoning Regulations state 100 feet is needed, the applicant would come and ask for a variance to that regulation to build a house and driveway. He said the Zoning Board of Adjustment would not ask to see the State application for a driveway permit. He stated they are specifically dealing with what the Town Regulations are.

Janice Loz said that the Zoning Ordinances are voted on by the entire Town and the Zoning Board of Adjustment's job is to take those ordinances read through them and interpret them and make sure they are being followed with the spirit that they are written and find where their may be some relief and adjust accordingly. She stated that if Ms. Sullivan had something that shows an ordinance was violated they would certainly want to hear. She stated unless it has to do with the ordinance specifically it would be difficult to see how the information would fit into their job.

Rick Davies stated that tonight's meeting is dealing with Article IV; paragraph L of the Town of Warner Zoning Ordinance because that is what the Variance is requested on to put the applicants' situation into compliance. Rick Davies also agreed that that is all they are dealing with tonight.

Rick Davies said Ms. Sullivan may have some information that is appropriate to talk about regarding the request for Variance.

Ms. Sullivan thanked the Board for the explanations. She said she was trying to determine if there was ever a kitchen or kitchenette over the garage and she would like those definitions specified a little more in detail. Ms. Sullivan stated that a copy of a letter that she had from the Board of Selectmen implies that removal of the kitchenette would need to be realized in order for the applicants to build their waterfront home. She stated that the Board would probably say it had nothing to do with this meeting.

Ms. Brown said she could explain the letter. She asked Ms. Sullivan the date of the letter. Ms. Sullivan said it was 12/22/04. Ms. Brown said that was what she was talking about earlier when they were asking about building an apartment while they were building the house. Ms. Brown said she did not want to be caught in a catch 22 by being told you already have a house so you cannot build another house. She stated they never went through with that plan and the area was just left as a space above the garage. She explained that they built the house first instead and the garage and are now present at the meeting abiding by the ordinance and the rules asking to do what is allowed under the ordinance. Ms. Sullivan said the language in the letter makes it sound like this will be accomplished by the removal of the kitchenette. Ms. Brown said that situation was purely hypothetical and it never happened.

Rick Davies said as a point of order all questions need to go through the Board first and not directly to the applicant.

Ms. Brown apologized for answering.

Kimberley Edelman asked if they should be bringing up things that are six years old.

Mike Holt said it is appropriate.

Rick Davies said as long as it is pertinent information.

Ms. Sullivan referred to the minutes of November 10, 2010 on page 4; she questioned the statement made by Ms. Brown regarding the definition of a dwelling unit. She asked to have 1 or more sleeping areas clarified.

Eric Rodgers explained that Ms. Brown was referencing the definition of a dwelling unit from the definitions section of the Town of Warner Zoning Ordinance.

Ms. Sullivan confirmed that the applicants were planning to have a one bedroom apartment with 1-2 adults and no children.

Ms. Sullivan asked if it would be a yearly or seasonal rental.

Mike Holt asked the applicants what their intention was.

Ms. Brown said they would hope to rent it yearly but would rent it seasonal if they had to. She also stated that their intention is to not have anyone on the lake because they do not want the renters cutting across their property. The property where the house is will be considered private property. The rental agreement will be with "no lake access".

Ms. Sullivan said that she realized there is another rental property in Warner that she had spoken to Martha Mical, tax collector, about that was grandfathered in before the law was changed. Ms. Sullivan stated she is concerned with further development on the lake in particular on their side of the lake. She stated that there are many parties that own land on the other side of Dimond Lane on the other side of their residences for example Laurie Hart, Mr. McManus, Jacqueline Stock, Mr. Blake, etc. She said she is concerned about what might happen in years to come when others in the same situation want a Special Exception or Variance to do more developing. Ms. Sullivan stated that her family has been on the lake for 80 years and over the years she has seen massive tree removal and loss of habitat. She stated that at one point someone wanted to build duplexes at the end of Dimond Lane and cut the trees and cleared the land before getting permission to build. She stated the duplexes were not built but the area looked like a war zone. Ms. Sullivan stated that luckily the forest floor has begun to regrow. She stated that at the end of the lake there has been more massive clearings and tree cuttings resulting in an open, ugly sandy lot with piles of sand surrounding it.

Eric Rodgers asked Ms. Sullivan what all this has to do with this particular case. He stated that what someone else did on a lot has nothing to do with this case.

Ms. Sullivan said she is just voicing her opinion as an abutter that she is against development.

Eric Rodgers asked if she was against this Variance being heard tonight. Ms. Sullivan said absolutely.

Janice Loz asked if all the situations Ms. Sullivan was talking about happened on Dimond Lane. Ms. Sullivan said absolutely.

Mike Holt asked where Ms. Sullivan's home was located near the applicants' home. Eric Rodgers said Mr. Baye stated Ms. Sullivan lived to the left of the applicants if you were sitting on the lake. Ms. Sullivan is lot #48.

Kimberley Edelman asked Ms. Sullivan how often she is at her property on the lake because earlier Ms. Sullivan stated she was there part-time. Ms Sullivan said it was hard to say since she just retired last year and she will be able to spend more time there.

Mike Holt asked if there was anyone else from the public with any questions or comments.

Martha Mical, tax collector, introduced herself and stated she had two points:

1. Ms. Sullivan asked Ms. Mical at her office if there were any other apartments with separate houses. Ms. Mical stated that the house at the very end of Dimond Lane is a two-family structure that is connected by a breezeway and deck. However, in that situation the road does not run through the middle of the property.

2. The Zoning Board has previously granted to the Chadwick's who live in an R-2 zoning district on Ferrell Loop an apartment over the garage not connected to the house since the new Zoning Ordinance went into effect.

Janice Loz said she also found Zoning Board of Adjustment minutes 11/10/08 and 08/08/07 where they denied people the ability to build an apartment in a detached structure unless they connected the two structures because it was not in keeping with the spirit of the ordinance.

Kimberley Edelman brought up the fact that the Board of Selectmen approved the use of yurts as living quarters. Rick Davies said a yurt is considered a temporary structure so it does not fall under the same criteria as a dwelling unit.

Gordon Nolen asked Ms. Sullivan if she was finished with her presentation. Ms. Sullivan said she was finished and stated that she is against any further development.

Mike Holt read into record a letter received from abutters Dana and Tracy Hanson:

Attention: Zoning Board of Adjustment-Warner New Hampshire

RE: Proposed Unit/Apartment

Subject: Proposed dwelling unit/apartment

Date: November 29, 2010

To whom it may concern;

This letter is in response to the proposed dwelling unit/apartment located at 81 Dimond Lane, Warner New Hampshire. We; Dana and Tracy Hanson who own neighboring property located at 79 Dimond Lane have no opposition to the proposed unit/apartment.

Respectfully,
Tracy and Dana Hanson

Mike Holt asked if there were any further comments or questions from the public. There were no further questions; therefore the Public Hearing was closed.

C. CLOSE PUBLIC HEARING RE-OPEN MEETING

Mike Holt re-opened the meeting and asked the Board if they had any further discussions.

Eric Rodgers said the pros and cons for granting the Variance in his opinion are:

PROS:

1. The USE Table shows it is okay for a multi-family dwelling unit in the R-2 District
2. There would be no traffic issues to speak of with a 1 bedroom apartment.
3. It is an existing space. There will be no new construction/building of apartment houses.
4. One abutter is agrees with it per the letter read into the minutes.
5. From the map the Board looked at the garage has a large setback from the road and neighboring properties with plenty of trees.
6. He does not believe a one bedroom apartment over an existing garage and existing structure of that nature specifically would diminish any value of any surrounding properties. He said the Town's Master Plan has asked for more affordable housing.

CONS:

1. The Zoning Board of Adjustment has historically denied most of these requests based on information discussed at the meeting.
2. One abutter is against it.
3. The Board needs to be careful of setting a precedent.

Kimberley Edelmann stated that she drove by the property to look at it. She asked Mike Holt if he was okay with that.

Mike Holt said he was not sure if the Board needed to view the property collectively after making a motion for a site visit.

Eric Rodgers said Kimberley Edelmann could ride by on her own to look at the property. He wanted to be sure it was on record that the Zoning Board did not do a site visit.

Kimberley Edelmann said that she wanted to see the distance from the building to the road and other properties in person. She said in her opinion she liked the property and if it were proposed

in her neighborhood she would not be upset by the idea.

Janice Loz said she also drives by some of the properties to familiarize herself with the situation.

Rick Davies said in general drive bys are acceptable. A site visit needs to be done as a Board.

Janice Loz said she just drives by and does not get out of her vehicle.

Rick Davies said in theory they could vote to do a site visit and then make a decision at a later date.

Kimberley Edlmann wanted to be sure it was on record she did not get a tour she went by on her own.

Janice Loz said when she went by the property it appeared that the house and garage were two separate and distinct residences. She said if she did not know the garage belonged with the house she would have thought they were two separate properties and separate houses. She said they are both beautiful and if you did not know it you would think they were two separate residences on two separate lots.

Gordon Nolen said he does not see why at this point in time a decision could not be made and another event for this request would be a waste of the Board's collective time.

Janice Loz said the Use Table states a two-family dwelling not dwellings in two separate structures. She stated that is where she is having a hard time saying it is an okay thing to do.

Rick Davies asked if Janice Loz was referencing paragraph L with the two separate dwellings. Janice Loz said yes in paragraph L states you are only allowed one permanent structure containing residence on a single lot. Rick Davies stated that is why they are looking for a Variance because they cannot physically attach the two structures due to the road. Janice Loz said that in the Use Table you can have a two family dwelling in an R-2 Zoning District but she interprets that to read a two family in a single residential structure. Janice Loz said in the past they have stayed very strictly to that. She stated that she understands that in this situation the structures are separate and distinct which is a good thing and a bad thing which is why she is finding herself in a struggle. Janice Loz said she also thinks that if they are allowed to put an apartment in the garage across the street then everyone on that street can do the same thing or she could put a garage at the other end of her property and say it is impossible to attach it to the house and put an apartment in it and rent it. She feels a can worms is being opened and the Board needs to be really careful in their decision. Janice Loz also said that when the day comes that Ms. Brown and Mr. Baye do not own the property there is nothing saying that the new residents will not allow the renters to have lake access on the property.

Rick Davies said at this point he likes to read down through the questions on the application that the law states they need to interpret to see if majority of the Board agree with all the questions to vote to approve a Variance.

Granting the variance would not be contrary to the public interest Rick Davies said there are abutters going both ways and there were also abutters that did not respond which usually means they are neutral or have no opinion.

Explain why the variance is not contrary to the spirit of the ordinance. Rick Davies said Janice Loz just talked about that since it allowed in that particular area and also that they would want their house located on the lake.

Explain why granting the Variance the surrounding properties would not be diminished. Rick Davies said they have not seen anything in writing presented to the Board from an entity stating that the values would be reduced in the area if the Variance were approved which would make it a judgment call from the Board's point of view.

Explain why Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. The property was accepted in the past and was bisected by a road. Janice Loz stated there are other properties on the road that have the road running through them which does not make the property unique.

5. 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.

Mike Holt said the special conditions are that the road bisects the property and asked how many other lots are bisected by the road. Ms. Brown said there are only four lots that have the road running through a single property the others are separate pieces of property on either side of the road.

Rick Davies asked Ms. Brown to clarify how many other residents have other structures across from the road from their houses. Ms. Brown said two of the four properties have other structures across the road. Ms. Brown pointed out the lots on a map.

Eric Rodgers said if it was boiled down to one issue that if the garage were attached to the house the issue would have been resolved a long time ago. He said to him it all boils down to the road running through their lot and them not being able to build a garage attached to their house at the beginning. Eric Rodgers asked if the road convinced everyone individually that that is a condition that would be deemed appropriate to give a Variance for.

Rick Davies asked if looking at question #5 of the Variance application if they were having reasonable use of the property. Eric Rodgers said he was just trying to boil it down to one question which he feels after the last meeting and this meeting if the garage was attached to the house tonight's meeting would not be necessary. He stated that if the road were 100 feet further away from the lake none of this would be an issue.

Janice Loz stated that the applicants did not have to build the house in that location. Eric Rodgers said in his opinion if he bought a piece of property he should be able to do what he wants with it.

Janice Loz said yes but you should know what you're doing when you go into it. Eric Rodgers said that is his opinion and everyone has their own opinion and that is why he brought forth the question about the road to focus on before any motions are made. He asked if the road causes enough of a situation that the lot is not able to be used the way they wanted to use it.

Ms. Brown asked the Chairman if she could say something since they could not really say much in their defense aside from reading the application.

Mike Holt allowed Ms. Brown to speak.

Ms. Brown said Janice Loz mentioned they could have built the garage by the house but there was no way of doing that with setbacks. Ms. Brown said that anyone who buys a piece of property that you are paying a lot of taxes on you should have reasonable use of the property. She stated Mr. Baye is a builder and he needs to have a place for all his stuff. The house is situated on the pond side of the property to take advantage of the pond view which is the reason for purchasing the property on the pond however due to setbacks the garage had to be built on the other side of the road.

Janice Loz said it is a mute point whether they could or could not build the house and garage differently.

Ms. Brown asked if the other requests that were denied were special exceptions or variance requests. She stated that she felt the reason Rick Davies thought they should come back, and she agreed with him, was under Boccia case that talks about whether or not given the special conditions of the property would the applicant have been able to do anything differently and also it states that one of the benefits sought by the applicant could be achieved by some other method reasonably feasible for the applicant to pursue other than an area variance which includes considerations of whether the variance is necessary to avoid an undue financial burden on the owner. Ms. Brown said the reason they are asking for the area Variance is because they are allowed to and the law states that they are allowed to. She stated that a Variance is set up for people like them to get relief. Ms. Brown stated they are allowed to do and they could not attach the garage. She said a precedent is not going to be set by a decision made tonight because the precedent has already been set since other garages that are not attached have apartments above them.

Eric Rodgers said that one of the cases Janice Loz talked about earlier that was denied was the beauty shop in a garage that was approximately 7.5 feet away from the house and it could have been attached to the home. Eric Rodgers said he remembers that particular case being denied not due to a lot non-conformity but rather because the two structures were close to one another and could be physically attached.

Rick Davies commented on his interpretation of question #5 since the new law that past about a year ago so looking back at other decisions really does not apply depending on what they are looking. Question #5 deals with hardship. Eric Rodgers said Ms. Brown is referring to a financial hardship in the Boccia case and it a financial hardship which no longer applies. Financial burden is no longer a hardship.

Ms. Brown apologized that she read too much into it. She said she was referring to the statement that Rick Davies had made referring to the unique setup of the land requiring a variance rather than a special exception.

D. ACTION TAKEN – APPROVE/DENY/CONTINUE

Rick Davies made a **MOTION** to have a **SITE VISIT** prior to making a decision.

The **MOTION** was not seconded therefore the **MOTION** died.

Rick Davies made stated that some Zoning Board’s would agree to come back in a week or so after someone has formulated a Motion. He stated that the Board does not have to make a decision tonight.

Rick Davies made a **MOTION** to **APPROVE** the request for a Variance to paragraph L of Article IV in the Zoning Ordinance for a one (1) bedroom dwelling unit located above a garage with 1-3 adults only no children as the applicant has answered the questions with #5.B being explained as a reasonable use of their land. Gordon Nolen seconded the **MOTION**.

Mike Holt asked if there was any discussion on the **MOTION**.

Mike Holt paraphrased the Motion to make sure everyone was clear on it. The motion is that the Zoning Board of Adjustment approve the request for a Variance as stated answered all five (5) questions completely with paragraph 5 section b was considered reasonable use of their property.

Janice Loz said she was not comfortable stating in the motion “no children” allowed. She felt it is discriminatory. Rick Davies said he thinks they can and due to the situation it would be okay. Janice Loz said she feels that would be the applicants place to state if children are allowed or not.

Eric Rodgers made a **MOTION** to **AMEND** the previous Motion to strike 1-3 adults and no children and read..... a one (1) bedroom apartment in the existing structure over the three (3) car garage.

Eric Rodgers said if for example a single mother with a 4 year old is trying to rent a place because she just got a job in the area it would not be reasonable for the Board to say they could not rent the apartment. He said in the other hand if the applicants do not want to rent to anyone with children that is their business. Janice Loz agreed.

Gordon Nolen seconded the **MOTION**.

A vote was taken on the amendment to the **MOTION**: Eric Rodgers-yes; Janice Loz-no; Rick Davies-no; Gordon Nolen-yes; Mike Holt-yes.

Eric Rodgers confirmed that the new motion included Rick Davies motion striking “1-3 adults no

children”. Rick Davies said he stated dwelling unit and Eric Rodgers said “apartment”. Eric Rodgers said he did not mean to change the wording from dwelling unit to apartment. Rick Davies said there is not a definition in the Zoning Ordinance for an apartment.

Eric Rodgers made a **MOTION** to **Amend the Amended Motion** to use the word dwelling unit instead of apartment.

A vote was taken on the verbiage of the amendment to the amended motion. Eric Rodgers-yes; Janice Loz-yes, Rick Davies-yes; Gordon Nolen-yes; Mike Holt-yes.

A vote was taken in the motion that reads **MOTION** to **APPROVE** the request for a Variance to paragraph L of Article IV in the Zoning Ordinance for a one (1) bedroom dwelling unit in the existing structure over the three (3) car garage as the applicant has answered the questions with #5.B being explained as a reasonable use of their land.

A yes vote grants the request for Variance and a no vote denies the request for Variance.

Rick Davies-yes; Gordon Nolen-yes; Janice Loz-no; Eric Rodgers-abstained; Mike Holt-yes.

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

Mike Holt stated that within 30 days the decision can be appealed.

Mr. Baye and Ms. Brown thanked the Board and left the meeting.

3. COMMUNICATIONS AND MISCELLANEOUS

Rick Davies said he had some points of miscellaneous and communications he would like to discuss.

Eric Rodgers made a Motion to Adjourn. Gordon Nolen seconded the Motion. Janice Loz said she had something to present. Mike Holt said Gordon Nolen needed to leave.

Rick Davies said there was a Motion on the floor and he wanted to vote is down.

Eric Rodgers said he withdrew the Motion with apologies; it was said in jest.

Rick Davies said the Motion was made and seconded and they were playing around with a little game. Rick Davies said he felt it was childish and he wished Mr. Rodgers would refrain from joking around during the meetings.

Rick Davies said the comment right now and he was not sure it was appropriate or not, but Eric Rodgers abstained twice on important decisions. He stated that it is not so much he has a problem with people abstaining but when you go to school your told to come ready to make a decision. Rick Davies said if Eric Rodgers is a good solid member he needs to make a decision. Rick Davies said he does not have fun making the decisions sometimes either and at times he has

a hard time making a decision too. Rick Davies said he feels it is their responsibility for the Town to vote either up or down. Rick Davies said Eric Rodgers is a good participant but the responsibility of the Board members from the Board of Selectmen is to make decisions and if they thought there was someone else that could make a decision they should consider them. Mike Holt said Eric Rodgers is an excellent participant. Rick Davies said he thinks Eric Rodgers can make decisions.

Kimberley Edelman said if she were a voting member she would have had to abstain because she is friends with the applicants and was curious why Eric Rodgers abstained.

Eric Rodgers and Janice Loz said Kimberley Edelman would have recused herself.

Eric Rodgers said in his defense he was absolutely on the fence on this one. He said he understands that if push comes to shove he needs to make a decision and he would do that but the fact is he read the Board and he understood his vote would not be a deciding factor.

Rich Davies said they could not discuss the case now. Eric Rodgers told Rick Davies he brought it up. Rick Davies said he brought up the fact that Eric Rodgers abstained. Eric Rodgers said he is explaining his reasons for abstaining which is perfectly legitimate.

Mike Holt said that Gordon Nolen had to leave. Rick Davies said that was okay since they had an alternate there that could vote if necessary.

Kimberley Edelman was elevated to a voting member.

Janice Loz asked if there was a legal definition for abstaining. Mike Holt said they would look into that.

Eric Rodgers said he was on the Board for six years and has abstained twice. Rick Davies said those times stuck out because he too had a hard time making a decision. Eric Rodgers said in both cases the Board issues a decision and his abstention did not interfere with the outcome. Eric Rodgers said he was 50/50 on it the entire time.

Rick Davies said they could not discuss it anymore. Rick Davies said if he was out of line for bringing it up then he is sorry. Eric Rodgers said if something is stated on the record then he is going to defend himself. He said if Rick Davies said something to him off record about voting then that would be fine and he respects Rick Davies opinion.

Rick Davies mentioned procedure for recusal. He said if there is a reason a member cannot make a rational opinion due to be friends with someone or being an abutter, etc, they should recuse themselves as soon as possible. Rick Davies said in a small town a lot of people know one another and it can be difficult.

Janice Loz presented some verbiage for the Zoning Board of Adjustment Rules of Procedure regarding the reasons why a person would recuse themselves or be disqualified for serving on the

Board. She said she looked at the State and OEP sites and put together some verbiage that would fit.

A potential conflict of interest might include but is not limited to a financial, legal or family relationship with the applicant; abutter status; or any other similar special interest that might affect the objectivity of the member.

Mike Holt asked if friend or acquaintance was mentioned anywhere. Janice Loz said no. She said it does state that if your objectivity is compromised it could be a catch all.

The Board agreed to file the addition until the June 2011 when the Rules of Procedure are voted on. Rick Davies suggested doing more research and referencing an RSA.

A brief discussion was held on reasons why a member would recuse themselves.

4. ADJOURN

Eric Rodgers made a **MOTION** to **ADJOURN**. Janice Loz seconded the **MOTION** and all were in favor. The meeting was adjourned at 8:40 p.m.