

Call to Order: Chairman Morton called the meeting to order at 7:02 P.M.

Present: Chairman Morton, Jill Newick, Ralph Estes, Richard Ford, Vincent Frank and Tom Morgan, Town Planner.

Minutes: Minutes to be voted on at next meeting. Although available, they were not given to Board members prior to the meeting.

Correspondence: Nothing to report.

Public Hearing:

A request by John and Barbara Mahoney for a variance to establish two building lots with a total of 230 feet of frontage on a Town Road, where Article VI of the Zoning Ordinance requires a minimum of 200 feet of frontage per lot. The property is located at 80 Little Bay Road, Tax Map 15, Lot 1.

Attorney Tom Watson of Wiggin & Nourie spoke on behalf of John and Barbara Mahoney, 80 Little Bay Road. This property consists of 6+ acres with 230 feet of road frontage on Little Bay Road. He presented Exhibit A, a copy of the subdivision of Land into two lots as outlined for John F. Witham in January 1986. Exhibit B is a copy of the subdivision of land done for Jean F. Bowser in August 1989. The third exhibit outlines the two acre tract, 200' frontage, 30' in the rear of the lot facing Little Bay Road proposed for the Mahoney's request. Mahoney's property goes back 1200 feet from Little Bay Road. There is a long driveway to the house on the Northern side of the property. Attorney Watson stated the Mahoneys were requesting a variance for this property because it is in a residential district that requires a 200' frontage and a minimum two acre lot. The Mahoneys are retired and on a fixed income and in order to remain on their property they have to generate some income in order to pay their taxes and other expenses. To do this they hope to divide the property and sell one house lot. The money they receive would allow them to remain in their home. A proposed subdivision has not yet been presented because the cost involved in hiring a surveyor is beyond the means of the applicants unless the variance is allowed. The proposal is to have two lots; one with a 30 foot frontage and one with a 200 foot frontage. Obviously the 30 foot frontage needs approval from the Board. Attorney Watson stated this variance is not a use variance but an area variance and one that is governed by the Boccia standards in 1994. The court laid out the five standards that the Mahoneys need to meet.

Attorney Watson went on to outline the five criteria as it related to this request.

1. **There would be no diminishment in the value of properties in the area.** They don't feel there would be any diminishment in this case, given the other uses and other variances granted in that area.

2. **The variance would be consistent with the spirit of the ordinance.** Applicants feel it would not adversely impact the ordinance, in that they are keeping with the minimum two-acre lot.

3. **Substantial justice be done.** As in the Boccia case, what is being asked now, has been allowed before. A variance was granted on 112 Little Bay Road 3 -4 years ago for 103 ft. frontage for the Perkins house.

4. **That the variance not be contrary to public interest.** The property remains as residential lot sizes pretty much the same.

5. **Hardship** - in Boccia case new standards created a two-prong test. **1. Is the variance needed?** Unique because it's long and narrow. Not general to this area, but unique to this property. Applicants could never have two lots if there wasn't a variance. **2. Can benefit be achieved by some other method?** Applicants can not do it. No way to accomplish without some type of variance. Attorney feels there is no other reasonable variance.

Chair Morton questioned where the entrance would be. Attorney responded that it would be off Little Bay Road. The question was asked "who owns the right-of-way?" The Mahoneys own the ROW, however, there is an easement to the lots down back. Estes asked if they would be going with the existing R.O.W.? The response was that the driveway would stay as it is. The only way to the Bowser's lot is the R.O.W. that goes on to the Mahoney's lot. The driveway (or R.O.W.) would be shared by the three lots. The Board asked how many families lived on these properties. There are four.

Discussion followed from the public. Jean Bowser stated that in 1999 they brought a water line in. It is in the middle of the land. There are two separate lines. Sean Mahoney stated that they are not sure where the water line comes in on Bowser's land. Dan Trefethen, 116 Little Bay Road and Nancy Perkins 112 Little Bay Road spoke in favor of the request. Ms. Perkins felt the request was in the spirit of a small town and that families should stick together.

It in 1989 someone came before the BOA because they wanted a 30 foot easement; the Board voted it down.

Chair Morton stated this was not a new request to the Board. The Board takes each case and determines it on its merit. He pointed out to the Public and the applicants that the Board takes requests very seriously. Chair Morton asked if we wanted to propose at Town Meeting that we do away with the 200 foot frontage requirement?

Board felt granting variance would change frontage on front. Estes said he knew it was the right thing to do, however, was the Board opening up a can of worms? After more discussion by the Board, Town Planner Morgan pointed out that the Board has approved some and disapproved others. Ford asked if there wasn't a compromise? Were there other options? Attorney Watson stated any other would be too expensive and the

Mahoneys would not achieve the goal of having money for things they needed.

Chair Morton stated it would be easier if the Mahoney's were not requesting so many feet variance. After more discussion, Estes made a motion to accept the Mahoney's request for a variance; Newick seconded.

Board closed discussion to review five criteria.

1. There would be no decrease in value of surrounding properties. No one in the area opposes the request.

2. Must not be contrary to public interest. Board feels it would not be contrary.

3. Would result in unnecessary hardship to the owner. The Board is not denying use of the property. Hardship would be if applicant not allowed use of the property. Boccia - Dimensional 1. Special conditions of property; 2. Undue financial burden. Feel there would be undue financial burden.

4. Granting variance, substantial justice would be done. Board agreed, however, the criteria is for 200 ft. frontage and the fact that the request is for only 30 feet, it makes it difficult to justify. Perhaps a request for 150-175 ft. variance might be more appropriate.

5. Spirit & Intent of the Ordinance. The Town requires a 200' variance. It was noted that 17 years ago approval was made for the Bowser property for an identical variance. Although this is true, the Town has voted to require 200 ft. frontage since that time.

Board voted as follows: Estes and Newick, aye, Morton, Frank and Ford, nay.
Request for variance not approved.

Newick moved to adjourn , Ford seconded, motion carried. Meeting was adjourned at 8:00 P.M.

Respectfully Submitted,

Sandra Sweeney, Secretary