



# TOWN OF NORTHBOROUGH Zoning Board of Appeals

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Approved 3/27/12

## Zoning Board of Appeals Meeting Minutes February 28, 2012

**Members in attendance:** Richard Rand, Chairman; Mark Rutan, Clerk; Richard Kane; Craig Gugger

**Others in attendance:** Kathy Joubert, Town Planner; Bill Farnsworth, Building Inspector; Fred Litchfield; Town Engineer; Elaine Rowe, Board Secretary; Kevin Quinn, Quinn Engineering; Attorney George Pember; Bob Gleason; Tim Shay; Mike Sullivan; Sean Durkin; John McGuinness; Bill Scully; Leslie Harrison, 28 Moore Lane; Anthony & Carol Chione, 15 Brigham Street; Arthur Pennesi, 32 Wesson Terrace; Robert Gersh, 19 Brigham Street; Tricia Foster, Ashby, MA; Katee & Jarrett Craver, 19 Brigham Street; Robert & Linda Murphy, 121 Brigham Street; Danielle Hanson, 40 Brigham Street; Janet Robbins, 44 Brigham Street; Karen Ares, 31 Leland Drive; Amy White, 23 Brigham Street; Deidre Merritt, 16 Wesson Terrace; Ellen Picone, 64 Brigham Street; Lisa Masselli, 13 Maple Street; Fred & Virginia George, 96 Wesson Terrace; Al Lotoski; Ken Hutchins; Rebecca Hickins, 76 Brigham Street; Charlie Cleary, 50 Juniper Brook Road; Melinda Kement, 305 Brigham Street; Andrew Munro, 47 Leland Drive; Troy & Lisa Van Gorder, 20 Johnson Avenue; Gerry Anderson, 23 Juniper Brook Road

**Chairman Rand called the meeting to order at 7:20PM.**

**Continued Public Hearing to consider the petition of Tim Shay, LLC for a Variance/Special Permit/Special Permit with Site Plan Approval to allow a Horizontal Mixed-Use development containing 12 residential dwelling units and 12,880 square feet of business uses on the property located at 130 Main Street, GIS Map 53, Parcel 152**

Chairman Rand noted that there were some requests made of the applicant at the last meeting. Mr. Sullivan presented the revised plans, based on comments and requests that were made during that meeting.

Mr. Sullivan stated that he had met with the Fire Chief to obtain his input regarding the two proposed entrances. He noted that, per the comment letter provided, the Fire Chief has indicated that he would prefer to have two entrances for safety reasons.

Mr. Sullivan also noted that he had looked into the possibility of moving the apartment building to position it perpendicular to Route 20 on the westerly side of the property, but found that the

traffic flow internally and parking spaces would not work so the plan remains the same as originally presented. Mr. Sullivan explained that he has added a natural buffer of arborvitae and fencing along the property line, which should provide improved screening. In addition, the proposed decks and lighting have been removed from the rear of the building, and a buffer of blue spruce has been added to better separate the office building from Brigham Street. Mr. Sullivan commented that much of the discussion at the last meeting was about traffic impacts, and introduced Bill Scully to present the results of the traffic study.

Bill Scully stated that he has 35 years of experience in transportation planning and traffic engineering, mostly in Massachusetts. He noted that the traffic report was submitted to the town a few days ago.

Mr. Scully explained that the purpose of a traffic study is to get a better understanding of how a project site is going to impact an abutting roadway system, which in this case is Main Street and Brigham Street. Mr. Scully noted that Main Street is under state control, so requires a curb-cut permit from them. He explained that he studied the intersections of Main Street at Brigham and Maple Streets during the first week of February and collected 24 hour data on Main Street as well as the peak periods of 7AM to 9AM and 4PM to 6PM at the two intersections. He also looked at state-wide collected data to see how traffic flows vary over the course of the year and the raw data was adjusted as appropriate. Mr. Scully stated that Main Street carries 18,000 cars per day with average travel speeds of 35 to 40 miles per hour. He also noted that the traffic volumes are approximately 35% lower during the off peak hours of 9AM to 2PM.

Mr. Scully explained that, in forecasting traffic for the project, he separated out the data for residential, commercial/retail and office components, forecasted them separately and then added them together. He estimated 22 to 23 trips in and out of the site during the peak morning hours and a total of 46 trips during the afternoon peak, with 85 to 90% of the traffic going to Main Street. Mr. Scully also assumed that the cars exiting onto Main Street will follow the existing patterns, with 60 to 65% of the flow heading east in the morning and the opposite direction in the afternoon. Mr. Scully stated that the analysis shows increases in volume from the project of 1% or less. He concluded that the estimated increase in traffic from the project will be minimal, with fairly balanced flow at the driveways. Mr. Scully voiced his understanding that it is currently difficult to get out onto Main Street from these intersections, but reiterated that the project will not dramatically change the current conditions.

**Deirdre Merritt, 16 Wesson Terrace**, asked how many days the traffic was studied. Mr. Scully indicated that the data was collected on Thursday, February 9<sup>th</sup>, and noted that Thursday traffic is typically average or above average.

**Carol Chione, 15 Brigham Street**, stated that she disputes the results of the traffic study, and noted that there is heavy traffic between the hours of 3PM to 4PM and the speeds on Main Street are well in excess of 40 miles per hour. She also discussed the lack of sidewalks on Brigham Street, which makes any increase in traffic a safety concern for families and children who walk to school.

A resident noted that, during the last meeting, Ms. Joubert stated that the town had applied for a traffic light at this intersection and was denied by the state, and asked Mr. Scully his opinion of the situation. She also noted that this is the second worst intersection in Northborough and voiced concerns about safety.

**Virginia George, 96 Wesson Terrace**, commented that she makes the turn from Brigham Street onto Main Street every morning between 7:00AM and 7:45AM, and she does not understand how the town can minimize the impact of the increased traffic. She also does not believe the traffic increase from this project will be less than 1%. Ms. George also voiced her opinion that one day of study is not sufficient, and questioned whether the impacts from the church on Brigham Street and the nearby golf course were factored into the analysis.

**Lisa Masselli, 13 Maple Street**, asked Mr. Scully if he had referred to the Central Mass traffic study that was done in 2003. Mr. Scully stated that he had not. Ms. Masselli noted that there were several things noted in the study that should have been considered during Mr. Scully's analysis.

**Elaine (last name unknown) of Wesson Terrace**, commented that she does not have children in school but she does watch the bus traffic come and go at 3PM each day. She also stated that a substantial number of high school students have their own car, which results in further impacts to these roads on weekdays during times that are not within the peak times studied by Mr. Scully. She commented that drivers trying to head west on Main Street from Brigham Street are taking their lives in their hands.

**Fred George, 96 Wesson Terrace**, asked if there are any alternatives that have been considered, including the consideration of changing the traffic patterns. Chairman Rand explained that this issue would be beyond the scope of this board. Mr. George voiced his desire to investigate alternatives, especially given the concerns voiced by town residents about traffic volume and safety.

**Al Lotoski** stated that the study should have taken into consideration the impacts at the junctions and also voiced his opinion that the town should fight the state to get a five-way light. He commented that the traffic issues will not only impact current residents, but also tenants in the proposed development. Mr. Lotoski also disputed the average speeds quoted by Mr. Scully.

Ken Hutchins voiced concern about the curb-cut that comes out onto Brigham Street from the proposed project. He also disputed Mr. Scully's estimation that 10% of the traffic will travel to Brigham Street, as he knows all too well that many people use Brigham Street to avoid Main Street.

**Janet Robbins, 44 Brigham Street**, asked why a traffic counter wasn't put on Brigham Street during the traffic study. She voiced her opinion that Brigham Street is the real concern, and reiterated that a traffic counter should have been placed across the road. Mr. Scully stated that he had studied the intersections, and his focus was to get daily flow and speed data for Route 20 because the expectation is that the majority of traffic will flow onto Route 20.

**Amy White, 23 Brigham Street**, commented that there was nobody counting cars coming and going in and out of Brigham Street, so the study is not accurate. Mr. Scully noted that the operations analysis focuses on the conditions during peak travel times. He explained that being able to estimate worst-case scenarios enables him to work back and estimate off-peak conditions. Chairman Rand asked Mr. Scully if he has an estimate of the number of minutes cars wait to get out onto Main Street. Mr. Scully estimated this at between 55 and 120 seconds.

**Karen Ares, 31 Leland Drive**, commented that the traffic study did not consider traffic during school dismissal times (between 2:00PM to 4:00PM). Mr. Scully stated that the standard procedure is to study the morning and afternoon peak periods. He noted that, while he is not denying that there is other activity, the peak traffic onsite is not expected to be at 2:30PM. He reiterated that the analysis focuses on traffic flow and operations as it relates to the project itself. He stated that he has been out during peak and non-peak times, having done studies for other projects in the neighborhood, but reiterated that this study is to determine the impacts of the project and forecast conditions.

**Rebecca Hickins, 76 Brigham Street**, commented that the traffic study was not done on Brigham Street as was originally requested by the residents.

**Charlie Cleary, 50 Juniper Brook Road**, stated that he travels back roads to avoid Route 20 because of the difficulty getting through the intersection, and asked Mr. Scully why he believes that only 10% of the traffic will go onto Brigham Street. He also asked if the traffic flow takes into consideration the truck restriction they are seeking for Brigham Street. Mr. Scully stated that he had no knowledge of the truck restriction. He explained that, in terms of assigning traffic, the study involves counting traffic to see proportionally what is going on and what uses occur on the project site in question. He reiterated that most of the traffic in this general region heads east in the morning. Mr. Cleary asked Mr. Scully why he thinks the traffic impact from the project is small, and question what type of businesses will be located in the project and how much truck traffic is anticipated. Mr. Scully voiced his opinion that the truck traffic will be fairly light, and will likely be small Federal Express or UPS vans.

Mr. Hutchins asked how many vehicle trips are expected in and out of the site, and how Mr. Scully arrived at his estimation. Mr. Hutchins also commented that, based on that estimation, it seems feasible to eliminate the Brigham Street access. Chairman Rand reiterated that the Fire Chief has voiced a preference for an access to/from Brigham Street.

**Jarrett Craver, 19 Brigham Street**, voiced his understanding that, while the Fire Chief said he would prefer the access on Brigham, if the board denies it, the plans could be reworked.

Ms. George commented on Mr. Scully's statement that drivers wait 55 seconds to turn onto Main Street from Brigham Street, and noted that she waits 5 to 15 minutes depending on the day of the week. She suggested that Mr. Scully should do another such study and do it on a Saturday when the nearby church is in session.

A resident of Sunset Drive commented that drivers will choose to go through the proposed project in order to gain better site distance for turning onto Main Street.

**Ellen Picone, 64 Brigham Street**, stated that she often heads toward the center of town during peak times, and has waited as much as 7 minutes to make the left turn. She also noted that you can't really see what traffic is coming up the hill unless you creep out onto Route 20. She also voiced concern that, while sitting at that intersection, it will be impossible to determine if oncoming traffic is intending to make a turn onto Brigham Street, Maple Street, or into Mr. Shay's project.

**Melinda Kement, 305 Brigham Street**, asked if anyone has consulted the bus company about the number of buses that go through this area. She commented that the proposed apartments will likely house children, and bus traffic stopping in front of the complex will back-up traffic.

**Andrew Monro, 47 Leland Drive**, asked if there is any overflow traffic on the site, and noted that parked cars typically line Brigham Street when there are events at the Church or school. Mr. Shay indicated that there is no overflow parking planned in his project.

**Troy Van Gorder, 20 Johnson Avenue**, noted that drivers trying to turn onto Main Street from Maple Street are competing with drivers from Brigham Street. He reiterated concerns about increasing traffic at an already dangerous intersection.

Ms. Chione presented a photograph showing a bus that can barely fit on Brigham Street and asked the Board for a peer review of the traffic study. She commented that traffic from Lyman Street should also be taken into consideration. She voiced her understanding that the Central Mass traffic study identified this intersection as a crash cluster situation, and she believes that this is a unique intersection that needs unique consideration. Ms. Chione asked Mr. Scully how many people were involved in the manual study. Mr. Scully indicated that one person, two at most, would conduct the counts. Ms. Chione stated that one person could not adequately see everything, and voiced her opinion that the study is inaccurate.

Mr. Craver asked Mr. Scully if he would recommend adding any traffic, given the town's failed attempts at getting a traffic light at this intersection.

Town Engineer Fred Litchfield explained that, when 7-11 wanted to build at this intersection, their plan included a proposed traffic light without the benefit of a study. He stated that they wanted it simply for the positive impact they perceived it would have on their business. He noted that, at that time, the state would not approve the signal because the intersection did not meet the traffic warrants. Mr. Litchfield expressed his desire to have a traffic engineer review those warrants as they pertain to the intersection now. He commented that it is not the applicant's responsibility and requiring it is not justified based on the size of this project. He also noted that, regardless of whether this project moves forward or not, the town has a responsibility to address the issues at this intersection.

Mr. Craver commented that everyone in the room knows that this is a horrific intersection, and questioned whether it makes sense to add more traffic to it. Mr. Litchfield reiterated that it is the town's responsibility to resolve the issues with the intersection. Mr. Craver reiterated his question to Mr. Scully about whether he believes allowing additional traffic at this intersection is advisable. Mr. Scully commented that, whether this project goes through or not, traffic at this intersection is likely to increase anyway, and reiterated that the project itself adds a fairly small percentage of traffic.

Mr. Litchfield noted that it has been nearly ten years since the corridor study was done and, given the increases in traffic during that time, there is a good possibility that the intersection may now meet the warrants. He voiced his opinion that, while not ideal, he does not believe the size of the proposed project warrants the Zoning Board denying site plan approval.

Ms. Robbins asked how long construction of the project will take and how many large trucks will be going to and from the site during that time. Mr. Shay estimated that the project will take 18 to 24 months to complete, but stated that it is difficult to estimate the number of trucks.

Ms. White asked if construction of this project is anticipated to occur at the same time that work on Route 20 in the center of town is expected to be done. Mr. Litchfield noted that the downtown traffic improvement project is expected to begin in March or April and will take approximately one year to complete so there would likely be some time of overlap.

Chairman Rand asked Mr. Shay if he would agree to have his traffic engineer look at the warrants to determine if the town could get approval for a traffic signal. Mr. Shay commented that, though he does not believe it is his responsibility, he would be willing to do so. Mr. Scully suggested that this would involve additional review with longer duration counts on both Maple and Brigham Streets.

**Lisa Van Gorder, 20 Johnson Avenue**, voiced her opinion that this conversation is mixing apples and oranges. While we all agree that this is an awful intersection, the proposed project still adds 400+ cars back and forth to the site. She stated that the reality is that, just because we need a light at the intersection does not mean that we need this project.

An audience member asked how early in the morning and how late in the evening the town can anticipate truck traffic. Mr. Farnsworth noted that permitted work hours are 7AM to 7PM, Monday through Saturday with the exception of legal holidays.

Ms. White voiced her opinion that the traffic issues and safety concerns will result in this project being substantially detrimental to the entire community and suggested that it should be divided up and spread throughout the community. She reiterated that the project is not necessary and not appropriate in this residential area of single family homes.

Mr. Kane commented that Mr. Shay is simply attempting to make a reasonable return on his money and suggested that the board should approve his project.

**Tricia Foster** recommended that the applicant be required to do a longer study to determine the actual peak hours for Brigham and Maple Streets. She also questioned whether the applicant has identified areas for material storage and worker parking during construction. She noted that Mr. Litchfield had indicated that the traffic impacts alone do not warrant denying the special permit and asked if the other adverse impacts would justify a denial. She voiced her opinion that the adverse impacts from this project will outweigh the benefit to the community and therefore the special permit should not be approved.

Mr. Shay stated that everything, including material storage and worker vehicles, will be contained onsite. Ms. Foster asked how many workers Mr. Shay anticipates the project will require. Mr. Durkin explained that the project will be done in phases, and that any subcontractors they employ will be required to comply with the work hours and parking directives. Ms. Foster asked about the maximum number of workers anticipated at any given time, and suggested that the applicant should have some idea of how many workers would be needed for each trade involved in the project. Mr. Durkin stated that he has not yet done that phase of planning. Ms. Foster emphasized the importance of understanding the impact that the workers will have on the traffic and the neighborhood. Mr. Durkin stated that the site will be handled in a professional manner.

Mr. Van Gorder commented that the applicant has still not explained what the expected benefits will be for the town.

**Katee Craver, 19 Brigham Street**, discussed a statement that she said was made at a ZBA hearing in 2008 when Mr. Shay was seeking approval for a 2-bedroom apartment for a second level. Chairman Rand explained that the Zoning Bylaw has changed since that time. Mr. Gugger suggested that Mr. Shay was likely seeking a variance in the 2008 hearing, and noted that the Zoning Bylaw allows what Mr. Shay is now proposing, with site plan approval. He reiterated that the Zoning Bylaw was changed in 2009 when residents voted that it was in the town's best interest to create this district and that this type of use in this area is beneficial to the town.

Mr. Shay explained that the project is designed to fit into Route 20 and meets the local zoning. He noted that he has worked to minimize impacts to the neighborhood and has made some adjustments based on comments made at the last meeting. He explained that he did have his engineer look into the feasibility of moving the 10-unit building but he had determined that it was not possible to do so. He stated his intention to build a nice project, similar to others he has done in town. He also commented that it is unrealistic for neighbors to think that nobody would ever develop on this property.

**Gerry Anderson, 23 Juniper Brook Road** commented that the situation here is that we have a room full of people who don't want a project because it is impinging on their neighborhood, and this proposal is creating a tremendous animosity. Mr. Shay commented that he has already invested a tremendous amount of time and money in this project.

Mr. Hutchins asked if the board has the authority to grant site plan approval with conditions that would prohibit the cut onto Brigham Street. Chairman Rand confirmed that it does. Mr. Hutchins asked Chairman Rand if he would be willing to poll the board to see where they all stand on this issue.

Mr. Rutan asked if the applicant had looked into the possibility of installing a breakaway emergency gate as was previously suggested. Mr. Sullivan stated that the matter was discussed and the Fire Chief was not in favor of it. Mr. Scully suggested that eliminating the cut on Brigham Street would force more traffic to have to attempt to turn into the development from Main Street, further exacerbating the situation there. Chairman Rand stated that he does not see an issue with allowing the cut on Brigham Street. Ms. Joubert noted that there was a similar discussion when the credit union project was proposed. Mr. Rutan reiterated his desire to use a breakaway gate for emergency access. Mr. Gugger agreed and asked Mr. Shay his opinion. Mr. Sullivan commented that a breakaway gate would likely work. Ms. Joubert commented that this would need to be evaluated, and noted that she could provide the board with instances of when this was considered in the past and how well it did or did not work out.

Lisa Maselli, 13 Maple Street, read her letter dated February 28, 2012 (copy attached) aloud.

Mr. Craver asked if the applicant filed an affidavit in accordance with section 7-05-040 of the bylaw. Ms. Joubert noted that the section Mr. Craver is referring to deals with environmental performance standards for industrial developments and is not applicable here. Mr. Craver also asked if Mr. Shay has filed a Master Signage Plan. Ms. Joubert indicated that the signage plan was discussed as part of the Design Review process, and will be addressed by town staff when appropriate. Mr. Craver reiterated his understanding that a Master Signage Plan is required, and that the board cannot approve the application until it has been filed. Ms. Joubert reiterated that the Design Review Committee (DRC) has already addressed the issue of signage with the applicant.

Chairman Rand asked if the Fire Chief, Police Chief, and Historical Commission have been made aware of the project proposal and offered any input. Ms. Joubert confirmed that they all received copies of the original application as well as additional information that has come in since then. Chairman Rand voiced his understanding that, so far, only the Fire Chief has commented. Ms. Joubert confirmed that the Fire Chief has provided two comment letters, and noted that the Police Chief is in attendance tonight.

Police Chief Mark Leahy stated that the concerns about the intersection being one of the worst in town are accurate. He agreed that drivers are taking their lives in their hands when trying to maneuver through that area at all, and believes that eliminating the Brigham street entrance is imperative. He would also support any effort the town can make to get approval for a traffic light at that intersection, and voiced his opinion that adding even one car will not improve the quality of life for the people who have to use that intersection. He also noted that, when residents have complaints that result in a traffic study, the counter is in place for no less than seven days and the town should insist on no less from the traffic engineer.



Ms. Joubert informed the audience that all emails and letters sent by concerned residents are forwarded to the board members, and all phone calls/communications are also relayed to them.

Mr. Rutan noted that there has been a lot of discussion about increased impacts to the intersection when the golf course is in operation and asked Chief Leahy if he finds this to be true. Chief Leahy commented that there is no difference in terms of accidents but that tournament traffic from the course causes a real mess.

Ms. Chione voiced concern about impacts to the Assabet River caused by runoff from the site, given the increase in paved surfaces. She also questioned if the title is clear and stated that she has documentation that shows a possible separate lot. She stated that she is not against building on the parcel, she just believes that this proposal is too much for the area.

Ms. Ares voiced her understanding that the credit union has a left turn prohibition from their parking lot onto Route 20.

Mr. Craver stated that he had sent the board a letter about possible conditions for the project and asked if the board members had received it. Members of the board confirmed that they did. Mr. Craver noted that the board has not mentioned any conditions, and asked if it will be discussed or if the board simply decides those on their own. Chairman Rand explained that the board will decide about conditions, but will take all suggestions into consideration. Mr. Craver reiterated that the bylaw stipulates that the benefits of the project must outweigh the adverse impacts, and questioned what the benefits to the neighborhood will be. Mr. Shay suggested that, depending on the types of businesses that locate to the project, the benefits could vary.

Ms. Van Gorder stated that she fully understands the impacts that businesses and traffic can have on a neighborhood. She explained that her landlord decided to put a workout studio below her business, so she is now forced to move. She commented that there are no guarantees that a business that moves in will be beneficial to the neighborhood.

Ms. Merritt asked the members of the board what benefits they see that would outweigh the potential risks and “perfect storm” that this project will create. Mr. Gugger stated that the project will result in more jobs and Mr. Rutan cited the increase in the commercial tax base. Mr. Rutan also reiterated that the town’s residents, through their vote at Town Meeting, have designated this area for commercial development and that is what the applicant is proposing to do.

Ms. Joubert noted that the Zoning Board’s next meeting is scheduled for March 27<sup>th</sup>. Chairman Rand asked if it will be possible to get the additional traffic information by that time. Mr. Scully agreed to do so.

Richard Kane made a motion to close the hearing. Absent a second, Mr. Kane withdrew his motion.

Mark Rutan made a motion to continue the hearing until March 27, 2012 at 7:00PM. Craig Gugger seconded, vote unanimous.

**Public Hearing to consider the petition of Cyrus Brook Estates of Northborough, LLC, for a Variance/Special Permit for dimensional relief to allow 4 lots of the Cyrus Brook Estates subdivision to have less than the required minimum lot width, on the properties located at 10-12 Cyrus Way (Lot 3), 17 Cyrus Way (Lot 4), 11-13 Cyrus Way (Lot 5), and 7-9 Cyrus Way (Lot 6) , GIS Map 82, Parcels 113-1&2, 114-2, 115-1&2 and 116-1&2, respectively**

Attorney George Pember explained that the applicant is seeking relief of the lot width requirement, which is necessary primarily due to the topography on the site. He noted that there is an enormous geologic formation, over 70 feet above the street, at the rear of the lot that is treed and attractive but is very steep. Attorney Pember stated that the applicant believed that the lots were prepared in compliance with the bylaw, but because of a lack of a specific definition of the width measurement, the result is that lots 3,4,5 and 6, which have skewed lot lines, have less than the required 100 feet of width.

Attorney Pember reiterated that the root issue has been topography all along, and noted that if the topography had allowed for the buildings to be placed further back on the lots then the width measurement would be in compliance. He voiced his opinion that the board can be comfortable in the knowledge that granting relief does not compromise the spirit of the bylaw. Chairman Rand asked for confirmation that the lots are all 100 feet wide at the building locations. Attorney Pember confirmed that they are, and reiterated that the issue became apparent long after the subdivision was developed.

Ms. Joubert explained that the only zoning amendment being requested at Town Meeting this year is to clarify and redefine the width measurement. Mr. Kane asked if there are any adverse affects on anyone because of these particular lots. Mr. Joubert noted that this is a brand subdivision.

Mr. Farnsworth explained that the bylaw has been in effect for many years and he is not sure what happened in this particular case. He stated the misapplication of the definition was missed by his office when the building permit was issued and was only realized when the as-built was submitted for the Certificate of Occupancy. He explained that the only resolution is to relocate the building or seek a variance. Mr. Quinn noted that there has been no building yet on lot 6, but the foundations are already in on all of the other lots.

Chairman Rand asked why the retaining wall was built where it is and not located further back on the lot. Mr. Quinn voiced a desire not to annihilate the hill for the purpose of constructing a house further back. Ms. Joubert reiterated that permits were issued by the town for these buildings, and the developer constructed them assuming that he had met the zoning requirements. Chairman Rand suggested that the developer could take some land from lot 6 to make the other lots compliant. Mr. Quinn indicated that it would be difficult to do so and he would lose continuity of the project if the one building were pushed back to be in compliance.

Mr. Quinn reiterated that he operated in good faith and has made a whole-hearted attempt to make this right.

Attorney Pember reiterated that everyone believed that the project met the requirements of the zoning bylaw before proceeding with construction, and voiced his opinion that a variance is justifiable because everything was done in good faith. Chairman Rand asked if it is possible to move land from lot 6 to lot 5 to make it compliant. Mr. Quinn stated that it would not be possible to do so and maintain the number of buildable lots.

Mr. Farnsworth explained that the subdivision went through the Planning Board, and the building setbacks were shown on the plans submitted. He noted that the minimum lot width was not reviewed by the Planning Board, was missed by the Building Inspector when the building permit was issued but was caught at the Certificate of Occupancy stage. Mr. Kane noted that there was apparently an oversight on the part of several parties, but there appears to be no adverse affects so he feels it is reasonable to approve this application. Mr. Rutan agreed, especially given that all of the buildings involved are new and the project is not impacting existing structures. Mr. Litchfield explained that the engineer and developer worked closely with town staff and complied with some very tight constraints regarding impervious cover because of the Groundwater Overly district. He also noted that the retaining wall was a substantial expense and there was a good deal of balancing involved. He stated that the project was constructed as originally proposed, it is clear that the width definition needs to be clarified, and the variance request is a reasonable one.

Mr. Gugger commented that the board rarely gets a variance request that meets the criteria, and this one clearly has a true topography issue.

Mr. Quinn stated that he does not believe it is possible to take enough property from lot 6 to render lot 5 compliant, and pushing the building on lot 6 further back will increase the amount of impervious cover. Ms. Joubert explained that town staff has been struggling with this in-house and has tried to redraw the lot lines to minimize what was brought before the board and they were unable to find a fix.

Mr. Gugger voiced his opinion that moving the structure back would cause more of an impact than allowing it to remain as proposed. He asked Mr. Litchfield his opinion of which would be more detrimental - adding more asphalt or allowing a diminished lot width. Mr. Litchfield stated that he would prefer to see the board grant a variance. Mr. Rutan reiterated that moving the house back would ruin the aesthetic of the project. Mr. Farnsworth stated that the structure on lot 6 would end up being moved back 10 feet. Mr. Litchfield stated that he does not see the relevance in requiring the applicant to shift the building back, and reiterated that he would recommend granting a variance and leaving the project as proposed. Mr. Rutan agreed. Mr. Farnsworth reiterated that his office had made the error.

Mark Rutan made a motion to close the hearing. Richard Kane seconded, vote unanimous.

Mark Rutan made a motion to grant a variance for the 4 lots as specified in the application. Richard Kane seconded, vote unanimous.

**Public Hearing to consider the petition of John McGuinness for a Variance/Special Permit to allow a proposed addition to be located less than the required 15 feet from the west side property line on the property located at 96 Ridge Road, GIS Map 72, Parcel 20**

Mr. McGuinness discussed his proposal to construct an addition on the end of the house to make the master bedroom/bathroom more of a modern-day master suite. He noted that the proposed addition will encroach on the side setback by about 1.5 feet. Mr. Kane asked if any of the neighbors have voiced objection to the proposal. Mr. McGuinness indicated that they have not, and noted that even with the addition there will be at least 45 feet between the two houses. Mr. Gugger stated that he has no issues with the proposal.

Richard Kane made a motion to close the hearing. Mark Rutan seconded, vote unanimous.

Mark Rutan made a motion to grant a variance to reduce the side setback on the west side of the property to 13.5 feet. Richard Kane seconded, vote unanimous.

Adjourned at 9:48PM.

Respectfully submitted,

Elaine Rowe  
Board Secretary