



**TOWN OF WEARE**  
PLANNING BOARD  
ZONING BOARD OF ADJUSTMENT  
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Naomi L. Bolton  
Land Use Coordinator

**Office Hours:**  
Monday  
thru  
Friday  
8 AM – 4:30 PM

**ZONING BOARD OF ADJUSTMENT  
MINUTES  
JANUARY 2, 2007  
(Approved as amended 2/6/07)**

**PRESENT:** David Ruoff, Chairman; Ian McSweeney, Vice Chairman; Forrest Esenwine; Jack Dearborn; June Purington; Elwood Stagakis, Alternate; Naomi L. Bolton, Land Use Coordinator.

**GUESTS:** Ginger Esenwine; Art Siciliano; John Nelson; Lois LaPage; Deb Stewart; Ronald Stewart; Eldon Townes, II; Richard E. Townes; Steve Najjar; Ted Ober; Lisa Kazakis; Bruce Fillmore; Nancy Fillmore; Richard Howson; Rebecca Kram.

**I. INTRODUCTION:**

Chairman David Ruoff called this meeting to order at 7:30 PM and asked the board members present to introduce themselves. Chairman Ruoff explained to those present the way by which the board conducts business.

**II. ADMINISTRATIVE ITEMS:**

There were no administrative items for this evening and the board went right to the hearings.

**III. PUBLIC HEARINGS:**

Case #0107 Eldon J. Townes, II  
Variance, Article 17, Section 17.1.1  
Applicant is requesting permission to build a single family home.  
Tax Map 406-068 Huntington Hill Road (Class VI)

Forrest Esenwine stated that he is concerned that the location map and site map that were included, which he felt were not really sufficient, although he knew where the property was located. Jack Dearborn moved to accept the application as complete; Chairman Ruoff seconded the motion. Vote: 4 in favor (Purington, Dearborn, McSweeney, Ruoff) and 1 opposed (Esenwine). Eldon Townes was present. Mr. Townes explained that he would like to build a single family home on this lot. He got this lot from his grandparents.

Mr. Townes went through the five points of hardship as follows:

1. That there **will not** be a diminution of value surrounding properties as a result of the granting of this variance because: currently the portion of

Huntington Hill Road that I front on is of Class VI status. I intend to modify the road to a higher standard so it will be suitable to gain access to my lot, thus creating a superior right of way for any other properties that front on it.

2. That the granting of the variance **will not** be contrary to the public interest because: The road in question will be available for public use the same way it is now.
3. That enforcement of the zoning ordinance will create an unnecessary hardship in that the zoning restriction:
  - a. As applied to the petitioner's property will interfere with the petitioner's reasonable use of their property, considering the unique setting of the property in its environment for the following reasons: The lot in question is of suitable size to support a single family dwelling, which is my intended reasonable use of the property, therefore a reasonable use of the property. Since the lot fronts on a Class VI road, I can't get a driveway permit or building permit without a variance therefore interfering with my reasonable use of the property.
  - b. As specifically applied to the petitioner's property has no fair and substantial relationship to the general purposes of the zoning ordinance for the following reasons: The zoning ordinance states under 17.1.1 that no building permit can be issued on a Class VI road. Right now on Huntington Hill Road two lots gain entry off of Huntington Hill Road, therefore why a variance is being requested.
  - c. If relieved by a variance, will not injure the public or private rights of others for the following reasons: The granting of one building permit for access to one proposed residential lot is a normal scenario for any lot created in the Town of Weare. Granting this variance would give me one building permit for one residential lot, the same as anyone else is allowed. Therefore will not injure the public or private rights of anyone.
    - aa. An area variance is needed to enable the applicants proposed use of the property given the special conditions of the property because: The lot is situated in a residential zone and there are two lots already existing on the Class VI road. It has always been the landowner's intent to construct a single-family home on the lot.
    - bb. 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 because: There is no other road frontage and there is no land for a right of way available that may have Class V road frontage.

4. That through the granting of relief by variance substantial justice will be done because: Currently lot 406-068 fronts on a Class VI road and is not eligible for a building permit. The granting of this variance will allow access to an otherwise inaccessible lot; therefore substantial justice will be done.
5. The use, for which the variance is requested, will not be contrary to the spirit of the ordinance because: The spirit of the ordinance is not to allow a driveway to gain entry to a lot that fronts on a Class VI road. I am willing to upgrade the road to meet the criteria set forth by the fire department and of the Town road agent to make the road suitable for emergency travel. Thus making the use for which this variance is requested not contrary to the spirit of the ordinance.

Jack Dearborn wanted to clarify for the applicant of area versus use. Mr. Dearborn stated that we are dealing with an area because the property doesn't have 200 feet on a class V road. The use variance doesn't fit because Mr. Townes is not asking for a use that is not allowed in that zone. It is a dimensional variance, therefore anything to do with a setback or area issue is an area variance.

Chairman Ruoff asked Mr. Townes to give a brief history of this lot. Mr. Townes explained that he got this lot from his grandparents. His grandparents owned the original lot and subdivided it up using the frontage on River Road. They kept this lot for Rick Townes (Eldon's dad) to build a house, but they ended up getting another piece of property and built their house there.

Forrest Esenwine stated that the spirit of the ordinance is to try to not have premature development, which is one reason why the ordinance states that it doesn't allow building on class VI or private roads. Just because there are a couple of houses already on the road, doesn't mean we need to continue aspirating a situation. Mr. Esenwine explained that this board doesn't have the authority to allow you to upgrade the road. If a class VI road is to be upgraded it can only be granted by the Board of Selectmen. If that is to happen, you would be talking about a class V black top road from River Road to the lot. Mr. Townes explained that he was not going to access his lot from Huntington Hill Road to River Road, but rather from Bart Clough Road. Mr. Townes driveway will be approximately 1500 feet in from Bart Clough Road. There are currently two other homes that use Huntington Hill Road and one is across the street from his proposed access.

Elwood Stagakis asked why we are in the business of approving or disapproving the roads. He felt this was premature. Mr. Elwood stated to Mr. Townes that in his response it indicates that you will upgrade and he was wondering how much he was going to pave. Mr. Townes indicated that his intention was to upgrade but not through pavement. Mr. Townes stated that he has met with Carl Knapp, Road Agent and he gave him a list of things that he would be looking to be done to have it passable for emergency vehicles. Mr. Townes stated that he didn't have the list

with him and didn't include it in the package because he received that only a short time ago, long after he filed the application.

Jack Dearborn asked Mr. Townes if he would entertain a possible condition of no further subdivision of the 15 acre parcel. Mr. Townes stated that he was willing to accept that as a condition of approval.

Chairman Ruoff then asked if there were any:

Approving Abutters: John Nelson, 55 Huntington Hill Road, he doesn't have any objections with this request.

Disapproving Abutters: Ronald Stewart, 1131 River Road, abutter was concerned about any further runoff coming down Huntington Hill Road. He is getting natural springs off the hill as it sits now. He doesn't want any further damage from the water or erosion issues that might be created. There is a lot of water coming down the hill in the natural state. He has done some repairs now over the years from the water and just would like to see that it doesn't worsen.

Public at Large: NONE

Other Boards: NONE

Chairman Ruoff closed the public portion of this hearing at 8:14 PM.

BOARD DISCUSSION: Chairman Ruoff stated that each variance request is done on a case by case nature, and he felt the burden has been met in this particular application. Largely due to the fact of the lot size, the conditioned offered by the applicant to no further subdivision as well as no real objection from any of the abutters.

CASE DECISION: Point #1: Jack Dearborn moved to accept point #1, June Purington seconded the motion. Discussion: Forrest Esenwine questioned the response given from the applicant indicating that any upgrade would be creating a superior right of way for other properties that front it. In looking at the tax map there would be no other properties that front this right of way that would gain any benefit by this upgrade. Vote: 4 in favor (Purington, Dearborn, McSweeney and Ruoff) and 1 opposed (Esenwine). Point #2: Chairman Ruoff moved to accept point #2, June Purington seconded the motion. Discussion: Ian McSweeney stated that he felt the deed restriction speaks to the public interest. He felt it was definitely large enough for a single family home, but he felt the ability to subdivide would increase the potential. Vote: 5 in favor (Purington, Dearborn, McSweeney, Ruoff and Esenwine). Point #3aa: Chairman Ruoff moved to accept point #3aa, Ian McSweeney seconded the motion. Discussion: None. Vote: 4 in favor (Purington, Dearborn, McSweeney and Ruoff) and 1 opposed (Esenwine). Point #3bb: June Purington moved to accept point #3bb, Ian McSweeney seconded the motion. Discussion: none. Vote: 5 in favor (Purington, Dearborn, McSweeney, Ruoff and Esenwine). Point #4: June

Purington moved to accept point #4, Chairman Ruoff seconded the motion. Discussion: none. Vote: 4 in favor (Purington, Dearborn, McSweeney and Ruoff) and 1 opposed (Esenwine). Point #5: Chairman Ruoff moved to accept point #5, June Purington seconded the motion. Discussion: Chairman Ruoff stated that the restrictions that the board can place will bring the request closer in line to the intent of the ordinance. Vote: 4 in favor (Purington, Dearborn, McSweeney and Ruoff) and 1 opposed (Esenwine).

Jack Dearborn moved to grant the variance for Case #0107 with the following conditions:

1. A deed restriction to be recorded at the Hillsborough County Registry of Deeds stating that no further subdivision of this lot (406-068) is allowed.
2. The access to the lot (Huntington Hill Road) needs to be upgraded if approved by the Board of Selectmen under the direction of the Public Works Director to a performance standard that is acceptable to allow for the safe passage of emergency vehicles from Bart Clough Road to the driveway of the subject property. All upgrade needs to be inspected prior to the issuance of a building permit AND prior to issuance of an occupancy permit.
3. Town of Weare Liability Disclaimer to be attached to the building lots deed and be recorded at the Hillsborough County Registry of Deeds as part of the deed, approved by Town Counsel.
4. Class VI Road sign to be posted at the entrance of the road.

Ian McSweeney seconded the motion. Vote: 5 in favor (Purington, Dearborn, McSweeney, Ruoff and Esenwine). Chairman Ruoff closed this hearing at 8:25 PM.

Case #0207 Homes for a Lifetime (Owner: Howard & Mary Kreider)  
Variance, Article 17, Section 17.1.1  
Applicant is requesting permission to build a single family home.  
Tax Map 108-041 Pondview Road (Private Road)

Ian McSweeney stated that before the hearing gets started, in the order of full disclosure, he has discussed with Mr. Fillmore about listing some of his property , therefore will be removing himself from the board for this hearing. Chairman Ruoff appointed Elwood Stagakis to sit in place of Ian McSweeney for this case.

Bruce Fillmore was present. Mr. Fillmore explained that he would like to build a single-family home on this lot. This lot is located as the third lot on the left from where the Town maintenance ends and the private portion begins. He stated that from his count there are about 20 houses, some are seasonal and some are year round, but a large majority of the dwellings are beyond the location of this request.

Mr. Fillmore went through the five points of hardship as follows:

1. That there **will not** be a diminution of value surrounding properties as a result of the granting of this variance because: The addition of a new home on the same size and quality of existing homes will not diminish any surrounding property values. This lot was created in 1976, prior to zoning. This is a 3.99-acre lot. The State of NH recognizes this as a build able lot because of its size.
2. That the granting of the variance **will not** be contrary to the public interest because: The addition of one new home to the existing twenty (20) or so existing homes will not affect public interest at all. Any upgrading to Pondview Road will improve public access to the area.
3. That enforcement of the zoning ordinance will create an unnecessary hardship in that the zoning restriction:
  - aa. An area variance is needed to enable the applicants proposed use of the property given the special conditions of the property because: The lot is situated in a development started prior to zoning and prior to the Town not allowing private roads. It has always been the landowner's intent to construct a single family home on the lot, as twenty (20) or so other lots in the development have been developed.
  - bb. 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 because: There is no other road frontage and there is no adjoining land available that may have Class V road frontage.
4. That through the granting of relief by variance substantial justice will be done because: This residentially zoned lot would be one of several homes allowed by variance on private roads in Town that have been substantially build out. This is not a development that there is no activity on. It is not premature because the development is fairly substantially complete. There are about ½ dozen empty lots.
5. The use, for which the variance is requested, will not be contrary to the spirit of the ordinance because: As stated above the development is substantially build out and was conceived and constructed prior to zoning being in place in Town. To allow this new home would be allowing the intended use of the property to be utilized. This is not a scattered use as there are nineteen (19) or so residences further up the private road.

Mr. Fillmore stated that he has asked Carl Knapp, Road Agent to look at it and he has not gotten back to him. Mr. Fillmore stated that he measured the road and it appears to be approximately 15 feet traveled surface up to this lot and after the lot it begins to get narrow. Mr. Fillmore stated that at the Registry of Deeds there is

a document that has been signed by 15 land owners that have agreed to maintain Pondview Road. He would assume that he would be added to the list for maintenance if this is approved.

Approving Abutters: NONE

Disapproving Abutters: Lisa Kazakis, 75 Pondview Road, she has been there about 15 years. She likes living there. They have struggled because of the condition of the road, which was owned by an association up until last year. The association used to collect a fee. Rene' Montplaisir used to do all the plowing and all the work, as he is the last house. Each year the fee got to be more and more, which caused problems, because some were able to contribute but some were not. There are still others that maintain the road out of their pocket. She felt another house would add more wear and tear on the roadway. She enjoys her house and doesn't want to see another house there. The association dissolved because they got tired of knocking on doors looking and begging for money. She stated that she doesn't have anything against the applicant, but she did write to the owner's about 10 years ago looking to purchase the lot, so she wouldn't have anyone building there but she never heard back from them.

Public at Large: Stephen Najjar, 138 Pondview Road, presented the board a couple of pictures. The first one demonstrates the width and the ice on the hill today. The other one demonstrates the steepness of the road. Mr. Najjar read the following letter into the record.

"Dear Mr. Galvin:

I am writing and testifying in opposition to the granting of a variance for the construction of a new home on the private un-maintained portion of Pondview Road. My objection to issuance of the variance is related to the road condition, layout and maintenance. Pondview Road is not town maintained from the edge of pavement for approximately ½ mile to its termination.

The private portion of Pondview Road is owned by Mount William, Inc. with rights to pass over the road established in a protective covenant (Volume 1666 page 30) filed in Hillsborough County Registry of Deeds. There is no provision for establishment of a mandatory private neighborhood association to ensure proper road maintenance. In the past a loose neighborhood association (Mount William Pond Road Association) existed which collected funds and contracted for road maintenance, snow removal and sanding. The association dissolved over the last summer due to limited participation both in providing funding and volunteer time for management of projects and business. There is currently no guarantee of snow removal, no sanding and there will be no other maintenance on the road for the foreseeable future.

The private portion of Pondview Road contains a very excessive slope (approximately 25 degrees) at the confluence with the paved town maintained portion. This area is subject to severe erosion during rain events, wash-boarding

from tire losing traction due to the excessive slope and icing during winter. The hill is very dangerous and frequently not passable during winter; neighbors often are forced to park on the town road and walk home due to ice. Parking at the bottom of the hill on the town road also causes a crash hazard from cars coming down the hill on ice. During the last icing event on January 1, 2007 one car was forced to park on the town maintained road and another stranded car was left parked on the private road leaving little room for passage.

Various sections of Pondview are also narrow, allowing only one vehicle to pass with very limited areas to pull off or turn a vehicle around especially during winter when snow banks infringe on the traveled portion of the road. Several accidents have occurred on the road due to the narrow nature of the road and icing during winter.

Continued development on the private portion of Pondview Road increases the risk of events that require emergency response vehicles. With the current road condition and lack of maintenance I am concerned that Weare Police and Fire vehicles would have difficulty getting up the road during the winter in the event of an emergency. Additionally other services usually expected in a residential area are also limited due to the road, the US Postal Service has recently refused to deliver any packages on the road and UPS does not always deliver during winter on the road.

In closing I respectfully suggest that Weare Zoning Board of Adjustment deny this variance because of the safety issues related to Pondview Road.

Respectfully,

Stephen Najjar  
138 Pondview Road  
Weare, NH 03281”

Richard Howson, owner of lot 70 & lot 72, stated that he built his home in 2002. He did it then specifically because he knew that no more building permits were going to be allowed on class VI and private roads. Mr. Howson’s interpretation of this zoning change was because the Town was trying to slow down growth on class VI or private roads. His larger concern is a safety issue. He stated that you can’t get up and down the road, particularly in the winter. There is no guarantee of services. Lastly, he is against anyone building on this road as a commercial venture and not intending to live there.

Russell (Ted) Ober, 47 Pondview Road, his property is the first house on the left going up from the Town maintained portion. Mr. Ober stated that he has the same issues and concerns as all the others, increased traffic, the wear and tear on the road, etc. It is dangerous particularly in the winter. The more traffic is going to increase the chance of more accidents. The construction vehicles that will be used

for the development of the lot will certainly, in his opinion cause the road to deteriorate from its existing condition.

Other Boards: NONE

Rebecca Kram, real estate agent representing Howard and Mary Kreider, stated that she was contacted by them to sell the property after the re-evaluation largely because the assessment on this property went from \$6,000 to \$80,000 as a buildable lot. Jack Dearborn stated that the current assessment did increase but is there an indication on the property card that indicates it is buildable? Ms. Kram stated that it does not indicate it is buildable. Mrs. Kram then read the following letter from the Kreider's into the record.

"Dear Rebecca:

I appreciate your call to inform me that people living on the street that provides access to my property located at lot 67 on Pondview Road have protested the issuance of a permit to construct a home on said property. I understand that they do not wish any more homes to be built along that existing street. Should the City of Weare decide in their favor and deny a building permit for this property, I would like to offer two suggestions to resolve this situation.

1. We, Howard and Mary Kreider, will sell the property to the home owners that desire the property as it is for the currently assessed value, thus giving them the right to decide how the property may be used.
2. Rescind their protests and allow the City of Weare to issue a building permit to 'Homes for a Lifetime' without further protests.

Respectfully,

Howard and Mary Kreider"

Chairman Ruoff closed the public portion of this hearing at 9:20 PM.

**BOARD DISCUSSION:** Jack Dearborn stated that if you take the case principally on the fact, there is not 200 feet of frontage on a class V road. A private road is anything other than a fee simple town road. It is really an access to a property. The Town has no responsible or authority to revoke the access to that if it exists. The real question becomes, pertaining to the road, without a variance the owner doesn't enjoy the reasonable enjoyment of his property, as the Town has it assessed. Chairman Ruoff stated that it reminds him of some of the cases out of the Lake Horace area. There are private roads developed kind of piecemeal. This particular subdivision appears to be dormant, with nothing done in the past 10 years. Mr. Dearborn stated that the issue is the road, bottom line. The real issue is, is this allowing a reasonable use of the property, and the only issue on the table is the status of the lot and the location of the lot on the road which has a part in that. Mr. Dearborn stated that there are other avenues for the residents like betterment assessment.

Chairman Ruoff stated that before the board votes he is offering anyone present one last chance at public comment.

Steve Najjar responded to the betterment assessment comment, which they did look into about a year ago and it would require taking of some people's property and ended up being not a feasible option. The other issue is the current assessment that the Town has put on that. He felt there was an avenue that everyone had the opportunity to go through to meet with them in an effort to get it reduced. He stated that all the assessments up there were problem and if they didn't come and look into it that is their issue. The beginning of the road is the problem, not the remainder of the road. This requested access is in the most dangerous part of the road, on the hill.

Lisa Kazakis stated that a few years ago they did apply for a betterment assessment, but it would involve an expense and some taking of property. The location of the lot is in the most dangerous location. As far as the abatement process, she did file and was relieved of some assessment.

Art Siciliano stated that Mr. Dearborn made a good point and it has to do with the road. If a land owner wants to improve the roadway out of their pocket to get to the lot, they should have that opportunity to do so.

Jack Dearborn asked if it would be unreasonable for the board to get a professional opinion from the Road Agent as to the condition of the road, from where the Town maintained portion goes off up this private road to the location of the driveway, which the board has every right to ask for that. Chairman Ruoff stated that his personal opinion is that this board is a quasi-judicial board and not a board seeking more information. It is up to the applicant to provide the burden of proof. Chairman Ruoff felt that Mr. Dearborn was right in a certain situation, but his personal opinion is that it is not a practice the board should get into.

Bruce Fillmore then asked if it would be out of place to request a continuance to next month to allow him to obtain something from the Road Agent. Chairman Ruoff responded no, particularly at this point in the public hearing.

CASE DECISION: Point #1: June Purington moved to accept point #1, Chairman Ruoff seconded the motion. Discussion: Forrest Esenwine said that after all that has been presented tonight, he is not sure if a new dwelling would diminish the values or not. We have no factual proof only a statement from the applicant. Vote: 3 in favor (Purington, Dearborn and Stagakis) and 2 opposed (Ruoff and Esenwine). Point #2: June Purington moved to accept point #2, Chairman Ruoff seconded the motion. Discussion: Forrest Esenwine stated that we certainly have heard a lot tonight that this would be contrary to the public interest and that road is the issue. Jack Dearborn stated that unless we pick at this, you need to understand the issue. Mr. Esenwine stated that he is not convinced that the additional driveway is not going to be more detrimental. Chairman Ruoff

stated that this is the pivot, public interest. He felt the public interest is the safety on these types of roads. He felt it is a safety issue and the board has no any evidence from the Fire or Police departments that would give their input. Vote: 1 in favor (Dearborn) and 4 opposed (Purington, Ruoff, Esenwine and Stagakis). Point #3aa: Chairman Ruoff moved to accept point #3aa, June Purington seconded the motion. Discussion: none. Vote: 0 in favor and 5 opposed (Purington, Dearborn, Ruoff, Esenwine and Stagakis). Point #3bb: June Purington moved to accept point #3bb, Chairman Ruoff seconded the motion. Discussion: none. Vote: 3 in favor (Purington, Dearborn and Ruoff) and 2 opposed (Esenwine and Stagakis). Point #4: June Purington moved to accept point #4, Chairman Ruoff seconded the motion. Discussion: none. Vote: 2 in favor (Purington and Dearborn) and 3 opposed (Ruoff, Esenwine and Stagakis). Point #5: June Purington moved to accept point #5, Chairman Ruoff seconded the motion. Discussion: Forrest Esenwine stated that he felt it is contrary to the spirit of the ordinance, because the rest of the ordinance tries to address roads for a reasonable use for people that live on these types of roads. Vote: 1 in favor (Dearborn) and 4 opposed (Purington, Ruoff, Esenwine and Stagakis).

Chairman Ruoff moved to grant the variance on case #0207, June Purington seconded the motion. Discussion: none. Vote: 0 in favor and 5 opposed (Purington, Dearborn, Ruoff, Esenwine and Stagakis). Reasons for denial are as follows:

1. In addition to the reasons articulated by the Board on the record at the hearing, all five points of hardship did not pass, particularly points 2, 3aa, 4 & 5, which is a requirement of the State Statute.
2. The applicant did not meet the burden of proof regarding the safety of the access. More specifically, the Board concluded that the applicant had not meet its burden of proof in demonstrating that – based on the condition of the private road, the lot’s location on it, and the history of the development in the subdivision – granting the variance would not be contrary to the public interest or in keeping with the spirit and intent of the ordinance. Moreover, there was a dearth of evidence to support a finding of “substantial justice,” This is of special importance, especially in this case where the public’s safety is a prime consideration, and that is a function of the condition and nature of the private road.
3. Furthermore, there were no particularly special conditions about this lot as opposed to any other lot of record on a private road that supported a finding of hardship.

Ian McSweeney returned to his seat on the board and Elwood Stagakis will return to his seat as an alternate.

Case #0307 Arthur F. Siciliano (Owner: Sylvia Curtis)  
Variance, Article 14, Section 14.2

Applicant is requesting permission to subdivide the existing property into two substandard lots, so that each dwelling unit is contained on its own lot.

Tax Map 412-105 128 River Road

Art Siciliano was present. Mr. Siciliano explained that the purpose of this application is to propose a subdivision. There are currently two dwellings on one lot. One is occupied by the owner and the other is occupied by her son. There is plenty of frontage for two lots, just not area. This proposal would be creating lot 128 with 1.94 acres and lot 128.1 with 1.27 acres. The two dwelling units have been on this one lot long before zoning. The son would like to do some improvements to his house but is not finding a lending institute that will finance the current situation.

Mr. Siciliano addressed the five points of hardship as follows:

1. That there will not be a diminution of value surrounding properties as a result of the granting of this variance because: The dwellings are existing and will remain as residences. The subdivision of land will not be any more objectionable to nearby properties by reason of noise, fumes, odor, or vibration than the two dwellings on one lot. The lots across the street are smaller than what is proposed.
2. That the granting of the variance will not be contrary to the public interest because: The smaller lot size is not contrary to the spirit of the ordinance because when driving by a property the public doesn't know what size lot a dwelling is on, but appearance is important to the public. These dwellings will typically be kept up better if they are owner occupied.
3. That enforcement of the zoning ordinance will create an unnecessary hardship in that the zoning restriction:
  - aa. An area variance is needed to enable the applicants proposed use of the property given the special conditions of the property because: There are currently two separate dwellings with two addresses on one lot. Granting this variance will enable each dwelling to have its own lot thus resolving the special condition of the property.
  - bb. 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 because: If the dwelling were connected they could be sold as condos on one lot, but they are separate. In order to sell the separated dwellings they must have their own lot.
4. That through the granting of relief by variance substantial justice will be done because: By granting the variance of area reduction each lot will

have its own lot. Even though each lot will be reduced in size from the required zoning, it will be a more conforming use than two separate dwellings on a single lot. Many cluster lots are smaller than what is proposed.

5. The use, for which the variance is requested, will not be contrary to the spirit of the ordinance because: This is an existing situation, a lot with two separate dwellings. The spirit of the ordinance doesn't allow this situation. Granting this variance allows each dwelling unit to have its own lot and sold separately. There is no further strain on the land beyond that which has already been created. There will be no physical change to the land or use other than a line to separate the two dwellings. The ordinance does allow smaller lots in cluster subdivisions.

Forrest Esenwine stated that his only comment has to do with the last sentence in point #5, and that is some lots in a cluster are indeed smaller than these lots, but the actual density is based on two acres.

Approving Abutters: NONE  
Disapproving Abutters: NONE  
Public at Large: NONE  
Other Boards: NONE

Chairman Ruoff closed the public portion of this hearing at 10:18 PM.

BOARD DISCUSSION: Chairman Ruoff stated that he felt this was pretty straightforward.

CASE DECISION: Point #1: Jack Dearborn moved to accept point #1, Chairman Ruoff seconded the motion. Vote: 5 in favor (Purington, Dearborn, McSweeney, Ruoff and Esenwine). Point #2: Jack Dearborn moved to accept point #2, Chairman Ruoff seconded the motion. Vote: 5 in favor (Purington, Dearborn, McSweeney, Ruoff and Esenwine). Point's #3aa & #3bb: Jack Dearborn moved to take both points together, Chairman Ruoff seconded the motion. Vote: 5 in favor (Purington, Dearborn, McSweeney, Ruoff and Esenwine). Point's #3aa & #3bb: Jack Dearborn moved to accept both point 3aa and 3bb, Chairman Ruoff seconded the motion. Vote: 5 in favor (Purington, Dearborn, McSweeney, Ruoff and Esenwine). Point #4: Jack Dearborn moved to accept point #4, Chairman Ruoff seconded the motion. Vote: 5 in favor (Purington, Dearborn, McSweeney, Ruoff and Esenwine). Point #5: June Purington moved to accept point #5, Chairman Ruoff seconded the motion. Vote: 5 in favor (Purington, Dearborn, McSweeney, Ruoff and Esenwine). Chairman Ruoff moved to grant the variance on case #0307 as requested, Jack Dearborn seconded the motion. Vote: 5 in favor (Purington, Dearborn, McSweeney, Ruoff and Esenwine).

Case #0407 Justin Fitzgerald  
Variance, Article 3, Section 3.5.1  
Applicant is requesting permission to construct a deck within the  
building setback.  
Tax Map 409-146 Chuck Street

Justin Fitzgerald was not present. Art Siciliano stated that he was going to present the application. Naomi informed Mr. Siciliano that there was no written authorization from Mr. Fitzgerald for that. So the board indicated that it could not be heard this evening, but would be willing to continue it to the next hearing. Forrest Esenwine moved to continue this case to the next meeting, Ian McSweeney seconded the motion. Vote: 5 in favor (Purinton, Dearborn, McSweeney, Ruoff and Esenwine).

**IV: OTHER BUSINESS:**

DECEMBER 5, 2006 MINUTES: Chairman Ruoff moved to approve the December 5, 2006 minutes as amended; June Purinton seconded the motion, unanimous in favor.

REQUEST FOR REHEARING – CASE #1506 – RICHARD PERKINS & BONNIE ZIMMERMAN: The board reviewed the package of information that was turned in for a request for rehearing. After looking through the package and reading the cover letter, the board felt that there was no substantially new information that couldn't have been reasonably produced in the original presentation. This information is what the board heard the first time, with the exception of the footprint of the proposed dwelling unit. June Purinton moved to grant the rehearing request, Ian McSweeney seconded the motion. Vote: 0 in favor and 5 opposed (Purinton, Dearborn, McSweeney, Ruoff and Esenwine).

JOINT MEETING WITH PLANNING BOARD ON JANUARY 11, 2007: Naomi reminded the board that there has been a request from Diana Spring for a joint meeting with the Planning Board to be held next Thursday, January 11, 2007. Naomi asked everyone if they were available. Ian McSweeney, Forrest Esenwine and Elwood Stagakis all stated they were available. June Purinton, Jack Dearborn and Chairman Ruoff stated that weren't sure and would let me know. Naomi pointed out that this is the first item on the agenda for that meeting which starts at 7 PM.

**V. ADJOURNMENT:**

As there was no further business to come before the board, June Purinton moved to adjourn the meeting at 11:00 PM, Chairman Ruoff seconded the motion, all in favor.

Respectfully submitted,

Naomi L. Bolton  
Land Use Coordinator