

August 15, 1978

There was a meeting of the Board of Adjustment on Tuesday, August 15, 1978 at the Town Hall at 7:30 P.M. to hear the petition of Richard H. Davis (Case No. 45 for a variance to subdivide his property on Gregg Lake Road (formerly Warner) into two non-conforming lots.

The roll call was as follows:

A. George McLean, Chairman	- Present
Eugene Bried, Vice Chairman	- Present
Carole Webber	- Present
Patricia Thomas	- Present
Robert B. Flanders	- Present
James Dennison, Alternate	- Present
Catherine C. T. Dik, Alternate & Clerk	- Present

Also present were Richard H. Davis, Mr. and Mrs. Emery S. Doane, and Mr. and Mrs. John Perry.

The meeting was called to order at 7:30 P.M. and the Chairman announced that Patricia Thomas, Carole Webber, Robert B. Flanders, Eugene Bried and he would serve on the Board this evening with Mrs. Dik as Clerk. He then outlined the order of procedure, and the Clerk read the petition and exhibited an accompanying plan. Notices were sent by certified mail, return receipt requested, to the petitioner and all abutters and those within 200 feet of the bounds of the petitioner's land, and all receipts had been received; by regular mail to all members of this Board, the Selectmen, Town Clerk, Town Counsel, and Chairman of the Planning Board. Notice was published in the Peterborough Transcript on August 3, 1978 on page 3 and posted on the Town Bulletin Board. The Chairman pointed out that the minutes of the hearing on December 30, 1975 were here for reference if necessary.

Mr. Davis then presented his case, showing a surveyed plan done by Milton Attridge, a certified surveyor, dated July 1978. To give a little background, he said that when he purchased from the Warners the deed read three acres more or less. This is what we were assuming when applying for a subdivision in 1975. He did not have a copy of the deed with him at this hearing. It is at the bank in Hillsborough. Previously Mr. Attridge had

looked at the land and thought that there were two acres for the house lot. He did not want to be quoted that there were two acres--it was just a glance at it and assumed that there were possibly two acres there. Mr. Bried remarked that he just sort of guesstimated, and Mr. Davis replied that that was right. Mr. McLean asked when did Mr. Attridge tell you that he thought there were two acres? Mr. Davis replied that this was when he was selling his other property last fall. Have you anything from Mr. Attridge to tell you that you had the land? He did not come this evening. Mr. Davis replied that he did not--this is his survey. Mr. Davis went on to say that he purchased an additional 15 feet from Butterfields. When they came to survey he did not have three acres even with the additional land he bought. This is the problem; where he has the division line he has a driveway to the shop. In order to give that lot (Parcel B on the plan) another half acre it would be an inconvenience. He would have to reroute his driveway he does not know how, because actually to give a half acre more the line would come down through the shop.

Mrs. Thomas remarked that when Mr. Davis came before the Planning Board in 1975 he said there were 3.7 acres, and Mr. Davis reiterated that on the deed it said three acres more or less. Mrs. Thomas asked, "How did you get the 3.7 figure?" Reply: "From the deed somewhere--I couldn't tell you now. These old deeds often say that. I have bought 15 feet more down on this end from the Butterfields. Even then it does not stack up to three acres, 1.5 acres for Parcel B and 1.2 acres for Parcel A." Mrs. Thomas asked if the buildings are going to stay the way they are-- the shop and the house, and he replied, "Yes, Nothing is going to change."

Mrs. Webber asked if there was a road that divided his property from the Robinsons, and he said that there was a stone wall, a few trees, then their driveway. There is plenty of frontage and back setback but only

52 feet depth at the Robinson end.

Mr. McLean said that you came to us for a variance. Could you explain exactly why? Mr. Davis: "Mainly, it will create a hardship mainly on myself because I will have to do something with the driveway for Parcel A in order to come down another half acre in order to make a house lot of two acres for Parcel B. There is no way I can make a new driveway short of \$3000 or \$4000." Mrs. Thomas asked why does he have to give another half acre? Answer: "Because if I have to have two acres with the house lot. The reason I bought the extra feet down here was to make a circular driveway for the shop. This is what we intended."

Mr. McLean asked Mr. Davis to define his hardship, and he replied that they owned too much property at the wrong time when the business was not going good. When he came in for the subdivision in 1975 he owned two pieces of property in the Town of Antrim which he could not afford. Mr. Flanders remarked that originally both Davis properties were advertized in the paper and whichever went first it left the shop where it was. The reason the Board made the decision was that whichever house went first the shop stayed in the middle.

Mrs. Thomas asked what was the width of the driveway and Mr. Davis replied 16-18 feet.

Mr. Dennison remarked that as he understands it the hardship you claim is that you cannot sell your house because you do not have the two acres, not that you cannot move the driveway. Mr. Davis replied that he had assumed that they had the two acres for the house, but when it was surveyed they found there were only 2.7 acres for the whole piece. He is now applying for a variance for a subdivision of two nonconforming lots. Mr. Dennison asked: "For just a woodworking shop, not a residence--just woodworking?" Mr. Davis: "That is my shop." Mr. Dennison: "And where do you live?" Answer: "I am presently staying there." Mrs. Webber: "You are using it as a woodworking shop and you are living there?" Reply: "That is correct." Mr. Dennison asked if he

was renting the property now and Mr. Davis replied that the house was leased with an option to buy. The survey was made a month ago. Mrs. Thomas asked how much land was there between the two pieces (Warner and Penney), and Mr. Davis replied that the Butterfields owned approximately 100 to 150 feet of land between the two properties. Mr. Dennison remarked that the two properties never abutted. Mrs. Thomas asked if he had a right of way over the Butterfield land, and the answer was no. Mr. Flanders stated that between the house he sold to Penney and the Warner property he bought as much as he could from Butterfield. Mr. Dennison asked how much land went with the Penney house, was it a conforming lot; and Mr. Davis replied that he would have to look back. Mr. Flanders averred that it was a conforming lot. Mr. Flanders asked Mr. Davis if he had tried to buy any land in back, and the reply was that he had asked but at the present time they do not want to part with it. He has asked Isobelle Nichols within the last six months.

Mrs. Webber asked whether it was at all possible that if you had the boundary line here (close to the shop) that would give the two acres for the house and you could move your driveway and give up the idea of the circular driveway? Answer: "Number one, it would make the shop too near the property line, and right here there is a huge hill. Down here we could come in." "Could you come in on the Butterfields' land?" Answer: "No, that has nothing to do with me." Mr. Flanders remarked: "Not unless they give you a right of way." Mrs. Webber continued: "But you and your family do live in the shop now. Do you plan to stay?" Answer: "Yes, temporarily. That is to be my office, my drawing room and show room, and a room for staff workers who will work on the property out back."

Mrs. Thomas asked what were the designs for the other property on the other piece, and Mr. Davis replied that he did not know; that was not his business.

The Chairman then called for anyone in favor to speak and as there were none he called for those in opposition. Mr. John B. Perry said that they lived diagonally across from the property in question, and asked Mr. Davis, through the Chairman, whether he did acquire this land without having a survey. Answer: "Yes, I did. I was told, as I explained, as the deed read," Mrs. Perry said that her question was the same, but he now wishes to divide it into two parcels required by law to be two acres each which he finds he does not have. First he received permission to build a shop. Now he wants to divide the property--he wants to sell the house and is now living in the shop for an indeterminate period. This lady (Mrs. Thomas) asked what the people renting the house are going to do with the property and he said he did not know. Mrs. Perry continued that when one plans ahead and when the land is rented with an option to buy that land still belongs to the original owner; therefore, there should be some idea of what is going to happen to that land. Mr. McLean said that what the other party did with the property did not have anything to do with the variance. Mr. Flanders agreed that this was not a matter pertaining to the present petition. Any change in that property would require a variance taken up at another time. But Mrs. Perry felt that on the contrary it is important. She explained that they are not involved in the town but feared that the property would become industrialized, making two businesses side by side in the Rural area. Mr. Flanders said that he sympathized with Mr. Davis because he owns a piece of property that had not been surveyed. It is quite common to buy a piece of property in this area and not have it surveyed so he did not think we could fault Mr. Davis for that. Mr. Perry said, "That is your prerogative. Buyer beware." Mr. Bried asked if this piece of property is in the Rural District but with a business use, and Mr. Flanders explained that Parcel A was granted a business use; Parcel B was never granted a business use. Mr. McLean asked if this was ever recorded and Mr. Davis replied, "Yes, it was." The Clerk was then called upon to read the minutes of Case No. 5 which permitted him to

have a woodworking shop on the whole plot, and then turned to the minutes of Case No. 9 when Mr. Davis proposed to subdivide the property. Mr. McLean asked if he had heard something there about it could not be used for a residence. Mr. Davis replied, "No." And Mr. McLean asked to have the minutes read again.

Mrs. Thomas remarked that he was given permission for a shop, and wanted to know how he got a building permit for a residence. Mr. Davis: "I did not. It doesn't say I can't live in my shop. There is nothing in the town laws that says that I cannot live in the shop." Mr. McLean explained that it just says he cannot build a residence on that lot; it does not say he cannot live in the shop.

Mrs. Webber asked about the part of the property that Mr. Kramer now rents. "Did you object to the extension he put on the end?" Mr. Davis: "No, I did not because under the agreement we have he can do whatever he wishes." Mr. Doane replied that Mr. Davis's name is on that application for a building permit for July 5, 1977 for a studio and greenhouse, and submitted a copy of the application for a building permit on which the names of Richard H. Davis and Frederick Kramer appear dated July 5, 1977. Mrs. Webber pointed out that Mr. Kramer came before the Board for permission for a restaurant. The building permit of July 5, 1977 was for a studio and greenhouse. They were two entirely different matters. Mr. Doane corroborated her statement.

Mr. Flanders said he did not attend the Kramer hearing of April 12, 1977 so he was not informed, but he would like to confirm one question asked of Mr. Davis and lay it out before the table. When you bought that land (the Warner property) you felt that you were buying three acres more or less. Mr. Davis replied that the way the old deed read that was the assumption he went on. Mr. Flanders continued that when it was surveyed you ended up with 2.7 acres. Mr. Davis answered: "Yes, even with the land I bought." Mr. Flanders reiterated that based on

the deed you had thought you were buying three acres more or less.

Mr. McLean asked why he did not bring the deed as evidence as that is one of the most basic points of your argument? Mr. Davis replied that if that is to be a big factor then he was a liar. Mr. McLean said he did not say he was a liar; he asked where the deed was. Mr. Davis explained that the deed is in the bank; he did not get a copy of it. If he had thought it was necessary he would have brought a copy with him. Mr. Flanders pointed out that there is a problem in the depth,--in 1975 you said the depth was 225 feet and now it is 195 feet. Mr. Davis replied that he was going from the road edge. The Surveyor went from the center of the road--20 or 25 feet from the road.

Mr. Doane submitted two photographs, one dated 8/8/78 of the Warner house on Gregg Lake Road and the second of the shop dated 8/8/78 on Gregg Lake Road. They were passed to members of the Board and any others interested. The Chairman asked Mr. Doane if he had a reason for presenting them and Mr. Doane said he felt it pertinent to represent the use of the property which is now up for a subdivision.

The Chairman asked if there were any more questions from the Board. Were there any questions or remarks from Mr. Davis who said, "The only thing in regard to these pictures, it is a sorrowful thing that the town does not have an ordinance regarding the outside of a building." The Chairman asked if that had anything to do with the variance we are discussing tonight. Mr. Davis replied that he did not believe it had. It should not as regards himself. He did not know, maybe it had.

Mr. Flanders said to Mr. Davis, "I have known you a long time. I think you are (pardon my expression) a hell of a fine carpenter. How did you ever let anyone do that to a piece of property that you own?" Mr. Davis replied: "I wouldn't dare to tell you how many times I have been asked that in the past year. We do not have the right to choose and pick who we are going to sell that house to. Under the agreement we have to lease the house for a year with an option to buy, and that agreement allows him to do anything he wishes."

Mrs. Thomas asked if that lease agreement allowed him to do anything even if you owned that property. Mr. Davis replied that the agreement was written up by your town lawyer. Mrs. Thomas exclaimed, "And that agreement allowed him to do anything to the structure of that building!" Mr. Davis' reply: "What he does, I believe, does not have anything to do with me." The Chairman remarked that that was not pertinent to the question before us tonight. Mr. Davis agreed and felt that we were getting into the personal. Mr. Flanders apologized.

Mr. Doane remarked that at the hearing (Case No. 9) the question of area came up and the handdrawn plan Mr. Davis brought in proved to be inadequate. He, therefore, using the figures he gave, drew up a plan as best he could which showed the area to be 2.83 acres. The Board's decision was based on his plan. Mr. Flanders asked someone more experienced with deeds than he was if it was correct that deeds were apt to say more than there really was? Mrs. Thomas, who works in a lawyer's office, replied that a survey can come in and find more acreage or find less. There is no set trend. Mr. Bried felt that the trend twenty years ago was to say more.

Mr. Davis said that when he first came before the Planning Board in regards to the subdivision Mr. Abbott, the Chairman, referred him to the Board of Adjustment. Mr. Abbott wanted to know if he was going to have it pre-surveyed and he said not until he could find out whether he could subdivide it. He did not want to spend the money until he knew. He believed you would find that statement in the records.

The Chairman then summarized the hearing, saying that Mr. Davis came to the Board for a variance based on the two acre minimum, 210 feet frontage and 200 feet depth. We have gone into the matter thoroughly, so we will now go into executive session and hope to come up with an answer. He declared the hearing closed at 8:20 P.M.

The Board then met in executive session. The first order of business was to approve the minutes of Case No. 44 Richard L. Watterson. After minor changes were made it was voted unanimously to accept them as corrected.

The Chairman announced that we had received a letter from Mr. Falby, Mr. Watterson's attorney, Mr. Falby called to say that the proper procedure is to take up the matter at the next meeting of the Board, and consider whether we would grant a rehearing. If we grant a rehearing then we set a date and send out notices. But Mr. Falby said that Mr. Watterson would apply for a variance and to make life simple we should hear the variance first, and if we deny it we then vote on whether we will grant a rehearing, and if we deny that they will take it to court. In other words, if we do not grant the variance we will then do the appeal for a rehearing. If we deny, then I assume Mr. Falby will take it to court. The way he did it, if we deny the variance, then he can appeal our denial. I think he should make an application for a variance.

The Chairman then reviewed vacation plans of the Board so that the Clerk will know whether to schedule a hearing. He asked if there were any other business before discussion of the Davis case. There was none.

The Davis case then came under discussion. Mr. Bried said the way he saw it this man bought property he thought somewhere in the neighborhood of three acres. He came before the Board once to subdivide. Now he comes before us again to subdivide and he now knows he has less than three acres. He is supposed to have four acres for two lots. Mr. Bried did not know whether he personally would have the nerve enough to come before the Board again. Even so, he knows the man has problems. Mr. Flanders said Mr. Davis thought he had some three acres but finds he has only 2.7. The Board gave him a nonconforming lot for the shop. Mrs. Webber said that when Mr. Davis brought in his original plan she did not think it was an accurate survey. She would feel better to see the deed. Mr. Flanders remarked that his only comment is that it is either our fault or the Planning Board's. In the future he would like to have the

Planning Board not send us anything without a surveyed plot. The Board made a mistake. Buyer beware. The man came in and told us a story and the Board bought it. It is not Mr. Davis' mistake; it is the Board's. Mr. McLean said that before going further he would like to make a suggestion that the Board write a letter to the Planning Board to that effect, but Mrs. Thomas said that a survey was not required until two years ago; they requested it but did not require it. Now it is required. Therefore, Mr. McLean withdrew his request. Mr. Flanders summed it up by saying that if that plan came before the Planning Board today a survey would be required. Mr. Dennison remarked that it would be a very dangerous precedent for this Board to grant a variance because of sympathy for someone and take the wording in the deed without having a survey. I cannot understand anybody who is in a business; a man in the construction business like Watterson or Davis, buying a piece of land and assuming he had the land because of what his deed says. It would be foolhardy to buy a piece of land in Antrim or anywhere in the United States without a survey. If the Board grants the variance on the basis that the man thought he had the land but found he did not it would set a very dangerous precedent. Anybody could come in and claim the same thing. Mr. Flanders rebutted that statement by saying that the bank is willing to loan him a lot of money on a house and land without a survey. If you have no respect for me, then you are going to have trouble with the bank. He went on to say he knew Mr. Davis from the day one. He grew up with him in Henniker and he does not believe he has been any further away than Henniker. The man went out and did what 90% of the people do, and I do not think he should be punished for doing what a prudent man does in the State of New Hampshire. The Chairman reminded the gentlemen that the Board was considering the granting of a variance. Mrs. Webber asked if the problem was that he cannot sell this house unless he has two acres. Mrs. Thomas confirmed that Mr. Davis,

after receiving permission for a nonconforming lot for his shop in 1975 never had the land surveyed or took the plan back to the Planning Board for their approval and never recorded it at the Registry of Deeds. He could have had it this way, but it does not exist so he is asking for it this way now. Mr. Flanders repeated that the hardship is because he cannot sell his house because of the size of the land--because it is in actuality a nonconforming lot. The Chairman pointed out that a variance may be granted if the request does not diminish the value of the surrounding properties. Financial hardship does not alone warrant a variance. Because he bought a piece of property and finds he does not have what he thought is not a ground. Testimony from the Butterfields would have been helpful--whether they said they would not sell the land in back. Mr. Flanders said they will not sell mainly because the land is in land use and they do not want to pay the penalty. Mr. Flanders still feels that he bought a piece of land in good faith. Mr. Dennison does not agree. He thinks differently; should not buy without a survey. Mr. Bried made a motion that we grant the variance for a subdivision into two lots of 1.5 acres and 1.2 acres. Mrs. Thomas said that our function is to protect the people around and what is there. Actually he is doing just exactly what he darn pleases. If we grant this we are permitting two things affecting the neighborhood, and they are not consistent with the rest of the neighborhood. Mrs. Dik remarked that he changed the use of the shop by putting in an apartment and living there. Mr. Flanders said that granting or not granting is not going to change the buildings. There is no way we can discuss tonight about his living in that building. Mrs. Webber said that each time the Board has granted Mr. Davis something he does not stick with the ordinance. Mr. Flanders went on to say that the Board bent over backwards for Mr. Davis. It was trying to help him. He does not think it can sit with a vendetta because it made a mistake. If it is going to blame him it has to accept 50% of it.

Mr. McLean moved to deny the variance under Article VIII, Section E, 3.

He does not feel that the granting the variance will be in harmony with the general purpose and intent of the Zoning Ordinance of the Town of Antrim, and one must meet all these conditions to grant a variance.

Mr. Flanders: "I could not disagree with your statement more. If there wasn't a building there I do not think you would make that motion. I feel that 1.5 acres for that house is sufficient because it was a normal house, and probably if it were a little cape there would be no problem. When you say it is not in the spirit of the ordinance I think you are a hypocrite." Mr. McLean replied: "First of all, do not tell me what I am referring to. I am referring to what he asked for, a variance. A lot should be a minimum of two acres with a minimum of 210 feet frontage and 200 feet depth." Mr. Flanders: "A variance indeed is for the purpose of giving a variance to what you just read. The spirit of the ordinance is indeed to give a variance to what you have just read." Mr. McLean: "The spirit of the Zoning Ordinance is to obey what is in there." Mr. Flanders: "Then why are we sitting here tonight?" Mr. McLean: "As I read previously it should be in harmony with the general purpose and intent of the Ordinance which is two acres, 210 feet frontage and 200 feet depth,--right here in the Ordinance. All the other lots have that. This proposed lot does not fit in that category. Therefore, it should not be allowed." Mr. Flanders: "Then we should not have allowed the shop." Mr. McLean: "That is irrelevant." Mr. Flanders: "You are penalizing Mr. Davis for the judgment made a few years ago. We are at fault for doing it. We gave him a conforming and a nonconforming lot but at this time it is not true. Now the survey shows that he does not have that much land. Mr. Dennison remarked that the Board virtually sanctioned a variance when he said publicly that he is living in that shop. He was given permission for a shop. He has changed the use and, therefore, has not lived up to what he was granted." Mr. Flanders: "This statement that he lives in the shop, I do not feel

that it has anything to do with the variance. The Selectmen probably should deal with that." Mrs. Webber agreed with Mr. Dennison. Mr. Davis has admitted that he is living in the shop, and it is on the public record; he has violated the Ordinance. It puts us on shaky ground. We do have to deny the variance.

Mr. McLean then

MOVED: That the granting of the variance be denied because it is not in harmony with the general intent and purpose of the Ordinance as stated in Article VIII, Section E, 3.

SECONDED: By Mrs. Thomas

Mr. Flanders said that the Board has to read the four conditions of a variance, going through them himself and answering yes. Mr. McLean again read from the Zoning Ordinance but Mr. Flanders averred that State law takes precedence over local. But Mr. McLean pointed out that the four conditions Mr. Flanders just quoted are not State law, merely in their book of guide lines and that the Zoning Ordinance is the law. Mrs. Webber asked if when Kramer and Davis applied for the building permit for this lot was the subdivision made? Answer: No, Mr. Davis never surveyed or recorded. A building permit for this lot is not a subdivision permit.

The Board returned to public hearing and took the vote.

VOTED: In favor: Patricia Thomas
Carole Webber
A. George McLean

In opposition: Eugene Bried
Robert B. Flanders

The Clerk announced that the vote was three to two in favor or denial.

The meeting was adjourned by unanimous consent at 9:30 P.M.

Respectfully submitted,

Catherine C. T. Dik

Catherine C. T. Dik, Clerk