

**ALAN & JULIE FISH
PETITION FOR VARIANCE
AUGUST 4, 2008**

The public hearing was held in Stow Town Building and opened at 7:35 p.m. on the petition filed by **Alan and Julie Fish, 63 Robert Road, Stow** for side yard setback variance of approximately three (3) feet under Section 4.4 of the Zoning Bylaw, "Table of Dimensional Requirements", to allow construction of an approx. 17-ft. x 44-ft. addition approximately twenty-two (22) feet from the lot line at said address. The property contains 52,106 sq. ft. and is shown on Stow Property Map R-14 as Parcel 5A-39.

Board members present: John Clayton, Edmund Tarnuzzer, Michele Shoemaker, William Byron (associate).

Ms. Shoemaker chaired and read the notice of hearing as it had appeared in the *Beacon Villager* on July 17 and 24, 2008. The hearing notice had been forwarded to all abutters by certified mail, return receipt. No abutters were present.

Ms. Shoemaker noted that only four members of the Board were present, therefore, the decision of the Board must be unanimous. The petitioners were given the choice of continuing the hearing to a date when the full board could be in attendance, or proceeding with the hearing. They wished to proceed.

The petitioners were granted a five-foot setback variance in April and that decision was appealed by David Elkins, the immediate abutter. Since then the petitioners have had discussion with Mr. Elkins who indicated willingness to agree to a three-foot variance that he would not appeal. Therefore, this petition is for a three-foot side yard variance. Mr. and Mrs. Fish wish to move forward and not expend more time and money, both theirs and the Town's.

Mr. Shoemaker asked if there was anything in writing from Mr. Elkins concerning agreement to a three-foot variance. Mr. Fish responded there was an e-mail. Prior to the first request for five feet, Mr. Elkins asked if they would limit the variance to three feet. At the time, they had indicated they would if five feet were not approved by the Board.

Ms. Shoemaker noted that even with a five-foot variance on file, there could be a written agreement between the parties that construction would be limited to a twenty-two-foot setback. Mr. Tarnuzzer was concerned that even with a three-foot variance decision, there will still be a five-foot variance decision on record. Possible amendment of the April decision was to be explored with Town Counsel. Mrs. Fish expressed concern that an amendment decision would cause confusion to the abutter. Mr. Fish advised they had been in contact with Town Counsel Jonathan Witten on several occasions, and his advice was to petition for a three-foot variance.

Mr. Tarnuzzer moved to grant an amendment to the original five-foot variance decision by allowing a three-foot setback variance, subject to approval of Town Counsel. The Board will be guided by his advice even if it is to grant a three-foot variance decision rather than amendment. Second by Mr. Clayton. Voted unanimously.

The hearing was closed at 8:05 p.m.

Respectfully submitted,
Catherine A. Desmond
Secretary to the Board