

**ATTACHMENT TO REQUEST FOR VARIANCE
23 UNCLE BILLS WAY**

Statement of the Facts

This variance arises subsequent to the holdings of the Massachusetts Appeals Court in Burke v. Zoning Board of Appeals of Dennis, 2025 Mass. App. Unpub. LEXIS 663; 105 Mass. App. Ct. 1144 (2025) ("Burke 3").

In "Burke 3" the Court noted:

As the board conceded at oral argument, discretionary zoning relief may, theoretically, be available to the plaintiff through a dimensional variance,

The requirements for a variance are established by G.L.c. 40A, § 10 which states:

..that owing to circumstances relating to the soil conditions, shape, or topography of such Land or structures and especially affecting such Land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.

This request for a variance meets all of the foregoing requirements. Each of the requirements will be dealt with in turn below.

1. The Soil Conditions, Shape, or Topography of Such Land or Structures and Especially Affecting Such Land or Structures

23 Uncles Bills Way (the "Land") is burdened by a foundation, as well as the consequences of illegal dumping and alterations to the Land during the reconstruction of Uncle Bills Way.

I. The Foundation

The records of the Town show that a foundation was installed on the Land. The foundation was partially exposed during the site

work done on the Land.

ii. Dumping and Alteration

Further, the damage to the Land¹ from unlawful dumping is a matter of record with the Town. The Land was altered to allow for its use by construction vehicles during the reconstruction. The alteration which has created the opportunity for the Land's use as an illegal parking lot.

Further, the alterations left a "ledge" a short distance from where illegal parking occurs.

The following was stated on May 29, 2018 (a copy of the letter has not been located at this time):

As you may know, your client made Uncle Bills Way a public way and redid the roadway (hereinafter the "betterment").

On Saturday, May 26, 2018, the undersigned went to the Property to inspect its condition. At that time it was discovered that your client had either taken to using the Property as a dump for refuse from the betterment or had allowed it to be so used.

One of the immediate concerns is the three foot (approximate) drop from the portion of the Property which is being used as a parking lot. The front twenty or so feet of the Property has been leveled with the refuse and at the end of the leveling there is a drop with leaves and other refuse immediately behind the leveling (the "drop-off"). (Fair speculation is that the contractors for the betterment, with the approval of your client, undertook the leveling to allow for the parking of construction equipment, etc.) The leveling has created a dangerous situation. Transiting from the edge of the leveling to the remainder of the Property is a danger to the health and well being of anyone who attempts it.

Pictures supporting the above statements were sent to your counsel. (Copies of the emails are attached as are representative pictures. (Please see Exhibit 1.) Additional documents will be provided upon request.)

¹ Which was somewhat mitigated during the process of site work, which the Town raised issue with. (Please see Exhibit 1.)

The foregoing establishes that the first prong of the requirements has been met. Please see Dion v. Board of Appeals, 344 Mass. 547 (1962) and Sherman v. Board of Appeals, 354 Mass. 133 (1968)

2. The Literal Enforcement of the Provisions of the Ordinance or By-law Would Involve Substantial Hardship, Financial or Otherwise

The dispute between the Town and the applicant is longstanding.

At this juncture, both parties have expended considerable time and resources to address the issue of whether the Land is buildable.

To date the evidence adduced during discovery shows the following:

I. Building Permits Have Been Granted in the Past.

Dennis has produced differing records for the Land.

There is no dispute that Dennis issued a Building Permit and has approved construction work on the Land no later than December 28, 1993 (the "1993 Permit") (Filed with Application).

An explanation for the issuance of the 1993 has never been advanced.

The former owner of the Land applied for building permits were applied for by the former owner of the Land for 11, 15, and 19 Uncle Bills Way. Each was approved on September 13, 1973.

The former owner, Mr. Drake, was a high school principal and experienced in real property matters. It would be uncharacteristic for a person with his credentials to overlook an application.

The only logical conclusion based on the now available evidence is that a building permit was applied for as the same time as an application was made for 11, 15, and 19 Uncle Bills Way.

ii. Dennis Has Regularly Allowed Variance Requests.

Dennis has produced documents after which included an

(unpublished) Decision of the Second District Court of Barnstable, Healy v. Board of Appeals of Dennis, Docket No. 201691 (1975) and records which establish the following: (Please see Exhibit 3.)

Appeals to the
For Relief from
the 7,500 Sq. Ft.

<u>Requirement</u>	<u>Allowed</u>	<u>Denied</u>
107	96	19

Nearly all of the allowances included the phrases "keeping with the neighborhood" and "no derogation the by-laws" (with immaterial differences in the wording).

Of the allowances, 51 included the terms "long time ownership" (again with variances in the wording).

Further for three cases the ZBA in allowing the variance recognized that creating a public park was a hardship. (Connolly (10/20/1975); Hart (December 1, 1975) and more directly in Storlazzi, March 5, 1979.)

A financial hardship arises from the disparate treatment of the applicant and that of similarly situated individuals.

3. The Public Good Would Be Advanced.

The Land is an eyesore. It is regularly used as a parking lot and there is a history of its use by mobile home(s). (Please see Exhibit 1.)

The neighborhood where the Land is located has single family homes, many of very similar dimensions, some with upgrades.

The allowance of the variance would be consistent with the neighborhood and with the intention of the by law. (Please see Exhibit 3 and foregoing discussion.)

Further, the public's good is always advanced by the equal treatment of all of its citizens.

EXHIBIT 1

BURKE & ASSOCIATES

ATTORNEYS AT LAW

400 Washington Street, Suite 408, Braintree, MA 02184
Telephone (781) 380-0770 ■ Facsimile (781) 848-0330
www.burkelaw.us

October 11, 2022

Via Certified Mail and
Facsimile @ 508-394-6289

Paul Fowler
Building Commissioner
Town of Dennis
685 Route 134
South Dennis, MA 02660

Re: Alleged Violation

Dear Mr. Fowler:

I am in receipt of your notice of an alleged "23 Uncle Bills Way Violation". (Please see Exhibit 1.)

Your counsel was informed of the issue by this office on September 12, 2022. (Please see Exhibit 2.) Your counsel did not respond to the report of an issue.

The undersigned repeats the statements included in the notice to your counsel herein and denies any involvement in the alleged violation.

Attached hereto are copies of prior correspondence to your counsel regarding similar issues which have not been addressed. (Exhibit 3.)

In light of the decade long dispute between the parties, I respectfully request that all communication be made via your counsel.

Very truly yours,



Timothy Burke

Enclosures

cc. John J. Davis and Justin Amos
Robin Stein and Amy Kwesell

EXHIBIT 1



Town of Dennis
Building Department

Paul Fowler
Building Commissioner

Tel: (508) 760-6163
Fax: (508) 394-6289

Mr. Timothy Burke Trustee
TVB Trust
400 Washington Street
Braintree, MA 02184

October 5, 2022

23 Uncle Bills Way Violation

Mr. Burke,

You are hereby notified that you are in violation of Town of Dennis By-Law 169-1 "Keeping of Trailer or Mobile Homes".

"It shall be unlawful for any person to keep or park any trailer or so-called "mobile home" designated or intended for human habitation, or occupancy anywhere within the corporate limits of the Town of Dennis for a period of more than seven (7) days..."

If within 7 days of the date of this notice the "mobile home/trailer" is not removed, further action as the law requires may be taken. If you have any questions please contact the Building Department.

Thank you,

Paul Fowler
Building Commissioner

EXHIBIT 2

23 Uncle Bills Way

message

Timothy Burke <T.Burke@burkelaw.us>

Mon, Sep 12, 2022 at 5:38 PM

To: John Davis <JDavis@piercedavis.com>, Robin Stein <rstein@k-plaw.com>, "Amy E. Kwesell" <akwesell@k-plaw.com>, Justin Amos <JAmos@piercedavis.com>

Counsel:

I received a call today from a concerned (and likely upset) "neighbor" to the subject property. Anonymity was requested and will be honored.

The property is being used as a parking lot for a number of vehicles.

Most significantly, a motorhome has been parked at the property and is running a power line to a property across the street. This is a safety concern that your client should attend to immediately.

As you know, multiple complaints regarding the use of the property have been registered with the town via your offices. These complaints have been ignored.

Please inform your client of hazards that exist at 23 Uncle Bills Way.

Thank you.

—
Timothy Burke

Burke & Associates

Suite 408

Braintree, MA 02184

781-380-0770 (Phone)

781-848-0330 (Facsimile)

IMPORTANT NOTICE:

The information in this email (and any attachments hereto) is confidential and may be protected by legal privileges and work product immunities. If you are not the intended recipient, you must not use or disseminate the information. Receipt by anyone other than the intended recipient is not a waiver of any attorney-client or work product privilege. If you have received this email in error, please immediately notify me by "Reply" command and permanently delete the original and any copies or printouts thereof. Although this email and any attachments are believed to be free of any virus or other defect that might affect any computer system into which it is received and opened, it is the responsibility of the recipient to ensure that it is virus free and no responsibility is accepted by Burke & Associates for any loss or damage arising in any way from its use.

EXHIBIT 3

BURKE & ASSOCIATES

ATTORNEYS AT LAW

400 Washington Street, Suite 408, Braintree, MA 02184
Telephone (781) 380-0770 ■ Facsimile (781) 848-0330
www.burkelaw.us

May 25, 2018

Via Certified Mail and
Facsimile @617-350-7760

John J. Davis
Pierce, Davis & Perritano, LLP
10 Post Office Square
Suite 1100N
Boston, MA 02109-4603

Via Certified Mail and
Facsimile @ 617-654-1735

Jakie Cowin
Kopelman and Paige, P.C.
101 Arch Street
Boston, MA 02110

Re: TVB v. Dennis

Dear Ms. Cowin and Mr. Davis:

I am again writing regarding your client's continuing failure to properly police 23 Uncle Bills, Way, Dennis, MA (the "Property").

As you know, last year I sent you a letter detailing your client's allowance of the property to be used as a "parking lot" for vehicles in poor condition or apparent disrepair. (Please see attached.)

On Mother's Day, I rode by the property and witnessed that there were two cars in disrepair or poor condition on the property.

The years of litigation have established that your client does not wish to be burdened with the requirements of the law. Your client's failures had not only effected a damage upon the property, but also those who are its neighbors (who are likely summer residents and whose time to enjoy their properties is short).

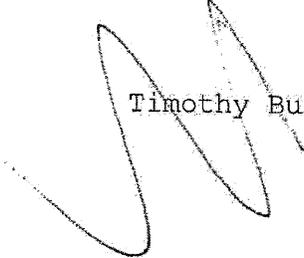
Please police the Property.

Further, it makes sense to erect a fence or string a chain across the front of the property to ward off trespassers. Please advise as to your view as soon as you can and provide the requisite forms. (The undersigned will not directly contact your clients.)

BURKE & ASSOCIATES
ATTORNEYS AT LAW

If you have any questions please do not hesitate to contact me.

Very truly yours,



Timothy Burke

cc. Interested Parties

BURKE & ASSOCIATES
ATTORNEYS AT LAW

400 Washington Street, Suite 408, Braintree, MA 02184
Telephone (781) 380-0770 Facsimile (781) 848-0330
www.burkelaw.us

June 16, 2017

Via Certified Mail and
Facsimile @617-350-7760

John J. Davis
Christine Dowling
Pierce, Davis & Ferritano, LLP
10 Post Office Square
Suite 1100N
Boston, MA 02109-4603

Via Certified Mail and
Facsimile @ 617-654-1735

Ilana Quirk
Kopelman and Paige, P.C.
101 Arch Street
Boston, MA 02110

Re: TVB v. Dennis

Dear Ms. Quirk and Mr. Davis:

I have received reports from owners of property on Uncle Bills Way in Dennis that 23 Uncle Bills Way (the "Property") is being used as a campground, as well as a parking lot.

Further, I understand that the Dennis police have reportedly and repeatedly been informed on the of the activities which are ongoing at the Property and that the police have taken no action.

As I am sure you know, the Town of Dennis ("Dennis") having placed the property into tax title "assumes some duties for the care and maintenance of that property". Please see Town of Milford v. Boyd, 434 Mass. 754 (2001).¹

There is no apparent reason for Dennis to intentionally neglect to meet its duties to the land and to those on Uncle Bills Way other than as retribution for the ongoing litigation.

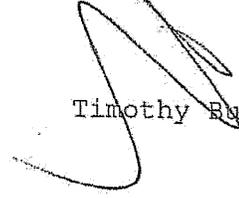
Please advise if your client will cease and desist from its unlawful activities as soon as your schedule allows.

If you have any questions, please do not hesitate to contact us.

¹ The revisions to G.L.c. 60, § 53 did not eliminate this duty.

BURKE & ASSOCIATES
ATTORNEYS AT LAW

Very truly yours,

A handwritten signature in black ink, appearing to be 'Timothy Burke', written over the typed name.

Timothy Burke



3 Uncle Bills Way

message

Timothy Burke <t.burke@burkelaw.us>
: John Davis <JDavis@piercedavis.com>, Jackie Cowin <JCowin@k-plaw.com>

Sat, May 26, 2018 at 5:23

Attached are pictures taken in the last hour or so of the lot at 23 Uncle Bills Way.

Your client has allowed the lot to become a dump for asphalt, etc. from the recent betterment done on the street.

Will send the pictures in packets intended to minimize issues with file size.

This sequence is not being sent to interfere with your weekend (if you receive work emails during a weekend) but to establish a contemporary record.

Tim Burke

5 attachments

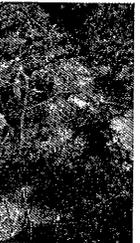
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3 Uncle Bills Way

message

nothy Burke <t.burke@burkelaw.us>
: John Davis <JDavis@piercedavis.com>, Jackie Cowin <JCowin@k-plaw.com>

Sat, May 26, 2018 at 5:25

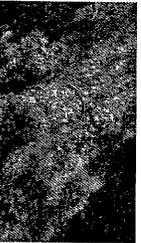
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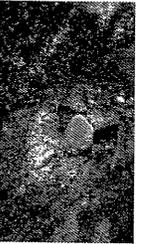
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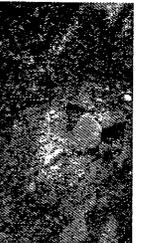
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3 Uncle Bills Way

message

mothy Burke <t.burke@burkelaw.us>

Sat, May 26, 2018 at 5:28 P

: John Davis <JDavis@piercedavis.com>, Jackie Cowin <JCowin@k-plaw.com>

5 attachments



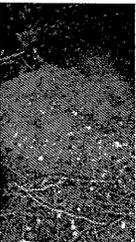
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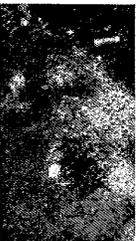
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Town of Dennis
Building Department

Nicholas Mayo
Building Commissioner

Tel: (508) 760-6157
Fax: (508) 394-6289

Notice of Zoning By-laws Violation(s) and Order to Cease, Desist and Abate:

Timothy Burke, 400 Washington St, Braintree, MA 02184, and all persons having notice of this order.

As owner of the property, located at 23 Uncle Bills Way, South Dennis, MA 02660, Assessor's Map 197, Parcel 41, and known as a vacant lot, you are hereby notified that you are in violation of the Town of Dennis Zoning By-law(s) Section 2.3.3.11, and are ORDERED this date, December 22, 2020 to: CEASE AND DESIST immediately, all functions connected with this violation, on or at the above mentioned premises.

Summary of Violation:

On December 21, 2021 I observed a violation of the Town of Dennis Zoning By-Law, Section(s) 2.3.3.11: *No construction or site preparation work shall be done on any land including the removal of living trees of greater than four (4) inch caliper, measured six (6) inches above grade or the removal of greater than ten percent (10%) of existing vegetation until all necessary permits and approvals have been obtained.*

Nature of violation: I did observe the majority of the parcel of land has been cleared of trees and vegetation in preparation for a new structure.

Summary of Action to Abate:

In order to abate this violation and to avoid further enforcement action, commence immediately upon receipt of this notice the following action: Install erosion control around entire perimeter of the parcel of land to avoid any and all water run-off. Submit a site plan showing the proposed vegetation including trees for approval to re-stabilize the site.

And, if aggrieved by this notice and order; to show cause as to why you should not be required abate the violation in this notice, you may file a Notice of Appeal (specifying the grounds thereof) with the Town Clerk of Dennis and the Town Planner, within thirty (30) days of the receipt of this order and in accordance with MGL 40A Section. 8. If, at the expiration of the time allowed, action to abate this violation has not commenced, further action as the law requires may be taken. If further action results in fines, the fine shall not be more than \$300 for each offense; each day constitutes a separate offence and the fine shall commence upon receipt of this notice

By order,

Nicholas Mayo
Building Commissioner

EXHIBIT 2



DENNIS BUILDING DEPARTMENT

MAIN STREET, SOUTH DENNIS, MASSACHUSETTS 02660

394-8300

OWNER EVERETT W. BOY, JR. PHONE 394-3090

LEGAL ADDRESS P.O. Box 186, 51 Cove Rd., West Dennis, MA ZIP CODE 02670

PERMIT TO: CONSTRUCT ALTER () ADD () DEMOLISH () MOVE ()

1-FAMILY GARAGE TOOL SHED ()

PROPOSED USE RESIDENTIAL ZONING DISTRICT R-40

NUMBER OF STORIES TWO NUMBER OF DWELLING UNITS ONE

LOCATION 23 UNCLE BILL'S WAY DENNIS
Number Street Village

SUBDIVISION 1 LOT 105 BLOCK LOT SIZE 7,650 SF

STRUCTURE IS TO BE 24' FEET WIDE BY 32' FEET LONG BY FEET HIGH

TYPE OF CONSTRUCTION WOOD FRAME = 4B USE GROUP(S) R-3
(Wood Frame = 4B) (162 Family = R-3)

CALCULATED AREA 1,317 SF PERMIT FEE 527-

COMPLETION COST 80,000.00 ASSESSORS SHEET # 197/41/R

CONTRACTOR EVERETT W. BOY, JR. PHONE 394-3090

ADDRESS P.O. Box 186, West Dennis, MA ZIP CODE 02670

REMARKS:

THE REQUIREMENT OF FULL COMPLIANCE WITH LAWS, CODES, ORDINANCES, RULES AND REGULATIONS IS NOT WAIVED BY THE ISSUANCE OF A BUILDING PERMIT.

APPLICATION FOR A PERMIT FOR ANY PROPOSED WORK SHALL BE DEEMED TO HAVE BEEN ABANDONED (6) MONTHS AFTER DATE OF FILING, UNLESS SUCH APPLICATION HAS BEEN DILIGENTLY PROSECUTED OR A PERMIT SHALL HAVE BEEN ISSUED.

ALL PROPOSED CONSTRUCTION SHALL BE SUBJECT TO TOWN OF DENNIS BY-LAW XV AND MASSACHUSETTS GENERAL LAWS, CHAPTER 131, SECTION 40, THE WETLANDS PROTECTION ACT.

NO PERMIT SHALL BE ISSUED UNTIL A DISPOSAL WORKS CONSTRUCTION PERMIT HAS BEEN ISSUED BY THE DENNIS BOARD OF HEALTH.

NO PERMIT SHALL BE ISSUED FOR CONSTRUCTION WITHIN THE OLD KINGS HIGHWAY HISTORIC DISTRICT OR THE SOUTH DENNIS HISTORIC DISTRICT UNTIL A CERTIFICATE OF APPROPRIATENESS OR A CERTIFICATE OF EXEMPTION HAS BEEN FILED WITH THE TOWN CLERK.

THE UNDERSIGNED ASSUMES RESPONSIBILITY FOR COMPLIANCE WITH THE STATE BUILDING CODE AND OTHER APPLICABLE CODES, ORDINANCES, BY-LAWS, RULES AND REGULATIONS.

SIGNATURE *Everett W. Boy, Jr.* TITLE CONST. SUPER. DATE 12/10/93

DULU... PERMIT NO. 2685 12/28/93 12/10/93

TOWN OF DENNIS
 BUILDING DEPARTMENT
 CONSTRUCTION SUPERVISOR FORM

PLEASE PRINT:

DATE 12/10/93

LOCATION 23 UNCLE BILLS WAY, DENNIS
 NUMBER STREET VILLAGE

OWNER OF PROPERTY EVERETT W. BOY, JR.

CONSTRUCTION SUPERVISOR EVERETT W. BOY, JR. #032809 394-3090
 NAME LICENSE NUMBER PHONE

ADDRESS P.O. Box 186, W. DENNIS, MA 02670
 NUMBER STREET CITY/TOWN STATE ZIP CODE

UNLICENSED DESIGNEE (OTHER THAN SUPERVISOR) NAME LICENSE NUMBER

RESPONSIBILITY OF EACH LICENSE HOLDER:

- 1.1 The license holder shall be fully and completely responsible for all work for which he is supervising. He shall be responsible for seeing that all work is done pursuant to the State Building Code and the drawings as approved by the Building Official.
- 1.2 The license holder shall be responsible to supervise the construction, reconstruction, alteration, repair, removal or demolition involving the structural elements of buildings and structures only pursuant to the State Building Code and all other applicable Laws of the Commonwealth even though he, the license holder, is not the permit holder but only a subcontractor or contractor to the permit holder.
- 1.3 The license holder shall immediately notify the building official in writing of the discovery of any violations which are covered by the building code.
- 1.4 Any licensee who shall willfully violate Subsections 2.15.1, 2.15.2, 2.15.3 or any other Sections of these Rules and Regulations and any procedures recommended, shall be subject to revocation or suspension of license by the Building Official.

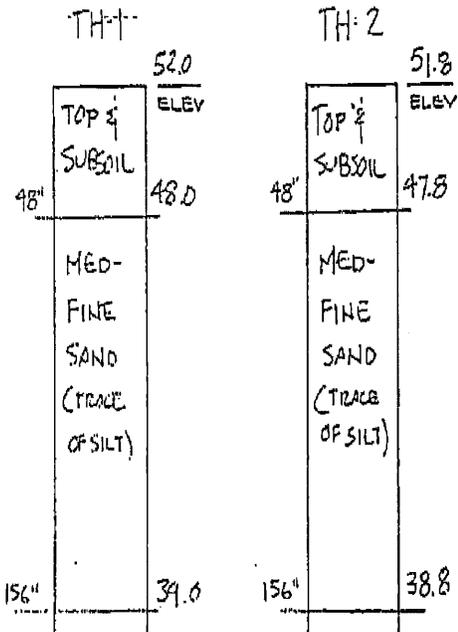
All building permit applications shall contain the name, signature and license number of the construction supervisor who is to supervise those persons engaged in construction, reconstruction, alteration, repair, removal or demolition regulated by Section 109.1.1 of the Code and these Rules and Regulations. In the event that such licensee is no longer supervising said persons, the work shall immediately cease until a successor license holder is substituted on the records of the building department.

I have read and understand my responsibilities under the rules and regulations governing the licensing of construction supervisors in accordance with Section 109.1.1 of the State Building Code. I understand the construction inspection procedures and specific inspections as called for by the building official.

SIGNATURE Everett W. Boy, Jr.
 (LICENSED CONSTRUCTION SUPERVISOR)

BUILDING OFFICIAL APPROVAL

ENGINEER: THOMAS McLELLAN PE
 WITNESS: TANYA DAGNEAULT
 DATE: 11-30-93
 PERC. RATE: < 2 MIN/IN



NO GROUNDWATER ENCOUNTERED

1. VERTICAL DATUM: ASSUMED FROM QUAD (NGVD)
2. MUNICIPAL WATER IS AVAILABLE
3. SCHEDULE 40 - 4" PVC PIPE TO BE USED THROUGH-OUT SEPTIC SYSTEM.
4. ALL PRECAST UNITS TO CONFORM WITH AA SH TO H 10 20 LOADING SPECIFICATIONS.
5. PIPE PITCH = 1/4" PER FOOT UNLESS OTHERWISE NOTED.
6. FIRST 2' OF PIPE OUT OF D-BOX TO BE LEVEL.
7. THE SEPTIC SYSTEM HAS NOT BEEN DESIGNED TO ACCOMMODATE THE USE OF A GARBAGE GRINDER.
8. ALL CONSTRUCTION DETAILS ARE TO BE IN CONFORMANCE WITH THE STATE OF MASS. ENVIRONMENTAL CODE (TITLE V).
9. CONTRACTOR TO VERIFY LOCATIONS OF ALL UTILITIES PRIOR TO CONSTRUCTION.

SEPTIC SYSTEM DESIGN

FLOW ESTIMATE:

4 BEDROOMS AT 140 GAL/MTY/BR = 560 GAL/DAY

SEPTIC TANK:

560 GAL/DAY x 1.5 DAYS = 840 GAL.

USE 1000 GALLON SEPTIC TANK

LEACHING AREA:

USE ONE LEACH PIT (6' x 4') WITH 4' OF STONE (14' EFF. DIAM. x 4' DEEP)

SIDE AREA $14 \times 7 = 176 \text{ SF}$ (2.5) = 440 GAL/DAY

BOTTOM AREA $7^2 \pi = 154$ (1.0) = 154 GAL/DAY

TOTAL CAPACITY = 594 GAL/DAY

197/41

APPLICATION FOR PERMIT TO INSTALL AND REQUEST FOR ELECTRICAL SERVICE

10-10

Inspector of Wires
Town of DENNIS Massachusetts

Wiring Permit # _____ COM/Electric # 325397
Building Permit # _____ Date 1/5/94

Customer: REEF READY on (Street #) 23 UNCLE BILLY WAY
Lot # _____ in the village of S. DENNIS utility pole number or underground number 221/3
Customer's billing address 24 SCHOOL ST. - W. DENNIS

Temporary New installation _____ Change of service _____ Starting date _____
Job description _____

Service entrance voltage 115/230 Amperage 30 Phase 1
Wire size (cu. or al.) 6AL Conductor per phase 1
Number of meters 1 Water heater _____ Off peak: Yes _____ No _____
Estimated load: Electric heat _____ kw, lights _____ kw, Range _____ dryer _____ Motors, H.P. & Phase _____
Ready for first inspection 1-5-94 Ready for final inspection _____
Electrical Contractor CRAIG MASHORE Lic # 47616 Telephone # 385-3787
Address 226 SO. YARMOUTH RD - DENNIS
Additional Remarks: _____

Do Not Write Below This Line
ELECTRICAL WIRING INSPECTION CERTIFICATE
INSPECTOR OF WIRES

INSPECTIONS	DATE	BEE CHARGE
Temporary Service	_____	20
Roughing In	_____	117
Service and Meter	_____	13.75
Off Peak Meter	_____	_____
Final Approval	_____	_____
Disapproved*	_____	_____

*For the following reasons _____

CERTIFICATE OF INSPECTION

To the COMMONWEALTH ELECTRIC COMPANY. The installation described above has been completed and has this day been inspected and approval granted for connection to your service.

Date Jan 7, 94
Ray Spedman
Inspector of Wires

WIRING INSPECTOR TO BE NOTIFIED WHEN WORK IS READY FOR INSPECTION
Permit Good For One Year From Date Of Issue

CA 46

INSPECTOR'S NOTICE

Key: 10049

Town of DENNIS - Fiscal Year 2022

12/22/2021 1:05:15PM SEQ #: 1,038

Assessed Owner Of Record		Parcel ID	Location		Class	Mix%	Description		BLD #	BLD ID	Card									
BURKE TIMOTHY TRUSTEE		197-41-0	23 UNCLE BILLS WAY SD.		1300	100	DEVELOPABLE LAND				1 of 1									
CURRENT OWNER		TRANSFER HISTORY		DOS	T	SALE PRICE	BK-PG (Cert)	PMT NO	PMT DT	TY	DESC	AMOUNT	INSP	BY	1st	%				
BURKE TIMOTHY TRUSTEE		BURKE TIMOTHY TRUSTEE		10/13/2016	H		(210988)		03/16/2017	77	CYCLICAL REV		03/16/2017	JMG	100	100				
TVB TRUST		DRAKE GREGORY W		10/07/2003	A		(170838)	000	02/28/2001	77	CYCLICAL REV		02/28/2001	REO	0	0				
400 WASHINGTON STREET SUITE 408 BRAintree, MA 02184		DRAKE DARREN P		12/27/1995	X		(139356)	2685	12/28/1993	1	NEW CONST	80,000	07/20/2006	APK	100	100				
CD	T	ACRES/SF	Nbhd	FEMA	Infl1	ADJ BASE	SAF	Infl2	Lpl	Chpt	CREDIT AMT	ADJ VALUE								
100	A	0.170	14	1.00	R	1.00	1	1.00	203,500	3.29	1	1.00	R02	1.00		113,750				
TOTAL	7,405 SF		LC PLAN 32986B-4		Photo Date		07/01/2021		BLDG #											
Nbhd	FOLL. POND		OLD KINGS HISTORIC DISTRICT																	
FEMA	OLD PK CODE																			
Infl1	AVERAGE																			
TY	QUAL	COND	DIM/NOTE	YB	UNITS	ADJ PRICE	RCNLD													
YrBlt		NET AREA																		
COST MODEL		CURRENT TAXABLE	PREVIOUS TAXABLE																	
		113,800	111,500																	
BLDG		ADJ	DESC	LAND	113,800	111,500														
STYLE				BUILD.	0	0														
QUALITY				DETACH	0	0														
FRAME				OTHER	0	0														
TOTAL				TOTAL	113,800	111,500														
BLD ID	MODEL	YR BLT	EFF YR	DLCU	OVCU	MEASURE	BY	LIST	BY	REVIEW	BY	w/Wall/FX	NET AREA	SIZE ADJ	ADJ PRICE/SF	RCN	% GD	RCNLD		
CAPACITY	UNITS	ADJ	ELEMENT	CD	DESCRIPTION	ADJ	S	BAT	T	DESCRIPTION	UNITS	YB	ADJ PRICE	RCN	TOTAL RCN	CONDITION ELEM CD				
EFF YR/AGE																				
COND	FUNC	ECON	DEPR	% GD																
RCNLD																				



EXHIBIT 3

**Dennis ZBA
Decisions**

<i>Variance Allowed</i>		<i>Keeping with</i>	<i>No derogation</i>	<i>Long time</i>	<i>Financial</i>
<i>Case Name</i>	<i>Date</i>	<i>Neighborhood</i>	<i>of By-law</i>	<i>ownership</i>	<i>difficulty</i>
Polonius	11/5/1973	x	x		x
Moreschi	1/7/1974	x	x	x	x
Clifford	1/21/1974	x	x		x
Salerno	5/20/1974	x	x		x
Bestgen	6/3/1974	x	x		x
Iozzi	9/16/1974	x		x	
Smith	9/16/1974	x	x		
Bibinski	9/16/1974	x	x	x	
Howell	10/7/1974	x	x	x	
Berry & Brainerd	10/7/1974	x	x	x	
Hennessey	10/21/1974	x	x	x	
Benson	10/21/1974	x	x	x	x
O'Brien	11/18/1974	x	x	x	
Schule	12/2/1974	x	x	x	x
Dunn	4/7/1975	x	x		
Armeson	4/21/1975	x	x	x	
Atkins	5/19/1975	x	x	x	
Short	6/2/1975	x	x		x
Coffey	6/16/1975			x	x
Howes	10/20/1975	x			x
Connolly	10/20/1975	x			x
Healy	11/3/1975				
MacPhetree	12/1/1975	x	x		
Noyd	12/1/1975	x	x		x
Kelly	3/1/1976	x	x		x
Baldwin	9/20/1976	x	x		
Pearce	9/20/1976	x	x		x
Beck	9/20/1976	x	x	x	
Foss	10/4/1976	x	x		

- 1 -

- 2 -

Marcalanti	10/18/1976	x	x	x	
Perry	11/1/1976	x	x	x	
Orcutt	11/15/1976	x	x	x	
Long	2/7/1977	x	x		
De Filippo	3/7/1977	x	x		
Hill	3/7/1977	x	x		x
Rose	3/21/1977	x	x	x	
Swan	3/21/1977	x	x	x	x
Doolittle	3/21/1977	x	x	x	x
Coughlin	5/16/1977	x	x	x	x
Charles Probst	7/18/1977	x	x	x	x
Ross	8/1/1977	x	x	x	x
Charles Probst	8/15/1977	x	x	x	x
Erb	10/17/1977	x	x	x	x
Gregory	11/7/1977	x	x		
Bassett	11/7/1977	x	x	x	x
Day	11/7/1977	x	x	x	
Campana	11/21/1977	x	x	x	
Nickerson	12/5/1977	x	x	x	x
Briggs	1/18/1978	x	x		x
Lindsay	2/27/1978	x	x		x
Young	3/6/1978	x	x	x	x
Kelly	3/6/1978	x	x		x
Dibbins	3/6/1978	x	x		x
Simpson	3/20/1978	x	x		x
Ray	4/3/1978	x	x	x	x
Conway	4/3/1978	x	x	x	x
DeFillipo	4/24/1978	x	x		
Howard	4/24/1978	x	x		
Howes	5/15/1978	x	x		
Barber	6/5/1978	x	x	x	x
Lindsay	6/19/1978	x	x		x
Lindsay	6/19/1978	x	x		x
Uto	06/16/978	x	x	x	x

- 3 -

Uto	06/16/1978	x	x	x	x
Sorabella	7/3/1978	x	x	x	x
Dykeman	7/3/1978	x	x	x	x
Tremblay	7/3/1978	x	x	x	x
Schoenfelder	8/7/1978	x	x	x	x
Sylvia	8/21/1978	x	x	x	x
McGrane	9/18/1978	x	x	x	x
Leidinger	9/18/1978	x	x	x	x
Murphy	10/2/1978	x	x	x	x
Best	2/21/1979	x	x		x
Bestgen	2/21/1979	x	x	x	x
Bestgen	2/21/1979	x	x	x	x
McGrane	2/21/1979	x	x		
Storlazzi	3/5/1979	x	x	x	x
Budrick	5/21/1979	x	x		
Lindsay	6/4/1979	x	x		
Lovell	7/2/1979	x	x	x	x
Sylvia	9/5/1979	x	x	x	
Uto	10/1/1979	x	x	x	x
Healy	10/15/1979	x	x		
O'Brien	12/3/1979	x	x	x	x
Perry	1/21/1980	x	x	x	x
Elis	2/4/1980	x	x	x	x
De Simone	5/19/1980	x	x		x
Homes	6/16/1980	x	x		x
Welch	8/1/1980	x	x		x
Phillips	9/15/1980	x	x		x
Alex	10/6/1980	x	x		
Garfield	10/6/1980	x	x		
Tartaglia	10/20/1980	x	x		
Averinos	11/3/1980	x	x	x	
Nobili	12/15/1980	x	x		x
Total	94			51	59

Variance Denied

Name	Date
Heath	5/20/1974
Cape Wide Dev.	5/20/1974
Hagopian	6/17/1974
Dalton	7/15/1974
Healy	3/3/1975
Campana	8/4/1975
Howes	10/20/1975
Morello	11/17/1975
Annese	11/17/1975
Annese	11/17/1975
Sherren	8/16/1976
Guillemete	8/16/1976
Clancy	10/4/1976
Chase	12/6/1976
Ralston	3/7/1977
Skinner	5/16/1977
Souke	6/6/1977
Boyle	9/19/1977
Lewis	10/3/1977
Ross	11/7/1977
O'Brien	10/2/1978
O'Neil	5/21/1979
Webber	9/5/1979
Shaeffer	1/21/1980
Shaw	6/2/1980
Bassett	7/7/1980
Mullaney	7/21/1980
Lane	8/4/1980
Stacy	8/18/1980
Ray	8/18/1980
Total	19

1
4
1

Footnotes

The above categories and entries were made in good faith. The ZBA employed varying terms in making its conclusions. Absolute precision is neither claimed nor believed possible. The designation Financial Hardship is believed fair based on the ZBA's considerations and statements.

The Commonwealth of Massachusetts

TOWN OF DENNIS

BOARD OF APPEALS

At a Public Hearing held November 5, 1973, recessed to February 4, 1974

relative to a variance in the Dennis Zoning Laws, the Board of Appeals voted to grant variance from the minimum lot size requirement to enable William V. Polonius to construct a single family dwelling on Lot 5, Miller's Road, South Dennis. Area of Lot 5 is 8,710 sq. ft.

The Board's vote was 4 Yea (Carroll, Flinkstrom, Lohr, Skelly) and 1 Abstain (Burrell). The hearing on November 5, 1973, was recessed at the request of Attorney Edward E. Veara, then representing the petitioner, to await confirmation of the Attorney General's ruling on the revised Zoning Bylaw. Hearing was resumed on February 4, 1974, and Attorney Lawrence O. Spaulding, Jr., now representing the petitioner, presented a brief and supportive argument. The chronology of Mr. Polonius' acquisition of Lot 5 is significant. The negotiation began in May or June, at which time the Building Inspector confirmed the lot as buildable. Purchase and sale agreement was executed August 7, 1973, and title passed on or before September 26, 1973. On that date, Building Permit Application was denied, the effective date of the bylaw change then being deemed to be August 15, 1973. On October 24, 1973, the Attorney General struck down the August 15 date, and the bylaw was posted and became effective on November 5, 1973. By these dates, the building permit was not subject to the new bylaw, and the Board could choose to recommend its issuance as of September 26, 1973. Petitioner requested granting of variance, as a more certain and permanent documentation, and the Board did so, since the financial loss would be very substantial if the house could not be built, and it appeared the project would not derogate from the community or the bylaw intent. Mr. Burrell's abstention was based on questions raised in his mind by Town Counsel's opinion of December 17, 1973.

Details of the hearing and the decision are on file in the Board of Appeals records at the Dennis Town Office, as Case No. Z-101.

Stephan B. Burrell Clerk
DENNIS BOARD OF APPEALS

- Copy to: Appellant
Appellant's Attorney
Building Inspector
Planning Board
Executive Secretary
Town Clerk
File

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FEB 6 1974

TOWN CLERK
TAX COLLECTOR
TOWN OF DENNIS

The Commonwealth of Massachusetts

TOWN OF DENNIS

BOARD OF APPEALS

At a Public Hearing held January 7, 1974, with decision rendered January 21, 1974 relative to a variance in the Dennis Zoning Laws, the Board of Appeals voted to grant variance from the minimum lot size requirement to enable John V. Moreschi to construct a single-family dwelling on Lot 392, Third Street, Dennis. Area of Lot 392 is 9,100 sq. ft.

The Board's vote was unanimous (Bechard, Burrell, Carroll, Flinkstrom, Skelly). Mr. Moreschi and his agent, Mr. Leighton Rogers, represented that he acquired Lots 392 and 393 in 1958; that he has maintained a residence on Lot 393 since that time; that he began arrangements in April, 1973, for construction on Lot 392; to realize on that investment as his children approach college age; and that he failed to obtain his building permit before the zoning change through a series of happenstances in dealing with the concerned Town agencies. The Board's opinion is that the proposed dwelling was undertaken well in advance of the zoning bylaw change, that the lot size and house are in keeping with the neighborhood so that no derogation of community or bylaw would result, and that both financial and site-connected hardship are involved, since the lots and existing house are so located that incorporation of Lot 392 would not substantially enhance the value or amenity of Lot 393.

Details of the hearing and the decision are on file in the Board of Appeals records at the Dennis Town Office, as Case No. Z-99.

Stephen B. Burrell Clerk
DENNIS BOARD OF APPEALS

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Appellant's Agent
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JAN 31 1974

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The Commonwealth of Massachusetts

TOWN OF DENNIS

BOARD OF APPEALS

At a Public Hearing held January 21, 1974,

relative to a variance in the Dennis Zoning Laws, the Board of Appeals voted to grant variance from the minimum lot size requirement to enable Phyllis M. Clifford to construct a single family dwelling on Lot 134,

Davenport Road, West Dennis. Area of Lot 134 is 9,900 sq. ft.

The Board's vote was unanimous (Burrell, Carroll, Flinkstrom, Skelly, Spruill). Attorney Myer R. Singer, representing Mrs. Clifford, reported that Mrs. Clifford's health dictated that they sell their present split-level home in Wrinkle Point and construct a single-level residence. They executed Purchase Agreement with Margaret L. Blatz on August 4, 1973, having confirmed with the Building Inspector that Lot 134 was buildable. Subsequent discovery of a minor irregularity in the probate of Mr. Blatz' estate resulted in delays so that title did not pass until November 27, 1973, at which time it came under the contiguous ownership ruling. A large price was paid, so as to remain in this familiar and desirable neighborhood. The lot size and house design are in keeping with this settled and almost fully built neighborhood, as attested by letter from the developer, Davenport Realty Trust. Associate Baldwin, speaking as a citizen and neighbor, urged granting of the variance, as did Mr. John M. Flkema, abutter to abutter. Mr. William B. Booker, abutter, and Mrs. Walter S. Robie, abutter to abutter, registered objection, on principle. In the Board's opinion, the lot purchase was conducted in good faith and with reasonable precaution by all parties; the financial loss would be very substantial if the house could not be built; the project would not derogate from the community or the bylaw intent; and the zoning changes in the past two years have generated confusion which contributed materially to the Cliffords' situation.

Details of the hearing and the decision are on file in the Board of Appeals records at the Dennis Town Office, as Case No. Z-100.

Heather Spruill Clerk
DENNIS BOARD OF APPEALS

- Copy to: Appellant
Appellant's Attorney
Building Inspector
Planning Board
Executive Secy.
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TOWN OF DENNIS

BOARD OF APPEALS

At a Public Hearing held May 20, 1974

relative to a variance in the Dennis Zoning Laws, the Board of Appeals voted to deny the petition of C. Wilbur Heath for variance from the minimum lot size and street setback requirements to place a single family dwelling on Lot 4, Captain Chase Road, Dennisport.

The Board's vote was 2 Yea (Lohr, Skelly), 2 Nay (Carroll, Flinkstrom) and 1 Abstain (Burrell). Mr. Heath and Mr. Franklin Kelley represented that the lot would be occupied by a house presently standing on Shad Hole Road, with a porch added; the house is now rented year-round and would be occupied by the same tenant in the new location. The petition was before the Board previously, on April 1, 1974, and was withdrawn so as to reposition the house in response to neighbors' objections, principally by the northern abutter, Mr. O'Boyle; the porch has been moved back 5 ft., and Mr. Kelley stated that Mr. O'Boyle was satisfied. Lot 4's area is 4815 sq. ft., comparable to adjacent lots (Plan 1960-25, Leonard & Rochelle, approved 5-23-60 by Planning Board). Mr. Heath has owned the lot since 1965.

Abutter: Pauline P. Hall and Mr. & Mrs. J. Edward Robertson, abutters to abutters, objected on the basis of traffic and sewage congestion in the area and the principle of by-law enforcement. Written objections were read from Mrs. Hall and Mrs. Fronska, Mr. Dahl, Mr. Anglin and Ms. Black. Mr. Robertson reported Mr. Ducey and Mr. Cusick as also opposed.

Dr. Carroll and Mr. Flinkstrom based their disapproval on the congestion testimony and the fact that setback variance was needed as well as waiver of the state minimum lot size. Mr. Lohr and Mr. Skelly were of the opinion that Mr. Heath had bought the lot in good faith and was being deprived of using it on the same basis as others in the neighborhood. Mr. Burrell abstained since his vote would have no effect and he had sympathy with both petitioners and objectors.

Details of the hearing and the decision are on file in the Board of Appeals records at the Dennis Town Office, as Case No. Z-104.

[Signature] Clerk
DENNIS BOARD OF APPEALS

- Copy to: Appellant
Mr. Franklin Kelley
Building Inspector
Planning Board
Executive Secretary
Town Clerk
File

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MAY 22 1974

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TOWN OF DENNIS

The Commonwealth of Massachusetts

TOWN OF DENNIS

BOARD OF APPEALS

At a Public Hearing held May 20, 1974

relative to a variance in the Dennis Zoning Laws, the Board of Appeals voted to grant the petition of Victor L. Salerno for variance from the minimum lot size to build a single family dwelling for his own use on Lot 20, Bassett Lane, Dennisport.

The Board's vote was 5 Yea (Burrell, Carroll, Flinkstrom, Lohr, Skelly). Mr. Salerno represented that he purchased Lot 20 in 1969, at which time it was confirmed to him as buildable by then Town Counsel John Hart and other officials. The lot's area is 4876 sq. ft. by the subdivision plan (Plan #1954-27, Bassett, approved 9-13-54 by the Planning Board). Mr. Salerno's is the only unbuilt lot, and 10 of the 23 existing houses are reported by him as being on lots smaller than his. No setback variances are requested. The house is to be 32' x 26' of year-round construction, and intended for family use only. No objections or comments were received from the floor; written approval from abutter Nellie M. Yundzilla was recorded. Dr. Carroll proposed a condition that the house be 3 bedroom rather than 4 bedroom, and Building Inspector Taylor confirmed that sewage increased with 4 bedrooms. Mr. Salerno was agreeable to this restriction. In the Board's unanimous opinion, Mr. Salerno bought in good faith and would suffer hardship, and no derogation of the neighborhood or the intent of the zoning bylaw would result. No other variances are required in the proposed use. Lot size variance was granted with the condition that the building be limited to 3 bedrooms, 2 upstairs and 1 downstairs.

Details of the hearing and the decision are on file in the Board of Appeals records at the Dennis Town Office, as Case No. Z-105;

Stephen B. ... Clerk
DENNIS BOARD OF APPEALS

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MAY 22 1974

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TOWN OF DENNIS

7-13-74 Copy to Jack ...

The Commonwealth of Massachusetts

TOWN OF DENNIS

BOARD OF APPEALS

At a Public Hearing held May 20, 1974, with decision rendered June 3, 1974, relative to a variance in the Dennis Zoning Laws, the Board of Appeals voted deny variance from the Town minimum lot size to Cape Wide Development Inc. to construct single family dwellings on combined lots 86 and 87, Edgemere Road (totalling 10,000 sq. ft.) and combined Lots 89 and 90, Bay View Circle (totalling 12,000 sq. ft.) in Old Mayfair in South Dennis.

The Board's vote was 4 to deny (Burrell, Carroll, Flinkstrom, Skelly) and 1 conditional (Lohr, who deemed Lot 89/90 grantable, but not Lot 86/87). Petitioner acquired the lots in November, 1973, after the revised Zoning By-Law was approved, published and widely publicized; as a professional developer, ignorance of the law and its applicability to the property would seem a self-induced hardship. The 4 lots combined would total a little over the minimum lot size, and the intrusion of Lot 88 in the tract, claimed as a hardship on the land, is a very common situation on Cape Cod. At the public hearing, 18 residents of the neighborhood spoke in opposition to the granting of variance. Of these, 9 occupied houses built on more than 2 lots, and only 4 (all recent buyers) occupied houses built on a single lot. In the Board's opinion, hardship was not established, and both the neighborhood and the intent of the by-law would be derogated.

Details of the hearing and the decision are on file in the Board of Appeals records at the Dennis Town Office, as Case No. Z-107.

Stephen L. Burrell
DENNIS BOARD OF APPEALS

- Copy to: Appellant
Appellant's Attorney
Building Inspector
Planning Board
Executive Secretary
Town Clerk
File

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JUN 7 1974

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The Commonwealth of Massachusetts

TOWN OF DENNIS

BOARD OF APPEALS

At a Public Hearing held June 3, 1974, with decision rendered June 3, 1974, relative to a variance in the Dennis Zoning Laws, the Board of Appeals voted to grant variance from the State minimum lot size to Irene P. Bestgen to construct a single family dwelling on Lot 3, Holiday Lane, Dennisport.

The Board's vote was unanimous (Burrell, Carroll, Flinkstrom, Lohr, Skelly). Area of Lot 3 is 4871 sq. ft., 129 sq. ft. under the 5,000 sq. ft. size specified in M.G.L. Chapter 40A, Sec. 5A. The lot was created on a 9-lot Approval Not Required plan for Rogers H. Bestgen endorsed by the Planning Board June 6, 1969. Lots 4 through 9 have been built; all but Lot 9 are smaller than Lot 3, and lots across the street and abutting on Cranberry Lane are also small and built. Mrs. Bestgen acquired the lot by gift from Mr. Bestgen in November, 1972, a date so far in advance of the zoning revision as to indicate no intent to circumvent the law. The land has no logical use except for building. A 40' x 28' 2-bedroom house is proposed, and approved sewage permit, including 100% expansion, is in hand. Setback variances are requested. Mrs. Bestgen was represented by Attorney Myer R. Singer. No written or personal objections were recorded. In the Board's opinion, hardship would exist if the lot were unbuildable, the neighborhood pattern is set and the proposed building in harmony, and the intent of the By-law would not be derogated. On Dr. Carroll's suggestion, the variance is conditioned that the house shall not exceed two bedrooms.

Details of the hearing and the decision are on file in the Board of Appeals records at the Dennis Town Office, as Case No. Z-108.

[Signature] Clerk
DENNIS BOARD OF APPEALS

- Copy to:
Appellant
Appellant's Attorney
Building Inspector
Planning Board
Executive Secretary
Town Clerk
File

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JUN 7 1974

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TOWN OF DENNIS

7-16-74 - Copy to Debra S. ...

The Commonwealth of Massachusetts

TOWN OF DENNIS

BOARD OF APPEALS

At a Public Hearing held June 17, 1974

relative to a variance in the Dennis Zoning Laws, the Board of Appeals voted to deny petition of Jacob Hagopian for variance of lot area requirements to construct a single family dwelling on Lot 2, Pine Street, Dennisport.

The Board's vote was 4 to deny (Burrell, Carroll, Lohr, Skelly) and 1 to grant (Baldwin). Attorney Myer Singer represented Mr. Hagopian, who was also present. The area of Lot 2 is 3880 sq. ft. It was created by Approval Not Required plan presented to the Planning Board by Mr. Hagopian and signed by them on June 28, 1969. He owns adjacent Lot 1, with an area of 6140 sq. ft., on which a house exists. Mr. Singer reviewed long-standing retirement income plans to build on Lot 2, which were not implemented before the zoning change because of a series of family crises. He pointed out that the neighborhood is one of small lots and summer cottages, and that sewage disposal could be fitted on the lot. Mr. Orion Derick appeared in opposition, representing abutter Elbert O. Derick and his own life interest in the abutting lot. He stated that Lots 1 and 2, totaling 10,020 sq. ft., were originally laid out as one lot of reasonable size for a year-round house, and that the proposal would crowd the area and aggravate sewage problems which already occur intermittently. Selectman Donald W. Moncevic requested recordation in opposition, citing long-term sewage problems in Dennisport which could force heavy investment in a municipal sewage system and also expressing his opinion that no hardship running with the land had been established. In the Board's majority opinion, hardship was not established, and derogation of both the neighborhood and the intent of the by-law would occur.

Details of the hearing and the decision are on file in the Board of Appeals records at the Dennis Town Office, as Case No. Z-109.

Joseph Burrell Clerk
DENNIS BOARD OF APPEALS

- Copy to: Appellant
Appellant's Attorney
Building Inspector
Planning Board
Executive Secretary
Town Clerk
File
Orion Derick

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JUN 27 1974

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TOWN OF DENNIS

The Commonwealth of Massachusetts

TOWN OF DENNIS

BOARD OF APPEALS

At a Public Hearing held July 15, 1974

relative to a variance in the Dennis Zoning By-Laws, the Board of Appeals voted to deny Michael J. Dalton variance from the minimum lot size to construct a single family dwelling on Lot 9, Easy Street, Dennisport.

The Board's vote was unanimous (Burrell, Carroll, Flinkstrom, Skelly, Spruill). Attorney Elliott K. Slade, Jr. represented Mr. Dalton, who was also present. In 1968, Mr. Dalton purchased Lots 7 and 8 with existing houses and Lot 9. In 1972, he was issued Building Permit #77 to construct a similar small house for summer rental on Lot 9, but the builder was unable to perform and this permit lapses. Area of Lot 9 is 4,277 sq. ft.; it is a corner lot, tapering somewhat at the Shad Hole Road end and narrow throughout. A 2-story house is proposed (the first on the street), and current sewage disposal requirements can reportedly be met. The properties are Mr. Dalton's investment to educate his children, and severe financial hardship is claimed if Lot 9 cannot be built to make its contribution to the tract's rental income. Mr. Skelly pointed out that the entire 3-lot tract was considerably under the 20,000 sq. ft. minimum lot size, and also that land investments, like the stockmarket, sometimes failed to realize fully on expectations. Messrs. William J. McClellan, Jr. and Sr., abutters, presented a citizens' petition in opposition with 32 signatures; pointed out that their lots were in the 10,000 sq. ft. range with substantial houses, and called attention to a previous denial of variance (B-293) sought in 1967 because of its peculiar shape. Mr. McClellan, Sr. further remarked that Mr. Dalton's supervision of his existing rental houses was somewhat marginal, with unmowed grass, littering, and other minor neighborhood nuisances. Other neighbors speaking in opposition were Mrs. Bowman, Mr. Rochelle and Mr. DeLuca. Mr. Frankl, speaking for the Planning Board, registered their policy objection to approval of undersized lots in the congested resort neighborhoods. The Board's denial was based on derogation of both neighborhood and by-law intent, and on the fact that substantial hardship, other than financial, did not appear to exist.

Details of the hearing and the decision are on file in the Board of Appeals records at the Dennis Town Office, as Case No. Z-111

Stephen D. Burrell Clerk
DENNIS BOARD OF APPEALS

- Copy to: Appellant
Appellant's Attorney
Building Inspector
Planning Board
Executive Secretary
Town Clerk
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JUL 26 1974

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TAX COLLECTOR
TOWN OF DENNIS

The Commonwealth of Massachusetts

TOWN OF DENNIS

BOARD OF APPEALS

At a Public Hearing held September 16, 1974

relative to a variance in the Dennis Zoning Laws, the Board of Appeals voted to grant Peter Iozzi variance from the 20,000 sq. ft. minimum lot size to combine lots 42, 43 and 44, Beach Street, Dennis, into two lots, of approximately equal size, and to permit construction of a single-family dwelling on each of the new lots.

The Board's vote was unanimous (Burrell, Carroll, Flinkstrom, Lohr, Skelly). Realtor Clark Potter represented Mr. Iozzi. He stated that Mr. Iozzi has owned the 3 lots since 1959. He will resubdivide into 2 lots, each having an area approaching 17,000 sq. ft., which is larger than the neighborhood average. Written approval of Joseph F. Curtis and telephoned approval of Ferdinand P. Civetti were recorded. The Board's approval was based on the long-standing neighborhood pattern, which places the petitioner in some duress. Dr. Carroll proposed the condition that the lots be of equal size, which the Board accepted.

Details of the hearing and the decision are on file in the Board of Appeals records at the Dennis Town Office as Case No. Z-115.

Joseph Burrell Clerk
DENNIS BOARD OF APPEALS

- Copy to: Appellant
- Appellant's Agent
- Building Inspector
- Planning Board
- Executive Secretary
- Town Clerk
- File

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SEP 23 1974

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TAX COLLECTOR
TOWN OF DENNIS

The Commonwealth of Massachusetts

TOWN OF DENNIS

BOARD OF APPEALS

At a Public Hearing held September 16, 1974

relative to a variance in the Dennis Zoning Laws, the Board of Appeals voted to grant Lillian H. Smith variance from the 20,000 sq. ft. minimum lot size requirement to enable construction of single-family dwellings on Lots 23, 24 and 25, Old Bass River Road, and Lot 5, Scargo Hill Road, Dennis.

The Board's vote was unanimous (Burrell, Carroll, Flinkstrom, Lohr, Skelly). Realtor Clark Potter represented Mrs. Smith. The lots are part of Parish Rocks subdivision, approved 11-9-64 for Donald H. Smith. Areas are as follows: Lots 23 - 19,900; Lot 24 - 18,700; Lot 25 - 17,600; Lot 5 - 18,900. Mr. Potter pointed out that their aggregate deficiency is 7 1/2%, and that they do not logically divide into 3 lots, lying as they do in the convergence of the roads. Written approval of Mr. & Mrs. George Riley and written opposition of Mr. John P. Franklin were recorded. Mr. William Swanson spoke in opposition, urging strict adherence to the zoning by-law and also inquiring if the deed restrictions would be enforced; Mr. Potter assured him they would apply. The matter was taken under advisement at the end of the hearing, but voted at the end of the meeting. The Board's approval was based on the topography and road convergence, that the lots are no detriment to the neighborhood as they are in its pattern, and that the small extent of variance does not derogate the intent of the by-law.

Details of the hearing and the decision are on file in the Board of Appeals records at the Dennis Town Office, as Case No. Z-114.

Handwritten signature of Clark Potter, Clerk, DENNIS BOARD OF APPEALS

- Copy to: Appellant
Appellant's Agent
Building Inspector
Planning Board
Executive Secretary
Town Clerk
File

RECEIVED

SEP 23 1974
TOWN TAX COLLECTOR
TOWN OF DENNIS

The Commonwealth of Massachusetts

TOWN OF DENNIS

BOARD OF APPEALS

At a Public Hearing held September 16, 1974

relative to a variance in the Dennis Zoning Laws, the Board of Appeals voted to grant Leo C. Bibinski variance from the 20,000 sq. ft. minimum lot size to construct a single-family dwelling on Lot 66, Park Drive, West Dennis.

The Board's vote was unanimous (Bunnell, Carroll, Flinkstrom, Lohr, Skelly). Mr. Bibinski represented that he wished to construct a year-round retirement home on this lot and sell his present summer home on Lot 36, Trotter's Lane. The lots abut along part of their rear lines, but face on different streets and do not combine into an attractive single lot. Lot 66's area is 7950 sq. ft., larger than many in this long-patterned neighborhood. Written approval of Ernest MacWilliams was recorded, as were written objections of Richard H. Taubert and telephoned objection of Athena Kitsopoulos. Mrs. Enos and Messrs. Rafferty Jr. & Sr. viewed the plans and had no objection. The Board's approval was based on the configuration of the lots and the neighborhood pattern.

The details of the hearing and the decision are on file in the Board of Appeals records at the Dennis Town Office, as Case No. Z-116.

Stephen Bunnell Clerk
DENNIS BOARD OF APPEALS

- Copy to: Appellant
Building Inspector
Planning Board
Executive Secretary
Town Clerk
File

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SEP 23 1974

TOWN CLERK-TREAS.
TAX COLLECTOR
TOWN OF DENNIS

The Commonwealth of Massachusetts

Town of Dennis

BOARD OF APPEALS

At a Public Hearing held October 7, 1974,

relative to a variance in the Zoning Laws, the Board of Appeals voted to grant Gerald Howell variance from the 20,000 sq. ft. minimum lot size to construct a single family dwelling on combined Lots 3 & 4, Union Park Road, Dennisport.

The Board's vote was unanimous (Burrell, Carroll, Flinkstrom, Kaminskas, Lohr). Mr. Howell represented ownership of the lots since 1957 and need to utilize the two lots. Abutter Harriet L. Nickerson appeared in approval. The Board's decision was based long ownership and no derogation to the neighborhood or the intent of the by-law.

The details of the hearing and the decision are on file in the Board of Appeals records at the Dennis Town Office, as Case No. 2-119

[Signature] Clerk BOARD OF APPEALS

- Copy to: Appellant Building Inspector Planning Board Executive Secretary Town Clerk File

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OCT 18 1974

TOWN CLERK-TREAS. TAX COLLECTOR TOWN OF DENNIS

The Commonwealth of Massachusetts

Town of Dennis

BOARD OF APPEALS

At a Public Hearing held October 7, 1974,

relative to a variance in the Zoning Laws, the Board of Appeals voted to grant Helen H. Berry and Elizabeth B. Brainerd variance from the 20,000 sq. ft. minimum lot size to enable construction of a single-family dwelling on Lot A20, Sears Road, East Dennis.

The Board's vote was unanimous (Burrell, Carroll, Flinkstrom, Kaminskas, Lohr). Attorney Charles Crowell represented that the lot contained approximately 16,000 sq. ft., had been owned by the ladies since 1965, and had become an undue care as their age advanced. Their prospective buyer plans a retirement home. Abutters and neighbors Schuble, Cuttle, Lawton, Ginn, Carter appeared in approval. The Board's decision was based on length of ownership, no derogation of by-law intent or the neighborhood, and the abutters' approval.

Details of the hearing and the decision are on file in the Board of Appeals records at the Dennis Town Office, as Case No. Z-120.

[Signature] Clerk
BOARD OF APPEALS

Copy to:

- Appellant
Building Inspector
Planning Board
Executive Secretary
Town Clerk
File

RECEIVED

OCT 13 1974

TOWN CLERK-TREAS.
TAX COLLECTOR
TOWN OF DENNIS

The Commonwealth of Massachusetts

Town OF Dennis

BOARD OF APPEALS

At a Public Hearing held October 21, 1974,

relative to a variance in the Zoning Laws, the Board of Appeals voted to grant Mary T. Hennessey variance from the 20,000 sq. ft. minimum lot size to construct a single family dwelling on Lot 45A, Surfside Road, West Dennis.

The Board's vote was 4 to grant (Burrell, Kaminskas, Lohr, Spruill) and 1 to deny (Carroll). Mr. Harold Wynot represented Miss Hennessey. stating that she wished to build a house for her own occupancy in anticipation that the existing house on contiguous lot 30A would be transferred to another family member. Lot 45A has been in her ownership since February, 1959 (Book 1030 Page 70) and has an area of 10,550 sq. ft., somewhat larger than other lots in the neighborhood, many of which are 7200 sq. ft. Letter of Roger Doggett and telephone message of Mrs. Dorothy Russell were recorded, both in approval, and Mark Smith also expressed approval. The Board's decision was based on long ownership and no derogation of neighborhood or by-law. Dr. Carroll's denial vote was based on his opinion that plot plan should be submitted for the Board to rule intelligently.

Details of the hearing and the decision are on file in the Board of Appeals records at the Dennis Town Office, as Case No. Z-122.

[Signature] Clerk
BOARD OF APPEALS

- Copy to:
Appellant
Building Inspector
Planning Board
Executive Secretary
Town Clerk
File

RECEIVED

OCT 24 1974

TOWN CLERK-TREAS.
TAX COLLECTOR
TOWN OF DENNIS

The Commonwealth of Massachusetts

Town OF Dennis

BOARD OF APPEALS

At a Public Hearing held October 21, 1974

relative to a variance in the Zoning Laws, the Board of Appeals voted to grant Frank F. Benson variances from the 20,000 sq. ft. minimum lot size and the requirement of 100' at the building line to enable construction of a single family dwelling on Lot 107, Garfield Lane, West Dennis.

The Board's vote was unanimous (Burrell, Carroll, Kaminskas, Lohr, Spruill). Attorney William F. Butler III, representing Mr. Benson, presented marked-up subdivision plan of Wrinkle Point and plot plan of proposed 2-bedroom dwelling. He stated that Mr. Benson has owned contiguous Lot 118 on which his house stands since 1958 and acquired Lot 107 in late 1960 (recorded 1/18/61, Book 1103, Page 93). Mr. Benson's health has required that he move to Arizona. He seeks to build on and sell Lot 107. Area of the lot is 10,100 sq. ft., and width of the lot is 99', necessitating a 1' variance of the width requirement. He represented further that (1) Lot 107 is one of 27 unbuilt in the subdivision and Mr. Benson is one of 5 owners of contiguous lots; (2) Lot 107 is worth \$16,000 as a buildable lot and \$5,000 if merged with Lot 118; (3) the house will be built by the same builder and in all respects accord with the neighborhood, as well as meeting or exceeding all current setback requirements. Letter of approval was recorded for Davenport interests, and Marshall David, Mark Smith, Mrs. Ellsworth Geist and Malcolm Hekking requested recordation in approval. The Board's approval was based on length of ownership, adequacy of plans submitted, and no derogation of neighborhood or bylaw intent.

Details of the hearing and the decision are on file in the Board of Appeals Records at the Dennis Town Office, as Case No. 4-123.

[Signature] Clerk BOARD OF APPEALS

- Copy to: Appellant Appellant's Attorney Building Inspector Planning Board Executive Secretary Town Clerk File

RECEIVED OCT 24 1974 TOWN CLERK/TREAS. TAX COLLECTOR TOWN OF DENNIS

The Commonwealth of Massachusetts

Town of Dennis

BOARD OF APPEALS

At a Public Hearing held November 18, 1974

relative to a variance in the Zoning Laws, the Board of Appeals voted to grant Mary H. O'Brien variance from the 20,000 sq. ft. minimum lot size to enable construction of a single-family dwelling on Lot 37.

Buckley Road, West Dennis.

The Board's vote was unanimous (Baldwin, Burrell, Carroll, Kaminskas, Lohr). Attorney William G. Howes III represented Mrs. O'Brien. Lot 37 has an area of 15,200 sq. ft. and has been in her ownership since 1964; a purchase & sale agreement was presented, for a substantial consideration. Mrs. James Baldwin, Mr. John Davenport and Mr. Malcolm Heikking spoke in favor; no opposition was expressed. The Board's vote was based on long ownership, neighborhood pattern, and no derogation of the by-law intent.

Details of the hearing and the decision are on file in the Board of Appeals records at the Dennis Town Office as Case No. Z-127.

[Signature] Clerk
BOARD OF APPEALS

- Copy to:
Appellant
Appellant's Attorney
Building Inspector
Planning Board
Executive Secretary
Town Clerk
File

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DEC 2 1974

TOWN CLERK-TREAS.
TAX COLLECTOR
TOWN OF DENNIS

The Commonwealth of Massachusetts

Town OF Dennis

BOARD OF APPEALS

At a Public Hearing held December 2, 1974,

relative to a variance in the Zoning Laws, the Board of Appeals voted to grant Evelyn W. Schuhle variance from the 20,000 sq. ft. minimum lot size to enable construction of a single-family dwelling on Lot A7, Sears Road, East Dennis, with the condition that a structure shall be built within two (2) years. If there is no building on the lot on December 2, 1976, this variance is rescinded.

The Board's vote was 4 to grant (Carroll, Lohr, Skelly, Stowe) and 1 abstention (Burrell). Attorney Charles F. Crowell represented Mrs. Schuhle, who was also present. Lot A7 was acquired in 1956, and contiguous Lot A6 was acquired in 1950 and is occupied by her home. Area of Lot A7 is 15,000 sq. ft., and area of Lot A6 is 24,200 sq. ft., the tract is becoming burdensome physically and is likely to become so tax-wise. Mr. Crowell reported telephoned approval of abutters Helen Berry and Elizabeth Brainerd. Approving letter of Marjorie Cuttle and objecting letter of Adelaide Smart were read. No specific sale or building plans were presented. The Board's imposition of the 2 year term was a result of this lack of specific immediate utilization plans, and Mr. Burrell's abstention was also based on this deficiency. The Board found no detriment to the neighborhood or derogation of the intent of the by-law.

Details of the hearing and the decision are on file in the Board of Appeals records at the Dennis Town Office, as Case No. Z-128.

[Signature] Clerk
BOARD OF APPEALS

Copy to:

- Appellant
Appellant's Attorney
Building Inspector
Planning Board
Executive Secretary
Town Clerk
File

RECEIVED

DEC 13 1974

TOWN CLERK-TREAS.
TAX COLLECTOR
TOWN OF DENNIS

The Commonwealth of Massachusetts

Town OF Dennis

BOARD OF APPEALS

At a Public Hearing held January 20, 1975, with decision March 3, 1975,

relative to a variance in the Zoning Laws, the Board of Appeals voted to deny James E. Healy variance from the 20,000 sq. ft. minimum lot size to construct a single-family dwelling on Lot 5, Horsefoot Road, West Dennis.

The Board's vote was 4 to deny (Burrell, Flinkstrom, Skelly, Spruill) and 1 to grant (Carroll). In the public hearing, Mr. Healy described his long and loving association with West Dennis, his purchase of Lots 4 and 5 in late 1972 for \$57,000, his decision to move family and business to Dennis in 1975, and his consequent need for more substantial housing than is provided by the old and casually constructed summer cottage on Lot 4. The lots abut Bass River, and the area of each is a scant 11,500 sq. ft.. A 4-bedroom house with 2-car garage is proposed for Lot 5; Mr. Healy expressed willingness to reduce the garage to 1-car to avoid need for any lot line variance. Two letters of approval and a statement of no objection signed by 18 residents of Horsefoot Road were presented by Mr. Healy. Objections were recorded by the Planning Board and Mr. E. T. Gardner. Written objections were subsequently received from residents Olwell and Taylor. The Board's decision was based on failure to prove substantial hardship, detriment to the neighborhood by overloading a small lot in this environmentally sensitive and exceptionally attractive locus, derogation of the intent of the zoning by-law, and the belief that other options for construction exist on the combined lots.

Details of the hearing and the decision are on file in the Board of Appeals records at the Dennis Town Office, as Case No. Z-131

Stephen J. Bernard Clerk BOARD OF APPEALS

Copy to:

- Appellant
Building Inspector
Planning Board
Executive Secretary
Town Clerk
File

Also, Atty James M Falla

RECEIVED

MAR 17 1975

TOWN CLERK/TREAS. TAX COLLECTOR TOWN OF DENNIS

The Commonwealth of Massachusetts

Town Dennis

OF

BOARD OF APPEALS

At a Public Hearing held April 7, 1975

relative to a variance in the Zoning Laws, the Board of Appeals voted to grant petition of Henry J. Dunn et ux for variance from the 20,000 sq. ft. minimum lot size to construct a single-family dwelling on Lot 14, Bass River Lane, South Dennis, with the condition that construction shall begin within two (2) years and be completed for occupancy within three (3) years.

The Board's vote to grant was unanimous (Burrell, Carroll, Flinkstrom, Lohr, Skelly). Mr. A. Lawrence Lovequist represented Mr. & Mrs. Dunn. He reported that Lot 14 was purchased under a deed restriction which precluded building for 5 years, or until September 27, 1974, at which time the revised zoning was of course in effect. Lot area is 15,499 sq. ft., one of the larger lots in the subdivision plan approved 6-22-59 for Lawrence R. Sherman, and one of the few which are not yet built. In the Board's opinion, hardship was established by the deed restriction, and there is no derogation of the neighborhood or by-law intent. The time condition was imposed because detailed building plans were not submitted.

Details of the hearing and the decision are on file in the Board of Appeals records at the Dennis Town Office as Case No. Z-138.

[Signature] Clerk
BOARD OF APPEALS

Copy to:

- Appellant
Appellant's Agent
Building Inspector
Planning Board
Executive Secretary
Town Clerk
File

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APR 10 1975

TOWN CLERK/TREAS.
TAX COLLECTOR
TOWN OF DENNIS

The Commonwealth of Massachusetts

Town OF Dennis

BOARD OF APPEALS

At a Public Hearing held April 21, 1975,

relative to a variance in the Zoning Laws, the Board of Appeals voted to grant to George E. Armeson variances from the 20,000 sq. ft. minimum lot size to enable construction of single family dwellings on Lot 4 and Lot 5, Lawrence Road, Dennisport, Mass.

The Board's vote to grant was unanimous (Carroll, Flinkstrom, Kaminskas, Lohr, Skelly). Mr. Armeson represented that he had owned this 2 acre tract since 1968, through several zoning changes. He proposes to subdivide it into 5 lots, Lots 1 through 3 meeting the 20,000 sq. ft. lot size, Lot 4 presently at 17,817 sq. ft. but anticipated to be increased to 20,018 sq. ft. by turnaround abandonment in future, and Lot 5 remaining undersized at 17,817 sq. ft. The plan was informally discussed with this Board on 1-6-75, and the Planning Board endorsed it on 2-24-75, with condition that Lots 4 and 5 were unbuildable without variances. Written objection was recorded for R. K. Reilly, and telephoned approval for Mrs. Seymour Goldman. Several neighbors were present and remarked on traffic hazard at the intersection at the north end of the property (Lot 5). Mr. Shepherd of 40 Lawrence Avenue spoke in approval for himself and several neighbors not attending, as substantially up-grading a neighborhood of 7500 sq. ft. lots. No one spoke in opposition. In the Board's opinion, the developer has made a very substantial effort to comply with greatly increased zoning requirements, the neighborhood is enhanced, and the intent of the by-law is not derogated.

Details of the hearing and the decision are on file in the Board of Appeals records at the Dennis Town Office as Case No. Z-140.

Shepherd, R. B. Clerk
BOARD OF APPEALS

Copy to:

- Appellant
Building Inspector
Health Officer
Planning Board
Executive Secretary
Town Clerk
File

RECEIVED

APR 30 1975

TOWN CLERK
TAX COLLECTOR
TOWN OF DENNIS

The Commonwealth of Massachusetts

Town OF Dennis

BOARD OF APPEALS

At a Public Hearing held May 19, 1975

relative to a variance in the Zoning Laws, the Board of Appeals voted to grant Eldred Atkins variance from the 20,000 sq. ft. minimum lot size to construct a single-family dwelling on combined Lots 6 & 6B, Holiday Lane, Dennisport.

The Board's vote to grant was unanimous (Burrell, Carroll, Flinkstrom, Lohr, Skelly). Attorney Peter N. Conathan represented Mr. Atkins and presented his petition to construct a house on combined Lots 6 and 6B, having a total area of 10,691 sq. ft. Written objection of Mr. & Mrs. Frank J. Donahue and telephoned objection of Mr. & Mrs. Verner Richardson were recorded. Mrs. Mary Flanagan, Mr. Lawrence Curtis and Mr. Zavin Ohanian appeared in opposition. Drainage and traffic problems already existing in this congested area were cited by all objectors. The Board's decision was based on the established character of the neighborhood, the lot size which considerably exceeds most in the area, Mr. Atkins' long ownership of the property, and other lot size variances granted in the vicinity.

Details of the hearing and the decision are on file in the Board of Appeals records at the Dennis Town Office as Case No. Z-1143.

[Signature] Clerk BOARD OF APPEALS

Copy to:

- Appellant
Building Inspector
Health Officer
Planning Board
Executive Secretary
Town Clerk
File
Appellant's Attorney

RECEIVED

JUN 2 1975

TOWN CLERK-TREAS. TAX COLLECTOR TOWN OF DENNIS

The Commonwealth of Massachusetts

Town OF Dennis

BOARD OF APPEALS

At a Public Hearing held May 19, 1975, recessed to June 2, 1975

relative to a variance in the Zoning Laws, the Board of Appeals voted to grant Craig R. Short variance from the 20,000 sq. ft. minimum lot size for 7 lots in the unbuilt portion of the family's 1961 subdivision on Horseman's Beach Road, off Mayfair Road in South Dennis.

~~The Board's vote to grant was unanimous (Burrell, Carröll, Flinkstrom, Skelly, Lohr). Mr. Short and his attorney, Stephen C. Jones, presented this latest version in Mr. Short's 2-1/2 year effort to enlarge lots and improve road design for the unbuilt portion of this legally buildable subdivision. The proposal is to sacrifice 2 lots, enlarge 7 lots, create 2 reserve areas totalling 19,150 sq. ft. which are to be permanently excluded from building, and terminate the road in a turnaround rather than continuing it to a 2nd access off Mayfair Road. Specific lot sizes are as follows: Lot 6 - 10,602 sq. ft., Lot 9 - 11,500 sq. ft., Lot 11 - 10,068 sq. ft., Lot 12 - 10,032 sq. ft., Lot 14 - 13,484 sq. ft., Lot 18 - 11,140 sq. ft., Lot 19 - 11,782 sq. ft., Lot 20 reserved from building - 16,250 sq. ft., and unnumbered reserved area and utility easement north of the turnaround - 2,900 sq. ft. Written approval of George F. Mallen and written objection of Harry Lengas were recorded. Planning Board is unable to approve the plan with undersize lots but expresses complete sympathy with Mr. Short's intentions. The Board's vote was based on no derogation of the by-law intent, improvement rather than derogation of the neighborhood, the legal buildability of the present 9 smaller lots, and Mr. Short's obviously sincere desire to build a more desirable development at some financial sacrifice.~~

Details of the hearing and the decision are on file in the Board of Appeals records at the Dennis Town Office as Case No. Z-151.

[Signature]
Clerk
BOARD OF APPEALS

Copy to:

- Appellant
- Appellant's Attorney
- Building Inspector
- Health Director
- Planning Board
- Executive Secretary
- Town Clerk
- File

RECEIVED

JUN 16 1975

TOWN CLERK & TREASURER
TAX COLLECTOR
TOWN OF DENNIS

The Commonwealth of Massachusetts

Town.....OF.....Dennis.....

BOARD OF APPEALS

At a Public Hearing held June 16, 1975

relative to a variance in the Zoning Laws, the Board

of Appeals voted to grant Helen J. Coffey variance from the 20,000 sq. ft. minimum lot size to construct a single-family dwelling on Lot 279, Horsefoot Path, Dennis, with the restriction that variance will expire in two years.

The Board's vote was 4 to grant (Lohr, Flinkstrom, Baldwin and Kaminskas) and 1 to deny (Stowe).

Attorney Gerald R. Ferrera, representing Mrs. Coffey, presented petition to grant variance to build on undersized lot, explaining that Mrs. Coffey has purchase and sales agreement on adjoining lot with dwelling, leaving her with an unbuildable lot. This lot 279 had been appraised and valued as a buildable lot following Dr. Richard Coffey's death in January 24, 1973. Planning Board wrote letter recommending against variance. Mr. George Lowe was in favor provided it would only be one-family house. Mr. Leighton Rogers was in favor. Richard Hanlon did not object providing there were restrictions on variance. It was stipulated that variance will expire within two years if property is not conveyed within that time.

Details of the hearing and the decision are on file in the Board of Appeals records at the Dennis Town Office as Case No. Z-152.

[Signature] Clerk BOARD OF APPEALS

Copy to:

- Appellant
Appellant's Attorney
Building Inspector
Health Officer
Planning Board
Executive Secretary
Town Clerk
File

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JUN 18 1975

TOWN CLERK-TREAS. TAX COLLECTOR TOWN OF DENNIS

The Commonwealth of Massachusetts

Town OF Dennis

BOARD OF APPEALS

At a Public Hearing held August 4, 1975

relative to a variance in the Zoning Laws, the Board of Appeals voted to deny Vincent C. Campana variance from the 20,000 sq. ft. minimum lot size to construct a single-family dwelling on Lot 2, Dartmouth Road, West Dennis.

The Board's vote was 3 to deny (Skelly, Kaminskas, Spruill) and 2 to grant (Burrell, Carroll). Mr. Campana acquired Lots 1 and 2 on November 16, 1966. He has dwelling on Lot 1, and proposed to build a 3 or 4 bedroom home on Lot 2. Notation was made of approval by abutters Mr. and Mrs. Angelo Manganaro. Mr. T. Gustafson questioned how far rear line setback line would be, and it was stated it would be 34 ft. He also inquired about septic system, and was told it would have to satisfy Health Dept. and Conservation Commission. The majority of the Board felt there was no hardship at this time and that such a size house was greater density than desirable.

Details of the hearing and the decision are on file in the Board of Appeals records at the Dennis Town Office as Case No. Z-155

[Signature] Clerk BOARD OF APPEALS

Copy to:

- Appellant
Building Inspector
Health Director
Planning Board
Executive Secretary
Town Clerk
File

RECEIVED
AUG 13 1975
BY [Signature]

The Commonwealth of Massachusetts

Town Dennis

OF

BOARD OF APPEALS

At a Public Hearing held October 20, 1975

relative to a variance in the Zoning Laws, the Board of Appeals voted to grant Edgar T. Howes, Trustee for Bleak House Downs Association variance from the Zoning By-Law to construct a dwelling on Lot 34, Bleak House Downs, Dennis.

~~The Board's vote was unanimous (Skelly, Burrell, Carroll, Flinkstrom and Kaminskas) because they felt the lot was only 600 sq. ft. under the required size, represented hardship, and would not derogate from the neighborhood. Mr. Edgar T. Howes read letter to Board detailing the background of Bleak House Downs, transfer of title of a contiguous lot in October, 1974, and having prospective buyers recently who could not obtain permits to build; following which an opinion was rendered by Town Counsel that he should petition Board of Appeals for appropriate relief.~~

Details of the hearing and the decision are on file in the Board of Appeals records at the Dennis Town Office as Case No. Z-165.

Stephen Bunnell Clerk
BOARD OF APPEALS

- Copy to:
- Appellant
- Building Inspector
- Health Director
- Planning Board
- Executive Secretary
- Town Clerk
- File

RECEIVED

OCT 30 1975

TOWN CLERK-TREAS.
TAX COLLECTOR
TOWN OF DENNIS 29

The Commonwealth of Massachusetts
Town of Dennis

OF

BOARD OF APPEALS

At a Public Hearing held October 20, 1975

relative to a variance in the Zoning Laws, the Board of Appeals voted to deny Edgar T. Howes, Inc., petition for variance from the Zoning By-Law to construct a dwelling on Lot 40, Bleak House Downs, Dennis.

The Board's decision was unanimous (Skelly, Burrell, Carroll, Flinkstrom and Kaminskas) for the following reasoning: no substantial hardship was proven; detrimental to public good and neighborhood because of water drainage problem existing. Mr. Edgar T. Howes had read letter to Board detailing the background of Bleak House Downs, transfer of title of contiguous lot in October, 1974, and having prospective buyers recently who could not obtain permits; following which an opinion was rendered by Town Counsel that he should petition Board of Appeals for appropriate relief.

Details of the hearing and the decision are on file in the Board of Appeals records at the Dennis Town Office as Case No. Z-166.

Stephen J. Burt
Clerk
BOARD OF APPEALS

Copy to:

- Appellant
- Building Inspector
- Health Director
- Planning Board
- Executive Secretary
- Town Clerk
- File

RECEIVED

OCT 30 1975

TOWN CLERK-TREAS.
TAX COLLECTOR
TOWN OF DENNIS

The Commonwealth of Massachusetts

Town Dennis

OF

BOARD OF APPEALS

At a Public Hearing held October 20, 1975

relative to a variance in the Zoning Laws, the Board of Appeals voted to grant John G. Connolly variance from Zoning By-Law to construct a single-family dwelling on Lot 33, Barry Lane, South Dennis, with the restriction that variance will expire in two years if construction is not completed.

The Board's vote was 4 to grant (Skelly, Burrell, Carroll, and Kaminkas) and 1 abstention (Flinkstrom), based on the following reasoning: there is no detriment to neighborhood (consisting of many lots of same size - 8,000 sq. ft.) or public good; that owner bought lot in 1972 in good faith as a buildable lot, and if not now buildable, would in effect, be creating a "public park" at his expense, creating hardship. Rev. John G. Connolly and his brother-in-law were present, represented by Attorney Richard H. Zisson, who presented brief to Board, explaining that Rev. Connolly wanted to build another home next door to his present dwelling for his family, stating that if variance were granted, definite building plans would be obtained. Attorney Zisson explained that title might be transferred to Rev. Connolly's brother-in-law.

Details of the hearing and the decision are on file in the Board of Appeals records at the Dennis Town Office as Case No. Z-168.

Richard H. Zisson Clerk
BOARD OF APPEALS

Copy to:

- Appellant
- Richard H. Zisson, Esq.
- Building Inspector
- Health Director
- Planning Board
- Executive Secretary
- Town Clerk
- File

RECEIVED

OCT 30 1975

TOWN CLERK-TREAS.
TAX COLLECTOR
TOWN OF DENNIS

49

The Commonwealth of Massachusetts

Town _____ OF _____ Dennis

BOARD OF APPEALS

At a Public Hearing held _____ November 3, 1975

relative to a variance in the _____ Zoning _____ Laws, the Board of Appeals voted _____ to grant James F. Healy variance from Zoning By-Law to construct a single-family dwelling on Lot 5, Horsefoot Road, West Dennis, with the restriction that variance will expire in two years if construction is not completed, and must comply with all applicable permits relative to Zoning By-Law, Building Code and Board of Health. Restrictions on contiguous Lot 4 and dwelling thereon, as follows: should not be any major reconstruction of cottage; if destroyed, not to be rebuilt; must obtain certificate of occupancy for rental of cottage on Lot 4.

The Board's vote was four to grant (Skelly, Burrell, Carroll, and Kaminkas), based on belief that financial hardship exists if relief is not granted; that this relief will not substantially derogate from intent of By-law; that it would not be a substantial detriment to neighborhood, provided the above-mentioned restrictions are imposed. Mr. Flinkstrom's abstention was based on his disagreement with granting of variance, and felt that the Court's Order of Judgment, following appeal in Second District Court of Barnstable, asked that the Board of Appeals go beyond their normal jurisdiction; in fact, that it appeared to require the burden of proof to be on the Board, when under normal circumstances the burden of proof lies with the appellant; further, that the Court did not differentiate between the 20,000 sq. ft. minimum lot requirement as opposed to the special case of contiguous lots, in requiring the Board to review all cases granted a variance from the 20,000 sq. ft. lot requirement since the By-Law became effective in November, 1973, if this variance were again denied. Details of the hearing and the decision are on file in the Board of Appeals records at the Dennis Town Office as Case No. Z-170.

Stephen B. ... Clerk
BOARD OF APPEALS

- Copy to:
- Appellant
- James M. Falla, Esq. _____
- Building Inspector _____
- Health Director _____
- Planning Board _____
- Executive Secretary _____
- Town Clerk _____
- Town Counsel _____
- File _____

RECEIVED

NOV 7 - 1975

TOWN CLERK-TREAS.
TAX COLLECTOR
TOWN OF DENNIS

The Commonwealth of Massachusetts

Town OF Dennis

BOARD OF APPEALS

At a Public Hearing held November 17, 1975

relative to a variance in the Zoning Laws, the Board of Appeals voted to deny NATALINA MORELLO variance from the 20,000 sq. ft. minimum lot size to construct a single family dwelling on Lot 50, Stafford Circle, Dennisport, Mass.

The Board's vote was 4 to deny (Carroll, Flinkstrom, Kaminskas, Skelly) and 1 abstention (Burrell). The majority opinion was based on failure to establish substantial hardship. Mr. Burrell abstained because the property was not in Miss Morello's ownership at the time of the zoning by-law change. Attorney Myer R. Singer represented Miss Morello, who was also present. Mr. & Mrs. Francis Bragg, Mr. Franklin Kelly, Mr. Andrew Rogers and Mrs. Raymond Speakman appeared in support of the petition.

Details of the hearing and the decision are on file in the Board of Appeals' records at the Dennis Town Office as Case No. Z-173.

[Signature] Clerk BOARD OF APPEALS

- Copy to: Appellant, Appellant's Attorney, Building Inspector, Health Director, Planning Board, Executive Secretary, Town Clerk, File

RECEIVED

NOV 26 1975

TOWN CLERK-TREAS. TAX COLLECTOR TOWN OF DENNIS

The Commonwealth of Massachusetts

Town OF Dennis

BOARD OF APPEALS

At a Public Hearing held November 17, 1975

relative to a variance in the Zoning Laws, the Board of Appeals voted to deny Louis Annese variance from the 20,000 sq. ft. minimum lot size to construct a single family dwelling on Lot 49, Stafford Circle, Dennisport, Mass.

The Board's vote was 4 to deny (Carroll, Flinkstrom, Kaminskas, Skelly) and 1 to grant (Burrell). The majority opinion was based on failure to establish substantial hardship. Mr. Burrell's minority vote was based on the opinion that that the change of zoning during Mr. Anese's ownership of the property, did constitute hardship. Attorney Myer R. Singer represented Mr. Annese, who was also present. Mr. & Mrs. Francis Bragg, Mr. Franklin Kelly, Mr. Andrew Rogers and Mrs. Raymond Speakman appeared in support of the petition.

Details of the hearing and the decision are on file in the Board of Appeals records at the Dennis Town Office as Case No. Z-174.

[Signature] Clerk BOARD OF APPEALS

- Copy to: Appellant, Appellant's Attorney, Building Inspector, Health Director, Planning Board, Executive Secretary, Town Clerk, File

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The Commonwealth of Massachusetts

Town OF Dennis

BOARD OF APPEALS

At a Public Hearing held November 17, 1975

relative to a variance in the Zoning Laws, the Board of Appeals voted to deny Louis Annese variance from the 20,000 sq. ft. minimum lot size to construct a single family dwelling on Lot 51, Stafford Circle, Dennisport, Mass.

The Board's vote was 4 to deny (Carroll, Flinkstrom, Kaminkas, Skelly) and 1 to grant (Burrell). The majority opinion was based on failure to establish substantial hardship. Mr. Burrell's minority vote was based on the opinion that the change of zoning during Mr. Annese's ownership of the property did constitute hardship. Attorney Myer P. Singer represented Mr. Annese, who was also present. Mr. & Mrs. Francis Bragg, Mr. Franklin Kelly, Mr. Andrew Rogers and Mrs. Raymond Speakman appeared in support of the petition.

Details of the hearing and the decision are on file in the Board of Appeals records at the Dennis Town Office as Case No. Z-175.

[Signature] Clerk BOARD OF APPEALS

- Copy to: Appellant, Appellant's Attorney, Building Inspector, Health Director, Planning Board, Executive Secretary, Town Clerk, File

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The Commonwealth of Massachusetts

Town of Dennis

OF

BOARD OF APPEALS

At a Public Hearing held December 1, 1975

relative to a variance in the Zoning Laws, the Board of Appeals voted to grant Charles A. & Gertrude E. MacPhetres variance from Zoning By-Law to construct a single-family dwelling on Lot 68, Davidson Avenue, South Dennis, with the restriction that variance will expire in two years if construction is not completed.

The Board's vote was unanimous (Skelly, Burrell, Carroll, Kaminskas and Shealey) based on the following reasoning: hardship exists because Lot 68 and Lot 44 are contiguous for only a short distance and not practical to combine them since they front on different streets (in fact, are from two different subdivisions; that unbuilt lot was intended for family use, no longer possible; would not be detrimental to neighborhood, and does not derogate from Zoning By-Law.

Details of the hearing and the decision are on file in the Board of Appeals records at the Dennis Town Office as Case No. Z-176.

Signature of J. Burrell Clerk BOARD OF APPEALS

- Copy to: Appellant, Appellant's Attorney, Building Inspector, Health Director, Planning Board, Executive Secretary, Town Clerk, File

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The Commonwealth of Massachusetts

Town Dennis

OF

BOARD OF APPEALS

At a Public Hearing held December 1, 1975

relative to a variance in the Zoning Laws, the Board of Appeals voted to grant Ruth B. Hart and David B. Noyd variance from Zoning By-Law to construct single-family dwelling on Lot 20, Debbie Lane, South Dennis, with the restriction that variance will expire in two years if construction is not completed.

The Board's vote was unanimous (Skelly, Burrell, Carroll, Kaminskas and Shealey) based on the following reasoning: hardship was established since one contiguous lot would, otherwise, be left as public park at private expense if not buildable; lots were acquired at separate times, and personal plans changing as to originally intended use of lot constitute hardship; would not be detrimental to established pattern of neighborhood; no derogation of Zoning By-Law.

Details of the hearing and the decision are on file in the Board of Appeals records at the Dennis Town Office as Case No. Z-178.

[Signature] Clerk
BOARD OF APPEALS

Copy to:
Appellant

- Building Inspector
Health Director
Planning Board
Executive Secretary
Town Clerk
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The Commonwealth of Massachusetts

Town Dennis

OF

BOARD OF APPEALS

At a Public Hearing held March 1, 1976

relative to a variance in the Zoning Laws, the Board of Appeals voted to grant Gregory M. Kelly variance from Zoning By-Law to construct a single-family dwelling on Lot 15, Trudy Circle, East Dennis, with restriction that variance will expire in two (2) years if construction is not completed.

The Board's vote was unanimous (Skelly, Burrell, Carroll, Flinkstrom and Kaminskas) based on the fact they felt hardship had been proven, would not derogate from Zoning By-Law and would not be detrimental to neighborhood.

Details of the hearing and the decision are on file in the Board of Appeals records at the Dennis Town Office as Case No. Z-186.

[Handwritten Signature] Clerk
BOARD OF APPEALS

Copy to:

- Appellant
Building Inspector
Health Director
Planning Board
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The Commonwealth of Massachusetts

Town Dennis

OF

BOARD OF APPEALS

At a Public Hearing held August 16, 1976

relative to a variance in the Zoning Laws, the Board of Appeals voted to deny Robert E. Sherren variances from the 20,000 sq. ft. minimum lot size and minimum lot width to construct single-family dwelling on Lot 5, Webster Way, Dennisport.

The Board's vote was 3 (Skelly, Flinkstrom, Spruill) - 2 (Burrell, Baldwin). The majority vote was based on the facts that the property (Lots 5 & 6) were contiguous lots and only conveyed jointly since 1953, according to Town Counsel's written opinion, until the Hyannis Co-operative Bank on July 1, 1976, conveyed the lots separately, being cautious to include disclaimer in deed relative to Town of Dennis Zoning By-Law; deeding out separately is merely a by-passing of intent of Zoning By-Law; that hardship presented was only created by transaction. Minority opinion was based on facts that there was hardship based on misinformation; that buyer after purchase had financial hardship on circumstances beyond his control; that it would not be detrimental to neighborhood, nor derogate from Zoning By-Law.

Details of the hearing and the decision are on file in the Board of Appeals records at the Dennis Town Office as Case No. Z-226.

Handwritten signature of Stephen B. Small, Clerk, BOARD OF APPEALS

- Copy to: Appellant, Appellant's Attorney, Building Inspector, Health Inspector, Planning Board, Executive Secretary, Town Clerk, File

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The Commonwealth of Massachusetts
Town of Dennis

OF

BOARD OF APPEALS

At a Public Hearing held August 16, 1976

relative to a variance in the Zoning Laws, the Board of Appeals voted to deny Robert L. Guillemette variances from the 20,000 sq. ft. minimum lot size and minimum lot width to construct single-family dwelling on Lot 6, Webster Way, Dennisport.

~~The Board's vote was 3 (Skelly, Flinkstrom, Spruill) - 2 (Burrell, Baldwin). The majority vote was based on the facts that the property (Lots 5 & 6) were contiguous lots and only conveyed jointly since 1953, according to Town Counsel's written opinion, until the Hyannis Co-operative Bank on July 1, 1976, conveyed the lots separately, being cautious to include disclaimer in deed relative to Town of Dennis Zoning By-law; dealing out separately is merely a by-passing of intent of Zoning By-Law; that hardship presented was only created by transaction. Minority opinion was based on facts that there was hardship based on misinformation; that buyer after purchase had financial hardship on circumstances beyond his control; that it would not be detrimental to neighborhood, nor derogate from Zoning By-Law.~~

~~Details of the hearing and the decision are on file in the Board of Appeals records at the Dennis Town Office as Case No. Z-227.~~


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Health Inspector
Planning Board
Executive Secretary
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TAX COLLECTOR
TOWN OF DENNIS

The Commonwealth of Massachusetts
Town of Dennis

OF

BOARD OF APPEALS

At a Public Hearing held September 20, 1976

relative to a variance in the Zoning Laws, the Board of Appeals voted to grant Alice S. Baldwin variance from the 20,000 sq. ft. minimum lot size to construct single-family dwellings on Lots 7A, 8A, 9A, 11A, 12A, 13A, 15A on Baldwin Road, off Scargo Hill Road, Dennis. Lots 5A and 6A are to be combined, creating a lot over 20,000 sq. ft. (Lot 10A petition was withdrawn without prejudice.)

The Board's vote was unanimous (Skelly, Kaminskas, Burrell, Carroll, Flinkstrom). The Board felt hardship was created by long time ownership and paying taxes; all roads and underground utilities are completed; property had been amortized for original subdivision of 23 lots, which are now reduced to 9 lots. They felt owner had made effort to meet Zoning By-Law as much as possible, that most lots granted variance come up to within 75% requirement; that two lots will be over 20,000 sq. ft. Board members did not feel it would be detrimental to neighborhood since adjacent lots range from 7500 sq. ft. to an acre. Also, that it would not nullify or substantially derogate from Zoning By-Law.

Details of the hearing and the decision are on file in the Board of Appeals records at the Dennis Town Office as Case No. Z-230

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TOWN OF DENNIS
TAX COLLECTOR
DENNIS, MASSACHUSETTS

The Commonwealth of Massachusetts
Town Dennis

OF
BOARD OF APPEALS

At a Public Hearing held September 20, 1976

relative to a variance in the Zoning Laws, the Board
of Appeals voted to grant Theodore L. G. Beck variance from the 20,000 sq. ft.
minimum lot size to construct single-family dwelling on Lot 4, Partridge
Lane, Dennis.

~~The Board's vote was unanimous (Skelly, Kaminkas, Burrell, Carroll, Flinkstrom) based on feeling that hardship exists from owning property since 1960; Lot 4 does conform to almost 75% requirement; that it would be difficult to combine with any other lot. The Board members felt averaging all the lots in the subdivision would not over-populate area, would not be detrimental to neighborhood, and would not substantially derogate from Zoning By-Law.~~

~~Details of the hearing and the decision are on file in the Board of Appeals records at the Dennis Town Office as Case No. Z-232.~~

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.....Town.....OF.....Dennis.....

BOARD OF APPEALS

At a Public Hearing held October 4, 1976

relative to a variance in the Zoning Laws, the Board of Appeals voted to deny Jennie E. Clancy variance from the 20,000 sq. ft. minimum lot size and variance from lot width to construct single-family dwelling on Lot 43 (#15), Allen Road, Dennis.

The Board's vote was unanimous (Skelly, Kaminskas, Burrell, Carroll, Flinkstrom) based on reasoning that Mrs. Clancy had not proven hardship, the land not being different from other land in area, only recently purchased in 1976, and was contiguous with other undersized lot. Board members expressed feeling that Mrs. Clancy had other recourse to seek satisfaction from the seller of property, rather than from Board. They felt granting would be a complete derogation of Zoning By-Law by deeding out undersized contiguous lot.

Details of the hearing and the decision are on file in the board of Appeals records at the Dennis Town Office as Case No. Z-233.

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[Signature]
BOARD OF APPEALS Clerk

- TOWN CLERK-TREAS
- ~~COPIES COLLECTOR~~
- TOWN OF DENNIS
- Appellant
- Building Inspector
- Health Inspector
- Planning Board
- ~~Executive Secretary~~
- Town Clerk
- ~~File~~

The Commonwealth of Massachusetts

.....Town.....OF.....Dennis.....

BOARD OF APPEALS

At a Public Hearing held October 18, 1976

relative to a variance in the Zoning Laws, the Board of Appeals voted to grant Gisela G. Marcadanti variances from minimum 20,000 sq. ft. lot size, sideline setback requirement, rear setback requirement, front setback requirement, on lots 54 and 55, Ocean Drive, Dennisport, as well as granting that said lots may be in separate ownership.

The Board's vote was unanimous (Skeller, Hamingskas, Tyrrell, Carroll, Flankstrom) based on reasoning that there is hardship with land and dwellings existing for many years; that it would not be detrimental to neighborhood, nor substantially derogate from zoning By-Law.

Details of the hearing and the decision are on file in the Board of Appeals records at the Dennis Town Office as Case No. Z - 274.

[Signature] Clerk
BOARD OF APPEALS

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TOWN OF DENNIS
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TOWN OF DENNIS

The Commonwealth of Massachusetts

Town OF Dennis

BOARD OF APPEALS

At a Public Hearing held November 1, 1976

relative to a variance in the Zoning Laws, the Board of Appeals voted to grant Joseph M. Perry variance from the 20,000 sq. ft.

minimum lot size to construct a single-family dwelling on Lot 8A and Lot 8B combined, Salt Meadow Road, West Dennis. Variance will expire if construction is not completed within two years.

The Board's vote was unanimous (Skelly, Kaminskas, Burrell, Carroll, Flinkstrom) based on feeling that combining Lots 8A and 8B brought the property up to approximately 3/4 of the normal requirement of the Zoning By-Law; that it would not be detrimental to neighborhood, nor substantially derogate from Zoning By-Law. The Board felt hardship exists due to ownership since 1964, and two small lots not combined would be useless for building.

Details of the hearing and the decision are on file in the Board of Appeals records at the Dennis Town Office as Case No. Z-242.

[Signature] Clerk BOARD OF APPEALS

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Town OF Dennis

BOARD OF APPEALS

At a Public Hearing held November 15, 1976

relative to a variance in the Zoning Laws, the Board of Appeals voted to grant Carleton E. Orcutt variance from the 20,000 sq. ft. minimum lot size to construct single-family dwellings on Lot 19 and Lot 21, Grassy Pond Drive, East Dennis. Variance will expire if construction is not completed within two years.

The Board's vote was unanimous (Skelly, Kasminskas, Burrell, Carroll, Flinkstrom) based on feeling that hardship would exist by combining two lots, thereby exceeding the 20,000 sq. ft. minimum lot size by 50%, and that Mr. Orcutt has owned property for a long time. They also felt it would not be detrimental to neighborhood since lots conform to an established neighborhood, nor substantially derogate from Zoning By-Law.

Details of the hearing and the decision are on file in the Board of Appeals records at the Dennis Town Office as Case No. Z-244

Stephen Burrell Clerk BOARD OF APPEALS

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The Commonwealth of Massachusetts

Town OF Dennis

BOARD OF APPEALS

At a Public Hearing held October 4, 1976

relative to a variance in the Zoning Laws, the Board of Appeals voted to grant Frank A. & Anne Foss variance from the 20,000 sq. ft. minimum lot size to construct single-family dwellings on Lots 23, 24, 25, 27, 28, 29, and 30, Country Lane, Dennisport.

The Board's vote was unanimous (Skelly, Kaminskas, Burrell, Carroll, Flinkstrom) based on Board's determination that redesign of subdivision, still under protection, was better use of land in reducing number of lots from 11 to 6, increasing size of lots, and eliminating road which would eventually have to be served by Town. They did not believe it would be detrimental to neighborhood, nor derogate from Zoning By-Law. Redesign has been approved by Planning Board, with notation that above lots do not conform to Zoning By-Law.

Details of the hearing and the decision are on file in the Board of Appeals records at the Dennis Town Office as Case No. Z-234.

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[Signature] BOARD OF APPEALS

- Appellant
Appellant's Attorney
Building Inspector
Health Inspector
Planning Board
Executive Secretary
Town Clerk
File

The Commonwealth of Massachusetts

Town of Dennis

BOARD OF APPEALS

At a Public Hearing held December 6, 1976

relative to a variance in the Zoning Laws, the Board of Appeals voted to deny David Chase variances from minimum lot area, front yard setback requirements, rear yard setback requirement to relocate dwellings on Lots 2, 4, and 5, build addition to dwellings on Lots 1, 3, and 5, addition to dwellings on Lots 1, 3, and 5, Old Wharf Road, Shad Hole Road, Sea Street, Dennisport.

The Board's vote was unanimous (Skelly, Kaminskas, Burrell, Carroll, Flinkstrom) based on feeling that hardship had not been proven, and would be in derogation of the Zoning By-Law, even though it might not be detrimental to neighborhood.

Details of the hearing and decision are on file in the Board of Appeals records at the Dennis Town Office as Case No. Z-247.

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[Signature] Clerk BOARD OF APPEALS

- Appellant
Appellant's Agent
Health Inspector
Building Inspector
Planning Board
Executive Secretary
Town Clerk
File

copy to K. Pfeiffer

DENNIS BOARD OF APPEALS

February 7, 1977

Convened: 7:37 P.M.

Adjourned: 11:00 P.M.

Present: Skelly, Burrell, Carroll, Baldwin
Staff: Taylor, Perry
Public & Press: Approximately 18

Chairman Skelly announced that only four members of Board were sitting, as opposed to five. If anyone has any objections, the Board would continue their petition until the next meeting.

1. DEAN W. GARFIELD & FREDERICK H. SARGENT - Old Chatham Rd. at Rt. 134, South Dennis. Mr. Burrell read legal notice, requesting front yard setback variance and variance and Special Permit to construct and operate retail tire and automotive maintenance and repair store at above address. Attorney Myer Singer, representing, presented brochure and explained facts: That variance for setback had been granted in December, 1976, but since questions raised they felt they should return and clarify, seeking additional variances. Because of setback requirements almost 90% of lot is unbuildable; building would only cover 8.8% of lot. He pointed out that a gas station could be allowed in ZBL. Dr. Carroll questioned whether they were asking for 60 ft. variance, and not 50 ft., which Mr. Singer agreed was correct. Dr. Carroll said he would prefer curved drive; that sometimes the Fire Dept. wished it wider than 30 ft. Mr. John Melanson, direct abutter, spoke in opposition, saying he felt it would be detrimental and devalue his land. Mr. John Johnson, abutter from Hibiscus Way, spoke at some length in opposition regarding relief on triangular shaped lot; that some people told him he couldn't fight "City Hall"; that he thought they should be punished for breaking the law by starting building. He referred to "gentlemen's agreements"; that specific agreements should be outlawed to prevent being detrimental to neighborhood. Dr. Carroll, Chairman Skelly, and other Board members stated sharp disagreement to statements impugning the Appeals Board. Mr. Johnson continued to make references to Planning Board, Board of Selectmen, while Chairman Skelly sharply refuted his accusations, suggesting he go to Planning Board. Mr. Singer stated that Garfield & Sargent never had an agreement with Planning Board; that he had asked Planning Board about delay on building permit; that they had started work only after 21-day appeal period, following which Building Inspector called and asked work to be stopped, which was done except for preventive safety work. Hearing closed 8:17 P.M. The Board's vote was unanimous to grant based on the opinion that hardship existed in the shape of lot and fronts on two streets; that only 8% of lot will be used for building; that Zoning By-Law permits similar type of business in Extensive Business Zone. The Board also found that this would not be detrimental to neighborhood, nor derogate from the intent of the Zoning By-Law.

2. J. HARRY LONG - Lot 8, Sea Street, Dennisport.

Mr. Burrell read legal notice requesting variance from minimum lot size of 20,000 sq.ft and minimum width at building line. Attorney Michael Dunning represented, with Mr. Long also present. Mr. Dunning explained Mr. Long had been owner of subdivision still having protection, but at suggestion of Conservation Commission, had redesigned new subdivision to cut down on road, reduce number of lots, 2 over 20,000 plus Lot 8. This new plan has since been approved by the Planning Board. He submitted that these variances would not be detrimental, nor derogate from ZBL, and that Mr. Long had hardship, financial and with the land. Dr. Carroll raised

February 7, 1977

question of lack of frontage on Lots 9 and 10; Mr. Dunning asked to amend petition to request these variances. (It was later resolved with Mr. Taylor that only 50 ft. frontage was required, which existed; therefore the matter was dropped). Hearing closed 8:34 P.M. The Board's vote was unanimous to grant based on feeling that hardship was found in that Mr. Long had had 7-year protection of lots in rescinded subdivision, which could have been used for building. He has since reduced number of lots and enlarged size. Also that it would not be detrimental to neighborhood, nor derogate substantially from intent of Zoning By-Law.

3. JOHN MEGARGEES - 22 Baxter St., South Dennis.

Mr. Burrell read legal notice requesting variance from Flood Plain Zoning to construct addition to existing dwelling. Mr. Skelly requested Mr. Taylor to discuss the matter with Mr. Megargee and his builder, the result of which was that Mr. Taylor felt he could issue building permit. Therefore, the petition was "Dismissed without Prejudice." Closed 8:35 P.M.

4. BERNARD A. STROUM - Lot 13, Regan Road, West Dennis.

Mr. Burrell read legal notice requesting variance from Flood Plain Section of ZBL to construct single-family dwelling at above location. Attorney Edward J. Sweeney represented, with Mr. & Mrs. Stroum and Mr. Stanley Sweetser also present. Mr. Sweeney explained the Stroums wished to build home; that all other surrounding lots are built upon below the FPZ level, and called upon Mr. Sweetser to further explain. Mr. Sweetser explained he had run levels from sea level and calculated with mean sea level elevations; that there is a difference of 2.64 ft. He quoted figures of 8.74 above mean sea level, which would mean 10.9 ft. above mean sea level. In response to Dr. Carroll, he said it was 13 ft. plus above mean sea level at highest point. Mr. Sweeney further explained his understanding of H.U.D. purpose of plan and that this was only lot not built out of 27-lot subdivision. Mr. Clifford, the builder said the house would be 24 X 32, two bedrooms, with walk-out type of cellar, and said he figured that about 300 yards of fill would be needed to prevent run off. Mr. Sweeney further stated that the Stroums had purchased property with a mortgage; that if variance is not granted, they would have a severe financial loss, and that there is hardship with lot. Chairman Skelly stated that the applicant must be notified, by law, "that the issuance of a variance to locate a structure at an elevation below the 100 year flood level will result in increased actuarial rates for flood insurance coverage." There was discussion of whether or not the basement would be used for living purposes. What appeared to be fireplace on plans is the base for first floor fireplace. The Stroums said they did not intend to use as living quarters, and further explained plan. Mr. Curt Livingston, present as the Chairman of the Conservation Commission, pointed out Section 6.1.1, which indicated basement shall also be elevated to not less than base flood elevation. In response to Mr. Burrell, Mr. Sweeney said property was purchased 10/29/76 from Mr. L. Linsky through Dodd and Bestgen. Mr. Stroum said original Conservation Order of Conditions was issued in 1973, renewed in 1974 and that a sewerage permit had previously been issued. There was considerable discussion as to just how much of a variance was requested, with Mr. Sweetser stating that basement floor was not involved. Mr. Sweeney said that if Board does not favor variance, they should order or advise the individual how to build. Mr. Skelly said the Board would not do that; that any application should ask for a specific variance. Mr. Sweeney asked if they could withdraw and return with engineering plans. Mr. Skelly read Conservation Commission letter in opposition. There was discussion with Mr. Livingston, who said he thought some "casual" fill had already been placed on lot; he said there were about 30-40 acres of wetlands nearby, but only 200-250 ft. across marsh. In response to Dr. Carroll, Mr. Livingston said Conservation could consider building with different plan. Mr. Skelly insisted on specific variance requested, following which Mr. Sweetser said if below first floor level included, 5 ft. would be sufficient. The Board noted this amounted to a 50% variance requ: - 52 - Baldwin noted that insurance rates

February 7, 1977

would be about six times the normal rate. Hearing closed 9:35 P.M. The Board's vote was unanimous to deny based on feeling that the 50% variance from 10 ft. above mean sea level, as requested, was excessive, as well as type of building proposed for location. The Board is willing to accept a second appeal for consideration with substantially different building plans.

Nancy J. Perry
Nancy J. Perry
Secretary

Distributed 2-22-77 to:

Members & Associates
Building Inspector
Executive Secretary
Town Clerk
Assessors Office

BOARD OF APPEALS
February 23, 1977

Convened: 7:30 P.M.

Adjourned: 10:15 P.M.

Present: Skelly, Carroll, Flinkstrom, Baldwin, Teasdale.
Staff: Taylor, Perry.
Public & Press: Approximately 10.

1. Chairman Skelly called hearing in session, and the Board proceeded to discuss administrative matters. Mr. Skelly moved the Board adopt the following regulations to be effective March 1, 1977: All petitions to the Board shall be accompanied by a fee of thirty-five dollars (\$35.00) and a list of names and mailing addresses of all persons required by statute to be modified of proceedings. Such notices to abutters shall be sent by ordinary first class mail. Motion seconded by Mr. Flinkstrom. Vote; unanimous. Mr. Skelly stated that above adopted amendments will be forwarded to the Town Clerk. In discussion of the above, question was raised as to correct notification of abutters within 300 ft. as pertaining to Chapter 808, under which Flood Plain Zoning was adopted and which will ultimately cover all hearings. The secretary was requested to direct a memo to Town Counsel for his advise as to precise manner the 300 ft. should be determined..
2. A Mr. Lane spoke informally with Board regarding a contiguous lot situation, which appears also to involve Flood Plain Zoning. The Board informed Mr. Lane that he should start with the Building Inspector, and if Flood Plain Zoning involved, would need to provide certified engineer's plans.
3. CARL SCRIVENER - 623 Main Street; Dennis.
Chairman Skelly read legal notice (at 7:59 p.m.), advertised for 7:45, requesting Special Permit to change use from retail shop to real estate office at above location. Mr. Scrivener represented himself, and explained he wished to use one of four Nobscusset Settlement buildings as real estate office; that present gift shop will be moving to another building. In response to Mr. Flinkstrom, Mr. Scrivener stated that one rest room exists in building, that it will be under his sole control, and that he plans to lease for fours years. The Board noted that three Special Permits had been granted to Nobscusset Settlement businesses within the last year. Hearing closed at 8:05 p.m. The Board's vote was unanimous to grant based on feeling that sufficient parking was provided, suitable use in Limited Business Zone, not creating additional congestion or harm to area, nor derogating from Zoning By-Law.
4. DORIS B. CLARK d/b/a/CAPE COD PAPER CO., INC. - 35 Paddocks Path, Dennis
Chairman Skelly read legal notice requesting variances from front and side yard requirements to construct addition to existing commercial building at above address. Mrs. Clark was present, and explained she had received temporary building permit and put in foundation for office building prior to freezing weather and then found out that due to incorrect measurements, she lacked required 50 ft. front setback by 11 ft. She further explained that she hoped to purchase property from abutter, Mrs. Stout, which has been delayed due to death of Mr. Stout, and that they were using trailers for storage. Mr. Taylor confirmed that trailers can be used in this manner. The question of whether or not they are registered would be a Police Dept. matter. Mr. Flinkstrom raised point of several cases in which foundations were put in

Doris B. Clark (cont.)

based on faulty measurements while under temporary permit. Mrs. Clark said they had not proceeded any further with construction and that Mr. Gill had told her that there would not be a problem with O.K.H.R.H.D. Committee approval, which is required prior to issuing permit. Mr. Skelley noted that nearby there exists a foundry, a telephone operations building and Sesuit Creek swampland. Mr. Al Bohlen, her son, spoke briefly re pouring foundation before freeze and no further work done, and said they might expand at a later time when some of Mrs. Stout's land becomes available. Mrs. Clark, in response to Mr. Skelley, said she would be willing to deed front yard portion of land to her son to resolve matter. Hearing closed at 8:21 p.m. The Board's vote was unanimous to grant based on the following: the configuration of the land created a hardship; that it would not be detrimental to community area because of other existing commercial locations, nor that it would substantially derogate from Zoning By-Law.

5. SULLIVAN & SULLIVAN, INC.:- Loys 27, 28, 29, 51, 52, 53, 54, Oxbow Way, Dennis.

Mr. Paul Sullivan represented and explained they had an approved subdivision plan on which 7-year protection expired within the last year; that lots range in size from 15,109 sq. ft. to 17,410 sq. ft.; also that another lot had been eliminated to create 40 ft. way to tennis club. Dr. Carroll questioned if there were any way to redesign; it appeared that to do so would make lots much larger than 20,000 sq. ft. requirement. Mr. Sullivan stated that of balance of lots only five are unbuilt; that some people had purchased extra lot and that none were "checkerboarded". Mr. Sullivan informally discussed Special Permit granted for tennis club as to possible change in closing hours. Hearing closed at 8:37 p.m. The Board's vote was unanimous to grant based on feeling that the lots' sizes generally conform to others in subdivision and that hardship is seen in error being made as to date 7-year protection expiration. It was also considered that it would not be detrimental to community, nor substantially derogate from Zoning By-Law.

6. Selectman Henry Kelley II spoke informally with Board regarding Mr. John Johnson's recent accusations regarding "agreements" pertaining to Garfield & Sargent hearing on February 7, 1977. Mr. Kelley and Board members were in agreement that Mr. Johnson appeared to have confused the functions of the Planning Board and the Board of Appeals.

7. Mr. Richard Baxter spoke informally with Board regarding proposed cluster subdivision plan for Landmark Homes, Inc., recently presented as preliminary plan to Planning Board, which would require approval of Board of Appeals. He showed plan, off Airline Road, East Dennis, to Board members, and explained that Mr. Manog who would develop, owns most of land and rest is under agreement. He pointed out that according to Zoning By-Law they could plan 114, but had cut down to 100 lots, ranging in size from 10,000 sq. ft. upwards. The Board's general feeling was not favorable. Mr. Flinkstrom noted that they had followed the Zoning By-Law for minimum requirement, but that for cluster subdivision it lacked any aesthetic sense; also that

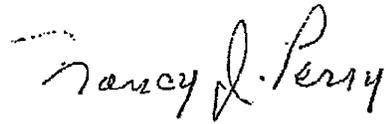
February 23, 1977

No. 7 (cont.)

there were two parcels not contiguous. It appeared that part of plan is in R-30 zone and part in R-20. Board members felt that a cluster subdivision could be designed in a much more favorable manner.

8. The secretary checked with members present as to P. O. Box numbers due to recent Post Office notice regarding delivery of mail.

9. The Board discussed microfilming planned by Town Office, feeling that Town Clerk's office has official copies of decisions, as well as minutes; that it was not necessary to duplicate this, nor to microfilm many papers involved in each hearing.



Nancy J. Perry
Secretary

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BOARD OF APPEALS

March 7, 1977

Convened: 7:42 P.M.

Adjourned: 10:30 P.M.

Present: Skelly, Burrell, Baldwin, Shealey, Teasdale.
Staff: Taylor, Perry.
Public: Approximately 13.

1. MID CAPE EQUITY TRUST - Lots 7 through 13 & Parcel A, Center St., So. Dennis. Mr. Burrell read legal notice requesting variance to utilize above property as residential use rather than industrial, which it is presently zoned. Mr. William Cobb and Surveyor Frank Conery presented case, showing preliminary plan and previous plan for abutting lots in front of this section. They indicated they would present a Definitive Plan to Planning Board if variance granted, and said they thought Planning Board would recommend change in zoning shortly. Mr. Skelly read letter from Planning Board in support of granting variance. Hearing closed 7:52 p.m. The Board's vote was unanimous to grant based on determination that hardship existed due to waiting approximately a year for expected action of Planning Board to propose change in existing zoning, which will be forthcoming very soon; also that it would not be detrimental to neighborhood, nor derogate from Zoning By-Law.

2. ROBERT RALSTON - Lots 1 & 4, Buckley Road, West Dennis. Mr. Burrell read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family dwellings on above lots. Mr. Ralston was present and explained he had bought four lots in 1965, had built home on two lots, and would like to build on remaining lots or sell as buildable lots. Mr. Skelly read letter from Planning Board suggesting combining two lots. Mr. Ralston said Merchant & Cassidy had developed many lots in area in sizes ranging from 7500-10,000 sq. ft.; that these are only unbuilt lots. Mr. Walter Robie, an abutter, spoke, stating his lot is 17,500, and felt that 10,000 is too small now, would not object to one house, but vehemently opposed two houses. Mr. Teasdale questioned if hardship is that not as much profit could be realized from sale of combined lots as opposed to two lots. Mr. Ralston replied he would have to find the person to pay for two lots, not on market yet. There was discussion of lot sizes varying in area, some 10,000, some considerably larger toward Wrinkle Point. Hearing closed 8:12. The Board's vote was unanimous to deny based on feeling that these are two substantially undersized contiguous lots which are readily possible to merge; bringing one lot up to approximately the required 20,000 sq. ft.; also that no hardship had been proven; also taking into consideration that variances had been granted in the immediate vicinity, though each case is decided on its own merits and that other petitioners in neighborhood had no escape from their position as opposed to this case where the two lots may easily be sold as one.

3. MICHAEL J. DE FILIPPO - Lot 9A, Salt Meadow Road, West Dennis. Mr. Burrell read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling on above property. Mr. DeFilippo was present and represented by Attorney Kathy Franklin O'Connell, who explained a similar variance was granted last May to Mr. John Perry, now deceased, but with stipulation that dwelling front on Swan Pond River Road; that Mr. DeFilippo was not aware of this limitation until closing, but felt he should go through with purchase. She added that Mr. Perry had paid taxes for many years, variance had been granted, and that it would be a hardship for Mr. DeFilippo since he had paid \$7500 for lot and wishes to build fronting on Salt Meadow Road, which has 120 ft. frontage as opposed to Swan Pond River Road, which has only 75 ft.

March 7, 1977

DeFilippo (cont.)

She also mentioned that there is less traffic on Salt Meadow Road, that there are some trees on lot, and that Mr. DeFilippo plans to leave as many as possible and also plant. In response to Mr. Burrell, Attorney O'Connell said it would be a summer home, not rental. Mr. Burrell read letter from Mr. John J. Linge re having lot remain in present state. Mr. Joseph Perry, brother of the late John Perry, spoke in favor of granting. Hearing closed 8:27 p.m. The Board's vote was unanimous to grant based on reasoning that hardship exists because previous variance was granted to John Perry on May 17, 1976, but with stipulation that house should face Swan Pond River Road; that petitioner purchased property intending to front on Salt Meadow Road only at time of closing was informed of above-mentioned stipulation. The Board also considered that traffic conditions would favor granting of variance; that it would not be detrimental to neighborhood, nor derogate from Zoning By-Law.

4. HENRY J. & GLORIA C. HILL - Lots 444, 445, 446, Nobscusset Road, Dennis. Mr. Burrell read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family dwellings on above three lots. Attorney William E. Crowell, Jr., represented; and stated that Mr. & Mrs. Hill live on Luscombe Road, and had purchased lots in question in 1971 as estate to leave to their children. He felt a hardship existed financially and in layout of land. He added they had gone to Mr. S. R. Sweetser for an ANR plan creating two lots out of 3, approximately 19,000 and 15,000 sq. ft. Mrs. James Sullivan, an abutter, questioned why request had not been for two lots. Mr. & Mrs. Bernstein asked if Board would put any restrictions on variance, to which Mr. Skelly replied that they could put conditions or deny; that real protection would be from Health Dept. Mr. Crowell said the Hills only wanted to build two normal size single-family dwellings. Mrs. Raycraft, another abutter, requesting copy of decision. Hearing closed 9:50 p.m. The Board's vote was unanimous to grant based on feeling hardship would be created if petitioner were obligated to combine three lots into one of over 34,000 sq. ft. and that this compromise would be in the best interests of the Town and petitioner. It was felt this would be compatible and not detrimental to neighborhood, nor derogate from intent of Zoning By-Law.

5. Mr. Richard Baxter, surveyor, appeared informally for the second time with Landmark Homes, Inc., cluster subdivision plan, now revised. He explained Sections A and B were redesigned, no longer "grid" type; that there were 13 fewer lots, now 87, whereas formula technically allows 114. He said lot sizes had been increased, not green area, and added that owners of record like revised plan better, but that it is under-agreement. Mr. Baldwin asked if agreement was conditional on approval but Mr. Baxter said he had not seen agreement. The Board's general feeling was much more favorable than toward previous plan presented to them.

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Nancy J. Perry
Secretary

BOARD OF APPEALS

March 21, 1977

Convened: 7:30 P.M.

Adjourned: 9:15 P.M.

Present: Skelly, Kaminskas, Burrell, Baldwin, Teasdale.
Staff: Taylor, Perry.
Public: Approximately 5.

1. JAMES V. ROSE - Lot 323, Wamponoag Trail, Dennis.
Mr. Burrell read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling on above property. Mr. Rose was present, and explained that he would like to build new winterized home, as opposed to his present seasonal home on contiguous lot on Wild Hunter Road. There was discussion of hardship existing if Mr. Rose were required to combine lots, bringing it way above minimum requirement. In response to Mr. Kaminskas, Mr. Rose said his grown son would take over existing house. He added that he would probably build within a short time if variance granted, and that most lots are built upon. In answer to Mr. Burrell, Mr. Rose said he owned one other lot on Shore Drive. The Board discussed the next case, which is identical in circumstances. Hearing closed 7:54 p.m. The Board's vote was unanimous to grant based on fact that to combine two contiguous lots would far exceed minimum requirement, constituting hardship; also the fact that taxes had been paid on property for many years. The Board felt it would be in keeping with neighborhood, not detrimental, and that it would not derogate from intent of Zoning By-Law.

2. DONALD L. SWAN - Lot 322, Wamponoag Trail, Dennis.
Mr. Burrell read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling on above property. Mr. Swan was present, and briefly presented his case. There was little discussion since petition had been covered in discussing previous case. Hearing closed 8:10 p.m. The Board's vote was unanimous to grant based on fact that to combine two contiguous lots would far exceed minimum requirement, constituting hardship; also the fact that taxes had been paid on property for many years. The Board felt it would be in keeping with neighborhood, not detrimental, and that it would not derogate from intent of Zoning By-Law.

3. CLYDE B. DOOLITTLE - Lot 61, Beaten Road, Dennisport.
Mr. Burrell read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling at above location. Mr. Doolittle was present, as well as Mr. Rocco A. Frisina, prospective purchaser of lot. Chairman Skelly requested Flood Plain Maps from Mr. Taylor to make sure property was not in A zone. After checking maps, the Board was satisfied that Flood Plain Zoning was not involved. Mr. Doolittle explained that he had had four lots on Beaten Road and Bain Road. He first purchased in 1940 and built home; that he had sold lot on Bain Road to Mr. Frisina, prior to Zoning By-Law, on which he has built home, and now would like to sell Lot 61 to Mr. Frisina. He added he was 80 years of age, and could no longer take care of the lot and gardens there. He presented several letters to Mr. Skelly, who read them. They were all from abutters in support of granting variance: Mr. Walter F. Lieberman, F. J. Hill, Albert Batista, Mr. & Mrs. Patsy J. Comoletti, and Charles N. Burns. Mr. Doolittle said he did not want to build, only convey property. Mr. Frisina added they had a purchase and sales agreement (on inspection this is in fact an "option to purchase"), and that he would not build as long as Mr. Doolittle is living next door. The Board discussed matter of which party should be granted

March 21, 1977

Doolittle (cont.)

variance; and decided it should be to Mr. Doolittle, since he has existing hardship. Mr. Frisina stated that as new owner he would maintain the lot in the same manner as Mr. Doolittle. Hearing closed 8:40 p.m. The Board's vote was unanimous to grant based on finding of hardship in that Mr. Doolittle has owned property for many years and maintained this property really as a park for neighborhood and with increasing age, he finds it too burdensome to continue to do so. The Board also felt that the structure will not be detrimental to neighborhood, and will be within the intent and meaning of the Zoning By-Law.

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Secretary

BOARD OF APPEALS

April 4, 1977

Convened: 7:40 P.M.

Adjourned: 10:45 P.M.

Present: Skelly, Burrell, Kamiskas, Flinkstrom, Teasdale, (Baldwin sitting for one hearing), (McCarthy present).
Staff: Taylor, Perry.
Public: Approximately 12.

1. SULLIVAN & SULLIVAN, INC. - off Oxbow Way, Dennis.
Mr. Burrell read legal advertisement requesting change in hours of operation relating to existing Special Permit for private tennis club at above location. (Mr. Flinkstrom stepped down for reasons of possible conflict of interest, and was replaced by Mr. Baldwin). Mr. Paul Sullivan represented, and explained that he had voluntarily agreed to hours stated in Special Permit granted on September 29, 1975 (case Z - 161), but would now like to request change, particularly regarding paddle tennis courts and social activities. In response to Chairman Skelly, Mr. Flinkstrom (as private citizen) said he thought all of the members, including himself, were in favor of requested change. Mr. Knowles from SKAD Realty, an abutter, questioned whether or not paddle tennis should be played after 10: p.m., but had no objection as to social affairs; suggested latest limit on paddle tennis should be 11 p.m. Mr. Sullivan said it would be for members only except for an occasional tournament; also that tennis courts would not be lighted. Chairman Skelly read original Special Permit. Hearing closed 7:58 p.m. The Board's vote was unanimous to grant on the basis that extended hours for some activities of the club would not be detrimental to neighborhood or public good, nor derogate from the intent of the Zoning By-Law.

2. HAROLD D. HOWES, off Oxbow Way, Dennis.
Mr. Burrell read legal advertisement requesting Special Permit under Section 4.4 to construct Open Space Village at above location. Chairman Skelly noted that this could not be a definitive case at this time since what little material was on hand had only been provided last Friday afternoon, making it impossible to circulate to other Board; also that a preliminary hearing is suggested in the Zoning By-Law, though not mandatory. He suggested going over material on hand and recessing until May 16, 1977, with the understanding that all material should be in the hands of the Board within two weeks, stating that the legal Master Deed should be reviewed by Town Counsel. Mr. Paul Worthington represented and said plan had been to the Planning Board; that he understood they would deed out all green area. Board members pointed out to him that this should be in writing, and Mr. Skelly quoted from Section 4.4.3.6. Mr. Worthington stated that he wished he had known about this; also that it would involve very expensive legal work. Chairman Skelly noted that extra effort had been made to secure all materials prior to hearing. Mr. Worthington further explained plan, as well as discussion with Mr. Knowles from SKAD Realty, an abutter, in relation to an "ancient way" which is their only access. Mr. Worthington assured that access would be preserved. Mr. Skelly read letter from Mr. David Ellis, stating that the Planning Board preferred this cluster plan to originally submitted standard plan. Mr. Worthington said they were concerned about proposed R-40 zoning, and decided to submit this plan. The principals involved are Paul Worthington, Paul Sullivan, Arthur Sears, and Joseph Borowick. The Board suggested recessing until May 16th with the condition that all material be supplied to secretary by April 25th, or that the case could be withdrawn without prejudice. Mr. Worthington said he would like to consult with his other three partners. The Board voted unanimously to recess until

April 4, 1977

(Harold D. Howes) (cont.)

May 16th with the above stipulation. Hearing recessed 8:54 p.m.

3. BRIAN E. SKINNER - Lot 1 (#94) Sea Street, Dennisport.
 Mr. Burrell read legal advertisement requesting variance from minimum lot size of 20,00 sq. ft. to construct single-family dwelling. Attorney Myer Singer represented, explaining that Mr. Skinner is from Connecticut, and purchased Lot 1 and Lot 2 (containing dwelling) in 1971. He now wants to remove garage from Lot 1 and build small home, which would comply with all other requirements. He claimed financial hardship would be created by having to join the two lots (approximately 18,000 sq. ft.) with one house; that it would not cause detriment to the public good, nor derogate from Zoning By-Law. He said it would be a 3-bedroom home, but owner would agree to two bedroom if Board so desired. Mr. Kaminskas questioned how many bedrooms in large house, which Mr. Singer did not know. Mr. Kaminskas stated that he knew the house, that it is used for group rentals, probably has four bedrooms, and that he has seen as many as 15 cars parked there. He asked where these cars would park since they now park on Lot 1. Mr. Singer said he thought they could park on Lot 2 with present house. Chairman Skelly read letter in opposition from Mr. & Mrs. Robert Jacob, who suggested a stockade fence be erected if variance were granted. He also noted a telephone call from Mr. Thomas E. Lahiff, who voiced extreme objection on basis of group rental, parking problems, and noise. Mr. Singer said owner would not object to stockade fence. There was further discussion of group rental and problems created. Mr. Singer requested the Board to agree to continue until next meeting so that he could talk with Mr. Skinner; that he might be agreeable to restrictions so as to better satisfy the Board. Mr. Kaminskas moved to take under advisement; seconded by Mr. Flinkstrom. Vote: unanimous.

4. CALVIN MEISNER

Mr. Meisner, his son, and Attorney Cassis appeared informally to discuss the possibility of renting "Mo-Peds" from a trailer at the corner of Lower County Road and Shad Hole Road. Attorney Cassis presented the point that Mass. Law exempts these from Motor Vehicle Laws as opposed to Dennis Town Counsel's opinion to Building Inspector Roland Taylor that motorized bicycles are motor vehicles within the meaning and intent of the Zoning By-Law. There also could be a question about renting from a trailer as opposed to a building. Mr. Cassis explained it would only be seasonal, and run by Mr. Meisner and his son. Mr. Flinkstrom questioned if a pedlar's license would be required and if Mr. Taylor considered a trailer a building, which he did not. The Board was also concerned about such heavy congestion at this location, and felt they had to abide by Town Counsel's opinion as to "motor vehicles." Discussion ended 10:10 p.m.

Nancy J. Perry

Nancy J. Perry
 Secretary

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BOARD OF APPEALS

May 16, 1977

Convened: 7:15 P.M.

Adjourned: 11:00 P.M.

Present: Skelly, Carroll, Kaminskas, Flinkstrom, Spruill.
Staff: Taylor, Perry.
Public & Press: Approximately 12.

1. First order of business was re-election of officers. Mr. Flinkstrom moved that Mr. Henry Skelly maintain his illustrious career as Chairman; seconded by Dr. Carroll. Vote: unanimous. Mr. Skelly moved Dr. John Carroll serve as Clerk; also moved that Mr. Adam Kaminskas serve again as Vice Chairman; seconded by Mr. Flinkstrom. Vote: unanimous. Chairman Skelly welcomed Mr. David Spruill as a full member of the Board, having been an Associate Member for many years. Chairman Skelly made motion to give Mr. Stafford Burrell, recently resigned, his name plaque and directed the secretary to send him a letter thanking Mr. Burrell for his service on the Board for many years and personal regrets in losing him as a Board member; seconded by Dr. Carroll. Vote: unanimous. Chairman Skelly made motion, seconded by Mr. Kaminskas, to nominate the Board's secretary as "Secretary of the Year." Vote: unanimous. The secretary expressed her thanks for the Board's recognition. Dr. Carroll suggested having more associate members. Mr. Kaminskas noted the Board had found out they could not do this previously. Mr. Skelly suggested associates could be rotated to sit on an informal basis when regular members were absent.

2. HAROLD HOWES - off Oxbow Way, Dennis.
Mr. Skelly said the Board had agreed to continue this case from April 4, 1977, on the basis that a Master Deed be provided regarding Cluster Subdivision. He added that Mr. Paul Sullivan had asked to "withdraw without prejudice." Mr. Skelly so moved; seconded by Mr. Kaminskas. Vote: unanimous.

3. JOHN T. DELANEY - 49 Monument View Road, East Dennis.
Dr. Carroll, new Clerk of the Board, read legal notice requesting variance from side yard setback to construct addition to garage at above address. Mr. Delaney explained that setback was all right toward front (13 ft.); that he needed 5 ft. variance toward rear because of siting of house. He added that he already had O.K.H.R.H.D. approval. Mr. Skelly read letter from Dr. C. E. McGran, nearest abutter, in favor of variance. Mr. Skelly and Dr. Carroll, who had viewed the property, which they felt was excellently maintained, expressed the view that they saw hardship in family purposes and having to add garage at other end of the house. The dimensions will be 10 x 27, and will not extend deeper than present. Hearing closed 7:41 P.M. The Board's vote was unanimous to grant based on belief that hardship had been proven due to personal conditions and that placement of building on lot would only allow garage to be placed where proposed; also that nearest abutter concurred. They also felt that it would not be detrimental to neighborhood, nor derogate from Zoning By-Law.

May 16, 1977

4. WALTER D. CLELAND - Lot 33, Buckley Road, West Dennis
 Dr. Carroll read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling and variance from Flood Plain Zoning. Mr. Charles Wilkenbach, representing Mr. Cleland, explained Mr. Cleland has purchased this lot and contiguous lot 34, as well as third lot with dwelling, several years ago to have for his children. He said many lots in area are 10,000 sq. ft., and that he had lived next door at one time; also that Mr. Cleland was not really seeking a building permit, but wants to put two lots into his children's names. Mr. Wilkenbach did not have Flood Plain Zoning elevations because he said surveyor said this would be expensive to do when all they wanted to do was transfer title. Dr. Carroll pointed out that the Board had to have this information and that hardship had to be proven. Mr. Kaminskas inquired about Ireland's Real Estate sign on property, which Mr. Wilkenbach said he was not aware of. After further discussion, Dr. Carroll suggested the Board could not make decision on information presented. Mr. Kaminskas moved to allow to withdraw without prejudice; seconded by Mr. Flinkstrom. Vote: unanimous. Mr. Wilkenbach said he would see their surveyor the next day. Hearing closed 8:00 P.M.
5. MID-CAPE EQUITY TRUST - off Center Street, South Dennis.
 Dr. Carroll read legal notice requesting Special Permit and variance from Flood Plain Zoning to construct Open Space Village Development at above location. Mr. William Cobb and Surveyor William Weller were present, and explained the Planning Board had recently interpreted the Zoning By-Law to preclude 100 ft. of land away from wetlands to be used in Open Space plan; therefore, they also requested a variance from Section 4.4.3.2. of the Zoning By-Law to allow inclusion of all uplands in computing applicable land area for plan. They added that Conservation Commission has control over land within 100 ft. of wetlands. Mr. Cobb said only 12.7 lots would be allowed under this interpretation, not permitting a cluster. They would be filing a Notice of Intent with Conservation Commission on some lots: 3-Health Dept. report indicated a only problem might be Lot 7. Mr. Cobb showed the Board an alternative conventional plan with 17 lots, but said he would prefer to do what he considered a "show case cluster." In response to Dr. Carroll, Mr. Cobb said these would be one-family homes with 3 bedrooms, one of which could be converted to den. In discussion of Flood Plain Zoning, it was determined that Lots 9, 10, 11 would require a 3 ft. variance; that Lots 3, 7, 8 would require a 3-4 ft. variance under Flood Plain Zoning. Dr. Carroll notified Mr. Cobb that he would have to pay much more for Flood Plain Zoning variance now, or to come back for each lot; the Board thought it best to consider the entire matter. Mr. Kaminskas moved to vote; seconded by Mr. Skelly. Vote: unanimous. The Board's vote was unanimous to grant based on their judgement that this plan was much better use of land in a topographical sense and utilized land in the most effective way possible to preserve it. Comparing it with a conventional plan possible, the Board felt the Open Space Plan would be much more efficient in up keep of roads. They did not believe it would be detrimental to the neighborhood, nor derogate from Zoning By-Law. Appellants were notified of increased Flood Plain insurance costs.
6. JEFFREY L. TRASK - 374 Hokum Roack Road, East Dennis.
 Dr. Carroll read legal notice requesting Special Permit to operate motorcycle sales and service with two employees and a minimal extension of operating hours. Mr. Trask explained he had had same operation for approximately 1 1/2 years about 250 ft. away, with no employees other than himself. Since his business has increased he would like to have two employees and stay open one evening a week preferably Thursday, until 9 p.m. for convenience of customers leaving or picking up motorcycles. Mr. Skelly, who lives closer than any other member, said he had not observed any problems and felt Mr. Trask runs a "tight ship," with no complaints. He also read letter from Peter McDowell in favor of granting. There was discussion of parking spaces for 3 people at building owned by Mr. Robert Bates, from whom Mr. Trask rents 1/2 of building. Board members and Mr. Trask favored only one additional employee unless written permission were granted by Mr. Bates. *insurance, which Board is obliged to tell applicants. There was discussion of granting FPZ

May 16, 1977

(6. Trask Cont.)

to allocate an additional parking space to Mr. Trask in addition to two he presently has. Hearing closed at 9:37 p.m. The Board's vote was unanimous to grant based on feeling it would not be detrimental to neighborhood, particularly in view of no complaints whatsoever since issuance of original Special Permit (on August 5, 1975), nor would it derogate from Zoning By-Law.

7. JEREMIAH F. COUGHLIN - Lot 1 (#88) Taunton Ave., Dennis.

Dr. Carroll read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling. Mr. Coughlin was 90 years old and had owned property since 1916; that land was subdivided in 1961 and that he wanted to build new cottage; that each contiguous lot is over 12,000 sq. ft. Mr. McCarthy further explained there is access over Wades Way, which is hardtopped, landscaped and well maintained. He enumerated several reasons why variance should be granted, among which were loss of value to Town, most adjacent lots are smaller, and that new zoning created a physical and financial hardship. Dwelling would be 2 or 3 bedroom and at least 10 ft. from nearest abutter. Mr. Coughlin spoke briefly, thanking the Board for hearing his appeal and hoping they would look favorably. Hearing closed 9:50 p.m. The Board's vote was unanimous to grant since Mr. Coughlin has owned land for 60 years and has used good judgement in maintaining adjacent property. They found hardship in his age of 90 years and that to combine the two lots, each over 12,000 sq. ft. would exceed the present requirement. The Board did not feel it would be detrimental to the neighborhood, nor derogate from Zoning By-Law.

8. BRIAN E. SKINNER - Lot 1 (#94) Sea Street, Dennisport (continued from 4/4/77)
Mr. Skinner had requested variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling. Attorney Myer Singer represented and explained Mr. Skinner would agree to limiting both houses (present and proposed) to single-family rental or 5-3 unrelated persons. Mr. Kaminskas noted this might be in conflict with State law or Health Dept. Mr. Singer agreed the Health Dept. sets limit, and added the parking could be arranged to suit the Board. In reply to Mr. Skelly's question of Mr. Skinner's lack of personal interest in Dennisport, Mr. Singer explained he used it as rental because of a divorced family. The Board generally thought these were two small lots, used as business investment. Hearing closed 10:05 p.m. The Board's vote was unanimous to deny based on belief no hardship had been proven, especially since adjoining house has been operated for rental income and this would further such rental operation. Also, it was felt that it would be detrimental to neighborhood because of congestion and would derogate from Zoning By-Law.

9. Selectmen Henry Boles informally presented plan for housing for elderly on 12 acres on Rte. 134, north of Setucket. Lewis Gordon hoped to obtain mortgage from Farmer's Home Administration. He said there could be 64 one-bedroom units. He also had an alternative plan for an adjacent piece of land. He stated there would be a 50 ft. setback from Rte. 134, and possibly a main sewerage plan. The Board generally looked favorably on the project.

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Nancy J. Perry
Nancy J. Perry
Secretary

BOARD OF APPEALS

June 6, 1977

Convened: 7:40 P.M.

Adjourned: 9:55 P.M.

Present: Skelly, Kaminskas, Carroll, Flinkstrom, Spruill (McCarthy in attendance).
Staff: Taylor, Perry.
Public & Press: Approximately 20.

1. CHARLES T. SOUKE & GERALDINE E. SOUKE - Lot C (#2), Scargo Hill Road, Dennis. Dr. Carroll read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling at above location. Mr. & Mrs. Souke were present and explained that they were looking for lot, saw Mr. Dixon's advertisement, and sought Home Farmer's Association loan. They asked Mr. Dixon if there were any problems with lot (he had Ireland's Real Estate sign on property), to which he said there were none. He said they then went to Farmer's for loan, saw O.K.H.R.H.D., made percolation test, saw Cape Wide Engineering; that no one told him he needed 20,000 sq. ft. Chairman Skelly asked if they had had an attorney. Mr. Souke said there was an attorney representing Farmer's Home Loan who did title search who was present at passing of title, whom the Soukes paid; also was present Mr. Dixon and his attorney, Mr. William E. Crowell, Jr., whom he quoted as saying "you don't know what can happen on the Cape." At the closing Mr. Dixon had letter for Mr. & Mrs. Souke to sign stating in effect that if they could not obtain a building permit within 90 days, Mr. Dixon was not responsible for legal fees. Board members asked if ad or purchase and sales agreement presented the lot as a buildable lot. Mr. Skelly explained that Mr. Dixon on April 17, 1974 deeded this lot (one of three contiguous undersized lots) to his wife after Zoning By-Law took effect on November 5, 1973. Mr. Reilly, abutter on Scargo Hill Road and Old Bass River Road, spoke in favor, saying that he felt it was sufficient space and that the Soukes were being penalized. Chairman Skelly said he had complete sympathy for the young couple but nothing but scorn for seller and his attorney. He added granting this, we might as well give up on Zoning By-Law; also that the Board had granted variances in that area some years ago, but it was done legally; that he would not favor illegality. Mr. Skelly read objections registered by telephone from Mrs. Frances Collins, Mrs. Katherine Scott, Mr. & Mrs. Harry K. Cross, and Mr. Harry K. Cross, Jr. Mrs. Frances Collins showed map of land presently owned by Cross, Collins, and Scott, direct abutters; also map of land Mr. Dixon wanted to sell them in 1960 for \$13,300. She was very much opposed to granting since it could set a precedent and would condone an act by Mr. Dixon 6 months after Zoning By-Law; she also spoke of Mr. Clark Potter's nice development abutting, and felt this could create sewerage problems and traffic hazard. Mr. William Cushman spoke in objection, though he felt sorry for the young couple, and suggested that Mr. Dixon should combine into two lots, one of which the Soukes should get. Mrs. Louise Vaughan, in opposition, spoke of traffic danger and that she had worked to get the present Stop sign at the corner. Mr. Robert Wood, abutter, spoke against granting because of what the Zoning By-Law is supposed to do. Mr. Clark Potter, speaking as a developer, said he thought the buyers were "horsewhipped" and that Dixon should be liable. In discussion of traffic, Mr. Skelly said this will not be decided on traffic issue. In reply to Mr. Spruill, Mrs. Souke said the attorney said they should not have responsibility. Mr. Skelly commented this is not the case. Hearing closed at 8:10 p.m. The Board's vote was unanimous to deny based on belief that while not detrimental to neighborhood, the appeal is in total derogation of Zoning By-Law * became effective November 5, 1973, to circumvent By-Law in a deliberate attempt to sell lot and thus make two adjacent undersized lots buildable.

*in that previous owner deeded out middle lot of three contiguous lots, after the ZBL

June 6, 1977

2. RICHARD F. CRAVENHO - 133 School Street, West Dennis.
Dr. Carroll read legal notice requesting variance from minimum lot size to construct portable stand for retail sales at above location. Mr. Cravenho was present and represented by Attorney James Connors. Mr. Skelly pointed out that application discrepancy in application; that it should be 2950 sq. ft. Mr. Connors explained this lot has existed for over 40 years, seemed to have been cut out of Watson lot; that there had been a building owned by a Mr. Phillips, which deteriorated to the point that it was torn down about 10 years ago. The lot was purchased by Mr. Henry Holden in 1973, who obtained a building permit but never exercised it. The petitioner, he said, with the knowledge that it was CG area and that a building permit had previously been issued, purchased the lot some two years ago. He now has funds to construct portable building and parking; that it would most likely be a seasonal operation. Mr. Connors added that as the lot is a peculiar size and in CG II, he was not asking for particular use, but it would not be a used car lot. He said it would be used for retail sales, possibly dry goods, shoes, hats, straw items, etc. In response to Dr. Carroll, Mr. Connors said he did not think it would be detrimental to area. Mr. Skelly noted date of purchase as May 1, 1976. Mr. Connors showed plan with 4 parking places, and said building would be 8 ft. deep and 12 ft. wide. He added that if "grandfather's clause" existed, it would have protection. In response to Mr. Kaminkas as to a whether a home or commercial business had existed, Mr. Connors said he thought they had sold eels. Mr. Flinkstrom asked about sanitary facilities; Mr. Connors said such could be located there and left of removed. Since there is no septic system it would have to be a portable facility. It was brought out that Mr. Cravenho might have this building under his supervision and also have another job. Mr. Kaminkas thought there could be a traffic problem. Mr. Spruill noted dimensions brought it up to two car lengths. Mr. Cravenho thought it might also be able to use Watson lot for parking. Mrs. Marion Farrell who has lived in area for 30 years, explained that a Mr. Hallett lived there many years ago, then a Mrs. Cahoon got a deed for land; when Mrs. Cahoon died, the Farrells had first refusal for \$2000, but were told they could not do anything with it. She added that the Watson property is not well maintained, and that there is not a clear title to the land. Mrs. Eunice Cahoon spoke in opposition, saying she already had trouble getting out of her driveway and that she had to pick up litter from nearby business. Mr. Clark Potter commented that he could compare this case with previous one. Mr. Skelly thought it somewhat different because the young couple did not buy from their father. Mr. Skelly read letter from Planning Board against granting; also noted opposition registered from Mrs. M. L. Johnson and Mr. Lawrence Pickering. Attorney Connors, in rebuttal, noted that the Town has assessed as buildable commercial property, and now a building permit cannot be issued without a variance. Hearing closed at 8:55 p.m. The Board's vote was unanimous to deny based on belief that it is a substantial derogation of the intent of the Zoning By-Law since appellant took title to the property after Zoning By-Law became effective on November 5, 1973, from a relative. The Board also felt that no hardship* and detrimental to the neighborhood in the problems of traffic, parking and access. In addition, the Board noted that the recent Annual Town Meeting voted to increase the required size of lot to be 15,000 sq. ft. from 5,000 sq. ft., while this lot is approximately 3,000 sq. ft.

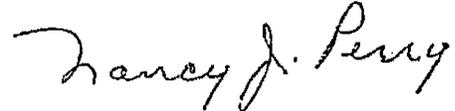
3. Selectmen Henry Boles presented informally a plan for senior citizen housing which is planned for present Lohr property on Rte. 134, East Dennis, to be developed by Lewis S. Gordon. He showed plan to Board and said it would be set back 50 ft. from Rte. 134 and parking. Dr. Carroll offered advice in designing such units for the handicapped. Mr. Boles said he had presented the plan to the Planning Board, who seemed to be pleased to seeing this being done by us. Mr. Flinkstrom inquired as to client choosing this over the other plan presented to us. Mr. Boles said the

*has been proven, and to grant a variance would be a hardship

June 6, 1977

(Mr. Boles cont.)

developer and contractor preferred this one. Mr. McCarthy asked about people applying, to which Mr. Boles explained the Government regulates this. He said the Farmers Home Loan would appreciate a letter from Board directed to Mr. Gordon. The Board was agreeable to sending letter indicating their general approval informally. The secretary will send such a letter.



Nancy J. Perry
Secretary

Distributed 6/13/77 to:

Members & Associates
Building Inspector
Executive Secretary
Town Clerk
File

BOARD OF APPEALS

July 18, 1977

Convened: 7:35 P.M.

Adjourned: 10:40 P.M.

Present: Skelly, Carroll, Flinkstrom, Spruill, Teasdale
(In attendance: Baldwin, McCarthy)

Staff: Taylor, Perry.

Public & Press: Approximately 15.

1. ROSEMARY K. STEUNENBERG - 69 Pleasant Street, Dennisport.

Dr. Carroll read the legal notice requesting Special Permit to operate hand-craft gift shop at above location. Mrs. Steunenberg explained that she would like to turn a rental apartment into a gift shop, some of the items made by herself and some bought from others. She also explained parking available plus in her yard; that it would be primarily during the summer, with hours about 10 A.M. to 9 P.M. Mr. Spruill noted that Pleasant Street is a narrow street and questioned 4 - 5 parking spaces on Center Street. In response to Mr. Skelly, she said room for the shop was about 10 x 14 ft. Chairman Mr. Skelly reminded that parking would have to be 10 ft. back. Mrs. Steunenberg said her family had owned property for about eight years. Mr. LaPorte, an abutter, stated that he was in total agreement with the petitioner. Mr. Spruill asked what she would do if denied, to which Mr. Steunenberg said she would have to turn it back into rental; that she has been looking for other job, and that rental only brought \$35-40 per week for room. Hearing closed 8:47 P.M. The Board's vote was unanimous to deny based on belief no hardship with land has been proven; also that it could be detrimental to neighborhood by introducing commercial venture into residential neighborhood, and thereby derogating from Zoning By-Law.

2. DAVID A. TELLEGAN - 63 Lower County Road, Dennisport.

Dr. Carroll read the legal notice requesting that Special Permit to construct addition to existing building and operate as office, shops and restaurant at above location. Attorney Nicholas Mazzoni representative, stated that advertising in the paper was somewhat inaccurate since Mr. Tellegen was only requesting lifting of hours restrictions for the Unicorn Publick House, for which they had already received a Special Permit. He said the Selectmen had described it as a beautiful family-type restaurant. They find that business on Lower County Road starts late, about 7:30 - 8:30 P.M. and they now have a liquor license and are seeking review of previous decision as to hours. Mr. Teasdale (who had not been present at original hearing) asked why there had been hours restrictions. Mr. Mazzoni said it was discussed at the time because of problems on Lower County Road; that he was told by the Board's secretary that they would have to start de novo. In response to Dr. Carroll's question of a liquor license need, Mr. Mazzoni said in his own opinion, people generally want a drink, which could cancel out a large group. He also said there is not a bar on the second floor; the restaurant seats 90. He further spoke of his own restaurant (Marshside), considering it a lift when they were recently granted an annual liquor license. Chairman Skelly read the Planning Board letter, which was in opposition because of insufficient parking and parking on a lot which could come before the Conservation Commission as wetlands. Mr. Mazzoni said that was discussed before and he thought it was resolved; also that he thought the Planning Board is "7 minutes too late". Mr. Zames, from Northern Avenue, said the parking lot is wetlands; also that there are three parking lot lights going directly into his property. Mr. Mazzoni said they would take of the lights immediately, but did object to wetlands parking.

In response to Dr. Carroll, Mr. Zames had no other complaints, thought it was a nice place otherwise. Mrs. Thomas O'Connor said they had no problem, but questioned if sold, what would happen to the liquor license. The Board informed her that the liquor license is not transferable. Mrs. O'Connor also said she believed the parking lot had been sold. Mr. Mazzonei acknowledged he had finally gone through, but they would have to go to Conservation. Mr. Skelly noted they have 18 parking spaces on Lower County, need 23 plus apartment, 25 needed. He also noted that Selectmen grant liquor license and they could cut back to 10 p.m.; that Appeals Board has no control over liquor license, but they can't overturn Appeals Board. Dr. Carroll asked, if granted, would the Tellegans be willing to come back in October for review; they said they would. Mrs. O'Connor said they would have no objection if run until 1 a.m., the same as it has been for 10 p.m. Hearing closed 8:14 p.m. The Board's vote was unanimous to grant based on belief that with above restrictions it would not be detrimental to neighborhood in noise or nuisance since existing operation has seemed to be well considered in the area; also that it would not derogate from Zoning By-Law since the Board felt that the need exists for such a restaurant in the area.

3. DONALD R. SMITH - 42 Pleasant St., Dennisport. Dr. Carroll read legal notice requesting Special Permit to construct five tennis courts to be operated as a private club with second floor apartment and first floor office at above location. Mr. Smith was present and represented by Attorney Nicholas Mazzonei, who explained case had been before the Board previously and denied, but requesting a variance, which needed hardship proven. Now, Mr. Smith wants to run as a private club, requiring a Special Permit, and has taken out 28% of the courts. The Planning Board voted to allow Mr. Smith to re-appeal. Mr. Mazzonei spoke of a tennis club (Dennis Racquet Club) on Black Ball Hill, owned by Paul Sullivan, and other public courts on Rt. 6A near his office, which had not created any noise or nuisance; that he did not believe Mr. Smith's courts would be detrimental to neighborhood. He also showed pictures of Mr. Sullivan's private club in North Dennis, and mentioned that within 1/10 of a mile of Mr. Smith's property there is the Nazarene Church, motel and pool, guest houses, etc. He added there would be 7 - 8 cars per 1 1/2 hours, then leaving, which would not be detrimental to neighborhood. He said the Recreation Commission said the Town needed 27 courts and none have been built, and mentioned proposed courts on Sciasconset Ave. and Girouard property as not yet built. Mr. Mazzonei added that there will be arguments that it is low land, but felt that should be determined by Conservation Commission, not this Board. Mr. Teasdale asked about the proposed by-laws and any restrictions on membership, to which Mr. Mazzonei said it would be moral and character. Chairman Skelly read letter from Planning Board in favor since there is a need for tennis courts; also letter from Mrs. Alice Hughes in opposition. In response to Mr. Spruill, Mr. Mazzonei said they felt they would have at least 100 people already from requests. The fence is 9 - 10 feet high. There was discussion of property the Town tried to take, but Mr. Mazzonei said they were not building there. Mrs. Olga Noxon spoke, saying she was in favor as long as they were run under restrictions made by this Board; she also spoke of the fact it abutts FPZ area. She spoke of run-off water affecting other properties, as well as speaking of another club where dues are \$200-250 per year; hoping this would not be a cut-rate arrangement and that they would not ask for a liquor license. Attorney Myer Singer, representing Mr. Manning, an abutter, asked if he could ask Attorney Mazzonei some questions; if in fact this

club makes money, is profit going to Mr. Smith or to members? Mr. Mazzoni said he would answer in his rebuttal. Mr. Singer said those opposed were concerned that there could be a lot of noise and nuisance. He also questioned if it would be a private club or a venture for profit, and quoted Webster's definition of a club as "a group of persons associated for a common purpose." He cited a Framingham case of an individual wanting a private club in a residential zone. Mr. Singer suggested that various sections of the ZBL had not been met: 4.1, 3.1.4.5 (parking), a side line variance was needed, parking is closer than 25 ft. in front; that the plan does not show landscaping or distinction between upland and low land. Mr. Singer said he did not think petition should be heard. Mr. Mazzoni responded by saying he did not think a few cars for 1½ hours would be a nuisance; that nearby properties already suffer from water problems; that their cottages are very close to low land. He felt the water problem should be decided by Conservation Commission, not this Board. A Mr. Ellis spoke about some clubs in which members are allowed to grant privileges to others, such as guest houses, and asked what amenities are going to be offered. He added that it is possible for people to hang around after tennis, which would add to parking needs. His main objection was conversion from residential to commercial, and he objected to sound of hitting tennis balls. Mr. Spruill noted from the By-Laws that there is a Board of Directors, Mr. Smith as President and Attorney Mazzoni as Clerk. Mr. Mazzoni said this would be registered with Secretary of State. Mr. Flinkstrom said he felt Mr. Singer has made many cogent points, and felt they should come up with plans; he suggested they withdraw without prejudice. Dr. Carroll moved to recess and set new date with secretary. Mr. Singer felt this unfair to abutters unless they were noticed. Mr. Flinkstrom seconded Dr. Carroll's motion. Mr. Mazzoni asked if Mr. Singer would be agreeable to his getting names from secretary and sending out notices from Mazzoni's office. Mr. Singer felt there were other problems. Dr. Carroll withdrew his previous motion. Mr. Spruill moved to allow to withdraw without prejudice; seconded by Dr. Carroll. Vote: unanimous. Hearing closed 9:25 p.m.

4. CHARLES W. PROBST - Lot 13 (#60), Thorwald Drive, So. Dennis
 Dr. Carroll read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling at above location. Attorney Robert Clayton represented, and explained Mr. Probst had bought 4 lots in 1961 from Mr. L. Lovequist, and that he has house on one corner lot; that he wants to build on opposite corner lot, and that the other two lots would be added to his dwelling lot. Therefore, there would be only two houses on approximately 32,000 sq. ft. in an area where most lots are 8000 sq. ft. He added each house would be bounded by two unbuidable lots. Dr. Carroll asked if this would do this and put through Registry of Deeds, which Mr. Clayton agreed to do. Chairman Skelly suggested he could go to Planning Board with plan, and then get a variance from this Board. Dr. Carroll agreed since only financial hardship had been shown. Mr. Skelly read Planning Board letter in favor. There was discussion of granting contingent upon going to Planning Board. Mr. Walsh, an abutter, said he had no objection if this is the way it goes. Hearing closed 9:50 p.m. The Board's vote was unanimous to grant based on feeling that there would be hardship in having only one house on approximately 32,000 sq. ft.; also that it would not be detrimental to neighborhood nor substantially derogate from the Zoning By-Law, provided the above described procedure with Planning Board is strictly followed.

Distributed to: Members & Associates
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Nancy J. Perry
 Secretary

BOARD OF APPEALS

August 1, 1977

Convened: 7:30 p.m.

Adjourned: 10:10 p.m.

Present: Skelly, Carroll, Spruill, Baldwin, McCarthy (Mr. George Fallon present)

Staff: Taylor, Perry

Public & Press: Approximately 14

1. EVELYN M. ROSS - Lots 7, 14, 15 Salt Meadow Rd., West Dennis Dr. Carroll, as Clerk, read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling on above lots. Mrs. Ross was present and explained they had bought 11 acres in 1940 and that it took quite awhile to get through Land Court; that they subdivided in 1958, and that she has just retired and needs to sell to invest money. She asked for variances on Lots 7, 14 and 15, but not Lot 5, on which part of her home exists with Lot 6. She mentioned a reference to Lot 28, which is not involved, which she had exchanged some time ago with Baker Homes, Inc. Chairman Skelly asked about hardship, to which Mrs. Ross replied that all the other lots are 7500 sq. ft. in the area, and she had kept the property, though widowed 14 years, to maintain it. She agreed her house on Lot 6 is partly on Lot 5. Mr. Skelly noted that only hardship is change in ZBL, and the fact that the "grandfather's clause" was taken out. Mrs. Ross agreed with Dr. Carroll that Lot 7 was adjacent to Lots 5 and 6, and that she just wanted to convey as buildable lots. Mr. Skelly asked if she would be agreeable to combining Lots 14 and 15, combined, for a variance and a variance for Lot 7, to which she agreed. Mr. Garbardino, an abutter, said he would object to two houses on Lots 14 and 15. Mr. Rogers, #53, asked about combining. Mr. John Perulis, #17, asked how many lots are that size, to which Mr. Skelly said there were two. Dr. Carroll asked if Lots 5 and 6 are combined. Mrs. Ross said they had added a bedroom and went over the line, and asked if she would not be assessed for more. Dr. Carroll replied no. Mr. Baldwin noted if she came back, then she would not have sideline setback requirement. Mrs. Ross was asked if she would legally combine Lots 5 and 6. She said to change, she would have to move the septic system on her house. Mr. Wallen, #67, said he would object to two story or A frame house. Dr. Carroll said he did not think this Board has the right to say what kind of house, except that it be a single-family dwelling. Mrs. Ross said she would not like to see an A-frame herself. Hearing closed 7:59 p.m. The Board's vote was unanimous based on feeling hardship existed because of long-time ownership and changes in the Zoning By-Law; that it would not be detrimental to the neighborhood, nor substantially derogate from the intent of the Zoning By-Law.

2. LAWRENCE F. MURPHY - Lot 39 (#16), Kibby Lane, Dennis Port. Dr. Carroll read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling

August 1, 1977

at above location. Mr. Murphy was present, represented by Attorney Myer Singer, who presented facts to Board: That Mr. Murphy owns adjoining lot with house; that Lot 39 is only lot not built upon. He felt there was hardship in that it is undersized lot under ZBL, but not at time of purchase in May, 1972, and added Mr. Murphy was not aware of need to transfer title, so as to get protection for individually-owned lot. He said Mr. Henry Holden's appraisals were \$32,900 if house built on lot, with value of lot \$10,000; otherwise, if unbuildable, lot would be \$1,000. Mr. Singer added that many other lots in area are smaller; that it would not be detrimental to neighborhood, nor that he felt it would not substantially derogate from ZBL. Dr. Carroll stated he had visited the street on Sunday, and thought it was an expressway because that at 6:00 a.m. he also observed a great many cars. Mr. Murphy indicated he wanted to build a more permanent home for himself on Lot 39. Chairman Skelly read letters in favor from Ms. Betsy Morton, Ms. Mary J. Roche, Horace Swatwazer, and Camille Santi. Mr. Judy Gopian spoke in favor, as well as John Mendles and Philip Mariner. Mr. Skelly read a letter from Mrs. Theresa Snow in opposition. Dr. Carroll commented that most of that street is breaking the law in not having proper house numbers. Mr. Philip Mariner, from the audience, asked if they would like them to have number signs "that big?" Dr. Carroll said he was just trying to be helpful; that they might not get their mail, or the Fire or Police Departments might not be able to find you. Ms. Gopian said she had #45 and that someone else had the same. Hearing closed 8:20 p.m. The Board's vote was 3 to deny (Spruill, Carroll, McCarthy) and 2 to grant (Skelly, Baldwin). Those voting to deny felt there was no hardship with land; if combined with contiguous Lot 37 with dwelling, the total area would be only approximately 12,420 sq. ft. Also, they felt it would be detrimental to the neighborhood and would derogate from Zoning By-Law. Those voting to grant felt it would be in keeping with neighborhood, would not derogate from Zoning By-Law, and that there was a hardship to owner in having contiguous lots.

3. BAKER HOMES, INC. - Lot 27 (#25), Nipigon Way East, Dennis Port. Dr. Carroll read legal notice requesting variance from front yard setback requirement to construct single-family dwelling at above location. Mr. Michael Baker, and his surveyor, Mr. S. Sweetser, were present. Mr. Baker explained that they had poured a foundation, with one corner too close to street; that there had been an engineering error in Mr. Sweetser's office - that they miscalculated 53 feet, which should have been 46 ft. Therefore, it showed as being the correct 25 ft. setback; then we found the mistake of being 3.2 ft. off at one corner. He added that everything was in conformance other than this error. He said it would be a hardship if foundation had to be knocked down and repoured; that he did not think it would be detrimental to area. In response to Mr. Spruill, Mr. Baker confirmed error was made by engineer and that he had stopped construction. Dr. Carroll again requested correct house numbers, which Mr. Baker said he would do. Hearing closed 8:39 p.m. The Board's vote was unanimous to grant based on belief that hardship existed if foundation, poured incorrectly.

due to surveyor's error, had to be removed and replaced; also that it was a diminuous variance from the Zoning By-Law, and that it would not be detrimental to the neighborhood.

4. OLD BARN CLUB, INC. - 626 Main St., Dennis Port

Dr. Carroll read legal notice requesting variance from the Sign Code to add to existing sign at above location ("Improper Bostonian"). Mr. David Hickey represented and said they wished to add to existing sign. Chairman Skelly noted that the application is not completed, does not give zoning district and many other items. The secretary said she had not realized so many items missing due to checking so many abutters for all five hearings. Mr. Hickey said he had better material but that it was in New York; that they are now required to serve food under common victualer license, and wanted to add sign to draw attention to serving of food. He said, in response to Mr. Skelly, that present sign is about 18 ft. from road, that they have 48 ft. and want to exceed 4 ft. He added they meet bare requirements as to serving food, which Dr. Carroll thought was 50-50. The Board made various suggestions: Incorporating "food" sign into existing sign; having "food" sign on other side, further from road, all of which Mr. Hickey did not want to do. After further discussion and with many exact figures missing, Dr. Carroll moved to continue for two weeks; seconded by Mr. Baldwin. Vote: unanimous. Hearing closed 9:00 p.m.

5. LeROY B. & ELEANOR S. BLOOM - Lot 10 (#41), Nipigon Way East, Dennis Port.

Dr. Carroll read legal notice requesting variance to construct deck on existing dwelling at above location. Mr. & Mrs. Bloom were present, and Mr. Bloom explained he was seeking variance for a deck he had himself constructed about a year ago; that the bounds had been moved and he was not aware he had gone over the setback. One corner of deck is about 4 ft. from the property line. He added no abutter had said anything about this and he did not realize; to take part of it down would cost a great deal. Mr. Baldwin asked what had brought it to his attention. Mr. Bloom said Mr. Roland Taylor left them a notice that a complaint had been made. Dr. Carroll noted that the Blooms were on a corner, which caused problem, to which Mr. Bloom agreed. He further explained that it was part of the original plan, but he had built himself in connection with agreement with Mr. Baker. Mr. McCarthy asked about size, which is 18 x 12 ft. plus side. Mr. Bloom said he would have to reduce to 6 ft. in order to comply, instead of 12 ft. Mr. Spruill asked about hardship; Mr. Bloom said he would have to remove about 6 ft., and move cement block supports. Chairman Skelly read letter in opposition from Mr. J. Edmund Harris, 15 Northern Avenue. Mr. Bloom stated that Mr. Harris' home is about 61 1/2 ft. from their deck, and that his house was constructed after deck was built. In response to Dr. Carroll, Mr. Bloom said they would be year-round residents eventually. Hearing closed 7:17 p.m. The Board's vote was unanimous to grant based on belief that since deck was intended to be part of the house originally, there was be hardship to have to tear it down considerably. In addition, the Board felt it would not cause any disturbance in

August 1, 1977

the neighborhood, nor substantially derogate from the Zoning By-Law.

Nancy J. Perry
Secretary

Distributed 2/8/78 to:

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BOARD OF APPEALS

August 15, 1977

Convened: 7:36 p.m.

Adjourned: 8:45 p.m.

Present: Skelly, Carroll, Flinkstrom, Spruill, Fallon
(In Attendance: Baldwin, Lizotte)

Staff: Taylor, Perry
Public & Press: Approximately 4

1. CHARLES W. PROBST - Lots 13 & 1r, Thorwald Dr., Lots 17 & 18, Lief Ericson Dr., South Dennis

Dr. Carroll read legal notice requesting variance from 20,000 sq. ft. minimum lot size to construct single-family dwelling on Lots 13 & 14, combined, and to combine Lots 17 & 18 where dwelling exists. Chairman Skelly explained that this case had been heard before and that only Mr. Fallon was unfamiliar with facts. He added that Dr. Carroll had previously suggested a different way to combine lots than requested, but the attorney did not have permission of client to change, but has come in again with request as per Dr. Carroll's suggestion. Attorney Robert Clayton represented, and explained he had contacted his client and convinced him that the present petition is a more sensible way of dividing property. He and his client felt it would be better for the neighborhood. Mr. Skelly commented that Mr. Clayton had been good enough to return with plan suggested by Board, and asked for any comments, of which there were none. Hearing closed 7:40 p.m. The Board's vote was 4-0 (Mr. Fallon abstaining) to grant since they felt there was a hardship in long ownership of contiguous lots; that it would not be detrimental to neighborhood, rather upgrade, and that it would not derogate from Zoning By-Law.

2. OLD BARN CLUB, INC. - 676 Main St., Dennis Port, (Cont. from 8/1/77)

Dr. Carroll read legal notice requesting variance from the Sign Code to add to existing sign at above location. Mr. David Hickey again represented, and explained he had more information, and they had been required to spend \$4,000 to put in food facilities. In response to Mr. Skelly, Mr. Hickey said no plot plan was available. Mr. Skelly stated he did not know how he could approve a plan if we don't have a plan; that he only needed a majority vote for a sign code variance. Mr. Hickey said distance was 20 ft. 4 in. presently, with 15 ft. 10 in. on new sign. Dr. Carroll questioned application reading 4 x 8 = 16 ft. Mr. Hickey said it would be a 4 x 4 addition. Mr. Skelly read Section 11 of the Sign Code, which deals with requirements as to specifications, location on premises, etc. Mr. Hickey's response was "Would you please then deny application - I don't want to waste any more of your time." Mr. Spruill noted top section would be advertising food and would

be changing daily. Dr. Carroll commented that present sign seems to be 96 sq. ft. Mr. Hickey showed several pictures of present and proposed sign. Dr. Carroll questioned regarding being 18 ft. back from street and wanting approximately 40 ft. additional. Mr. Hickey said they had ordered one 72 sq. ft., but were ordered to take it down. Dr. Carroll stated they now have 96 sq. ft., over 36 sq. ft.; now want 16 sq. ft. more - making 52 ft. over. Mr. Hickey again told the Board that no plot plan was available. In response to Dr. Carroll, Mr. Roland Taylor said he felt present sign is 96 sq. ft. Mr. Skelly again quoted from Sign Code, and said he could not vote on something not specific; he told Mr. Hickey the Board could allow him to withdraw or vote. He added the Board has rules that certified plot plans be required as in Sign Code. Dr. Carroll again asked Mr. Hickey if he wanted to withdraw without prejudice or request vote. Mr. Hickey said he would prefer vote. Hearing closed 8:58 p.m. The Board's vote was unanimous to deny with Mr. Fallon abstaining since he had not heard testimony on case continued from August 1, 1977. The Board felt the petitioner had not provided all materials required by the Board, such as plot plan and specific dimensions, even with a two-week continuance. They also believed the petitioner was already 52 ft. in excess of the size allowed in the Sign Code, and that a further addition would substantially derogate from the intent of the Sign Code. In the course of the hearing, the appellant asked the Board to deny his petition.

3. MR. PAUL ENDRES - Appeared informally to discuss moving ice cream parlor on Lower County Rd. to a different location in order to get Board's reaction. He explained he was considering buying $\frac{1}{2}$ acre lot, which would give him ample parking. If he can acquire property, the Board's general reaction was favorable, but he was reminded that a certified plot plan and parking plans would be required.

Nancy J. Perry
Secretary

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BOARD OF APPEALS

September 19, 1977

Convened: 7:30 p.m.

Adjourned: 11:42 p.m.

Present: Carroll, Fallon, Spruill, Flinkstrom, McCarthy
(Baldwin present)

Staff: Taylor, Perry

Public & Press: Approximately 8

1. LANDMARK HOMES, INC. - Off Airline Road, East Dennis

Dr. Carroll, sitting as Chairman, explained procedures and introduced members and secretary. He then read legal notice requesting a Special Permit under Section 4.4 of the ZBL to construct Open Space Village for 87 homes at above location. Attorney Robert J. Donahue and Surveyor Richard Baxter represented. Mrs. Braddock, an abutter, asked about easement on plan, which Mr. McCarthy explained was a Cape & Vineyard overhead easement. Mr. Fallon questioned if all procedure requirements had been met, to which Dr. Carroll replied they had. Attorney Donahue explained the plans were submitted to the Planning Board and Conservation Commission, and submitted preliminary plan to this Board; that the Planning Board had approved in the Spring. He added that Open Space set aside is approximately 14 acres, and the Board has proposed deed to be given to owners of lots. Mr. Fallon asked if final plan was the same as submitted to Planning Board; Mr. Baxter said it was. Mr. McCarthy inquired about frontage not being shown on some lots, if open space could be met, and what would happen if the title were not clear. Mr. Donahue said he did not do title. Mr. McCarthy also asked if it would be done at once or in parcels, but Mr. Donahue said he could not answer that. When asked about 20 ft. walk-ways, Mr. Baxter and Mr. Donahue said they were intended to be in open space. Mr. McCarthy felt these walk-ways should be included in agreement regarding the rights to get to open space; also questioned about running a truck through a given lot and the right to go over other lots. Mr. Baxter said they would completely restore. In response to Mr. Spruill, Mr. Donahue said the President is John Manoog, the Clerk is Jean Manoog. Mr. Spruill also questioned whose responsibility for open space. Mr. Donahue replied that he assumed eventually the owners would assume responsibility; that the deed would be recorded at the Registry, and open space left in natural state. Mr. Baxter stated that common land is upland except for some on bogs. Mr. Fallon asked if they would try a "grid" plan. Mr. Baxter said no because a conventional plan could have many driveways on Airline Road; that this plan has a much safer road. Mr. Flinkstrom questioned doing it all at once or in stages, but Attorney Donahue expected they could proceed ahead, and confirmed they would be single-family homes. Mr.

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McCarthy inquired if it would be locally financed or Home Farmers Loan Bank; Mr. Donahue thought it would be local; also that he doubted that walk-ways would be paved. Dr. Carroll read letters from Conservation Commission and Planning Board, referring to large lots on Bakers Pond. Conservation recommends omitting these five lots; Planning Board recommends reducing from five to three lots as a great improvement. Dr. Carroll stated that he felt the lots on Pond could be cut back and leave undeveloped near Pond; he referred to Peters Pond in Mashpee as example. Mr. Donahue said he could not speak for developer on dropping lots. Mr. Baxter reminded that Conservation Commission has jurisdiction within 100 ft. of Pond and that houses would be built near road. The secretary noted that they cannot even cut trees within 100 ft. of wetlands without permission. Mr. Fallon felt that the use of the Pond would be an attractive nuisance if owned by everyone, and could see potential hazard if owned by everyone. In response to Mr. Spruill, Mr. Donahue said they would sell as "package", not individual lots. Dr. Carroll noted that Town Counsel has approved the Master Deed. He then recognized Attorney Charles Desmarais, who said he was representing Mr. Ulrich, an abutter, who claimed title to a portion of the plan. He added that in 1956 Attorney Henry Smith represented and checked the easement to Cape and Vineyard; that Mr. Eastman of the Jacob Sears Library discussed sale; that Mr. Ulrich saw surveyors, has had their riding stables fenced in; and referred to adverse possession. Mr. McCarthy asked if Mr. Ulrich owns this, how much land is involved. Mr. Donahue said only the land he has fenced in. Mr. Fallon suggested Special Permit with notation that it could not be valid unless title is in Landmark, then come back. He also quoted sections 4.4.2 and 4.4.3, and felt the Board should approve. Attorney Donahue said the Board should realize he would agree Board's approval would cease, but that Mr. Ulrich can only claim land fenced. Hearing closed 8:28 p.m. The Board's vote was unanimous to grant based on belief that the petitioner has met all the provisions of the Zoning By-Law, under Section 4.1, and that the proposed Open Space Village is a much better use than a grid plan; that problems involved in access and egress have been eliminated by this plan. The Board also noted they have met minimum setback requirements; the minimum lot sizes have been defined. In addition, the deed covenant for "High Pines" has been approved by Town Counsel, and the Board has stipulated the rights of home owners to utilize the 20 ft. walk-ways on the plan. The Board did not feel it would be detrimental to the community or neighborhood. No construction can commence until title is clear to all land on plan.

2. EDWARD & JUDITH BOYLE - Lots 1, 2, and 3, Grazing Field Lane, Dennis

Dr. Carroll read legal notice requesting variances from minimum lot size of 20,000 sq. ft. to construct single-family dwellings

on above-named lots. Mr. & Mrs. Boyle were present, and Mr. Boyle explained they had purchased land in 1962; that taxes of \$500 per year had been since then. He added that they could have put in six lots, but felt four lots more in keeping; that Lot 4 was sold to Mrs. Purdy in 1972. He further explained that when Norman Hallett and others developed, they had a 30 ft. right of way over his land, and they agreed to put in underground utilities for his four lots. He added they were honest and did not try to "checker-board", and that it conforms to neighborhood. One is old homestead land, "The Willows", others run from 9,000 to 17,000 sq. ft. plus two large ones which are watershed. He said his hardship is that he has paid taxes and would like to sell two lots and pay off mortgage on Willows, which is his home. Mr. Boyle said they had given up land to clouded title, and did not think they could sell lots at 22,000-24,000 sq. ft. size. Mr. Spruill asked if they were appraised for \$12,500, to which Mrs. Boyle said they were being taxed as buildable lots. Dr. Carroll commented that if we ask you to make two lots, it would be over 20,000 each. Mr. Spruill favored two lots. Dr. Carroll read Planning Board letter recommending against granting. The secretary reported on a telephone call from Attorney-Nicholas Mazzone, a direct abutter, as being in favor. Mr. Boyle explained that there was a buffer of trees between lots and Mr. Mazzone, and said he had been told that if his appeal for variance is turned down, they would have to wait for two years. Mrs. Boyle asked if Planning Board had tax information when their letter was written; Dr. Carroll and secretary responded they did not. Hearing closed 9:00 p.m. The Board's vote was 3 to deny (Fallon, Spruill, McCarthy) and 2 to grant (Carroll, Flinkstrom). The majority vote felt that hardship had not been proven, nor that their case was different, and that it would derogate from Zoning By-Law. The minority vote believed hardship existed in long-time ownership, and that making two lots out of three would create two lots of almost 23,000 sq. ft., almost 3,000 sq. ft over R-20 zone requirement; also that it would not derogate from Zoning By-Law, nor be detrimental to neighborhood.

3. THE HORNBOOK STORE, INC. - 585 Main Street, Dennis

Dr. Carroll read legal notice requesting Special Permit for bookstore at above location. Mr. Peter McDowell, owner of the property, and Ms. Margaret Hudson, the lessee and applicant were present. Mr. McDowell explained that he had ordered a plan showing 51 parking spaces, which he has not received yet. He added that they expect to have five more Special Permits requested on October 3rd, and that all parking is covered. He said the total area of his building, plus Avis Carter (beauty salon) does not require a total of 51; that the bookstore was only 640 sq. ft. Ms. Hudson said she was trying to make it mainly a children's bookstore and handicapped children and adults, plus tapes and records. Dr.

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Carroll asked if she were going to have braille. She said she hoped to in the future, plus toys and story hours. In response to Mr. McCarthy, she said she would rent and re-rent these. Mr. Flinkstrom felt proposal is useful addition in that it is commercial but educational. Ms. Hudson said she would have no employees for now. Mr. Spruill asked if so many parking spaces would be given to each business. Mr. McDowell said we would want to be cooperative, and have employees park in rear. Ms. Hudson said she would like her hours to be 9:00 a.m. to 5:00 p.m. and sometimes on Sundays; also, added she had had experience with handicapped. Dr. Carroll read letter from Planning Board in favor. In voting, Selectmen Henry Kelley II, from audience, asked if landlord complies with trees, etc. Mr. Fallon suggested that lessee could not, herself, comply with parking, which is why he disagreed with Town Counsel that lessee should seek Special Permit, rather than landlord. Hearing closed 9:25 p.m. The Board's vote was unanimous to grant based on belief that it would not be detrimental to neighborhood, nor derogate from Zoning By-Law, but with provision that landlord comply with all Zoning By-Law requirements, including parking.

4. RUSSELL L. DOANE - 360 Hokum Rock Road, East Dennis

Dr. Carroll read legal notice requesting a Special Permit to operate auto body repair shop at above location. Mr. Doane and Mr. Peter McDowell, the owner of the land, were present. Mr. McDowell explained he was renting to Mr. Doane; that the building has been used for building construction, then auto repair (Mr. R. Bates), who built his own building on Hokum Rock Road. He added he was not sure whether it applied under GCI or GC II, or whether parking was required. He stated that there is an existing building and most parking would be inside; that there is a remaining half of the building. Dr. Carroll asked about a trailer there, which Mr. McDowell said was a trespasser, and added there was 1200 sq. ft. each side. There was question of whether Mr. Bates had had, or needed, a Special Permit when he was lessee. Mr. Doane said there would only be parking when someone in to discuss business; that he would send other business than body work to Mr. Bates. In response to Mr. Spruill, Mr. Doane admitted there is a noise level, but that it can be controlled; and in response to Mr. Fallon about where he would store wrecks, he said he did not intend to store, would probably have Dennis Garage or someone else store; that he would take orders over weekend and have stored. Dr. Carroll asked how many employees, which Mr. Doane said would be himself and his brother, and later probably two others. Mr. McCarthy asked if the Board granted a Special Permit with the

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stipulation of no outside storage, would it be a hardship. Mr. Doane felt no. Mr. McCarthy commented that there is a place on Atlantic Avenue which is a disgrace. Mr. Doane said he had discussed with Mr. McDowell about putting up a fence. Mr. McDowell said he thought Mr. Doane was talking about outside storage for remains of wrecks; could the Board allow this fence? Dr. Carroll read Planning Board Letter regarding providing parking plan before granting permit. Hearing closed 9:20 p.m.

Recessed until 9:30 p.m. As the Board started to vote, Dr. Carroll and Mr. Flinkstrom voted to deny, largely on the basis of lack of parking and whether or not the area might not be suitable because of possible nuisance and hazard at this particular location. Mr. McCarthy suggested continuing the hearing to give Mr. Doane more time to come back with an acceptable parking plan. Messrs. Fallon and Spruill concurred. Dr. Carroll asked if Mr. Doane could come back within 2-4 weeks with better parking plan, which he said he could do. Hearing continued.

5. Mr. Thomas Kelley appeared informally regarding the Stroum FPZ variance, Regan Road, West Dennis, denied by Appeals Board on 2/7/77. He explained that the previous house plan had a full, walk-out basement, and required a 50% variance; that the Bay Colony Bank now has taken over title, and that they had asked him to discuss informally what the Board might consider as an alternative. He proposed a design that only utilities could be placed in basement and balance of foundation would be 30" crawl space, with no living space in basement. He would like to come in with preliminary sketches. Mr. Fallon said he would want to see something to think about legally. Mr. Kelley would return on October 3rd informally.

6. Selectman Henry Boles appeared informally regarding Housing for the Elderly proposed on Route 134, to be built by Lewis Gordon (Mr. Boles being the architect). He explained it would be the same number of units (64), but Farmers Home Bank has said they had to be one-story, not two-story, and pointed out that there is no provision for elderly housing in ZBL. He added that if this were normal housing there would be 45 bedrooms - 90-92 people - instead of 64; that the F.H.L.B. requires 10% handicapped. The land is 322,974 sq. ft. Mr. Fallon inquired as to how far back from Golf Course; response about 400 ft. Dr. Carroll noted that 3 units per acre would give you 24 units, and questioned 64 units. Mr. Boles' reply was that intent of the ZBL was to control number of people and the subdivision would have more people; that the subdivision would have to be rescinded. Mr. Allen Collette, Greenwood Rd., an abutter, questioned control of the 64 people, or could it be more. Mr. Fallon questioned the safety factor on a main highway for the tenants and others. Mr. Boles said the F.H.L.B. has committed over 1 million dollars to this, and owner has spent \$27,000, for plans; that the next step would be to retain others

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for plans, landscaping, etc. Selectman Henry Kelley II, from the audience, spoke, stating that as a private individual, he felt a moral need for housing for everyone in Town; that from a public point of view, he believed the Town has made every effort to establish density rules, even though the Appeals Board can make exceptions as long as they don't derogate from ZBL. He said he is also an abutter, and has discussed their purchasing his land. He noted ZBL change from 1972 established 3 units per acre with the intent of what the population of Dennis should be. He said he knew of another parcel done privately; the Board might have to make decision of where to draw the line between private and semi-public. His main view was whether this land should have 25 people vs. 68 people. He felt there is a better spot in Town for such a project, though Mr. Boles is saying that a lot of time and money has been spent. Dr. Carroll noted the Board had said they looked favorably upon this, which Selectman Kelley felt was a mistake. Mr. Collette said he represented other abutters, and they were concerned. In response to Mr. Flinkstrom about cutting down the number of units, Mr. Boles said it must be in multiples of 4. Dr. Carroll suggest 48. Mr. Kelley said the price of the land is about 5% and 95% for buildings, and suggested devoting more cost toward land.

7. Mr. Paul Endres and his agent, Mr. Richard Arenstrup appeared informally to discuss seeking Special Permit for ice cream restaurant, as well as variance to extend non-conforming rear setback to construct addition to barn, rather than bringing building addition forward. They will also need variance for parking. Mr. Fallon commented that financial gain is not considered hardship.

Nancy J. Perry
Secretary

Distributed: 2/8/78 to:

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Building Inspector
Executive Secretary
Town Clerk
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BOARD OF APPEALS

October 3, 1977

Convened: 7:35 p.m.

Adjourned: 9:55 p.m.

Present: Skelly, Carroll, Flinkstrom, Spruill, Baldwin
Staff: Taylor, Perry
Public & Press: Approximately 15

1. JOHN H. GRIFFIN - 585 Main Street, Dennis

Dr. Carroll read legal notice requesting Special Permit to operate publishing office at above location. Mr. Peter McDowell, owner of the property, was present to represent Mr. Griffin; Mr. McDowell had today submitted plans showing number of parking spaces and also presented large plan by surveyor. He showed figures for large building (4,698 sq. ft.), plus other building (1,000 sq. ft.), plus apartment. Using formula of 1 parking space of one for each 150 sq. ft., he said 47 would be required, and plan shows 51 spaces. He added each one shares, and employees would park in rear; that he has potential for expansion if necessary. Dr. Carroll commented that the complex is good-looking, but asked if some shubbery or flowering trees could be added. Mr. McDowell said they had worked around some existing trees, planted others, roses along a fence, and plan to put in more. Mr. Skelly read letter from Planning Board recommending granting Special Permit, as well as to companion cases: Fallon, Carter, Wolf, Eagen. Hearing closed 7:50 p.m. The Board's vote was unanimous to grant based on belief that proposed use would not cause any noise, nuisance or congestion in the area and would not derogate from Zoning by-Law requirements, but with provision that landlord comply with all Zoning By-Law requirements, including parking.

2. GEORGE FALLON - 585 Main Street, Dennis

Mr. McDowell was present to represent, and explained Mr. Fallon intends to use on a part-time basis for a legal office upstairs. Parking plans presented were the same as previous case. Hearing closed 7:56 p.m. The Board's vote was unanimous to grant based on belief that proposed use would not cause any noise, nuisance or congestion in the area and would not derogate from Zoning By-Law requirements, but with provision that landlord comply with all Zoning By-Law requirements, including parking.

3. RUSSELL L. DOANE - 360 Hokum Rock Road, East Dennis (Cont. from 9/19/77)

Dr. Carroll read legal notice requesting Special Permit to operate auto body repair shop at above location. Mr. Doane and Mr. Peter McDowell, owner of property, were present. Mr. McDowell said they were aware of Board's concern about parking, and drew attention to Westerly borderline; he felt it would be appropriate to add a

stockade fence on the front, going before O.K.H.R.H.D. Committee for approval. He said they were adding four parking spaces and four spaces within the stockade area. He admitted there was a lot of debris to clean up and that they wanted to update to new ZBL. He said they would rather not pave, but use bark chips or something similar; he also suggested perhaps arborvitae, rather than fence. In response to Mr. Flinkstrom, he said they wanted to put a stockade fence on other side to allow for storage if not inside. Hearing closed 8:04 p.m. The Board's vote was unanimous to grant based on their feeling that applicant has now presented plans providing for adequate parking and storage so as not to be detrimental to neighborhood, nor derogate from Zoning By-Law. Hours of operation are limited to 8:00 a.m. to 6:00 p.m. on Monday through Saturday, with no work on Sunday. The Special Permit is granted conditionally on a two-year review at which time the petitioner must appear before the Board of Appeals.

4. AVIS E. CARTER - 585 Main Street, Dennis

Dr. Carroll read legal notice requesting Special Permit to operate beauty salon at above location. Mrs. Carter was present and explained she had been there about a year; that it was an oversight not to have applied sooner and that she had had same business a short distance previously. She added there are seven parking spaces, usually never more than five filled at one time; also there were only herself and 1½ employees. Parking was covered as in previous Griffin and Fallon cases. Hearing closed 8:08 p.m. The Board's vote was unanimous to grant based on belief that proposed use would not cause any noise, nuisance or congestion in the area and would not derogate from Zoning By-Law requirements, but with the provision that landlord comply with all Zoning By-Law requirements, including parking.

5. JANE RICE WOLF - 585 Main Street, Dennis

Dr. Carroll read the legal notice requesting Special Permit to operate gift shop at above location. Mrs. Wolf was present, and explained that she opened June 15th, and hoped to be year-round except for a couple of weeks in February. Parking was covered as in previous cases at this location. Hearing closed 8:18 p.m. The Board's vote was unanimous to grant based on belief that proposed use would not cause any noise, nuisance or congestion in the area and would not derogate from Zoning By-Law requirements, but with provision that landlord comply with all Zoning By-Law requirements, including parking.

6. Mr. Peter McDowell asked if the Board would consider talking with Planning Board about a "blanket Special Permit" - that he understood usually the owner of the business applies, rather than the owner of the property. Mr. Flinkstrom felt the present procedure provides an additional filter of protection of specific use.

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7. JAMES EAGAN - 585 Main Street, Dennis

Dr. Carroll read legal notice requesting Special Permit to operate structural engineering office at above location. Mr. Eagan and Mr. McDowell were present. Mr. Eagan explained the nature of his business, and Mr. McDowell added that Mr. Eagan has an office in Boston, lives in Dennis, and eventually hopes to transfer his business here, at which time he would need more space than he could provide. Parking covered as previous cases. Hearing closed 8:43 p.m. The Board's vote was unanimous to grant based on belief that proposed use would not cause any noise, nuisance or congestion in the area and would not derogate from Zoning By-Law requirements, but with provision that landlord comply with all Zoning-By-Law requirements, including parking.

8. ARTHUR J. LEWIS, JR. - Lot G-3 (#6), Old Fish House Rd., So. Dennis

Dr. Carroll read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling at above location. Mr. Lewis was present and said his law office was at 120 Tremont Street, Boston, and has summer home on Old Sailor Way, So. Dennis. He said he felt the ZBL passed in 1973 deprived him of beneficial use of that lot and was confiscatory; that the ordinance precluded him of use and that he had paid taxes as buildable lot, which he felt was hardship. He added most lots in area are 8500 sq. ft., some are 10-11-12,000 sq. ft. He said his intention in buying was to build on that lot and give other house to his children. His problem is that lots are contiguous and in same title, tenants by the entirety. He felt it would not be detrimental to neighborhood and knew of no objection. He added that it would not be commercial, but for his own use, and stated lot size was 10,500 sq. ft. Mr. Baldwin asked if granted variance, would he go ahead with plan to build, and how old his children were. Mr. Lewis said his children were 7, 6 and 3; that he had no intention of building right now, but thought he should get the variance if possible. Mr. Flinkstrom noted that normally when the Board issues a variance, there is a two-year time limit in which to build, which he thought Mr. Lewis should keep in mind. Mr. Lewis said he did not realize this; that this might force him to build, since it is a financial hardship, since he paid \$4,500 for the lot. Mr. Baldwin asked if it wouldn't be a temptation to sell as buildable lot or build and sell, to which Mr. Lewis agreed it might be true. Chairman Skelly noted there is discrepancy on application of lot size being 10,700 sq. ft., as shown on 1950 plan, whereas Assessor's Office carries the lot as 8,500 sq. ft. Dr. Carroll noted that there are other small lots in the area on which people might want to build. Mr. Lewis asked if Town has accepted Chapter 808; the answer was no. Mr. Lewis

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said he (as State Senator) had voted for "808" and thought there would be a lot of law suits. Dr. Carroll suggested he could sell the lot for \$8-10,000, over \$4,500 purchase price. Mr. Lewis claimed that under "808", there would not be a variance, only permits for one year, under the Act as amended. He felt the ZBL was depriving him, taking without eminent domain, and confiscatory. Mr. Baldwin noted, if granted, you would have to build and to maintain, would use as rental; asked if other rentals in area? Mr. Lewis said there were a few. In response to Mr. Spruill, Mr. Lewis said he had purchased lot G-3 about four years ago (4/6/73). Mr. Lewis repeated that he felt he was being deprived, and felt it would not affect other lots in the area. Mr. Skelly read Planning Board letter against granting. Hearing closed 9:10 p.m. The Board's vote to deny was 3 (Skelly, Flinkstrom, Spruill) to 2 to grant (Baldwin, Carroll). The majority opinion was based on not finding substantial hardship with the land; that this lot combined with contiguously owned lot would be only 600 sq. ft. over required minimum of 20,000sq. ft. They also felt that granting would derogate from the intent of the Zoning By-Law as expressed at Town Meeting. The minority opinion was based on finding hardship in not allowing a person to use his land for original purpose; that it would not be detrimental to neighborhood, nor derogate from Zoning By-Law.

9. Chairman Skelly nominated Mr. Charles Flinkstrom as Vice Chairman of the Board of Appeals; seconded by Dr. Carroll.
Vote: Unanimous.

Nancy J. Perry
Secretary

Distributed 2/8/77 to:

Members and Associates
Building Inspector
Executive Secretary
Town Clerk
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BOARD OF APPEALS

October 17, 1977

Convened: 7:30 P.M.

Adjourned: 1:45 A.M. 10/18/77

Present: Skelly, Carroll, Flinkstrom, Fallon, Spruill (McCarthy present).
Staff: Perry
Public & Press: Approximately 100 plus

Chairman Skelly briefly explained the procedure: when required, a person will address the chair only; first the petitioner will present his case, then those opposing may speak, and Board members may ask questions, going through Chairman.

1. JOHN D. ERB - Lots 16, 17, 2, 3, 4 - Erb Drive, Dennis

Dr. Carroll read legal notice requesting variances from minimum lot size to construct single-family dwellings on the above numbered lots. Mr. Erb was present and represented by Attorney Elliott Slade, who requested that the Board waive the appeal re Lots 2, 3, and 4; that Mr. Erb would like to make these three lots into two lots. Dr. Carroll moved to permit to withdraw without prejudice on Lots 2, 3, 4; seconded by Mr. Skelly. Vote: unanimous. Mr. Slade then proceeded to discuss Lots 16 and 17, explaining that they were purchased in 1946; that due to recent economic recession, they did not sell, and have now lost 7-year protection last April. He said Lot 16 is assessed for \$20,500, and Lot 17 for \$20,400; that there are many fine homes in area assessed for \$140,000-\$180,000. This he felt would be consistent with neighborhood, and said this would be to sell lots, not for Mr. Erb to build. Mr. Fallon asked about financial hardship and purchase price. Mr. Erb was not sure, thought about \$67,000. Mr. Fallon commented that loss of financial gain is not a hardship according to Supreme Court. Mr. Flinkstrom asked if these are last to be developed; Mr. Slade said they were going to combine the other three into two; that these would be the last. Dr. Carroll noted appeals board case in Town of Milton, where the Court held that forcing combining of lots to exceed requirement created hardship. Mrs. A. Dingman, from audience, asked why they could not combine the lots. Mr. Skelly noted there might be hardship in topography. Hearing closed 7:47 p.m. The Board voted to grant (4-1) based on belief that hardship existed in long-time ownership and land, plus the fact that combining Lots 16 and 17 would far exceed Zoning By-Law required size; also that it would not be detrimental to neighborhood, nor derogate from Zoning By-Law. The minority vote was based on belief that hardship was not proven.

2. RICHARD I. SHEA - Lot 32 Vesper Drive, Dennisport

Dr. Carroll, Clerk, read legal notice requesting variance from Flood Plain Zoning to construct single-family dwelling at above location. Chairman Skelly noted that although the plan does not indicate, the Town Engineer had found out that the elevations were based on "mean sea level." Mr. Shea explained he had bought land in 1969, and subdivided in 1970 before Conservation Commission or Flood Plain Zoning. He added he had not been in a hurry to develop; that since then the Conservation Commission had been very fair to him, and this is the only lot he did not fill. Mr. Shea

BOARD OF APPEALS

November 7, 1977

Convened: 7:38 P.M.

Adjourned: 9:45 P.M.

Present: Skelly, Carroll, Flinkstrom, Spruill, Lizotte (Baldwin present)
Staff : Taylor, Perry
Public & Press: Approximately 15

1. SAMUEL F. GREGORY - Lots 211 & 212 combined, Bob White Lane, So. Dennis

Dr. Carroll read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling at future time, but to maintain in its natural state for the present at above location. Mr. Gregory explained that variance on these lots granted to Dr. Samuel Dibbins in July, 1978; lots combined are 19,230 sq. ft.; that he would like to keep in natural state and build at some future date. Dr. Carroll suggested, but Mr. Gregory said he did not want to come back every two years. Chairman suggested going to Planning Board and combine into one lot, which would give 5 years protection. Mr. Skelly read letter from Mr. Nelson in favor. Dr. Dibbins and Mr. Bob Davis spoke in favor. Hearing closed 7:50 P.M.. The Board's vote was unanimous based on belief that hardship existed because of two-year limitation for completion of construction stipulated in previous variance granted to prior owner; also that it would not be detrimental to neighborhood, nor substantially derogate from Zoning By-Law.

2. ELLIOTT & MARGARET BASSETT - Lots 15 & 16, New Boston Road, Dennis

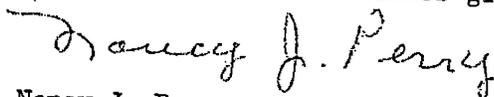
Dr. Carroll read legal notice requesting variances from minimum lot size of 20,000 sq. ft. to construct single-family dwellings at above locations. Mr. Bassett was present and explained they wanted to build homes for his son and brother-in-law next to his own house. Regarding hardship, he said they wanted to build a family complex. Mrs. Greaney, an abutter, looked at plan and asked about 60,000 sq. ft. zone; was not in favor. Mr. Bassett said he would have to sell as one lot without variance. Mr. Wallace Hanger said Mr. Bassett had assured him re access. There was discussion of nearby Town owned land, but Mr. Skelly pointed out that these lots are further away than Mr. Bassett's built on lot. Mr. Bassett said they would be built with 1-2 years, be 24 x 32 ft. with garage, and that he had spoken with Mr. William Hanger, who was in favor. On question of Dr. Carroll, he said he son was a singer in N.Y.C... Hearing closed: 8:08 P.M.. The Board's vote was 4 to grant (Skelly, Carroll, Spruill, Lizotte) 1 abstention (Flinkstrom). The majority vote was based on belief that hardship existed in long-time ownership and change in Zoning By-Law, as well as the fact that to combine the two lots would considerably exceed the required minimum of 20,000 sq. ft.. They also felt it would not be detrimental to neighborhood, nor substantially derogate from Zoning By-Law. The abstention vote was based on belief that hardship was not proven.

3. MARSHALL & EMMA DAY - Lot 500, Shore Drive, Dennis

Dr. Carroll read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family at above location. Attorney Charles Crowell represented Mr. and Mrs. Day, who were present. Mr. Crowell explained they had bought property in 1964, are getting older, and would like to sell this lot rather than pay taxes; that lot is 18,125 sq. ft. and that it would be a single-family dwelling; that they wished to sell instead of build. He further stated that Lots 502 and 503 have been combined and Lot 504 has been sold. Mr. Day explained that when the Town took land for parking lot, it cut down on the size of my lots, which he presented as hardship. He added he had the lot sold subject to variance being granted. Hearing closed: 8:22 P.M.. The Board's vote was unanimous based on belief hardship existed since the lot was only slightly under the required 20,000 sq. ft. and the Town had taken by eminent domain for parking, which reduced its size. They also felt it would not be detrimental to neighborhood, nor substantially derogate from Zoning By-Law.

November 7, 1977

4. EVELYN M. ROSS - Lot 5, Salt Meadow Road, West Dennis
Dr. Carroll read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to sell one-half of above lot to owner of Lot 4 and retain one-half of Lot 5, each half to be maintained in a natural state and not to be buildable. Mrs. Ross represented herself and explained she had recently been granted variances; subject to keeping Lots 5 & 6 legally together; that her neighborhood would like to buy one-half of Lot 5. She said she would sell him about 4100 sq. ft., which would bring her Lot 6 up to 12,000 sq. ft.. Mr. Flinkstrom noted the useage of the words "natural state" would not have to be incorporated in a decision; that based on previous variances, we would be accomplishing the same purpose. Mrs. Ross said Mr. Doyle would give her \$3,000 for one-half. She also asked about withdrawing petition. Chairman Skelly told her the previous variances of August 1, 1977 would still stand. The Board's general feeling was that hardship had not been presented. Hearing closed 8:45 P.M.. The Board's vote was unanimous to deny, based on belief that hardship was not proven. They felt that previous variances granted (Case Z-282) should stand as it was granted.



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Secretary

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BOARD OF APPEALS

November 21, 1977

Convened: 7:35 P.M.

Adjourned: 11:35 P.M.

Present: Skelly, Carroll, Flinkstrom, Fallon, McCarthy
Staff : Perry
Public & Press: Approximately 100 plus

1. VINCENT C. CAMPANA - Lot 2, Dartmouth Rd., West Dennis
Dr. Carroll read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling at above location. Mr. Campana was present, and explained that he originally bought Lots 1 and 2 in 1966; now he wants to build another house on Lot 2; that he can't combine with his own home on Lot 1, or add to size of Lot 2; also that if not built on, it would remain as only unbuild lot in the area. He said many of his neighbors were in support. He explained his parents wish to retire to Cape Cod and would like to be next door to him, and they don't have the equity to buy other land; that his parents and aunt presently live in second floor apartment and that this is the only way they could move to the Cape. Mr. Fallon commented that most of the lots in the area are of same size; that this is larger than many. In response to Mr. Fallon, Mr. Campana said they would need three bedrooms because of three people involved. Mr. McCarthy asked about previous denial over two years ago. Mr. Campana said he was not building for his parents then and felt this was the reason the Board did not feel he had hardship; he added he did not intend to convey property to his parents. In response to Mr. Skelly, he said he rented his own house for about 4-5 weeks only and is down almost every weekend; that he had never rented during the year or off season; he also volunteered he would remove rental sign on the house. Mrs. Hazel Snyder, who said she lived just around the corner, said she would be willing to have a home built for his parents. Mrs. Bilics was concerned it could become a rental. Mr. Angelo Manginero was in favor. Mr. Gustafson was concerned about drainage. Chairman Skelly said drainage would be a matter for the Board of Health. Mr. Campana assured it would not be a rental, and take down any signs. Hearing closed 7:57 P.M.. The Board's vote was unanimous to grant, based on belief that hardship existed in longtime ownership and being only unbuild lot in neighborhood; also the Board felt it would not be detrimental to neighborhood, nor substantially derogate from Zoning By-Law.

2. THOMAS A. GOOLISHIAN - 21 Bambi Lane, Dennisport
Dr. Carroll read legal notice requesting variances from side and rear line setback requirements to construct swimming pool at above location. Mr. Goolishian explained he had purchased house about 20 years ago, has hardly ever rented, and that he had talked with Mr. Dumas, who suggested the siting of pool because of septic system. Mr. Flinkstrom noted he was asked for 4 ft. on side and 4 ft. on rear to build 24 by 28 pool. There was discussion of lack of certified plot plan. In response to Mr. Fallon, Mr. Goolishian felt his hardship was in needing to swim for health reasons, and he would prefer pool rather than walking to beach. Mr. McCarthy pointed out that the plan did not include room for cement edge or fence. Hearing closed 8:09 P.M. The Board's vote was unanimous to deny, based on belief that petitioner had not presented sufficient hardship, and materials were not clear enough on which to make reasonable judgment.

3. STANLEY & BARBARA J. BOOTH - 260 Main St., Dennisport
Dr. Carroll read legal notice requesting variance from minimum lot width to divide property at above location. Mrs. Booth explained land was part registered and part unregistered; that frontage is 47.33 when 50 ft. is needed; that a plan would cost \$300-\$500. Mr. Skelly suggested it might be better to partition through Land Court. Mrs. Booth felt that could be very costly and time consuming, so were advised to go to Appeals Board first since she needs to sell her half of property. Hearing closed 8:25 P.M. The Board's vote was unanimous to grant, based on belief that

3. (Cont'd)

there was hardship with land, being stuck in corner; one part being registered, one part unregistered; also that variance is minimal. They did not feel it would be detrimental to neighborhood, nor substantially derogate from Zoning By-Law.

4. SHOREDRIVE REALTY TRUST - 262 Shad Hole Road, Dennisport
Advertised for 8:15 P.M., hearing commenced at 8:27 P.M.. Dr. Carroll, Clerk, read legal notice requesting Special Permit to operate family-style recreational center at above location. Attorney Paul Farrell represented, and stated that Kiley and Butler are owners of property, which is 3½ acres. He said Shoredrive Realty proposed a family-style recreation center, with nature trails, trampolines, and go-cart track; that there would not be any great difference in land except for go-cart track, as well as existing house, which would not change except for kitchen, game room, etc.. He said they have plans for construction of track and proposed parking area for 55 cars for these facilities. Mr. Farrell noted that a Special Permit shall normally be granted if it does not create noise or hazardous to the public good, nor derogate from Zoning By-Law. He continued that it is abutted on the north by Conservation area; that at present it is unlikely that it would be used for residential property. He added that Allen Voorhees Associates had conducted a study of the noise impact, as well as number of cars to be expected in August, plus checking with Dennis Police to determine number of accidents; adding that it should be noted that they examined conditions in October. They had analyzed that with 55 parking spaces, at maximum peak, there would be 85 cars going in and out. In addition, Mr. Farrell said the Voorhees people went to another go-cart track in Hanover, which measured 150-200 ft. from which they took final reading levels from 59.3 - 69.3. They also took into consideration the traffic would be a 1% increase, and would not exceed HUD standard; that they suggested a barrier to further cut down on noise and new mufflers on go-carts. Attorney Farrell noted this was a new plan; that they did not feel it comes under Flood Plain Zoning. Dr. Carroll noted that there was no mention of drainage, nothing about "The Plashes" on plan. Mr. Farrell said he felt there would be no change in drainage or flow. However, Dr. Carroll felt that if there is a drainage problem, the abutters would suffer. Chairman Skelly read letter from Health Department, stating that plan had not received approval because plan was not submitted by Mass. Registered Professional Engineer; septic system profile, flow rate, and proposed sewage system not shown on plan; test holes not witnessed by Health Dept.; additional run-offs increased; occupancy of building not given. Mr. Farrell repeated that noise level is almost imperceptible; that they wish to comply with Health Board, but that does not come under this Board; also that they still have to go before Conservation Commission. Chairman Skelly noted that this Board has the right to consult the opinions of these other Boards. He then read letter from Conservation Commission, which noted that "only open ditches can be maintained in an ecologically satisfactory manner...that water pollution is imminent because of the high water table in this area". There was further discussion of water level and noise; Dr. Carroll noting that traffic count was not done in August; Attorney Farrell maintained that the tree buffer would cut down the noise, and that Randy Parker, from Voorhees, claimed that in August the noise level would be 55 decibels. There was discussion between Board Member Fallon and Mr. Parker regarding count in October, and simulating data accordingly, as well as 85 cars to be in and out. Attorney said they hoped to be regulated by Selectmen and open until 11:00 P.M.. Mr. Flinkstrom noted they had said there would be no change in topography with construction of go-cart track and parking for 55 - would there not be some foundation work, and therefore, some displacement? Mr. Arne Ojalla, from Down Cape Engineering, stated the parking would be above 10 ft. Flood Plain Zone;

November 21, 1977

4. (cont'd)
that drain would slow down the drainage. Mr. Parker stated at Hanover noise was 82 decibels, higher than HUD standards. Mr. McCarthy felt 85 is really high and asked about the 200-300 people and talking also; that there is going to be more than the go-karts. Attorney said that tonight they were primarily asking for Special Permit, which could issue and will go to Conservation Commission. Mr. Flinkstrom disagreed since under Section 4 this Board could rule on other matters that might be detrimental to the area other than just as a Special Permit. Colonel McAbee spoke in favor, saying there was a need in Dennis and Yarmouth because there are so many rental units. Col. McAbee's address was given as Bayside Condominiums, Dennis. Mr. Ben Segal, from 20 Olivia Walkway, Yarmouth, also spoke in favor. Chairman Skelly read letters from the Dennis Police Dept., Planning Board, Motel Owners Association, Mrs. Olga Noxon, and Mrs. Carroll F. Asbell, all of which were for denying on the basis of traffic congestion, noise, hazardous to foot and vehicle traffic, and air and noise pollution. There were approximately 40 letters and/or telephone calls from abutters in objection; Mr. Fallon moved these to be accepted; seconded by Mr. Flinkstrom. Vote: unanimous. Several abutters and residents spoke in objection as to above points raise: Mrs. Dingman, Mr. & Mrs. Waystack, Mrs. McDevitt, Mr. Bestgen, Mr. Livingston (Conservation Comm. Chairman), Mr. Cummings, Mr. Kaminskas, Mr. Briggs, Selectman Henry Kelley. Mr. Walter Butler spoke in favor, referring to a lady who asked about buying house and/or property. Mr. Farrell declined to say whether his client could accept hours limitation, if granted, as to whether he could still make money; Hearing closed 10:25 P.M..

The Board of Appeals voted to deny Shoredrive Realty Trust a Special Permit to operate family-style recreational center at 262 Shad Hole Road, Dennisport, Ma.. The Board's vote was unanimous (Skelly, Carroll, Flinkstrom, Fallon, McCarthy). Based on evaluation of all evidence presented, they found that there would be a traffic hazard and congestion resulting. The Board felt there would be a drainage problem created in the neighborhood. In addition, they believed there would be a drainage problem created in the neighborhood. In addition, they believed there would be noise and light conditions detrimentally affecting residences, as well as an odor problem. Details of the hearing and decision are on file in the Board of Appeals records at the Dennis Town Office as Case No. Z-312.

5. KATHLEEN M. MEALEY - 16 Oldbury Place, So. Dennis
Dr. Carroll read legal notice requesting from street setback requirement to construct addition and garage at above location. Mrs. Mealey explained that "paper" cul de sac, which was never completed, cut off her lot, requiring the need for variance, and this was the only direction she could put addition. There were no objections. The Board's vote was unanimous to grant, based on belief that "paper" cul de sac, which would never be completed, created hardship with the land; also that it would not be detrimental to the neighborhood, nor substantially derogate from Zoning By-Law.

6. There was brief discussion of Lewis Gordon case, which will be re-heard under Chapter 40B, as opposed to Chapter 40A, previously heard on 10/17/77.

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Nancy J. Perry
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Secretary

Convened at 7:35 p.m. and adjourned at 11:30 p.m.
Present: Skelly, Carroll, Flinkstrom, Fallon, Baldwin
Staff: Taylor, Perry
Public and Press: Approximately 100
DOUGLAS E. NICKERSON, Lot 7 (#15), Ronda Lane, Dennis
Dr. Carroll read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single family dwelling at above location. Mr. Nickerson was present, represented by Attorney John Hopkins, who presented application requesting variance from ZBL under Section 2.3.2; that Mr. Nickerson purchased this lot in February, 1976, and another, Lot 13. He added that at the time of purchase, it was brought to his attention that lot could not be built upon unless it met the 20,000 sq. ft. He said in 11/5/73, Lots 7 and 8 were owned by Mr. Bottero prior to change in ZBL; then it transferred to Lipper and Priestley to Bellavance and Caswell; then to Falmouth National Bank. When Mr. Nickerson purchased this lot, he believed he could build a single family dwelling. He added he understood Mr. Bottero was before the Board recently and granted variance on Lot 8; he felt they should file to insure that this lot would be buildable in the future. He suggested that variance be granted; otherwise it would not have any use and only pay taxes; that of 22 lots, most are from 15,000-17,600 sq. ft. He added that Mr. Nickerson would not be back requesting other setback requirement variances. Dr. Carroll questioned Lots 7 and 8 being owned together. Attorney Hopkins agreed it was a legal problem, but compounded by the many changes of title. Dr. Carroll inquired as to hardship. Attorney Hopkins explained that when title was searched, it was done without doing a full title on Lot 8. Chairman Skelly noted the immediate prior owner of this land was The Falmouth National Bank and that Mr. Nickerson is a realtor; he asked if the Bank told him it was not a buildable lot? Mr. Hopkins said that Attorney Green had represented the Bank, did a title search for Lot 7 and certified. Mr. Skelly continued that he was interested because some banks have been doing these things; he is a professional realtor, and something is wrong. Mr. Flinkstrom said if variance were granted, there would be a two year limitation to build. Mr. Hopkins said he thought Mr. Nickerson simply wanted to sell lot; not build. Dr. Carroll felt if granted, the Board was increasing his profit by \$8,000-\$9,000, to which the attorney agreed. Mrs. W. Bingham, from audience, commented she thought Mr. Bottero was smart to sell the middle lot. Hearing closed at 11:59 p.m. The Board's vote was 4 (Skelly, Flinkstrom, Fallon, Baldwin) to 1 (Carroll). The majority opinion was based on the belief that hardship existed in that lot size was just one-tenth undersized; that it is no longer a contiguous lot, and that the Courts frown on unbuildable lots; also that it would not substantially derogate from Zoning By-Law, nor be detrimental to the neighborhood. The minority vote was based on feeling that hardship did not exist.

BOARD OF APPEALS

January 18, 1978

Convened: 7:37 p.m.

Adjourned: 9:02 p.m.

Present: Skelly, Flinkstrom, Fallon, Baldwin, Lizotte
(McCarthy attending)

Staff: Perry

Public & Press: Approximately 100 plus

1. ESTELLE BRIGGS - Lot 57 (#145), Sears Rd., East Dennis
Mr. Skelly, as Acting Clerk, read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling at above location. Mr. Kirkwood Brown represented, explaining Mrs. Briggs, his sister-in-law, lived in England and asked him to act on her behalf. He further explained that she had expected to build on one lot and her son on the other, but that she cannot leave England with more than 500 pounds, and read letter from her explaining her situation, which was detrimental to her health. He added that there was a road intended to connect two roads but never built; that in effect this created a buffer zone; that it was primarily financial hardship. Mr. Fallon asked if she could sell both lots together. Mr. Brown said that would make almost 40,000 sq. ft. and she would not realize as much income. Mr. Fallon suggested the 40 ft. way (buffer zone) could be dissolved and go to Mrs. Whitcomb (direct abutter) and Mrs. Briggs. Mr. & Mrs. Bell, owners of Lot 59, questioned building on the Lot 58 because of ravine in rear; asked what setbacks were required, and if a one-room house of 400 sq. ft. could be built. Mr. Flinkstrom said he believed 750 sq. ft. is minimum house size. Hearing closed 7:43 p.m. The Board's vote was unanimous based on finding that there was substantial hardship in long-time ownership and paying taxes for over 11 years; that the owner has been out of the country and not aware of Zoning changes. The Board also felt that combining this lot with contiguously owned lot would create a lot of approximately 40,000 sq. ft., or double the requirement. In addition, they considered as beneficial a 40 ft. way, or buffer zone, adjacent to the property. They did not feel it would be detrimental to neighborhood, nor substantially derogate from the Zoning By-Law.

2. JOHN W. STACY - No. 36 & 38, Upper County Rd., Dennis Port.
Mr. Skelly read legal notice requesting Special Permit to operate automotive repair shop at above location. Mr. Stacy was present, and represented by Attorney Robert Hall, who presented that the criteria of 1.4.4 of ZBL provides that a Special Permit will generally be granted if it is not detrimental to neighborhood, nor derogate from ZBL. Plan was presented, showing setbacks, parking, septic system, etc. Mr. Hall felt it was compatible in GC II zone; also that Mr. Stacy had operated for 15 years in Dennis Port, and had an excellent reputation; that this use would be beneficial, not objectionable. In response to Mr. Flinkstrom, Mr. Stacy said he would like hours of operation from 8 a.m. to 5 p.m. Monday through Friday, and 8 a.m. to 1 p.m. on Saturday.

John W. Stacy (Cont.)

Mr. Lizotte asked if a fence was intended, thinking of children; Mr. Stacy said no fence intended, but there is one around whole lot. Mr. Baldwin inquired as to intent for balance of lot, would it be developed? Mr. Stacy said possibly in future with access from Lower County Road. In response to Mr. Fallon, Mr. Stacy said people usually leave cars in morning and pick up at noon or end of day, about 15 to 20 cars; also that there would be no "wrecks", only mechanical work done in one day. Mr. Flinkstrom asked about cars that might have to wait more than a day and would they be stored inside. Mr. Stacy said sometimes he might have to wait for parts; that he would store inside if possible, but would have only 4 days. Selectmen Richard I. Shea spoke, explaining that he had received a letter from Mr. & Mrs. C. William Osborne, presently in Florida who are concerned about the effect of this type of business on abutting residential property. Mr. Shea also read his reply to the Osbornes, explaining to them that their property was about 2000 ft. North, and expressing his high opinion of Mr. Stacy for running such a business. Many people were present in favor of Mr. Stacy, and several spoke, urging the Board to grant the Special Permit. There followed discussion of whether or not a variance was also needed, since part of the lot is R-20, which the Board later decided was not required. Mr. Thomas Fleming asked about outside storage - would it be out of sight? Attorney Hall said it would be in rear; that it would be very difficult not to have any outside storage permitted. Hearing closed 8:20 p.m. The Board's vote was unanimous based on belief that this business would not create noise, nuisance or be detrimental to the neighborhood, nor derogate from Zoning By-Law. In addition, the Board noted that a great many local residents are in favor and feel the need for this business.

3. WAYNE A. & SUSAN J. MAYO - Lot 25 (#11), Buckingham Rd., East Dennis. Mr. Skelly read legal notice requesting variance from front yard setback to construct single-family dwelling at above location. Mr. & Mrs. Mayo were present, as well as Mr. Donald Fanning, who had poured foundation. Mr. Mayo explained he could not get a building permit because foundation was off by 3 ft., and that it would be a hardship to take down and replace. Mr. Fanning explained that he put in foundation; that Mr. & Mrs. Mayo had script and saved to build; that normally they would have had to get a plan for \$150 to put in foundation; therefore, Mr. Mayo did it himself. He added that only 18 ft. of the foundation was too close to street. Mr. Fanning said he only extended credit to young people until they can get mortgage, since he had gone through this himself; he felt Mr. Mayo may have measured from the telephone pole, rather than the legal bound as a "novice." Mr. Mayo said he sited the house so far forward since lot drops off in rear; that garage would be underneath, not to side. Mr. Fanning answered Reporter D. Shephard's question that Building Permit is not granted until foundation is in. Hearing closed 8:35 p.m. The Board's vote was unanimous based on their findings that there was an honest mistake in measuring, causing misplacement of foundation; that there was no fraud, and that to replace foundation would result in

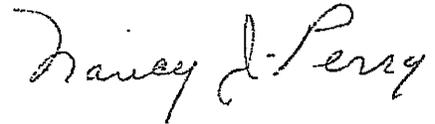
Board of Appeals

- 3 -

January 18, 1978

Wayne A. & Susan J. Mayo (Cont.)

extreme hardship. The Board did not feel it would be detrimental to neighborhood, nor derogate from the Zoning By-Law.



Nancy J. Perry
Secretary

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BOARD OF APPEALS

February 27, 1978

Convened: 7:35 P.M.

Present: Skelly, Flinkstrom, Fallon, Baldwin, McCarthy
Staff: Perry
Public & Press: Approximately 30

1. MANILA MARIE BRYAN - LOT 1 (#1366), Route 134, East Dennis
Chairman Skelly read legal notice requesting Special Permit for Grooming Salon and Boutique and Boarding Kennel at above location. Mr. & Mrs. Bryan were present, and Mr. Bryan first asked to have the request for boarding kennel deleted, which was agreeable to the Board members. Mr. Bryan explained the proposed location in the "Eldridge Complex" would be in the rear behind the ice cream store, and not completed yet; also that there would only be one or two animals on the premises at one time. There was discussion of building permit needing to be renewed, which Mr. Bryan said had been done; Mr. Skelly pointed out that he had not seen any building permit posed. In response to Mr. Fallon, Mr. Bryan said they had just understood there was a similar request scheduled for next week. Mr. Bryan said his wife had experience in this business in New Jersey; that they had hoped to start April 1st, but there were some hardship problems in Mr. Eldridge's family. Also that they would expect 6-8 customers per day; would like hours of 8:00 A.M. to 5:00 P.M., and perhaps one night a week to accommodate customers. Chairman Skelly read letter from Health Director, T. Dumas, in opposition; also noted telephone messages in opposition from Mrs. Fasch, Messrs. Lawrence, Corsini; and letters from Mr. Robert Radley and Mr. and Mrs. Donovan, in opposition. Mr. Lawrence withdrew his opposition if there would not be a kennel and dogs would not be let outside. Mr. Bryan stated they had researched the matter and found over 800 dogs in general area, and no facility to provide service. Hearing closed 8:01 P.M.. The Board's vote was 2 to deny (Baldwin, Skelly) and 3 to grant (Fallon, Flinkstrom, McCarthy). The minority's opinion was based on feeling that the nature of the animal grooming service was not compatible in the same building with food and beverage services, following the advice of the Health Director. The majority opinion was based on feeling that since a request for a boarding kennel had been withdrawn at start of hearing, and that this service would be on an appointment basis, there would not be a nuisance or hazard created, nor would it derogate from the Zoning-By-Law.

2. BAKER HOMES, INC. - LOT 29 (#52), Polly Fisk Lane, Dennisport
Chairman Skelly read legal notice requesting variance from front yard setback to construct single-family dwelling at above location. Mr. Michael Baker was present and explained the model house his client wants built would set back slightly over 25 feet, and the lady wants a bay window, making it 9 inches too close to front setback. When he poured foundation, he said he did not notice until she wanted bay window. He further explained that in ZBL (2.3.4.3) it excludes bay windows as exterior projections, as opposed to chimneys, etc. because of a particular problem some years ago; also that window would be about 6 feet wide and not habitable space, but for plants. Mr. Skelly read letter from William Corey in opposition. Hearing closed 8:10 P.M.. The Board's vote was unanimous to grant based on feeling that hardship existed since foundation was in and client wanted a bay window added, creating the need for a minimal variance; also that it would not be detrimental to neighborhood, nor substantially derogate from Zoning-By-Law.

3. DONALD W. LINDSAY & BERNARD C. LINDAY - LOT A (#18), Tory Lane, Dennis
Chairman Skelly read legal notice requesting variance from minimum lot size of 20,000 square feet to construct single-family dwelling at above location. Mr. Clark Potter (realtor), and Mr. Leonard (prospective buyer), and Attorney Joseph Malloy were present. Mr. Potter pointed out the small part that is contiguous with another lot, and very difficult to join. Chairman Skelly pointed out that two variances would be needed, the above mentioned and variance from lot width. Mr. Leonard explained that he wanted to build a full Cape with no garage, about 36 feet, two story, driveway for cars, and that it would be year-round. Mr. Paul Rockfeld, an abutter, spoke in opposition, feeling that it was against Zoning-By-Law, concerned about size of house and off-street parking. Messrs. Potter and Thomas King stated that the Walcott's had traded off some lots for these lots. Mr. Skelly read letter in opposition from Mr. Robert Walcott and Mr. & Mrs. Jack Taylor. Attorney Malloy, representing Mr. Lindsay, spoke, noting lot was laid out in 1972, and other lot sold in 1973, leaving it protected for 5 years until last August; that there is substantial hardship since there is a mortgage; that Mr. Lindsay was not aware of Zoning-By-Law changes, that it was an oversight. Mr. Lindsay said he thought taxes were about \$110.00; that he had not had offers on property, which Mr. Potter could answer - that now he has an offer and has paid taxes for some years; also that they had put in roads and landscaped. Hearing closed 8:28 P.M.. The Board's vote was unanimous to grant based on belief that hardship exists in that owner has been duly trying to sell lot for the last five years and now has buyer, and has acted in good faith; also that there is hardship with the lot being only 95 feet wide as opposed to 100 feet required. They also felt that it would not be detrimental to neighborhood, nor substantially derogate from Zoning-By-Law.

4. GLENN D. & CONSTANCE A. BECHARD - 744 Main Street, Dennis
Chairman Skelly read legal notice requesting Special Permit to operate retail shop for the sale of weather instruments and wood stoves and a parcel wrapping and forwarding service at above location. Mrs. Bechard explained that they were intending to open small shop in Mr. Paul Sullivan's building; renting from Mr. Sullivan who does not own building. They would sell weather instruments, with small demand, and wood stoves, and would occupy room formerly used as Tennis Pro Shop. In response to Mr. McCarthy, Mrs. Bechard stated that she would expect one truck per day to pick up parcels. Mr. McCarthy asked if front or rear entrance would be used; that there have been parking problems before this; did she think people would be parking in "no parking" zones. Mr. Skelly noted there is parking on the lawn and in rear; that plan shows parking spaces marked out, and people back out into traffic; that the rear just happens to be an open space. Mrs. Bechard stated she thought that about 3-4 years ago there was a request to leave it natural; that she had measured Mr. Sullivan's building, which came up with 18 parking spaces required. There was further discussion of parking and traffic; if additional parking needed, who would be responsible. Mrs. Bechard said if business is that successful, they would probably relocate; that she would not want to see Mr. Sullivan cut into trees. Mr. Baldwin noted that the real problem is when Emily Lawrence, Ltd. has a sale. Mrs. Bechard thought the latter shop hired a policeman at some times. Mr. Skelly read letter in opposition signed by Evelyn M. Howes, Genevieve More, Herbert R. More, and Rachel Clark Brown, all abutters on Hope Lane. Mr. Clark Potter spoke briefly on parking problem, and did not feel a policeman would solve problem. Mrs. Bechard said it was not her husband's prime source of income; something she wants to try; thinking of hours of 9-2. Mr. Bechard said perhaps 9-5 P.M., sometimes on Saturdays. Hearing closed 9:50 P.M.. The Board's vote was unanimous

4.. GLENN D & CONSTANCE A. BECHARD (cont'd).
to grant, based on their belief that no substantial hazard or nuisance would be created, and that it would not derogate from Zoning-By-Law.

5. MARY JO MONTANI - 608 Main Street, Dennis
Chairman Skelly read legal notice requesting Special Permit to operate Bakery Shop at above location. Ms. Montani explained that she would like to add sale of candy and ice cream, which Mr. Skelly pointed out was not included in application or advertising. Her father spoke re parking in rear, which is not laid out as yet; that it will be a summer operation. Ms. Montani said she would buy some items and make some on premises, and hoped to be open 7 days a week. In reply to Mr. Baldwin, she said truck deliveries might be from Hyannis or Boston. There was discussion about "travelled dirt way" owned by Mr. Antonelli, which would give access to rear parking; also the possibility of "horses" or cement blocks in front to prevent parking. This idea was discarded in favor of a sign directing parking to rear. Hearing closed 9:05 P.M.. The Board's vote was unanimous to grant, based on feeling that no substantial hazard or nuisance would be created, provided parking is confined to the rear; also that it would not derogate from Zoning-By-Law.

6. There was brief discussion of "Chapter 808".

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BOARD OF APPEALS

March 6, 1978

Convened: 7:35 P.M.

Staff : Taylor, Perry
Public & Press: 35

PRESENT: Skelly, Flinkstrom, Fallon
Baldwin, Lizotte

Adjourned: 10:30 P.M.

1. ELWIN K. & MARGARET L. YOUNG - Lot 2 (#55) Depot St., Dennisport
Chairman Skelly read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling at above location. Mr. & Mrs. Young were present, with Attorney Myer Singer representing. Mr. Singer explained the Youngs had purchased Lot 2 in 1967 before ABL change, and have owned adjoining lot since 1954, creating hardship. He presented Assessor's Map Sheets 40 and 58, showing Lot 2 is substantially larger than most in neighborhood, and that many small lots are not on Town ways or wide streets. He added that combining would slightly exceed 20,000 sq.ft.; that there is hardship in having a valid building lot or a big side yard. He commented that it is not strictly a residential lot, with several business, Wee Packet, etc.. They wish to build a home for themselves, and use other lot and dwelling for rental; that it would not add excessive traffic, and that it is not a Use Variance. Mr. Bob Briggs, Mrs. Anderson, and Mrs. Olive Porter all spoke in favor, noting that the Youngs have always kept property very well. Hearing closed: 7:50 P.M.. The Board's vote was unanimous based on belief that there is substantial hardship with land in that, though under 20,000 square feet, it is oversized lot for the area, which would be useless unless granted, not the intent of the Zoning By-Law. Also, the Board believed it would not be detrimental to neighborhood, but a good addition; nor would it derogate from the intent of the Zoning By-Law.

2. GREGORY KELLY - Lot 15 (#36), Trudy Circle, East Dennis
Chairman Skelly read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling at above location, and explained that Mr. Kelly had received such a variance with 2-year expiration date; that has now expired. Mr. Kelly explained that hardship was determined two years ago, and that he has now received permission from bank to complete in one year; that he would start construction this year. Hearing closed: 7:55 P.M.. The Board's vote was unanimous based on belief that hardship was proven when previous variance, now expired, was granted, and that from evidence submitted, the petitioner indicates a clear intent to proceed to build. In addition, the Board felt the lot size was in keeping with neighborhood and would not substantially derogate from the intent of the Zoning By-Law.

3. JOSEPH & SANDRA LOJKO - 171 Lower County Road, Dennisport
Mr. Skelly read legal notice requesting variance from sideline setback requirement to enclose existing car lift at above location. Mr. & Mrs. Lojko were present, and Mrs. Lojko explained it was difficult to work in bad weather; that they have just one lift and believed it would be safer because it is expensive to prevent children from getting hurt; also that it would look better enclosed. Mr. Williams stated he would be in favor because it would make it look much better. Mr. Bob Briggs also spoke in favor, feeling it would remove a safety hazard. Chairman Skelly read letter in opposition from Ms. Margaret Morrissey regarding parking and petition regarding Ezra Lane. In response to Mr. Baldwin as to any previous variance, Mrs. Lojko replied it had been there about 27 years. Mr. Flinkstrom determined from plot plan submitted that a 3-8 ft. sideline variance would be needed. Hearing closed: 8:14 P.M.. The Board's vote was unanimous since they felt that the existing lift without being enclosed is a potential hazard; that granting this variance would eliminate this hardship. Also, they believed that it would not derogate from Zoning By-Law or be detrimental to neighborhood.

March 6, 1978

4. SAMUEL A. DIBBINS - Lots 217 & 218, combined, Sally's Way, So. Dennis
Chairman Skelly read legal requesting variance from minimum lot size of 20,00 sq. ft. to construct single-family dwelling at above location, and explained that variance had been granted 7/7/76, to expire in two years if not completed; that Dr. Dibbins wanted to extend variance. Dr. Dibbins stated that combined lots are over 17,000 sq. ft.. Mr. Skelly noted that the Board does not like to tie up so far in advance, and Mr. Flinkstrom pointed out that under "808", effective July 1, 1978, or before, a variance would only be good for one year. Dr. Dibbins protested that precedent was set by granting Mr. Sam Gregory an extension of variance for five years recently. Mr. Gregory spoke in favor, and felt the Board should give Dr. Dibbins the same variance since he does not want to build now. Mr. Fallon raised issue of denial of building permit from Building Inspector, but that Dr. Dibbins does not want to build now. Dr. Dibbins said he had been paying taxes for 10 years, and felt he should have privilege of building. Chairman Skelly suggested a Conservation Easement would accomplish the same purpose, rather than avoiding the purpose of the Zoning By-Law; that under new Law (Section 10), you would have to return every year for such a variance. Hearing closed 8:45 P.M.. The Board's vote was unanimous based on belief that hardship would exist for petitioner if not regranted. They did not feel it would be detrimental to neighborhood, nor substantially derogate from Zoning By-Law.

5. KEANE KANINE CORP. - 1382 Route 134, East Dennis
Chairman Skelly read legal notice requesting Special Permit to operate dog grooming salon and retail sale of accessories, and variance from parking requirements at above location. Mrs. Keane was present and represented by Attorney Frank Shealey, who explained the proposed operation and that Mrs. Keane also operates the Dipsey Doodle dog salon in Hyannis, but lives in East Dennis and feels there is a need here. He further explained there would be two employees working, and animals would be dropped off in the morning by appointment and picked up later in the day. Attorney Shealey then discussed need for parking variance since building is so close to Rte. 134 and property drops off greatly in the immediate rear; that five parking spaces could be fitted in front of building. In response to Mr. Fallon, he said hardship was with the land, which could never be used without relief. He added that Mrs. Keane wishes to purchase the building, but owner would not sign purchase and sales agreement with contingency because of experience he had with Cumberland Farms in the past. Mr. Baldwin raised the issue of the possibility of widening Rte. 134, which could leave perhaps only 9 ft. in front of building. Mr. Lizotte raised the issue of angled parking could cause backing onto Rte. 134, and asked if it would be possible to use parallel parking. Mr. DeStafano, the present owner, explained he had bought about 8 years ago; that it was a four room cottage, but business zoned; that he had been tied up with Cumberland option, which caused a hardship to him. Mr. Jack Emlock, from Roots for Affirmative Action in Hyannis, addressed the Board, stating that a similar petition had been before the Board and the Health Officer had objected because of kennel; that the Board now have another letter and decision should be subject to new ruling. Mr. Baldwin stated the Board had not based their decision on the Health Letter alone, but also in connection with food service. Mr. Emlock said this (Keane) proposal was near by a restaurant, and added he was going to suggest they might go into a "class action suit". Chairman Skelly stated there is no connection, and that he would not entertain any threats as chairman of the Board. Mr. Robert Bryan, previous dog salon petitioner, attempted to connect the two cases, and asked if Mr. T. Dumas had written a letter re Keane and what Board's feelings were. He was told there "was no connection", and that Keane's is a free standing building. Attorney Shealey said he hoped the Board would only consider matters germane to the Keane case, and that other problems should not taint his client. Mr. John Civilla, from Forest Pines, spoke of this being near a residential area and suggested other areas could be found. Mrs. Lojko said she was familiar with Dipsey Doodle in Hyannis, and had never found parking problem.

March 6, 1978

5. (cont'd) KEANE KANINE CORP.

Mr. Shealey and Mrs. Keane stressed it would be a closed operation. Hearing closed 9:41 P.M.. Before vote was taken, Attorney Shealey requested to withdraw without prejudice. Mr. Baldwin so moved; seconded by Mr. Skelly. Vote: unanimous.

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BOARD OF APPEALS

March 20, 1978

Convened: 7:40 P.M.

Adjourned: 8:55 P.M.

Present : Skelly, Flinkstrom, Fallon, Baldwin, Lizotte (McCarthy in attendance)
Staff : Perry
Public & Press: Approximately 15

1. EDWARD F. SIMPSON, TRUSTEE FOR BOSTONIAN INVESTMENT TRUST, Lot 215 (#10) Bob White Lane, South Dennis, Ma.

Chairman Skelly read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling at above location. Representing was Attorney Robert Clayton, who explained that on 7/7/76 a variance was granted for various lots then owned by Dr. Samuel Dibbins, including Lot 215; that this variance was duly recorded. He further said that subsequently Bostonian Investment Trust bought the lot in July, 1977; when they went to sell the lot, the title examiner raised question, by reason of one or two decisions from Superior Court, that when variance was granted, procedural rules were not followed, even though Chapter 808 had not been adopted. He added that "808" now required notice to abutters within 300 ft., and he had come to the Board to resolve this impasse. Chairman Skelly explained that previous decision granted variance to Dr. Dibbins to combine two lots, combine another two lots, plus this one, but we were not using "808" procedures. Mr. Flinkstrom asked if this variance was requested for 2 years or only one; Attorney Clayton said only one. Hearing closed 7:53 P.M.. The Board's vote was unanimous to grant, based on feeling that hardship was established in that combining Lot 215 and any other contiguous lot would be requiring over compliance. The Board felt that granting of variance would not be detrimental to established, almost completely built, neighborhood; nor derogate from Zoning By-Law.

2. DONALD R. BROUILLETTE - Lot 2 (#14), Upper County Road, Dennisport.

Chairman Skelly read legal notice requesting Special Permit to operate automobile repair shop at above location. Mr. Brouillette was present, and represented by Attorney Myer Singer, who presented brochure supporting petition. He stated that Special Permits shall normally be granted unless use would cause problems with nuisance, hazard, congestion, harm to neighborhood, or derogate from Zoning By-Law. He further described proposed use as to what would be provided and what would not take place: (A) There will be 1. Work in existing building; 2. Main building interior changes only and outside trim painted; 3. Small building storage only - exterior painted; 4. Two (2) rail fence all around; 5. Shrubs and trees in ten (10) foot setback area; 6. Appropriate parking; 7. Grass in all areas not shrubbed or used for parking or access; 8. Bluestone for parking areas. (B) There will be 1. No outside long term storage of cars--only possibility of 2-3 overnight waiting for repair; 2. No heavy equipment or trucks to be repaired; 3. No sale used cars; 4. No automobile painting; 5. No auto body work or shop; 6. No neon signs; 7. No Sunday or Holiday hours; 8. No nuisance, hazard or congestion; 9. No substantial harm to neighborhood; 10. No derogation from intent of By-Law. He stated that Mr. Brouillette owned the West Harwich Shell Station, and the repair work would be the same as now done there; that a similar permit had recently been granted nearby and that this smaller business would not create any problems. Chairman Skelly asked about FPZ. Attorney Singer said it is within FPZ, but there will be no new building. Chairman Skelly read letter from Planning Board regarding parking spaces. Attorney Singer said he believed there were more parking spaces than required, and the ones in rear would be used by employees. Chairman Skelly read response from Fire Dept. to secretary's request, which indicated no problem; also response from Health Dept. stating "approval pending" on septic system. Mr. Skelly also read letter from Mr. William Osborne to Selectmen Shea in objection. There was discussion of hours of operation as well as potential traffic: Mr. Brouillette thought less than 15 cars per day. Messrs. Briggs, Chinogo, Michael Skelly, Donald Kossack, Donald Smith, all abutters, spoke in favor. Hearing closed 8:25 P.M.. The Board's vote was unanimous based on belief that the proposal as pre-

March 20, 1978

2. DONALD R. BROUILLETTE (cont'd)
sented to the Board and defined on plot plan with appropriate access, parking and landscaping is very much in keeping with requirements and intent of Zoning By-Law. The Board felt that no nuisance or hazard would take place in neighborhood, and that there would be no derogation from Zoning By-Law.

3. There was a discussion of LANDMARK, INC. decision rendered 9/17/77, which contained as a last sentence "No construction can commence until title is cleared to all land." Title has now been resolved and deeds so indicating provided to the Board. Mr. Baldwin moved to delete this sentence from the decision; seconded by Mr. Skelly. Vote: unanimous.

Nancy J. Perry

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Secretary

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BOARD OF APPEALS

April 3, 1978

Convened: 7:35 P.M.

Adjourned: 10:05 P.M.

Present: Skelly, Flinkstrom, Baldwin, Lozotte, Davis
Staff: Taylor, Perry
Public & Press: Approximately 30

1. ROSENA RAY - Lot 1 (#77), Searsville Road, South Dennis
Chairman Skelly read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling at above location. Mrs. Ray was present and explained that she needed to sell lot abutting her house in order to meet expenses since her husband had died; that her financial situation had become worse and it was difficult to maintain her home. Mr. Skelly noted that the lot in question was as large or larger as most of the neighborhood. Hearing closed 8:40 p.m. The Board's vote was unanimous to grant, based on belief that sufficient hardship existed in long time ownership and paying taxes; also that the lot is as large or larger than most in neighborhood and would not be detrimental, nor would it derogate from the intent of the Zoning By-Law.
2. PAUL SULLIVAN - spoke briefly and informally with the Board regarding a proposed group of business buildings on the former "Stageway" property. Mr. Sullivan said the property was 1.97 acres, and could have a building 130 x 60 ft., as opposed to his proposed group of separate buildings.
3. ROBERT G. & LOIS SKLAR - 838 Main Street, Dennis
Chairman Skelly read legal notice requesting Special Permit to operate Antique Business at above location. Mr. and Mrs. Sklar were present, and Mr. Sklar explained that he intended to purchase the entire property from Mr. Robert Thompson; that it would be his permanent residence; that there are three buildings, one of which he would like to use for antique business, and that he already has approval from O.K.H.R.H.D. He presented certified plot plan, done by Mr. George Lowe, showing parking for four cars plus two for his own vehicles. In addition, he said his in-laws would be residing in the cottage in the summer. He added that he had been in the clothing business which had closed; that he had gotten into antiques, and that the building is perfect for an antique business. Mr. Skelly read letters in favor from Louise Vaughan, Marguerite Ickes, Ethel Whittemore, Margaret Maher, Ardis W. Johnson, Charles E. Johnson, Harold and Eleanor Barrett, Muriel Hallett, and the Cape Playhouse. Hearing closed 8:05 p.m. The Board's vote was unanimous to grant, based on belief that such a use would not create any noise, nuisance or hazard, and that an adequate parking plan had been submitted. They felt it would not be detrimental to neighborhood, nor derogate from Zoning By-Law.
4. GLADYS E. CONWAY - Lot 25 (#5); Donnie Way, South Dennis
Chairman Skelly read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling at above location. Mrs. Conway was present and explained that she had purchased the lot 8 years ago as an investment; that now because of illness, she cannot live at home and has sold her house on adjoining lot. She added that she has a buyer next door, but that he does not want to build now; that she would build herself to sell in order to aid herself financially; that she had not been aware of change in Zoning By-Law and that almost all the lots in area are the same size. Hearing closed 8:10 p.m. The Board's vote was unanimous to grant, based on finding hardship in long-time ownership and being unable to maintain property; that without relief her assets would be depleted. The Board also felt it would not be detrimental to the neighborhood, most lots being of equal size, nor would it derogate from the intent of the Zoning By-Law.

5. HOUNDSTOOTH TRUST - Lots 3 and 4, Whalen Road, Dennisport
Chairman Skelly read legal notice requesting variance from required percentage of upland of above mentioned lots. Mr. William Marsh represented, and explained they had originally gone to the Planning Board with an ANR plan for 6 lots, "panhandled," with six driveways, and could have had it signed by the Town Clerk. However, the Planning Board suggested improving the plan having just one road, which cost them the loss of some upland. He added that the Planning Board had approved the revised subdivision plan and suggested they petition the Appeals Board for relief. Each lot has over 16,000 sq. ft. of upland, instead of required 18,000; however, each lot total size is well over required 20,000 sq. ft. Mr. Skelly read Planning Board letter in favor of granting the variance. Mr. and Mrs. Bukunis looked at the plan, and asked about Conservation Commission involvement. Mr. Skelly replied that the Conservation Commission would be the last stop; Mr. Marsh agreed they would have to go through Conservation for a building permit. Hearing closed 8:29 p.m. The Board's vote was unanimous to grant, based on finding hardship with land having wetlands problem, and that they could have had lots without a problem, but instead cooperated with the Planning Board to create a better subdivision with only one road, rather than six driveways. The Board felt it would improve neighborhood, rather than be detrimental, and that it would not derogate from the intent of the Zoning By-Law.

6. KEANE KANINE CORP. - 1382 Route 134, East Dennis
Chairman Skelly read legal notice requesting Special Permit to operate dog grooming salon and retail sale of accessories and variance from parking requirements at above location. Mr. Keane was present and represented by Attorney Frank Snealey, who explained parking plan presented (for five spaces); that Mr. DeStefano, the owner, in the past might have paved part of State property (rt. 134). He said the parking would be for employees and clients, who would bring dogs in by appointment. He explained the lot is 34,959 sq. ft., but drops off sharply behind the building, which would require a very costly retaining wall and fill to utilize the rear portion of the lot. He said they were looking for a 4-5 ft. variance and complete variance from 50 ft. setback; that they could put railroad ties or crushed stone for the present to identify parking. Hearing closed 9:00 p.m. The Board's vote was unanimous to grant, based on the belief that granting the Special Permit would not create any noise, nuisance or hazard, nor derogate from Zoning By-Law. The Board also felt that hardship existed with the land topography, requiring relief with the parking requirements variances.

7. CHARLES J. & URSULA F. DUNN - 821 Main Street, Dennis
Chairman Skelly read legal notice requesting Special Permit to operate retail shop for sale of imported handcrafted goods at above location. Mr. & Mrs. Dunn were present and represented by Attorney James Julian, who explained that 900 sq. ft. of building would be used for retail shop and presented certified parking plan showing 12 parking spaces. He said no major changes are planned; if so, they would have to get O.K.H.R.H.D. Mr. Skelly read letter from Cape Playhouse in approval. Mrs. Dunn said it would probably be a seasonal operation, with hours likely from 10 a.m. to 6 p.m. Mr. Paul Sullivan spoke in favor. Hearing closed 9:10 p.m. The Board's vote was unanimous to grant, based on belief that there would not be any noise, nuisance, or hazard created; also that an adequate parking plan had been presented. In addition the Board did not feel this would derogate from Zoning By-Law.

Nancy J. Perry
Nancy J. Perry /per S.B.B.
Secretary

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BOARD OF APPEALS

April 24, 1978

Convened: 7:35 P.M.

Adjourned: 10:15 P.M.

Present : Skelly, Flinkstrom, Carroll, Spruill, Baldwin
Staff : Perry
Public & Press: Approximately 20

1. MICHAEL J. DeFILLIPO - Lot 9A, Salt Meadows Road, West Dennis
Dr. Carroll, Clerk, read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling at above location. Mr. DeFilippo was represented by Attorney Kathleen Franklin, who explained the need for returning for variance to clear title. Chairman Skelly, with the consent of the Board, suggested to Miss Franklin, that she write out the decision and notice of variance with the language she would prefer, should the Board grant the variance. Hearing was recessed at 8:13 P.M. for her to do this. The Board's vote was unanimous to grant since hardship had been shown in that this lot could not be adjoined with any other lot. The Board also found that it would not be detrimental to the neighborhood as all lots in area are approximately the same size, and that it would not substantially derogate from the Zoning By-Law. This variance shall negate two variances previously granted for this property dated May 17, 1976 and March 7, 1977, recorded in Book 2361, Page 310, and Book 2531, Page 74, respectively.
2. JOHN L. LACASSE - 178 Depot Street, Dennisport
Dr. Carroll read legal notice requesting variance from rear yard setback requirement to construct additional outside staircase at above location. Mr. LaCasse explained he hoped to open gift shop, and have apartment on second floor; that he had been told he needed second egress. He responded that his hardship was in not being able to use second floor without variance. He added that previous owner had their son living upstairs for perhaps five years, and that it had been a one family residence. There was discussion of parking spaces needed. He has 2-3, but 2 would be required for apartment. Dr. Carroll suggested using other window, but Mr. LaCasse explained Lt. Thomas of Fire Department felt that was too close to the other stairs; also that new stairs would be constructed of wood. Mr. Skelly felt he should establish if it is a pre-existing non-conforming use. Dr. Carroll moved to recess to have Mr. LaCasse return with a certified parking plan and request a parking variance; seconded by Mr. Flinkstrom. Vote unanimous. Case will be heard May 15, 1978, if plan is available; if not, the next meeting.
3. CRAIG BALDWIN - 596 Main Street, West Dennis
Dr. Carroll read legal notice requesting variances from minimum lot size and side and rear setback requirements and parking requirements to construct office building at above location. Mr. Baldwin explained he had bought lot in 1974; that the deed from Merchant & Cassidy required building to be similar in design to Merchant & Cassidy building (now Surette). He said it would be only an office building with two restrooms, not overloading septic system. He added he had personal financial problems, and now has purchase and sales agreement. He had revised plans from D.P.W. regarding access which can be 20 ft.. He explained a service road had been put in for three lots, which could give access to other road, as well as Rte. 28; that the building would be 30 x 40 ft.. He said parking would be close to Rte. 28, and that he was not asking for complete variance; adding that lot size requirement had gone from 5000 sq. ft. to 15,000 sq. ft.. Chairman Skelly found it necessary to request Mrs. Pauline Johnson and Mr. Dennis Serpone not to carry on a conversation regarding the Sub 'n Pub, which was not pertinent. Mr. Baldwin stated it would be one owner building, Bernadine Real Estate, not rented out, and built

April 24, 1978

3. (Cont'd) CRAIG BALDWIN - 596 Main Street, West Dennis by Bob Campagnone, one story. Mr. Serpone stated he was familiar with area and had not seen any parking problems with Surette Realty. Mr. Charles Cassidy said he owned lot next to Baldwin and will probably need variances; had no objection. Mr. Skelly read letter from Mrs. C. Meade in strong opposition. Mr. Emile Mueller, representing Mrs. Meade, spoke in opposition regarding parking problems and no assurance that it would only be one tenant. Mr. Baldwin added that purchase and sales agreement called for 30 x 40 ft. building. Mr. Mueller suggested it could be a smaller office for a doctor, etc.. Mrs. Mary Doherty said she did not understand financial hardship. Mr. Skelly said there did not have to be financial hardship. Mr. Mueller raised issue of Zoning By-Law and Planning Board. Mr. Skelly read paragraph from Planning Board minutes of 3/13/78 as follows:

"Attorney Myer Singer presented this commercial building permit application, and owner Craig Baldwin and Realtors Florence Crockett and Sue Babineau were also present. The project is an office building (real estate). Mass. D.P.W. entrance permit on Route 28 is in hand, and in fact Mr. Baldwin has already installed berms. 8 parking spaces are provided, on the basis of one space for 150 sq. ft. of building area. Construction is more than 100 ft. from the adjacent wetlands, as confirmed by conservation inspection. The buildings will be brick on all 4 sides, responsive to deed restrictions imposed by Mr. Merchant that all buildings in this small commercial complex shall be matched. The lot is small and difficult to design to current zoning by-law standards, but the Planning Board cannot legally endorse any non-conforming plan. Mr. Baldwin was advised to petition the Board of Appeals for all needed variances - setbacks, 10 ft. vegetative strip at property lines, etc.. Mr. Singer expressed hope that the Board would take a favorable position at the Appeals' hearing, which seems likely. Mr. Romley cautioned that adequate plantings would improve the site, and also pointed out that it is part of the entry to the South Dennis Historic District, and accordingly under exceptional demand for appearance amenity."

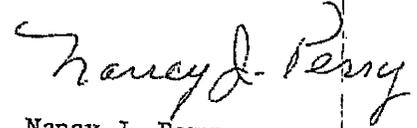
Mr. Manuel Gomes (brother of Mrs. Meade) thought there could be parking problems, but after looking at plans, appeared to have less objection. Mr. Baldwin explained he fronted only on Rte. 28 (110 ft.). Hearing closed 9:00 P.M.. The Board's vote was unanimous to grant in that they found substantial hardship with the land based on deed requirements; also that this was an intelligent use of the property. The Board found there was sufficient parking planned. They did not believe this would derogate from the intent of the Zoning By-Law, nor would be detrimental to the neighborhood.

4. ALBION F. HOWARD - Lots 3 and 4, Richard Lane, West Dennis
Dr. Carroll read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling on combined Lots 3 and 4. Mr. Howard explained he had bought two individually owned lots and could have built on each legally, but he chooses to build one house on the combined lots; that he has access from Tower Road to Richard Lane. Chairman Skelly thought there could be hardship in combining two buildable lots to build one house. Mr. Howard added that combined size was over 15,000 sq. ft.; plan approved in 1967. Dr. Carroll asked how could the Board grant variance when Richard Lane has not been built. Mr. Howard explained that he had a release on his lot, but Mrs. Taylor did not get release on Lot 6. Mrs. Hazel Snyder spoke in favor of granting. Planning Board minutes of 3/27/78 were read as follows:

"Mr. Albion Howard requested Partial Release of Lot 4. He explained that he owns Lots 3 and 4 and wishes to build a house on the combined lots. The road has never been constructed, and only Lot 5 remains in Mrs. Taylor's ownership. However, these matters were not deemed germane to Mr. Howard's request. Release was approved and signed, on motion of Mr. Romley, seconded by Mr. Frankl, - 110 - 1 unanimously."

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4. (Cont'd) ALBION F. HOWARD - Lots 3 and 4, Richard Lane, West Dennis
Mr. Sliney, Lot 2, spoke in favor, as well as abutter, Mr. Durgin. It was de-
termined that access on Tower Road is between 25-30 ft.. Hearing closed 9:20 P.M..
The Board's vote was unanimous to grant since they found hardship in being able to
build on each lot separately, the petitioner has chosen to build one single-family
house on the two lots combined. The Board found it would not be in derogation of
the Zoning By-Law, nor be detrimental to neighborhood.



Nancy J. Perry
Secretary

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BOARD OF APPEALS

May 15, 1978

Convened: 7:35 P.M.

Adjourned: 9:45 P.M.

Present: Flinkstrom, Carroll, Fallon, Spruill, Baldwin

Staff : Taylor, Perry

Public & Press: Approximately 12

1. EDGAR T. HOWES, INC. - Lot 40, Bleak House Downs, Dennis

Dr. Carroll read legal notice: "the case has been returned to the Board of Appeals on a remand from Second District Court of Barnstable". Mr. Howes was represented by Attorney J. Storer, who explained this hearing was by agreement with Town Counsel; that he had understood the Board is to reconsider all evidence presented at first hearing; also that Mr. Howes has received order from D.E.Q.E. to take care of wetland problem. There was discussion of the Board having exceeded its authority in getting into Conservation Commission matters. Attorney Storer explained drainage and water systems and said they were now solved; he presented topographic map of land. He further explained that it was Mr. Howes' position that the lot is not substantially below the required 20,000 sq. ft. (17,600). Mr. Fallon asked if the lot could be put to any other use if variance not granted. Mr. Storer felt that it could not. Mr. Andrew Wilson, an abutter, spoke in favor. There was discussion of two year limitation for completion since case preceded Chapter 808, which allows only one year. Hearing closed 8:00 P.M.. The Board's vote was unanimous (Flinkstrom, Carroll, Spruill, Fallon, Baldwin) to grant variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling on Lot 40, Bleak House Downs, Dennis, Ma., variance will expire in two years if construction is not completed, in finding hardship existed in leaving property vacant would serve no substantial good to neighborhood. In addition, the Board found that it would not be detrimental to the neighborhood, nor substantially derogate from the Zoning By-Law.

2. CAPE COD FARMS, INC. - 1366 East-West Dennis Road, East Dennis

Dr. Carroll read legal notice: "An appeal of building Inspector's Decision in denying building permit to Cape Cod Farms, Inc. at above location". Attorney Myer Singer represented and explained this was an appeal from Building Inspector's denial to issue building permit for changing exterior doors and some interior changes on the south end of small shopping plaza, housing the Lower Deck. He presented plan showing changes. In response to Mr. Flinkstrom, Mr. Singer said the Building Inspector gives all commercial permits to the Planning Board, which he stated is not required by law. The Planning Board was concerned about parking. He further explained that a subdivision plan was approved 12/22/72 and signed in January, 1973; that it still has seven years protection. He read from Chapter 40A, Section 7A, citing that this area was "Unrestricted Use District" in 1972; therefore that present zoning requirements cannot be superimposed at this time, since it was unrestricted in 1972. He presented color map showing existing zones at that time, and pointed out that this lot is within 600 ft. of Route 6A. In response to Mr. Flinkstrom, Mr. Singer said Mr. Hudson Eldredge, owner of property, had about 38-39 parking spaces, and presented parking plan, showing some spaces in dirt area. He added they had received O.K.H.R.H.D.C. approval. Acting Chairman Flinkstrom commented that the intent of the By-Law was to promote the safety, welfare, and health of the community; that a hazard could be a problem in this area. He asked Mr. Singer how he would respond to that; that the Board has to look at this in all terms. Mr. Singer responded that the request before the Board this evening was in regard to decision to issue permit; that whether there are other concerns is not before the Board tonight; that the present ZBL did not include this property in 1972. Dr. Carroll asked how large delivery trucks could get in. Mr. Singer maintained they could get in on one side, which is about 100 ft., and front, about 84 ft.. In response to Mr. Spruill. Mr. Hudson Eldredge said it was now vacant, but had been a grocery store, fruits and

May 15, 1978

2. CONT'D. - CAPE COD FARMS, INC.

vegetables, and ice cream; that a 40 ft. trailer had been delivering daily. He added the ice cream business would have lines of people in July and August until about 9:30 P.M., but the only problem was it was seasonal. Mr. Flinkstrom read letter from Planning Board in objection, particularly regarding parking; also extract of Planning Board minutes of 2/27/78, at which Mr. Singer had presented building permit, which they voted to disapprove. Also read was memo from Health Department to Planning Board regarding parking and sewage at this location. At Mr. Fallon's request, Mr. Roland Taylor, Building Inspector, said he would agree that this does not meet present ZBL, but that in past there were no requirements. Speaking in favor were Alfred Leed, Dana Littlefield, and Dana Eldredge. Mr. Hudson Eldredge said that since Mr. Dumas has written to him, they had met and he has agreed to do septic system work and he would withdraw his objections; also that he would ask employees to park in rear. Mr. Flinkstrom asked him if he had the authority to ask employees to park in rear. Mr. Eldredge said he did not have such an agreement. Dr. Carroll asked if he intended to have further addition to rear. Mr. Eldredge said he probably would; that permits were taken out. Mr. Singer noted that would be a new problem, and that he would have to comply with current ZBL. Hearing closed at 8:58 P.M. Recessed for 15 minutes. The Board's vote was unanimous (Flinkstrom, Carroll, Spruill, Fallon, Baldwin) to reverse Building Inspector's denial of a building permit to Cape Cod Farms, Inc., at 1366 East-West Dennis Road, East Dennis, since the Board was in agreement with petitioner's argument that 7-year protection existed from 1972 subdivisions. The Board noted that owner of property has stated that he will upgrade septic system requirements in agreement with Health Inspector. In addition, they stipulated no additional building without meeting current Zoning By-Law requirements.

Mr. Roland Taylor asked if there is a 20 day waiting period, or if he could issue permit immediately. The secretary was requested to check this point with Town Counsel. His reply was that there should be a 20 day appeal period as in other cases.

3. Mr. David Ludwig appeared informally to present his plans for a skateboard park to the Board.

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BOARD OF APPEALS

JUNE 5, 1978

Convened: 7:40 P.M.

Adjourned: 9:05 P.M.

Present : Flinkstrom, Carroll, Fallon, Spruill, Baldwin
Staff : Taylor, Perry
Public & Press: 100 plus (standing room only)

1. KATRINA SEARS BARBER - Lots 3,4,5,6,7,8, and 10, Robbin Run, East Dennis
Dr. Carroll read legal notice requesting variances from minimum lot size of 20,000 square feet to construct single-family dwellings on each lots noted above. Attorney Myer Singer represented, and explained that they wanted to build on existing 7 lots from plan of 1965, and in ownership since 1968, and pointed out that lots 9 and 11 exceed 20,000 square feet. He added that if it were redesigned there could be 8 lots, and presented plot plans of lots. Mr. Singer pointed out that there are different circumstances than in 1965 since the Zoning By-Law changed in 1973; that the lots conform in size with others in subdivision. Dr. Carroll asked if they could reduce number from 7 to 5 by redesigning. Mr. Baldwin asked if Mrs. Barber was aware any variance would have a one-year limitation, and if her intention was to sell now or build. Mr. Singer said she was aware of this and that she planned to sell. Dr. Carroll again suggested reducing to 5 or 6 lots, to which Mr. Singer was agreeable. Mr. Chris Patsavos spoke in opposition, feeling that the 20,000 square feet should be maintained, and questioned what kind of houses. Dr. Carroll said the Board could not tell what kind of house to be built, only it could only be a single-family dwelling. Mr. Morrison, 53 Robbin Run, said he did not hear hardship in bringing down to 11,000 from 20,000 square feet. Ms. Elaine Taylor questioned 100 ft. frontage; it was explained that the 100 ft. requirement was at the building line. Hearing closed 8:18 P.M.. The Board's vote was unanimous (Flinkstrom, Carroll, Fallon, Spruill, Baldwin) in finding hardship in ownership of over 10 years. The Board also found that it would not derogate from Zoning By-Law, nor be detrimental to neighborhood.

2. DAVID LUDWIG - No. 701, Route 134, So. Dennis
Dr. Carroll read legal notice requesting variances from front yard setback, side setback, rear setback requirements, and percentage of lot coverage for construction of a private skateboard club at No. 701, Route 134, South Dennis. Attorney Jay Murphy represented Mr. Ludwig, and stated Mr. Ludwig is withdrawing his request without prejudice because he has redrawn plans so that it will not require variances. Mr. Endres, an abutter, asked about percentage of coverage of lot. Mr. Flagg, another abutter, asked why he has withdrawn. Mr. Flinkstrom stated that it is agreed that he may withdraw.

Nancy J. Perry
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Secretary

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TOWN OF DENNIS
BOARD OF APPEALS

June 19, 1978

Convened: 7:30 P.M.
Present : Flinkstrom, Carroll, Fallon, Spruill, Lizotte (McCarthy Present)
Staff : Taylor, Perry
Public & Press: Approximately 25

1. DONALD W. LINDSAY & BERNARD G. LINDSAY - Lot 4, Johnson Lane, Dennis
Dr. Carroll read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single family dwelling at above location. Mr. Donald Lindsay was present, and represented by Attorney Joseph Malloy, who explained Lot 4 had been owned by the Lindsay brothers since 1970, and that they were the developers of the original subdivision. He said they have a customer for the lot through Clark Potter, and have paid taxes of \$175.00 for last several years; that it is one of the larger lots in the subdivision. He added, "You may recall we were here last February and received variance and had made attempt to sell". He explained they needed the variance because as of May, 1977, they still had seven years protection, but then it expired. In response to Mr. Fallon, Mr. Malloy said he felt hardship was in having the lot on the market but not finding a purchaser until now; he thought the law reads "financial or otherwise" - that land and topography would not pertain. Mr. Donald Lindsay said he had spent \$60,000.00 on roads, \$15,000.00 in taxes, and another \$300-\$400 in water fees; that taking into consideration these expenses, if he does not get a variance, the lot is useless. Dr. Carroll reminded that if granted, it would only be good for one year under Chapter 808. Mr. Durham, Mr. & Mrs. Gallanti, and Mr. Rothville wanted to know what someone is going to build and about septic system. Mr. Lindsay said he thought it would be above average and would be governed by the Building and Health Departments. He added there are restrictions and he would be willing to add re not cutting down trees. Mrs. Gallant said they would not build yet, did not want to break law, adding that though there are restrictions, they don't seem to be followed. Mr. Fallon explained the Board is only concerned with Zoning By-Law, not deed restrictions. Abutter Paul Rothfield said he was concerned about some lots being sold before and after seven year protection; that some people have restrictions - some have to build garage and others with no garage. Mr. Lindsay said deed restrictions were recorded. Abutter Seth Pearson said five years ago he was forced to put in garage and in dealings with developer could care less; that O.K.H.R.H.D. would not approve this house; that he did not think hardship has been proven - nothing happens at all except to sell lots. Mr. Flinkstrom stated this matter of restrictions is beyond Board. Attorney Malloy said some of the deed restrictions have not been met by buyers, but felt it unfortunate that these matters have come up. Mr. Pearson said he had talked with Mr. Lindsay about design of new house, and that he could care less. Ms. Denise Doherty complained that the restrictions are not the same. Mr. Lindsay said it was up to the people to enforce deed restrictions. Mr. Flinkstrom felt the Board had heard enough about what is beyond the Board's jurisdiction. Mr. Jack Thompson, 24 Tory Lane, said Mr. Lindsay knew of seven years protection and now he expects to be bailed out. Mr. Fallon asked if Mr. Lindsay had had a prior offer to sell, to which Mr. Lindsay replied, "No".
Hearing closed 8:14 P.M.. The Board's vote was unanimous to grant in finding that if variance were not granted, the petitioner would suffer financial hardship. In addition, the Board found that it would not be detrimental to the neighborhood, nor substantially derogate from the Zoning By-Law.

2. DONALD W. LINDSAY - Lot 24, Federal Lane, Dennis
Dr. Carroll read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling at above location. Attorney Malloy said this was similar to previous case. He said this lot was purchase from Charles Johnson in 1973 for \$9,000.00, and mortgage of \$7,000.00. Mr. Donald Lindsay acquired this lot individually in April, 1977. He and his brother want to build two houses for their own use; that he has paid taxes at the same time. Mr. Lindsay stated that they intended to save two lots for ourselves; that he (Bernard Lindsay) would take Lot 23 and I would take Lot 24. He added building costs were at highest, and the right to build expired in April, 1977. He said they only want to build small homes. Attorney Malloy said Mr. Lindsay could not build sooner because of expenses; he could not afford to build. Mr. Spruill asked if his brother, Bernard, would be coming before Board soon. Mr. Donald Lindsay said he could not say. Mr. Spruill also asked about how many lots he owned - 4-5? Mr. Lindsay said that in 1977 we had sold many and just these two are left. Mr. Spruill asked if he and his brother could not put together? Mr. Lindsay said it would be a hardship to put together. Mr. Pearson spoke, referring to Charles Johnson, who has 40,000 sq. ft. lots nearby; that they are asking permission for variance, and he thought the Town should respond. Mr. Rothfield said he strictly opposes this variance because of next lot, if granted, it would cause it to be buildable. Mr. Jack Taylor said he thought Mr. Lindsay offered lots a year ago. Mr. Lindsay agreed that he had offered them, but as 2 and 2. Hearing closed 8:27 P.M.. The Board's vote was 2 to deny (Spruill, Fallon) in not finding financial hardship; and 3 to grant (Flinkstrom, Carroll, Lizotte) in finding that financial hardship had been proven and that there would be hardship to the neighborhood in less of the lot itself; also that it would not be detrimental to neighborhood, nor derogate from the Zoning By-Law.

3. ALBERT A. & EDITH C. UTO - Lot 67 and part of Lot 68, Riverdale North, So. Dennis

Dr. Carroll read legal notice requesting variance to construct single-family dwelling at above location. Attorney Elliott K. Slade represented, and explained that Mr. & Mrs. Uto own Lots 67, 68, and 69 as shown on Land Court Plan 29215/41826, each lot approximately 13,000 sq. ft., and owned since 1/3/68. They propose to divide these three lots into two lots, making them 19,110 sq. ft. and 18,900 sq. ft., slightly under 20,000 sq. ft., but very close. They have had longtime ownership, and wish to sell to aid their financial condition; that they paid over \$10,000.00 in 1968, and have paid taxes. He added that they are feeling substantial financial hardship, and felt that seeking a variance in this manner would not derogate from Zoning By-Law. Mr. Spruill pointed out that a variance, if granted, would only be for one year, and asked if they would build or sell. Mr. Slade said they wished to sell. Mr. Ralph Connon, abutter, spoke in favor of granting. Mr. Ralph Proctor felt that dividing this way would be an improvement. Hearing closed 8:35 P.M.. The Board's vote was unanimous to grant in finding hardship in long-time ownership and paying taxes and that the variance would be diminimus. They believed that creating two lots from three lots would be an improvement to neighborhood, not detrimental, and would not derogate from the intent of Zoning By-Law.

4. ALBERT A. & EDITH C. UTO - Lot 69 & part of Lot 68, Riverdale North,
So. Dennis

Dr. Carroll read legal notice requesting variance to construct single-family dwelling at above location. As a companion case to previous one, there was little discussion. Hearing closed 8:40 P.M.. The Board's vote was unanimous to grant in finding hardship in long-time ownership and paying taxes and that the variance would be diminimus. They believed that creating two lots from three lots would be an improvement to neighborhood, not detrimental, and would not derogate from the intent of Zoning By-Law.

5. MICHAEL HENDERSON - Capt. Frosty's - 229 Route 6A, Dennis

Dr. Carroll read legal notice requesting variance for 10 ft. sideline setback for vegetation planting at above location. Attorney James Julian represented and said it was their contention that such a variance would not be detrimental, nor derogate from Zoning By-Law. He referred to Section 3.1.4.6, and said to comply with Zoning By-Law the petitioner would have to tear up black topping and put in loan and shrubbery and would narrow down access on 6A. It was their belief that granting the variance would be beneficial to area. He showed a photo of location, and said O.K.H.R.H.D. had approved building addition. He added that parking would be southwest of Rt. 6A, not adding any more, and exit would be on So. Yarmouth Road. Mrs. Alice Dingman spoke in favor, feeling it would be detrimental to take away parking spaces and that it would be difficult to get in. Mr. Flinkstrom was concerned about people parking by building and then backing on to Rt. 6A, and suggested a sign indicating "parking in the rear". Mr. Henderson said he would like to cut down access, but must go by D.P.W.. Hearing closed 9:00 P.M.. The Board's vote was unanimous in finding hardship with traffic hazard and hardship to further extend into parking area if variance were not granted. The Board did not believe it would be detrimental to neighborhood, rather beneficial, nor substantially derogate from the Zoning By-Law.

6. DAVID LUDWIG - 701 Route 134, So. Dennis

Acting Chairman Flinkstrom noted that the Board had not taken a formal vote on this case heard on June 5, 1978. Dr. Carroll made motion to allow Mr. Ludwig to "withdraw"; second by Mr. Flinkstrom. Vote: unanimous.

Meeting adjourned 10:35 P.M..

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TOWN OF DENNIS
BOARD OF APPEALS

July 3, 1978

Convened: 7:30 P.M.
Present : Flinkstrom, Carroll, Fallon, Baldwin, McCarthy
Staff : Taylor, Perry
Public & Press: Approximately 40

1. SALVATORE SORABELLA ET UX - Lot 61 & Lot 63 Dunstable Cross Rd., So. Dennis
Dr. Carroll read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family dwellings on each of above named lots. Attorney James F. Connors represented, and explained they had bought these lots eleven (11) years ago; that their son-in-law bought a third lot in 1965. He added that there are sixty-nine (69) lots in this area, all about the same size, and that they should have "checkerboarded" them; that they had been paying taxes for eleven (11) years. He said Mr. Sorabella had financial hardship because he lived under mistaken notion that they were a good investment. He also said his son-in-law had built house, to which abutters present objected, saying there was no house. He felt building on each lot would not be detrimental to neighborhood, nor derogate from Zoning By-Law. Dr. Carroll suggested he could combine and sell. Mr. Connors said he is only asking for what others have done - build on lots under nine thousand (9000) square feet; that if Mr. Jones and Mr. Smith each owned one lot, they could build now in 1978. He said Mr. Sorabella might build on one lot and sell the second, or sell both. In response to Mr. McCarthy, Mr. Connors said there would be approximately a 40% loss to sell as one lot as opposed to selling two lots. Dr. Carroll asked what he had paid for these lots. Mr. Connors said he did not know, but thought he had paid about twelve hundred dollars (\$1200.00) in taxes. A Ms. Killen, from the audience, asked if the Board could explain the Zoning By-Law and what requirements are. Mr. Flinkstrom said there are new changes in Zoning By-Law, which are available from the Town Clerk, and that the Board is not present as an educational Board but to hold legal hearings. Mr. Frank Burgess stated there have been mis-statements - that no lots have been cleared; he did not think owner intends to build, but has a builder who builds "cheap houses". Mr. & Mrs. Henry Nelson, 60 Charing Cross Road, agreed with Mr. Burgess. Attorney Connors again spoke of financial loss because they did not build earlier; that all lots are about the same size, and that houses would have to be approved by Mr. Ralph Kelley, which he felt has nothing to do with this Board. Mrs. Schallasky asked about hardship, just what taxes have been paid. Mr. Fallon wanted to know what he had paid and what was asking price. Mr. Connors did not know what he had paid, but there was a purchase and sales agreement - both lots for about twelve thousand dollars (\$12,000.00), or each for about eight thousand dollars (\$8,000.00). Dr. Carroll felt it is up to the petitioner to present evidence showing hardship, and that Mr. Connors had not supplied figures. Hearing closed 8:22 P.M.. The Board's vote was 4 to grant (Flinkstrom, Fallon, Baldwin, McCarthy) and 1 to deny (Carroll). The majority's vote was based on belief that hardship was proven; that it would not be detrimental to neighborhood, nor substantially derogate from the Zoning By-Law. The minority vote was based on not finding hardship.

2. JAMES R. DYKEMAN, JR. - Lot 13, Ronda Lane, Dennis
 Dr. Carroll read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling at above location. Attorney William E. Crowell, Jr. represented, and explained that his client purchased vacant lot on Ronda Lane, which is 17,300 sq. ft.. He added that while it is now in single ownership, it was deeded out from contiguous ownership in 1973; that Mr. Dykeman paid seven thousand dollars (\$7,000.00) for lot and now has financial hardship. In response to Board, Mr. Crowell stated that Mr. Dykeman wishes to build for himself and retire, and the Cape Cod Co-operative Bank had given him a mortgage. Dr. Carroll noted that this lot was deeded in 1974 from Bottero, to Bellavance, to the Falmouth National Bank, to Douglas Nickerson (a realtor) to Dykeman; further that Nickerson was in recently for a variance on a lot on Ronda Lane. Mr. Crowell replied that Mr. Dykeman had bought in good faith. Abutters, Mr. Carl Hughes and Mrs. Priestly, both spoke in favor, saying they would like to have the Dykemans as neighbors, and it would enhance the street. Hearing closed 8:33 P.M.. The Board's vote was 4 to grant (Flinkstrom, Fallon, Baldwin, McCarthy) and 1 to deny (Carroll). The majority's vote was based on finding hardship in Mr. Dykeman's ability to recover his money if lot were not buildable, also that the lot is similar in size with other lots in the neighborhood, and, therefore, would not be detrimental. They also believed it would not substantially derogate from Zoning By-Law since the lot is 17,305 sq. ft.. The minority's vote was based on belief that it is an attempt to circumvent the Zoning By-Law.

3. RALPH L. KELLEY - Parcel 2, Theophilus Smith Road, So. Dennis
 Dr. Carroll read legal notice requesting variance from minimum lot size of 40,000 sq. ft. to construct builder's warehouse at above location. Attorney George Armeson represented, and explained the land was in Industrial Zone, which now requires 40,000 sq. ft., and this lot is 31,566 sq. ft.. He added that Mr. Eastman of West Dennis would build a warehouse; that if variance were not granted, nothing could be done with lot. In reply to Mr. Baldwin, Mr. Armeson said there was a purchase and sales agreement contingent on variance being granted. He added the next lot was about 40,000 sq. ft. with cablevision and that he, himself, owned some nearby land. He said Mr. Eastman planned a warehouse with several sections to be rented; that he did not know if warehouse would meet all setbacks since he had not seen a plan. Mr. Eastman stated that the setback requirements would determine size of building. Hearing closed 8:40 P.M.. The Board's vote was unanimous based on belief that hardship existed if this lot could not be utilized in Industrial zone, and that it would not add to value of adjacent property if not used. The Board also believed it would not substantially derogate from Zoning By-Law, nor be detrimental to neighborhood.

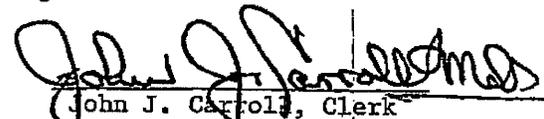
4. MARJORIE TREMBLAY - Lots 40 & 41, combined, Signe Rd., Dennis
 Dr. Carroll read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling at above location. Mrs. Tremblay represented herself, and explained that she had been granted a similar variance previously, which will expire on July 21, 1978. Mr. Flinkstrom informed Mrs. Tremblay that if any variance is granted, under present law, it would expire in one year if not utilized. Mrs. Tremblay explained that her realtor had not been well and did not work on selling the lots over the last two years; that she was actively trying to sell. She confirmed that the two lots would be combined. Hearing closed 9:49 P.M.. The Board's vote was unanimous to grant based on belief that hardship was proven in ownership of eighteen (18) years. In view of the fact that petitioner has combined two lots and upgraded, the Board believed it would not derogate from the Zoning By-Law, nor be detrimental to neighborhood.

5. CLEMENT G. & DORIS KOCH AND PAULINE F. JOHNSON - Lot 2, Rt. 28, W. Dennis

Dr. Carroll read Legal Notice as follows: Clement G. & Doris Koch, 19 Little Cove Circle, West Dennis, Ma., and Pauline F. Johnson, 24 Alburmar Road, West Dennis, Ma., appeal from Building Inspector's granting of Building Permit and failure to enforce Zoning By-Laws, and petition the Dennis Zoning Board of Appeals to rescind, annul, and revoke the building permit issued to Bruce L. Babcock on Lot 2, Route 28, West Dennis, Ma., on April 13, 1978. Attorney Michael Princi represented, and stated that the abutters in a subdivision off Route 28 object to a building permit granted to Parcel 2 on Rt. 28 in this subdivision on 4/13/78. He said 60% of distance of lot is on Alburmar and balance in residential. Mr. Princi quoted from Zoning By-Law Section 2.1.4 - Divided Lots - "Where the boundary of a zoning district divides a lot having frontage on a street in a less restricted district, the provisions of this by-law covering the less restricted portion of the lot may extend not more than twenty-five (25) feet within the lot beyond the district boundary. Where the boundary of a district divides a lot having frontage on a street in a more restricted district, the provisions of this by-law covering the more restricted portion of the lot shall extend to the entire lot," and said their position was that the second sentence should control, even though it is conflicting. He further quoted from Section 2.3.4.6 - "Where the rear lot line abuts a residential zone, the rear yard shall be 50 feet and shall conform to the standards set forth in Sub-section 2.2.3.4." (Outside bulk storage, contractor's yard, disposal area or open storage related to manufacturing, processing, warehousing, wholesale trade or a public utility facility shall be screened from any adjacent residential use, a residential district or street by a solid stockade fence six feet in height or densely planted trees or shrubs six (6) feet or more in height, or be equivalently obscured by natural vegetation), and contended that the front yard is on Alburmar Rd., which would require a 50 ft. rear yard. He felt Mr. Babcock should not be allowed to use his residential area to project into rear yard; he referred to a recent case where Mr. Harney put a road through residential property to satisfy commercial use and the Court said he could not do so. Mr. Princi then cited Section 3.1.2 (Off-Street Parking Schedule); that computations of 120,000 sq. ft. gross floor area required 41 spaces, but that this did not include portico of 1700 sq. ft., which would require another 12 spaces. He added, assuming the front yard of the building is where it is, there should be a 50 ft. setback as it is in a residential zone. Mr. Princi continued that this matter was much debated on the basis of the access; that the Zoning By-Law requires a 30 ft. access and was approved, but left up in the air since the State has jurisdiction, and requires two 20 ft. accesses. He again referred to the Harney case, and said the arguments are made on behalf of Mr. and Mrs. Koch and Mrs. Johnson, but he presented a petition in support by other petitioners. He continued to ask what is the purpose of the Zoning By-Law in the Town of Dennis - to maintain the health and welfare? He said this subdivision plan provides 24 lots with beach rights, including Mr. Babcock's lot. Mr. McCarthy asked how much frontage does he have in GC II and residential. Mr. Princi replied that it is clear that most is in GC II. Mr. Princi referred to Section 2.2.3.4, and said it seems to refer to bulk storage or open storage in an open area. Dr. Carroll did not think this case similar to Harney's; that Harney had 600 ft. commercial and 150 ft. residential and wanted to build road through. Mr. Princi felt Mr. Harney was more flagrant, but it was still basically the same; added they had tried to keep Mr. Babcock from continuing building until we could get here. Mr. Baldwin questioned if the petitioners really felt the portico should be considered regarding additional parking. Mr. Princi felt it should be considered as additional gross square footage. Mr. Princi stated that

Mr. & Mrs. Koch had sent in an "informal appeal" before, but it was not noticed (dated 4/11/78). Ms. Marion Low spoke in favor of Mr. Princi's presentation. Mrs. Mary Doherty spoke, saying she felt it was in violation of Zoning By-Law. Attorney Nicholas Mazzone, representing Mr. Babcock, questioned when an appeal could be filed to start the motion. He continued on May 5th an appeal was received; on about June 2nd, an application was submitted and it was asked to be backdated to May 5; that he wanted the record to show this: that your secretary went to Town Clerk's office and Town Counsel, and this was done. Mr. Mazzone said letters were sent in and requests for stop work orders, but no formal application. He added that petitioners asked for front on Rt. 28; after discussion with Fire Department they agreed it did front on Rt. 28 and there is a 50 ft. rear yard. Mr. Mazzone agreed with Mr. Baldwin that the portico should not be considered floor space, adding Mr. Babcock agreed to everything the petitioners and Fire Department wanted, as well as State requirements for Rt. 28 access and egress, which would be reduced in size inside State road. He did not feel Mr. Babcock was in violation of any Zoning By-Law, nor that anyone could come in 40-50 days later and appeal a building permit. In response to Dr. Carroll, Mr. David Ellis, Acting Chairman of the Planning Board, stated that to the best knowledge of the Planning Board, Mr. Babcock was not going against Zoning By-Law. Mr. Baldwin asked Mr. Ellis if it were his impression that when all changes were made and put on paper and examined, there seemed to be a meeting of the minds. Mr. Ellis agreed. In response to Board, Building Inspector Roland Taylor stated he had complete file on this matter, and could not find any way in which Zoning By-Law was not fulfilled. Mr. Flinkstrom read memo of April 18, 1978 from Mr. Taylor to Mr. T. Nelson, outlining various sections of the Zoning By-Law and compliance with these. Mr. Taylor said he considered, by definition, Rt. 28 to be the front; also that he did not think any similar cases had been before this Board. Mr. Princi said there is no precedent as to how such an appeal should proceed; that he had spoken with Mr. O'Neil and they agreed that May 5th was the date of appeal; also that Mr. Mazzone does not address himself to Section 2.1.4. Mr. Mazzone requested the Board to establish the fact that the formal application was backdated. The Board's secretary explained request to have Town Clerk backdate to May 5, which was done on approval of Town Counsel. Attorney Mazzone claimed it was necessary to file an application, provide abutters, and pay fee; that no fee had been paid on May 5th. Mr. Princi claimed his petition of May 5th included all the facts. In response to Mr. Fallon, Attorney Princi said he thought formal application was filed on June 2nd. Miss Pauline Johnson asked if she could address Attorney Mazzone, who agreed he was at the last three Planning Board meetings on this matter. Miss Johnson stated the residents had drafted an "Appeal" on April 11, 1978, addressed to Town Clerk, listing all the things they objected to; she said she had spoken to Mrs. Slade, Mrs. Hagler, and went to Appeal Board office (which had received copy) and was told it was illegal and nothing would be done about it. The Board's secretary asked Acting Chairman Flinkstrom if Miss Johnson could identify the person who made these remarks. Miss Johnson said it was the secretary sitting right there. The secretary asked if she could step down and refute her alleged remarks. Mr. Flinkstrom decided this was not germane. He then read letters from Mr. Weber and Mr. & Mrs. Howard Smith in objection. He made note of a June 20, 1978 petition, marked "An Appeal", signed by many names. Mr. Koch began to address Attorney, but Acting Chairman Flinkstrom ruled he could only address the Chair. Hearing closed 10:10 P.M.. The Board felt that there was a great deal of material to study, and voted unanimously to take under advisement. A special meeting was scheduled for July 11, 1978 to discuss this case. Meeting adjourned 11:10 P.M..

8/11/78
Date


John J. Carroll, Clerk

TOWN OF DENNIS
BOARD OF APPEALS

August 7, 1978

Convened: 7:35 P.M.
Present : Flinkstrom, Carroll, Fallon, Lizotte, McCarthy
Staff : Taylor, Perry
Public & Press: Approximately 25

1. TOWN OF DENNIS BEACH COMMITTEE - Mayflower Beach, Off Dune Road, Dennis Dr. Carroll read legal notice requesting a Site Plan Review and variance from parking requirement regarding trees for construction of parking lot at above location. No one was present representing, so Board continued the case until later in the evening.

2. CHARLES W. WAKEFIELD - Lot 33 (#15), Shirley Avenue, Dennisport Dr. Carroll read legal notice requesting variances from front yard and side yard requirements to construct addition to single-family dwelling at above location. Mr. & Mrs. Wakefield were present, and explained they would like to square off building because his mother, who is ill, is coming to live with them in the summer; that his mother is not in wheelchair yet, and lives with his sister in the winter. Mr. Wakefield also confirmed they live there in summer, and no longer rent. Mr. Fallon spoke of fact that lot is 3,339 sq. ft.; size of building is about 250 sq. ft. and addition would be about 99 sq. ft., about 1/3 increase; that he had viewed house with two cars in drive and two cars in street, and asked Mr. Wakefield if he also planned to retire. Mr. Wakefield replied that he did plan to retire and his mother is selling her house; that he had bought his house from his mother 14 years ago. He added that his hardship was in needing more space for his mother in the summer. Mr. McCarthy said he thought that the present house was probably about 700 sq. ft. rather than 250 sq. ft.: Mr. Flinkstrom read letter from James P. Gallivan in favor; another letter in favor signed by several neighbors; letter from Mr. Wakefield expressing need for more space; noted telephone call from Mr. & Mrs. McDonald in favor. Hearing closed 8:05 P.M.. The Board's vote was 4 to grant (Flinkstrom, Carroll, Lizotte, McCarthy) and 1 to deny (Fallon). The majority vote found hardship had been proven; that it would not be detrimental to neighborhood, nor substantially derogate from Zoning By-Law. The minority vote did not believe sufficient hardship had been shown.

3. ROBIE W. DIMOCK - 528 Route 6A, Dennis Dr. Carroll read legal notice requesting Special Permit to operate Antique Business at above location. Mr. & Mrs. Dimock were present, and he explained that he was retired and wanted to start a small business to supplement income; that he would use existing building, 16 x 24 feet; that it is opposite Signal Hill, formerly the Grose house. The Board looked at recent Grose ANR plan, and Mr. Dimock said it sets approximately 110 feet back from street; that the Grose Gallery is in back. Mr. Flinkstrom noted that there is an existing drive, but Mr. Dimock said there is, but he wanted to also have his own drive here, pointing to circular drive in front of house. Mr. Dimock said the clerk made a mistake in only advertising as antique business, not "this and that". The secretary replied that Mr. & Mrs. Dimock had only indicated antique business to her. Mr. Dimock said the drive would be 25 feet from front of house. Mr. Flinkstrom asked if there was any way that parking could be routed to back yard? Mr. Dimock replied, "No", without ruining his back yard. There was discussion of shrubbery in front; that drive would not be paved, just a path.

3. (CONT'D.)

Mr. Lizotte asked about a car entering and a car exiting at the same time from only one access. Mr. Dimock said that one car would have to wait; as to hours he thought he would like from 10:00 A.M. to 4:00 P.M., six days a week. Mr. George Armeson, not an abutter, said he did not think this would be detrimental or derogate. Hearing closed 8:19 P.M.. The Board's vote was unanimous (Flinkstrom, Carroll, Fallon, Lizotte, McCarthy) to grant on finding that there would not be sufficient nuisance, noise, or hazard so as to be detrimental to neighborhood, nor derogate from Zoning By-Law.

4. OTTO W. SCHOENFELDER - Lot 33 (#295), Old Bass River Road, So. Dennis. Mr. Schoenfelder was present and represented by Attorney Nicholas Mazzoni, who explained his client's lot on Dunstable Cross Road was purchased in 1968, and four years later purchased another lot behind, not realizing they would become contiguous. He added Lot 33 is 11,250 sq. ft., while most other lots are about 10,000. He referred to Sorabella variances recently granted, adding that most lots in area are built upon and that it would be a hardship if not granted so that he can sell for his retirement; also that the two lots are not completely contiguous. Mrs. McGorty, an abutter, spoke in favor. Hearing closed 8:26 P.M.. The Board's vote was unanimous (Flinkstrom, Carroll, Fallon, Lizotte, McCarthy) to grant in finding hardship that if variance were not granted the lot would remain useless and not used. They also found it would not be detrimental to neighborhood, nor substantially derogate from Zoning By-Law since the lot is comparable in size to other lots in neighborhood.

5. JOHN W. CARNEY - Lot 50 (#22), Fiddlers Green, West Dennis. Dr. Carroll read legal notice requesting variance from rear yard requirement to rebuild shed at above location. Mr. Carney was present and represented by Attorney Myer Singer, who explained it was a simple request for reconstruction of a shed, adding an additional 4 ft.; that the shed was already reconstructed, has been there for about 12-15 years and houses hot water heater and other items. Mr. Singer said Mr. Carney did not realize a building permit was needed, and after work was done he was advised that he needed 25 ft. rear setback. In rebuilding he put doors inside rather than rear, added a fence to give privacy for showers on each side. Mr. Singer felt there would be hardship to rebuild to meet setback. Mr. Carney explained the north side of duplex does not fall within 10 ft. rear setback; that it is non-conforming; that it contains one water heater plus miscellaneous. Mr. McCarthy questioned how maintenance could be done with only 3 ft. 6 inches rear setback, and asked how difficult to remove? Mrs. Campbell, not an abutter, suggested sliding door. Attorney William Kilroy, representing Thomas and Florence Lane, abutters to the rear, spoke in opposition. He said the applicant had put up shed, and the Building Inspector was asked by his client to look at it; that there had been no building permit. He felt it was out of character with neighborhood, and you could not get around shed without encroaching on abutter's property. He added that if this Board accepts this as hardship, it outside the realm of the Zoning By-Law; that he did not think the Zoning By-Law says "hardship" is after the fact. Hearing closed 8:55 P.M.. The Board's vote was unanimous (Flinkstrom, Carroll, Fallon, Lizotte, McCarthy) to deny in finding that there was failure to show hardship; if any hardship, it was brought by petitioner's actions in rebuilding and enlarging without a building permit. The Board also found it would be detrimental to neighborhood and derogate from Zoning By-Law.

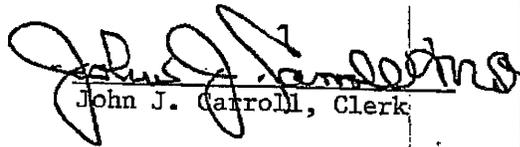
1. (CONTINUED) MAYFLOWER BEACH

Mr. Larry Leone represented the Beach Operations Committee, and explained that they were requesting elimination of the Zoning By-Law section that requires plantings for every five cars; that they had been told by Conservation Commission that plants would not survive. He said only beach grass will survive, which would collect sand and have to be bulldozed out, removing planting. He added that Dr. Norton Nickerson and Mr. Curt Livingston have stated this. In response to Board, Mr. Leone said they were just trying to put in 144 parking spaces, reduced from 220 by the Conservation Commission; that by putting in plantings, they would lose another 30-40 spaces. Mr. Leone said Conservation had learned from Chapin Beach, and that they were getting beach grass to put out near dunes. In response to Mr. Fallon, Mr. Leone said they felt hardship is that planting would require constant maintenance, a financial burden to the Town; that it would not be detrimental to the neighborhood, and that he was in favor of Zoning By-Law, but not in this case. Dr. Carroll asked how they were going to protect Mrs. Moody. Mr. Leone stated that she has a right of way to beach so that she is protected. He added that a truck accidentally dumped a load of sand, which will be removed; that they are talking about a couple of porto comfort stations. Mr. Sanclemente, from Dunes View Road, suggested that Chapin Beach is more exposed; that there is a lot of natural vegetation at Mayflower now, and questioned if only beach grass will grow Mrs. Campbell, of Horsefoot Path, asked about other plantings. Mr. Leone suggested black pines, and said they did not intend to strip of all vegetation, only clearing small parking lot. Mr. Flinkstrom read letter from Planning Board recommending planting and poles. Hearing closed 9:20 P.M.. The Board's vote was unanimous (Flinkstrom, Carroll, Fallon, Lizotte, McCarthy) to deny variance from parking requirement regarding trees for construction of parking lot at Mayflower Beach, in finding that hardship had not been proven; that granting would be detrimental to neighborhood and derogate from Zoning By-Law.

6. J. ALBERT BASSETT - Lot 3 (#4), Pilot Drive, East Dennis
This hearing was continued from July 17, 1978. There had been a question of Mr. Bassett cleaning up some tree stumps, etc.. Mr. Flinkstrom asked Building Inspector, Roland Taylor, what the present condition was. Mr. Taylor said he had inspected; that Mr. Bassett had bulldozed and covered tree stumps, and that he felt it was now all right. In response to Mr. McCarthy, he said there was not any grass. Mr. Bassett stated it would be a hardship to move foundation. Hearing closed 9:45. The Board's vote was unanimous (Flinkstrom, Carroll, Fallon, Lizotte, McCarthy) to grant based on belief that considerable hardship would exist if foundation, which has been put in, had to be moved for the small distance of 1 foot 3 inches. The Board also found that it would not be detrimental to neighborhood, nor substantially derogate from Zoning By-Law:

Meeting adjourned 10:15 P.M..

8/30/78
(Date)


John J. Carroll, Clerk

TOWN OF DENNIS
BOARD OF APPEALS

August 21, 1978

Convened: 7:35 P.M.
Present : Flinkstrom, Carroll, Fallon, Lizotte, Hart
Staff : Nancy Perry
Public & Press: Approximately 10

Acting Chairman Flinkstrom announced the very recent death of Appeals Board Member James E. Baldwin, and asked for a moment of silence in respect for Mr. Baldwin.

1. ALICE SYLVIA & FRANCIS J. SYLVIA - Lots 25 & 26, combined, Maloney Lane, Dennisport

Dr. Carroll read legal notice requesting variance from Section 2.4.1.2, requiring minimum lot size of 7,500 sq. ft. for an individually owned lot, to construct single-family dwelling at above location. Attorney Sylvia, a relative, represented, and presented a better plot plan. He explained the history goes back to about 1948; that lots 22 and 23 are owned by his parents. He said Lot 26 was owned by his cousin, who intended to build cottage; that his cousin died and nothing could be done with lot. He suggested that by putting together the two lots it would be just under 7500 sq. ft. and would not derogate from Zoning By-Law, nor detrimental to neighborhood. In response to Mr. Fallon, Mr. Sylvia said that if variance were granted, they would put lots on the market. Ms. Linda Anderson, 53 Ferncliff, spoke of Dooley variance granted. Mr. Edward Arms was concerned about size of house. Mr. Flinkstrom explained what setbacks would be required and that septic system requirements must be satisfied. Mr. Flinkstrom read letter in opposition from Mr. McCauley; also noted telephone call from Mr. Jones, not objecting but felt Zoning By-Law should be upheld. Hearing closed 7:55 P.M.. The Board's vote was unanimous (Flinkstrom, Carroll, Fallon, Lizotte, Hart) to grant in finding sufficient hardship in owning and paying taxes since 1948-49; that it would not be detrimental to neighborhood, rather an improvement in combining lots. The Board also believed it would not substantially derogate from Zoning By-Law. Hearing closed 7:55 P.M..

2. The Board briefly discussed revision of Rules and Regulations and possibly increase in fee. The secretary was requested to contact other towns for comparison figures and work up a cost analysis for Dennis cases.

Meeting adjourned at 8:15 P.M.

8/30/78
(Date)


John J. Carroll, Clerk

TOWN OF DENNIS
BOARD OF APPEALS

September 18, 1978

Convened : 7:45 P.M.
Present : Fallon, Carroll, McCarthy, Lizotte, Muse
Staff : Taylor, Perry
Public & Press: Approximately 15

1. WINONA W. LEIDINGER - Lot 20 (#40), Debbie Lane, South Dennis
Dr. Carroll read legal notice requesting variance from minimum lot width to construct single-family dwelling at above location. Acting Chairman Fallon explained the lot is 20,690 sq. ft., but that frontage is 92 ft. and lacks 8 ft. in minimum lot width. Mrs. Leidinger was present and explained the lot is next to their home which they are trying to sell; that they would like to live on one floor. She added they had believed it buildable because it was over 20,000 sq. ft. and has been assessed as a buildable lot; that it came as a shock to find they could not sell as such. They would like to sell house and lot, or each separately. Mrs. DeVeré identified herself as listing realtor, and said she had discovered this problem. The secretary explained the subdivision plan, without showing a specific house, had been accepted on authorization of Vice Chairman Flinkstrom. Mr. McCarthy questioned another lot on Ferry Street. Mrs. Leidinger stated the only lot owned is next to her home, not on Ferry Street. She also asked about one year limitation if granted. Mr. Fallon explained this was a State law. Mr. Leidinger said she could not understand how there are some lots approved at 7500 sq. ft.. Mr. Fallon replied that the Town Meeting is the place to object, and added financial hardship needs to be proven, not detrimental, nor derogate from Zoning By-Law. In reply to Mr. Fallon, the petitioner said her hardship was in not being able to buy smaller house without selling. Mr. Fallon asked her if he came to her and said he would like to buy house and extra lot what would she say? Mrs. Leidinger said she would say yes. Dr. Carroll again pointed out to realtor that variance, if granted, would be good only for one year. Mr. Fallon read letters in opposition from Eugene Theroux, 26 Loring Ave., Jeannette & Gilbert Ethier, 10 Loring Ave., and Allan & Martha Phillips, 32 Uncle Barney's Road. Mrs. Leidinger commented on Ethier letter, saying that they rent their house, sometimes to some very undesirable people; that Mrs. Ethier had come over to talk with Mr. Leidinger and said she wanted to look at woods, not a house. She added that Mr. Phillips had subdivided and is no way nearby. Hearing closed at 8:06 P.M.. The Board's vote was 4 (Lizotte, Carroll, Muse, McCarthy) to grant; 1 to deny (Fallon). The majority vote found hardship in owner having paid taxes since 1942 on property assessed as a buildable lot and that most lots in that area are smaller in size; that it would not be detrimental to neighborhood, nor substantially derogate from Zoning By-Law. The minority vote was in not finding sufficient hardship and the fact that the extent and size of the variance was undefined.

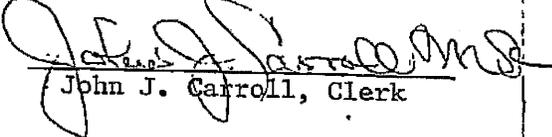
2. LILLIAN A. McGRANE REALTY TRUST - Lot 20 (#40), Debbie Lane, South Dennis
Dr. Carroll read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling at above location. Mrs. McGrane was present, and explained she would like variance so that she can sell lot; that she had bought for her sister, who no longer wishes to build. She added it is expensive to keep up; that she and her husband live down the street; that there is a prospective buyer if variance is granted, and that she would lose money if not buildable. At Board's request,

2. (CONT'D. - LILLIAN A. McGRANE REALTY TRUST

she explained that she had bought from Hart and Noyd, who received variance which expired on December 1, 1977. Mr. Robert Hubbard, 33 Debbie Lane, confirmed that Hart and Noyd had had contiguous lots, received variance and Old King's Highway Regional Historic District approval. He viewed certified plot plan and proposed house plans, and said he had no objection. Mrs. Leidinger asked about her evaluation, but was told her hearing had been closed. Hearing closed 8:17 P.M. The Board's vote was unanimous (McCarthy, Fallon, Muse, Carroll, Lizotte) in finding proven financial hardship; that it would not be detrimental to neighborhood, nor substantially derogate from Zoning By-Law. Hearing closed 8:17 P.M..

Meeting adjourned 8:45 P.M.

9/21/78
(Date)


John J. Carroll, Clerk

13.

TOWN OF DENNIS
BOARD OF APPEALS

October 2, 1978

Convened : 7:37 P.M.
Present : Flinkstrom, Carroll, McCarthy, Lizotte, Muse
Staff : Perry
Public & Press: Approximately 20

1. JOSEPH T. & GERTRUDE O'BRIEN - Lot 100 (#129) Bayridge Drive, S. Dennis
Dr. Carroll read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling at above location. Mr. & Mrs. O'Brien were represented by Attorney Jay Murphy, who explained that the petitioners are seeking variance from width of lot as well. He said that under Section 10 hardship would be due to soil or topography. In response to Mr. Muse, Mr. Murphy said there are houses there which are about same size. Mr. McCarthy commented that it was bought for \$1200.00 and could be sold for much more with or without house. Mr. Murphy said he felt that taxes had been paid; thought they had buildable property. Dr. Carroll felt that they need to prove substantial hardship, and that attorney should look up exact price figures, etc.. Mr. Flinkstrom read letter from Mr. Edmund Griffin, an abutter, stating that he had no opposition. Hearing closed 8:12 P.M.. The Board's vote was 4 (McCarthy, Muse, Carroll, Flinkstrom) - 0 (Lizotte abstaining) to deny. The majority vote was based on not finding that substantial hardship had been proven.

2. VARKIS K. OVIAN, Lot 6 (#32) Davidson Avenue, South Dennis
Dr. Carroll read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling at above location. Mr. Mark Ovian represented his father, who explained that his father found it difficult to maintain the lot, is on fixed income; that he had purchased lot for \$6,000.00, and in selling would not make much profit, just break even. Mr. McCarthy did not think the intent of ZBL was to have an investment made in 1962 turn to ZBL for relief, that he did not feel it would be detrimental or derogate. Dr. Carroll felt they should consider protection of water supply. In response to Mr. Lizotte Mr. Ovian said this was the only unbuilt lot; that his sister-in-law had intended to build, but had changed her plans and he needed to sell. Mr. Flinkstrom pointed out to Mr. Ovian that if variance were granted, it would be good for only one year under State Law. Hearing closed 8:22 P.M.. The Board's vote was unanimous (Lizotte, Carroll, McCarthy, Muse, Flinkstrom) to grant based on finding hardship in that petitioner's original investment could not be remade; that size of lot is consistent with other lots in neighborhood, not detrimental, and that it would not substantially derogate from Zoning By-Law. The Board also found that Lot 56 was not contiguous with Lot 16, Charing Cross Road, since the lots are on different streets.

3. JEANNETTE L. KEHOE - 3W (Lot 123), Old Chatham Road, South Dennis
Dr. Carroll read legal notice requesting variance from side line setback requirement to construct tool shed at above location. Miss Kehoe was present to represent herself. Mr. Hugh McGinniss, direct abutter on the side for which variance is requested, spoke in favor of granting because of Miss Kehoe's health. Miss Kehoe explained that the tool shed would be 8 ft. from sideline, rather than 10 ft.; that Old Kings Highway Regional Historic District had not approved placing it on side on Old Bass River Road where she would have had room. Dr. Carroll asked if she

17.

3. (CONT'D.) - JEANNETTE L. KEHOE, 3W Old Chatham Rd., S.Dennis had a garage or cellar. Mrs. Kehoe explained she could not lift anything for health reasons. In response to Mr. McCarthy, Mrs. Kehoe said she could not put next to garage because of living quarters in rear of garage. Mr. Lorenzo A. Bean, an abutter, stated he had no opposition. Mr. Hugh McGinnis again stated he was in favor. Hearing closed 8:35 P.M.. The Board's vote was unanimous (Flinkstrom, Carroll, McCarthy, Lizotte, Muse) to grant in finding financial and physical hardship, as well as cooperating with Old Kings Highway Regional District in siting of tool shed, which necessitated need for variance. The Board also found it would not be detrimental to neighborhood, nor substantially derogate from Zoning By-Law.

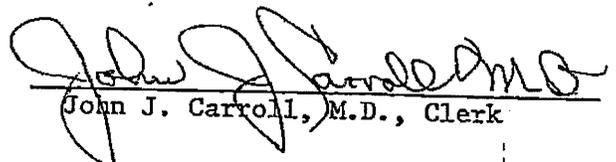
4. PAUL J. & MARGARET F. MURPHY, Lot 5 (#42) Ferncliff Rd., Dennisport Dr. Carroll read legal notice requesting variance from Section 2.4.1.2, requiring minimum lot size of 7,500 sq. ft. for an individually owned lot, to construct single-family dwelling at above location. Mr. & Mrs. Murphy were present, and Mr. Murphy explained they had bought lot 9 years ago (1969); that three years ago they were intending to build, but he was in automobile accident after being issued a building permit; that now they could see their way clear to build. Dr. Carroll and Mr. Flinkstrom pointed out that building line is only 90 ft. and that 100 ft. is needed. Mr. Murphy agreed he would like to request this variance also. There was discussion of parking of cars, but Mr. Murphy said they only had one car. Abutter Barbara Zullo commented that Mr. Murphy parks his car in her driveway. Mr. Gerald Lamothe, direct abutter, spoke in objection, stating that a few years back he had offered to purchase lot; that Mr. Murphy excavated and left hole and the neighbors were concerned about children. He added that Mr. Roland Taylor examined the site and about 14 months later the Town filled in. He wanted to know what Mr. Murphy is going to build. Dr. Carroll and abutters wanted to know how many bedrooms; Mr. Murphy stated there would be two. Mr. Flinkstrom reminded Mr. Murphy that if variance were granted it must be utilized within one year or would expire. Hearing closed 9:10 P.M.. The Board's vote was 4 (McCarthy, Muse, Carroll, Lizotte) to grant - 0 (Flinkstrom abstaining). The majority vote found hardship in price paid for lot in 1969 and paying taxes on a buildable lot since then. They also did not believe granting of the variance would have adverse effect on the neighborhood, nor substantially derogate from Zoning By-Law.

5. JOHN L. LACASSE - 178 Depot Street, Dennisport Acting chairman Flinkstrom explained that Mr. Lacasse's hearing in April was continued. He had requested variance from rear yard setback requirement to construct additional outside staircase, and has not decided not to proceed with addition. He read letter from Mr. Lacasse requesting withdraw without prejudice. Motion made and seconded to permit this action. Vote unanimous.

6. Attorney Myer Singer, Mr. Bill Weller, and Mr. Craig Lohr appeared informally to present proposal of 11 or 12 apartments or condominiums on Route 134 south of Setucket Road, which is EB Zone.

Meeting adjourned 10:50 P.M.

11/5/78
(Date)


John J. Carroll, M.D., Clerk

TOWN OF DENNIS
BOARD OF APPEALS

15

October 16, 1978

Convened : 7:36 P.M. (Lizotte,
Present : Skelly, Flinkstrom, Carroll, McCarthy, Hart Muse present)
Staff : Taylor, Perry
Public & Press: Approximately 12

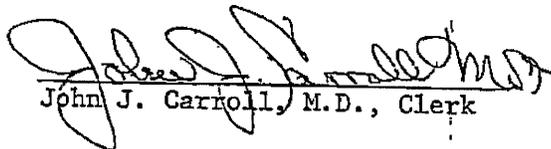
1. CARLTON M. ELLIS - Lot 4 (#3), June Terrace, Dennisport
Dr. Carroll read legal notice requesting variance from Section 2.4.1.2., requiring minimum lot size of 7,500 sq. ft. for an individually owned lot, to construct single-family dwelling at above location. Attorney Russell Wilkins represented Mr. Ellis, and explained the plan submitted is reconstruction of plans already submitted; that the latest is Land Court plan. He continued that Mr. Ellis would like to combine three lots subdivided in 1969 following 1959 plan; that in 1974 the ZBL changed, plus recent changes. Chairman Skelly reminded that the Board is talking about Lot 4, established in 1959 and 6518 sq. ft., which is under the required 7500 sq. ft. according to Section 2.4.1.2.. He added that there is a Town road and a Land Court road which has not been cut in. Mr. Wilkins said this is unique and to prevent Mr. Ellis from selling would be hardship; that the effect on the ZBL would be minimal, not adverse effect, nor derogate. In response to Mr. Flinkstrom, he said he did not have amount of taxes paid at hand. Mr. Wilkins quoted from Cape Cod Times article of 4/16/76, indicating there would be 7 year protection, which Mr. Ellis received in Florida. Chairman Skelly read letter from Mr. George Macdonald, of Conservation Commission, indicating this lot is within the jurisdiction of the Conservation Commission. He also read letter from Health Director, Ted Dumas, saying there might be a problem with septic system. Also letter from Mr. Raymond Gagnon in opposition, and noted telephone call from Mr. & Mrs. James Harrington stating no objection. Dr. Carroll said lot is very near "The Flashés" and he would like to see house proposed. Attorney Wilkins said Mr. Ellis only wants to sell buildable lot; that they know they would have to go to Conservation and Health Department. In reference to Cedar Pond Road, which has an ancient way and which is not utilized, in order to change with Land Court, could cost \$3000-\$4000. Mr. Skelly reminded that variance, if granted, would only be good for one year; that he would prefer to have this case come in when there is a purchase and sales agreement, rather than have someone come in after a year and say "you said it is a buildable lot". Mr. Wilkins stated the lot is not within the FPZ. Mr. Hixon, 9 June Terrace, questioned if Gagnon letter (who purchased from Cash) had the right house in mind; that the whole neighborhood is small lots. Mr. Wilkins said Mr. Ellis intends to deed Cedar Pond Way to Town, but Mr. Skelly said he did not like to see Town accepting, but not being able to maintain. Mr. Flinkstrom pointed out that another variance might be needed since the lot lacks 100 ft. at the building line. Attorney Wilkins requested to withdraw without prejudice and return at appropriate time. Mr. Flinkstrom moved to allow petitioner to withdraw without prejudice; seconded by Dr. Carroll.
Vote: UNANIMOUS.

2. CARLTON M. ELLIS - Lots 5, 8, 9, Combined, June Terrace, Dennisport
Dr. Carroll read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling at above location. Mr. Wilkins again represented, and explained June Terrace and Ellis Drive form a horseshoe; that - 130 - ft to combine three lots into one,

2. (CONT'd) CARLTON M. ELLIS
which would be over 18,000 sq. ft.,. He added most other lots are small, and they had an opportunity to sell to neighbors to add to their lots; that hopefully could sell other lots 6, 7, and 22. Abutters came up to look at plans. Hearing closed 8:22 P.M.. The Boards vote was unanimous (Skally, Flinkstrom, Carroll, McCarthy, Hart) to grant in finding hardship with the configuration and layout of the lots, as well as long time ownership. The Board did not believe it would be detrimental to neighborhood, nor substantially derogate from Zoning By-Law since total of three lots combined is over 18,000 sq. ft..

Meeting adjourned 8:31 P.M..

11/2/78
(Date)


John J. Carroll, M.D., Clerk

TOWN OF DENNIS
BOARD OF APPEALS

31

FEBRUARY 21, 1979

Convened: 7:42 P.M. Adjourned: 12:10 P.M.

Present: Skelly, Flinkstrom, Fallon, McCarthy, Muse, Lizotte
Staff: Perry
Public and Press: Approximately 20

1. ARTHUR SEARS, ROBERT SEARS, WILLIAM SEARS, D/B/A A.R.W. CO.
Lots 5 & 6, Hokum Rock Road, East Dennis

Acting Clerk McCarthy read legal notice for hearing continued from February 5, 1979. Chairman Skelly stated the case could not be heard tonight because of lack of members; that it would be continued to Monday, March 5, 1979. Attorney Jay Murphy, representing, said they would be present on that date.

2. PAUL MCDONNELL - Lots 5 & 6, Hokum Rock Road, East Dennis

Mr. McCarthy read legal notice for hearing continued from February 5, 1979. Mr. Skelly again stated that this case could not be heard and would be continued to March 5, 1979, which was agreeable to representing Counsel Murphy.

3. JOHN P. BEST, JR. - Lot 4 (#53), Horsefoot Path, Dennis

Mr. McCarthy read legal notice requesting variances from minimum lot size of 20,000 sq. ft. and minimum lot width to construct single-family dwelling at above location. Attorney Myer Singer represented Mr. Best, who was present, and presented the Board with a brief on this case, explaining that the lot in question presently appears in the name of Hinckley, though Mr. Best is the owner; that subdivision was approved 48 years ago. Mr. Singer believed the Board had the power to grant variances, and offered his reasoning: he discussed soil conditions and topography, feeling these conditions would only relate to the siting of a building, not whether or not a lot is buildable. He suggested this leaves only shape, the lot having four sides and being determined by the area involved. He believed each lot would have a unique shape based on its area, giving the Board the power to grant variances; that the uniqueness of size determines the outside shaping of the lot; that if shape cannot be used to justify the granting for undersized lots, it would render this lot unbuildable with almost no value. He felt the current and future taxation of such a lot is a hardship to the owner if it can't be built upon and becomes a "public park" or open space. He quoted from the "American Law of Zoning," citing a Milton Case from 1964 in regard to hardship. Mr. Singer suggested that another house on this street would not cause noise or detriment to the neighborhood. He cited the ZBL reference to lots of 7500 sq. ft. minimum being protected. There was discussion of the change in the new Chp. 40A, relief of the rigidity of the ZBL, and the definition of "shape" in Webster's dictionary. Mr. Fallon referred to Mass. Law Review comments on leaving such lots unbuildable and Attorney George McLaughlin's views about the law being tested in Court. Mr. Skelly read letter from Mr. and Mrs. Edward Campbell, abutters, in opposition. Mr. Carmen Ferrante, owner of abutting Lot 3 spoke in opposition, saying that he was concerned about his septic system near lot line and that it would de-value his property if granted.

CONTINUED: JOHN J. BEST, JR.

It was determined that Mr. Ferrante's lot is about 11,000 sq. ft. and septic system is not over property line but that he has a sewerage easement for access. Mr. Elliott Stacy, abutter across the street, spoke in opposition, concerned that with only 70 ft. frontage, another house would make the street too crowded. There was further discussion as to when Mr. Best bought (1972), when he sold Lot 3 to Ferrante (1975 with prior house in place), the question of Mr. Ferrante offering to purchase Lot 4 and Mr. Best also needing variance from width requirement. A letter was read from Health Director Dumas re: the septic system for both lots. Hearing closed 8:38 P.M. DECISION: The Board's vote to grant was 4 (Skelly, Flinkstrom, McCarthy, Muse) and 1 to deny (Fallon). The majority vote was based on the belief that sufficient hardship was established in the shape of the particular lot and in ownership prior to lot size changes; that it was equal or greater in size with other lots in the neighborhood and, therefore, would not derogate from the neighborhood and intent of the Zoning By-Law, nor be detrimental. The minority vote was based on belief that there were not sufficient circumstance found relating to the shape of the lot to justify hardship.

2. SARA BESTGEN - Lot E (#18), Huckleberry Lane, Dennisport

Mr. McCarthy read legal notice requesting variances from minimum lot size of 7500 sq. ft. and minimum lot width to construct single-family dwelling at above location. Attorney Myer Singer again represented, and stated that the argument for granting this, and for next case of John Bestgen, would be much the same as he had just presented for preceding hearing. He presented brief, said all other building requirements would be met, and that this subdivision was created in 1952. Mr. Singer pointed out that this lot was individually owned, and meets 96% of the minimum requirement of 7500 sq. ft.; that several family members bought lots in area in 1968 and this lot transferred to Sara on 1-27-73. Mr. Fallon questioned the equating of "shape" with "size." Attorney Singer quoted from Section 2.3.3.8 of ZBL ("...having a shape number not exceeding the numerical value of 22...") as a reference point for equating shape and size. Ms. Joanne Wilkins, owner of Lot G, spoke opposing building on both this lot (E) and Lot C (next case), and felt that it would be over-developed. Ms. Helen Kelley, 22 Huckleberry Lane, was also opposed, and was concerned about the effect on the water table. Hearing closed 9:00 P.M. DECISION: The Board's vote to grant was 4 (Skelly, Flinkstrom, McCarthy, Muse) based on finding hardship in shape of the lot and protection by State Statute. The majority also believed that since the lot fulfills 96% of the Zoning By-Law size requirement, it would not be detrimental to the neighborhood, nor substantially derogate from the intent of the Zoning By-Law. The minority vote found that local Zoning law was applicable and that hardship was not proven.

3. JOHN G. BESTGEN, JR. - Lot C (#10), Huckleberry Lane, Dennisport

Acting Clerk McCarthy read legal notice requesting variances from minimum lot size of 7500 sq. ft. and lot width to construct single-family dwelling at above location.

CONTINUED: JOHN G. BESTGEN, JR.

Attorney Singer represented and wished to have the record show that his arguments were the same as for previous case, except that this lot is owned by John Bestgen. He added that all water and sewerage questions would meet Board of Health requirements. The plot plan was studied to determine that test pit was done 10-28-76; Mr. Rogers Bestgen said permits were issued but expired. He added that Lot C was transferred to John Bestgen (alone) 7-27-73. Hearing closed 9:08 P.M.

DECISION: The Board's vote to grant was 4 (Skelly, Flinkstrom, MsCarthy, Muse) based on finding hardship in shape of the lot and protection by State Statute. The majority also believed that since the lot fulfills 96% of the Zoning By-Law size requirement, it would not be detrimental to the neighborhood, nor substantially derogate from the intent of the Zoning By-Law. The minority vote found that local Zoning law was applicable and that hardship was not proven.

Mr. Charles Flinkstrom stepped down from Board, to be replaced by Mr. Peter Lizotte.

4. SULLIVAN & LEVINE - No. 700-716 Route 6A, Dennis

Mr. McCarthy read legal notice requesting variance from 2.3.4.1 of the ZBL, minimum lot area, to construct and operate Business Complex at above location. He also read legal notice for hearing continued from 1-17-79: requests Special Permit to operate gift shop, bank, and offices at above location. Attorney Myer Singer represented, with Mr. Paul Sullivan present, and presented brief, noting that first phase was before the Board previously for three buildings for "Dennis Commons" and special permits were granted. He addressed Section 2.3.4.1's requirement of 20,000 sq. ft. per building in LB-I zone; that this would require 120,000 sq. ft. and the property involved has approximately 80,000 sq. ft. He pointed out that this parcel is on the north side of Rt. 6A, and indicated other commercial lots in use near the site of the former "Stageway" restaurant: a gas station, theater, Nobscussett Settlement, McDowell Complex, etc. Mr. Singer said it is proposed to have three additional buildings on the lot, of Cape Cod colonial design and maintaining harmony with Rt. 6A and Dennis Village. Plans shown are for three buildings in front, three in rear, controlled traffic and parking, with a setback from Rt. 6A of 50 ft. Plan showed all parking in rear as required in this zone; Emily Lawrence Ltd. will move from down the street, and Cape Cod Bank & Trust has plans drawn if permission is granted for a branch office (artist's rendering displayed.) Mr. Singer suggested that of recent years this parcel has provided minimum tax return to the Town since the "Stageway" burned down; that this proposal will turn an eye sore into an attractive, tax-generating property. He said the buildings will cover only 10%, approximately 40% will be landscaped plus parking. Mr. Singer continued that the area could be developed in same square footage with one block building, or subdivided into separate lots; that the proposal meets all other requirements except question of area. He indicated the plan has been approved by Planning Board, Health Department, Police, Fire, and State D.P.W. for access and egress from State Highway; that most activity would be in buildings, not outside; that there are no convenience food stores; appearance to conform to O.K.H.R.H.D.; that there will be no odors from cooking, noise, nuisance or inconvenience; therefore, no harm to neighborhood or derogation from the Zoning By-Law. He said a special permit should be granted if it does not cause harm otherwise.

CONTINUED: SULLIVAN & LEVINE

Mr. Singer noted that retail, bank and other uses, except for summer time, would be likely to have same hours as most normal businesses, and felt there should be a concern for off-season use. Attorney Singer also said there will not be any dangerous operations with the suggested businesses; that the space for cars exceeds the requirement and that access will be controlled from State highway with no side streets, having D.P.W. approval. He again noted that it will consist of $\frac{1}{2}$ - $\frac{3}{4}$ Cape buildings; will not cost the community but gain money, requiring a minimum of services. Chairman Skelly questioned granting a special permit for non-specific uses; Attorney Singer said most uses are clear and others are for various offices. Mr. Sullivan presented photographs of parcel as it now exists, showing building to be removed. There was some discussion of bank having to get State approval; the difficulty in securing tenants in advance; parking, including such for Emily Lawrence Ltd.'s employees numbering 6-7. Mr. Singer said the parking provided in plan exceeded the requirement. Mr. Muse was concerned about people who might illegally park on Rt. 6A despite parking available. Regarding variance requested, Attorney Singer suggested the Board look at the shape of the lot, which he felt did not have any unusual topographical features or soil conditions. Mr. Skelly pointed out that plan does not show drainage. Mr. Sullivan said topographic has been taken, and they were told by building inspector that they would not get building permits until drainage is approved. Mr. Singer pointed out that Zoning By-Law is interesting in that it does allow for square footage provided it is aligned differently than proposed; that if one building were put on the lot, same ground coverage would exist and it would be permitted; the fact that they are dividing into separate buildings for aesthetic reasons runs into the problem. He added that the parcel is big enough so that it could be subdivided into three, maybe four, lots greater than 20,000 sq. ft., with a maximum lot coverage of 25 per cent; that you could have three lots with 14,793 sq. ft. of building, about 5000 greater than proposed, and with greater parking. Mr. Singer also suggested there could be a plan with a short road and turnaround creating four lots with more saturation and coverage. Mr. Singer felt that it would be disadvantageous to the petitioner, the Town and Village to adhere to ZBL; a hardship to the Town because rigid ZBL requirements could cut land up into small parcels to achieve same end; that proposed concept is one that justified relief for the betterment of site and community since it is highly visible, travelled road. As to special permits, he felt that if developed in a pleasing and beneficial way, there would be no detriment or derogation of ZBL resulting from noise, nuisance, congestion or appearance of Cape Cod building design. Mr. Singer suggested that purpose of ZBL is to prevent overcrowding of land, and square footage in one building or in several buildings on cut up lots could be greater, that the proposed plan is not against the intent of ZBL, and meets all other requirements. He quoted from Section 2.1.5.4, Intent of Limited Business I zone, and presented two signed petitions in favor of request. Mr. Skelly noted that three variances are requested per plan: square footage, width and frontage according to Section 2.3.4.1. In response to Mr. Fallon's question about hardship, Mr. Singer felt it is a hardship to the owner of the land that it is less advantageous to develop according to ZBL than could be otherwise; that the Board had the opportunity to grant according to the words "functionally served" in Section 2.3.4.1; that per the ZBL it could be made into four lots since it is one of the largest undeveloped parcels in this zoning district; that it would be hardship to community and petitioner to develop less advantageously.

CONTINUED: SULLIVAN & LEVINE

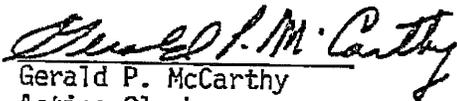
Mr. Skelly read letters in favor of granting from Messrs. Edward McGrath, Carl Scrivener, and Ms. Annette Hailer. Mr. Peter McDowell spoke, stating that he wished to be recorded not in opposition of special permits, but cautious that more special permits are not issued than buildings that could be there. He said he was reluctant to oppose against fellow businessman, but when Mr. Sullivan approached on first permits, he (Mr. McDowell) had called attention to Section 2.3.4.1. of ZBL and Planning Board regulations; that he felt drainage mentioned in this section would not be enforceable by Building Inspector. Mr. McDowell felt that this variance could not be granted consistent with Chapter 808, Section 10, and quoted re "...circumstances relating to the soil conditions, shape, or topography of such land or structures..." Mr. McDowell continued to say that he felt petitioner did not have substantial hardship; that he could make more money with six buildings rather than three; that the Board should not consider what might be best for the Town of Dennis and that this should be talked about at Town Meeting. He stated that soil conditions and topography do not apply and that shape had not proven hardship; that if granted it would be almost impossible another time to say no to another case. Mr. McDowell said the building mentioned might be multi-family housing, but Dennis ZBL does not allow such on parcels under 130,000 sq. ft. He felt that the petitioner could participate to change the ZBL and permit this kind of activity so that everyone could take advantage of this, or rather than creating six structures, he could have three larger structures; he felt that this variance would create a bad precedent and could be easily challenged under "808." Mrs. Constance Bechard spoke strongly in favor of proposed plan, saying that she felt it would benefit Town and Mr. Sullivan also; that with alternatives, there could be 3-4 drives instead of one controlled drive. In rebuttal, Attorney Singer corrected statement to say green area would be 35%, buildings 15%. He said that if the Board had any impression that residential or multi-family was planned, this is incorrect and he did not believe he mentioned this. He felt that even Mr. McDowell in his opposition suggests that maybe the concept is not bad, allowing more commercial buildings on a site than now provided for; that if granted he did not believe it would set a precedent and that this is different because of the large area involved in this district. Hearing closed 10:29 P.M. The Board's vote to grant variances was 4 (Skelly, McCarthy, Muse, Lizotte) in finding hardship due to the shape of the land and in believing that hardship existed if not allowed to use the superior proposed plan over possible alternatives; that granting would be a more effective use of the land. The majority vote did not believe that granting variances would be detrimental to the neighborhood, but rather more pleasing and attractive, and would not derogate from the intent of the Zoning By-Law. The minority vote (1-Fallon) was based on not finding hardship proven. The Board's majority vote (4-0) to grant special permits (Skelly, McCarthy, Muse, Lizotte) was based on finding that the use would be superior to existing or alternative uses, not detrimental to the neighborhood or community; that it would not derogate from the intent of the Zoning By-Law. Mr. Fallon abstained.

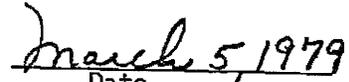
5. STANLEY E. MCGRANE - Lot 40 (#13), Barry Lane, South Dennis

Mr. McCarthy read legal notice requesting variance from minimum lot size of 20,000 to construct single-family dwelling at above location. Mr. McGrane explained that he purchased this lot in 1975 with the intent that it would be used by his son but that circumstances now prevent this; that he now needs

CONTINUED: STANLEY E. MCGRANE

to sell but requires variance since it is a hardship to continue paying taxes. He said this lot is the largest lot in Jonathan Acres development, whereas most lots average 9000 sq. ft. He added that an island on Debbie Lane prevented access to his house lot and that he had garden on his second lot; that he has now combined Lot 41 and 42 into one lot of over 20,000 sq. ft. His plan for proposed house on Lot 40 showed house as far away from other abutter as possible. Mr. Fallon noted that Lot 40 has unique shape with most lots being rectangular and that this has a curved side and is really pie-shaped. In response to Mr. Lizotte, Mr. McGrane said they felt it was better to create one lot over 20,000 rather than dividing the middle lot equally. Mr. Skelly read letter from Mrs. Anderson abutter, in opposition. Mr. McGrane added that he offered to sell this lot to Mrs. Anderson but that she was not interested. Hearing closed 10:40 P.M. The Board's vote was unanimous (Skelly, Fallon, McCarthy, Lizotte, Muse) in finding hardship in the shape of the lot being unique with five sides and a frontage of about 70 ft., making placement of a structure difficult. The Board also found that the size of the lot in relation to neighborhood would not be detrimental, nor substantially derogate from intent of the Zoning By-Law.


 Gerald P. McCarthy
 Acting Clerk


 Date

Distributed to:

Members & Associates
 Building Inspector
 Town Clerk
 File

TOWN OF DENNIS
BOARD OF APPEALS

37

MARCH 5, 1979

Convened: 7:40 P.M. Adjourned: 10:35 P.M.

Present: Skelly, Fallon, McCarthy, Hart, Muse

Staff: Perry

Public & Press: Approximately 20

1. ARTHUR SEARS, ROBERT SEARS & WILLIAM SEARS, D/B/A/- A.R.W. Company
Lots 5 & 6 Hokum Rock Road, East Dennis
Acting Clerk McCarthy read legal notice for hearing advertised for February 5, 1979 and continued. Chairman Skelly announced that due to vacations and conflict of interest, there were not sufficient Board members present to hear this case and that it would be continued to March 19, 1979. Attorney Edward Viera was present and agreed to continuance, stating that March 20, 1979, was the legal deadline for hearing.
2. PAUL McDOWELL - Lots 5 & 6, Hokum Rock Road, East Dennis
Mr. McCarthy read legal notice for this case, also continued from February 5, 1979. Mr. Skelly again stated that this hearing could not be held at this time, would be continued to March 19, 1979. Attorney Viera consented to this.
3. ERNANI D. & ELEANOR STORLAZZI - Lot 39 (#32), Oak Street, Dennisport
Mr. McCarthy read legal notice requesting variances from individually owned minimum lot size of 7500 sq. ft. and minimum lot width to construct single-family dwelling at above location. Mr. Storlazzi was present, and explained that this lot is 80 by 80 ft., similar to all other lots on the street, only one unbuilt, and that he wants to build retirement home. He said he had been paying taxes for 23 years and now lives in Revere. His plot plan was studied, and the Board agreed variance was also needed for minimum lot width, with setbacks of 25 ft. in front, 10 ft. on each side and in rear. Mr. David Conlon represented his parents who own on one side of this lot. He felt that according to argument, petitioner would have to have 7500 sq. ft.; that under Chp. 40A, Sect. 10, petitioner is required to prove hardship, which is strictly interpreted. He did not feel Mr. Storlazzi had proved hardship, having two homes, plus one conveyed to daughter. He also felt there is a question about "Grandfather Clause" on setbacks. Mr. Skelly explained that former Building Inspector always claimed that all setbacks were according to date of subdivision. Mr. Conlon said his parents had owned property since 1963, a double lot, and recently acquired lot on other side of one in question, thinking the latter was unbuildable. Mr. Muse commented that Mr. Storlazzi bought a long while ago when it was buildable. Mr. Storlazzi stated that Mr. Conlon's family have wanted to buy this lot for some time. Mr. Skelly noted memo from Planning Board reminding that minimum lot size is 7500 sq. ft. Hearing closed 8:12 P. M.

CONTINUED: ERNANI D. & ELEANOR STORLAZZI

The Board's vote to grant was 4 (Skelly, McCarthy, Hart, Muse) to 1 (Fallon). The majority vote was based on finding hardship in the size and, therefore, the shape of the lot; that it would be hardship not to grant and thereby create a public park from private property without just compensation being given. The majority believed that it would not be detrimental to the neighborhood, where most lots are of same size, nor substantially derogate from the Zoning By-Law. The minority vote did not find that hardship had been sufficiently proven.

4. SESUIT MOTEL, INC. - 1421 Main Street, Dennis

Mr. McCarthy read legal notice requesting Special Permit under Section 2.4.3.7 of Zoning By-Law to construct three-unit addition to existing motel at above location. Mr. Norman McKinstry, motel owner, explained that they were seeking Special Permit to increase by three rooms by raising roof and using existing building, believing that it would not be detrimental, but serve public good in a Limited Business Zone. He said there are two ways to increase business: to raise rates, or raise number of units, and they preferred to do the latter. In response to Mr. McCarthy, he added that there are presently 15 units, that plan would be for Garrison Colonial, had been approved by O.K.H.R.H.D, and that there would not be additional parking visible, just appearance of building being two stories. Mr. Paul Sullivan, an abutter, wished to be recorded in favor. Mr. McKinstry acknowledged that he had added only a porch in 1978, and showed Board another plan showing land, buildings, drives and parking. It was determined that this would even meet current density, but that this is a non-conforming use. Hearing closed 8:27 P.M. The Board's vote was unanimous (Skelly, Fallon, McCarthy, Hart, Muse) based on finding that granting would not be substantially detrimental to the neighborhood or community, nor derogate from Zoning By-Law.

5. WOODSIDE PARK CORP. - No. 986, 992, 1000 Rt. 134, East Dennis

Mr. McCarthy read legal notice requesting Special Permit, Sections 2.3.2 and 2.3.3.2 of ZBL to construct twelve apartments at above location. Attorney Myer Singer represented, and explained request, presenting brief of application: abutters, denial, plan, locus, etc. Mr. Singer spoke of an old 12-lot subdivision, south of Setucket Rd. and north of Dennis Equipment, on which this is proposed, treating it as one parcel and doing away with some roads. He added it was a R-20 Zone. There would be 29 parking spaces on plan, with only 24 required, plus an access way on the side for safty vehicles; he showed an overlay of original subdivision, indicating topography of land, is almost flat except that it is a little lower away from Rt. 134. The percentage coverage of lot would be 3.3% for buildings, 13.4% for drives and parking, for a total of 16.7%; the ZBL permits 25% coverage. Mr. Singer felt that if developed for single-family homes, there would be more driveways, more of each lot covered with house, and more trees and growth taken down, exposing the site. Attorney Singer stressed there would not be unsightly conditions, sounds, odors; that special permit should be granted if no noise, nuisance, hazard. He said there would not be traffic problems created, and there had been no adverse comment from Police or Fire Dept. Attorney Singer continued to present argument for granting variance, that hardship should be proven. He felt soil conditions or topography are not unusual, leaving shape of lot.

March 5, 1979

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CONTINUED: WOODSIDE PARK CORP:

He indicated 174,000 sq. ft. would be needed for 12 units, that parcel has about 3000 sq. ft. less, that 11.79 units would be permitted density. Being less than 2% shy of requirement, he felt hardship flows from size of lot. He thought that once line is drawn and is so close, there is hardship on the owner; that assessments are made depending on square footage of vacant land, and that the land above that for 11 units goes for naught because it cannot be developed. Mr. Singer pointed out that of 11, one unit could be three bedroom according to square footage, possibly having as many or more people overall in 11 units as opposed to 12 two-bedroom units. There was further discussion with the Board on how many possible people in such units versus single-family dwellings that could be built on the parcel. Chairman Skelly read memo from Planning Board about possible rescission of the existing subdivision and awaiting confirmation from Town Counsel as to effective date of proposed Zoning amendment on density. Mr. Skelly noted that such opinion has not yet been given; that this application was on file before this amendment was voted by Planning Board and advertised; that the amendment still has to have public hearing and be voted at Town Meeting. Mr. McCarthy asked about having units with 4-4 and 3 apartments; Mr. Singer said they would probably shorten up on one building. Mr. Papagno, direct abutter on the south, spoke in opposition, claiming it would disrupt their privacy a great deal. Mr. Skelly read letter of 2/21 from Health Dept. and 2/26 letter from Water District. Health Director Dumas indicated that plans were not complete enough to approve at this time. There was discussion of difference between separate septic systems for condominiums, because of separate ownership, versus single septic system for a given number of units in an apartment complex; also the effect if an apartment were sold as condominium units. Upon questioning, Attorney Singer indicated that the project would most likely be sold, but Woodside is presently the owner. Hearing closed 9:25 P.M. The Board's vote was unanimous (Skelly, Fallon, McCarthy, Hart, Muse) in finding that sufficient evidence was presented to indicate that there would not be any noise, nuisance or hazard created to be any substantial harm to neighborhood; that it would not be a derogation of the general purpose and intent of the Zoning By-Law. In denying variance, the majority found that no substantial hardship was shown to result from circumstances of shape, soil conditions, or topography of property.

6. Mr. Paul Sullivan appeared informally to discuss with Board of Appeals the Special Permits granted him on 12-4-78 and his wish to move proposed ice cream and office buildings forward on the lot.

7. The Board agreed to have a second April meeting on April 30th due to Patriot's Day Holiday on 4/16. A special meeting will be called to finalize new Rules and Regulations and elect new officers.

March 14, 1979
Date

Sheldon P. McCarthy
Acting Clerk

Distributed to:

Members & Associates
Building Inspector
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TOWN OF DENNIS
BOARD OF APPEALS

MAY 21, 1979

Convened: 7:33 P.M. Adjourned: 10:42 P.M.
Present: Flinkstrom, Carroll, Fallon, McCarthy, Lizotte
(Simon present)
Staff: Perry
Public & Press: Approximately 35

Acting Chairman Charles Flinkstrom called the meeting to order, and briefly described the procedures to be followed to those present.

1. ROBERT C. & GLENWORTH B. REAM - 619-621 Main St. (Rt. 6A), Dennis
Dr. Carroll, Clerk read legal notice requesting Special Permit to operate
Antique Shop at above location. Messrs. Ream were present, and stated
that they have purchased this building on Rt. 6A, which they intend to
restore. They showed Board members architect's drawings on improvements
intended. Mr. Glen Ream said they wish to run antique business with
quality things, and felt it would benefit the neighborhood with an attractive,
colonial building. He said there are two buildings, the smaller of which
they would rent to Johanna (boutique) until perhaps next fall. There was
discussion of parking; Mr. Ream said they would share established parking
in rear with liquor store, barber shop, others in complex. Mr. Flinkstrom
asked about one living unit; Mr. Ream said it would be refinished in the
rear of the building. As to hours, he indicated they would like 8-5 p.m.
seven days a week. In response to Dr. Carroll, Mr. Ream explained his
reference to condominiumizing would be only commercial, not residential; that
they were buying this portion of entire property through corporation. Messrs.
Ream said their father was familiar with antique business; that they would
carry quality more than some shops; asked about minimal placement of stock
outside building. Hearing closed 7:44 P.M. The Board of Appeals voted to
grant Robert C. & Glenworth B. Ream, Main Street, Yarmouth Port, Ma.,
Special Permit to operate an Antique Shop at 619-621 Main Street, Dennis.
The Board's vote was unanimous (Flinkstrom, Carroll, Fallon, McCarthy,
Lizotte) in finding that the proposed business was compatible with the area
and would not create nuisance, hazard, or congestion in the neighborhood.
The Board did not believe this use would derogate from the general purpose
and intent of the Zoning By-Law.

2. GLORIA TROISI BUDRICK - Lot 52 (#71), Louis Avenue, Dennis
Dr. Carroll read legal notice requesting variance from minimum lot size of
20,000 sq. ft. to construct single-family dwelling at above location. Mrs.
Budrick was present, and explained that this lot is 8000 sq. ft., and just
touches at a corner Lot 56, Black Flats Road, owned by her, and around on
other street. She said she didn't think she could sell three lots together

GLORIA TROISI BUDRICK CONTINUED:

(including her lot with home) because they are on different streets. She added that she realized the remaining two lots could not be sold separately, but needed the variance to sell this lot on Louis Avenue. There was discussion among Board relative to the contiguous nature of Lots 52 and 56, touching only at a corner; they concluded they did not believe the lots were contiguous; that in the past the Board looked at lots that had a reasonable degree of common property lines as contiguous. They felt this should properly be an appeal from the Building Inspector's decision. Mrs. Budrick requested to so amend her petition. Mr. Flinkstrom moved to allow petitioner to amend application to make it an appeal of Building Inspector's decision to deny building permit; seconded by Mr. Lizotte. Vote: Unanimous. Mr. Flinkstrom noted Planning Board Memo that they had no objection to granting. Mr. Gaspari, 11 Louis Avenue, spoke in favor of a house being built on this lot, and said other neighbors did not seem to object. Hearing closed 7:59 P.M. The Board of Appeals voted to sustain the appeal of Gloria Troisi Budrick, 49 Black Flats Road, Dennis, Ma., of the Building Commissioner's decision to deny a building permit for Lot 52 (#71), Louis Avenue, Dennis. The Board's vote was unanimous (Flinkstrom, Carroll, Fallon, McCarthy, Lizotte) in finding that Lot 52, Louis Avenue, was not contiguous with Lot 56, Black Flats Road, within the intent of the applicable laws.

3. FRANCIS THOMAS - 554 Route 28, Dennisport

Dr. Carroll read legal notice requesting Special Permit for automotive repair shop and sale of used motor vehicles and variance from Sect. 2.2.3.3, outdoor display of used vehicles for sale, at above location. Mr. Thomas was present, and represented by Mr. Bob King, from Richard J. O'Hearn's surveying office. Mr. King said the petitioner wishes to store a maximum of four vehicles outside and repair and sell antique cars only; that the larger building shown on plan is for offices. Newest plan showing sewerage was viewed by Board members. Mr. Fallon spoke of Dennisport Auto Sales across the street. Mr. Flinkstrom reminded that variance requested for outdoor display would require evidence of hardship. Mr. Thomas said he had recently purchased this property and next door at #566, and lives in Hyannis; that this will be his main source of income, having had a business in Worcester with a good reputation. He said it will be classic and sports cars, not the usual used cars; that it will be a one-man operation, and that he has three mortgages. Mr. Flinkstrom reminded that hardship must be in the area of shape, soil conditions, or topography. Dr. Carroll noted that an article to change outdoor display from variance to special permit was submitted in recent Town Meeting, but was not voted to change. He also mentioned a very fine example of outside appearance at a garage on Upper County Road. Mr. Fallon felt the petitioner was not very familiar with the ZBL and might wish to withdraw without prejudice in order to prepare a better case. Mr. Thomas asked if he could withdraw the request for variance but continue to seek Special Permit. Dr. Carroll moved to allow petitioner to withdraw without prejudice re: variance and continue hearing for Special Permit for auto repair shop; seconded by Mr. Fallon.

FRANCIS THOMAS CONTINUED:

VOTE: UNANIMOUS. In response to Mr. Lizotte, Mr. Thomas said he expects to work on 1-2 cars per day, and asked if he could sell or transfer cars within the building, which the Board felt was regulated by Registry. In reply to Mr. McCarthy, petitioner said he might have 3-4 cars being repaired outside; that he has a two-car garage but lots of outside space. Mr. McCarthy was concerned that this type of business tends to collect junk, and felt it best when the Board could take a look at an existing business, other than going to Worcester. Mr. King asked if it would help to propose a stockade fence. The Board again suggested that it was up to the petitioner to come in and present a well prepared case. Mr. Thomas said he didn't know how to prove it would not be detrimental without showing his Worcester operation. Mr. King felt the procedure "hit or miss"; the Board did not agree. Mr. John Lane, abutter, asked if his letter, if received, could be read into the record. Mr. Flinkstrom read Mr. Lane's letter in opposition; he felt it was only ½ acre with a single-family house, could be substantially detrimental to the area, and was not needed for service with so many others. Mr. Thomas did not agree that because there are others, there isn't room for another. Mr. John Taupier said that he agreed with Attorney Lane that another auto repair was not needed on Rt. 28. Hearing closed 8:30 P.M. The Board of Appeals voted to deny Francis Thomas 23 Wheddon Street, Hyannis, Ma., Special Permit for automotive repair shop and sale of used motor vehicles at 554 Route 28, Dennisport. The Board's vote was unanimous (Flinkstrom, Carroll, Fallon, McCarthy, Lizotte) in finding that petitioner had failed to prove that noise, nuisance, or hazard would not be created in the neighborhood by this use.

4. CHARLES J. HAMILTON - Off No. 34 Shad Hole Road, Dennisport
Dr. Carroll read legal notice requesting variance from Sect. 2.3.3.8, Numerical Configuration of Lot Shape, to construct three single-family dwellings on proposed three lots at above location. Mr. Hamilton was present, with Surveyor Stanley Sweetser, and represented by Attorney James Julian. Mr. Julian said it was a hardship to petitioner to try to subdivide property for residential purposes because surrounding lots within 300 ft. and more were about 5000-7800 sq. ft., plus having commercial on northerly bound; that all this has an effect on marketability now and in the future. He said that if his client has to comply, he could only divide into two lots, and would have to offer these 20,000 sq. ft. lots for substantially less to compete with other lots; that they have already complied with density, and now seek variance. He said this was the hardship and also had financial hardship. Mr. Fallon questioned if making less profit was the hardship; Mr. Julian agreed in that this size lot could not command as high a price as somewhere else. Topographic plan was presented, and Mr. Sweetser explained the lot sizes, "Catch 22" and access. Mr. Julian said that Mr. Hamilton had authorized him to state what he had paid for this land - \$22,000 - that lots in the area are being marketed for \$7-9000 for 7500 sq. ft. lots. In answer to Mr. McCarthy, Mr. Sweetser said the high shape number comes from the panhandle lots; that with 10-15,000 sq. ft. lots, they can get 22, but on 20,000 sq. ft., it goes over 22. Mr. Lizotte asked if it could be divided differently with a right of way to avoid variance. Mr. Sweetser said that the ZBL requires 50 ft. on an approved way. He explained numbers 3, 4, 5 on lots was due to Land Court numbering. Mr. John Taupier, abutter on Rt. 28 side, asked if this hardship was bought when the property was bought? He also asked if it was going to be filled.

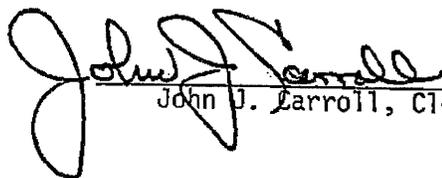
Mr. Sweetser said it is a man-made bog that might have to be filled, but not like previous proposed subdivision; that there would not be any run-off on Taupier's property. Mr. Fallon asked what planned selling price would be, if variance granted, since purchase had been mentioned. Mr. Hamilton said that if not granted, he would lose money and didn't know what price would be. Mr. Julian suggested that prices might have to be the same as those in area, with not much profit; didn't know what 30,000 sq. ft. lots could command there; added that if two lots sold for \$10,000 each, petitioner would lose \$2000 plus taxes paid. He felt that complying with 20,000 is hardship enough. Mr. John Lewis asked about this not being granted before because of fill needed. (This was a preliminary subdivision plan disapproved by Planning Board in 1974.) Mr. Sweetser said he had walked the land with NRO, that any wetland would come before Conservation Commission, that the road paving for proposed subdivision in the past had the problem with the bog. Mr. Flinkstrom briefly explained to those present the procedure of going to various Boards for different situations. Mr. Lewis, abutter, said he built in 1960 on Priscilla Lane, and would like to have had more land; he felt the hardship is profit. In reply to Mr. Taupier, Attorney Julian said it would be a Town approved road, not a driveway. Hearing closed 8:55 P.M. The Board of Appeals voted to deny Charles J. Hamilton, 51 Bleak House Circle, Dennis, Ma., variance from Sect. 2.3.3.8, Numerical Configuration of Lot Shape, to construct three single-family dwellings on proposed three lots off No. 34 Shad Hole Road, Dennisport. The Board's vote was unanimous (Flinkstrom, Carroll, Fallon, McCarthy, Lizotte) on the grounds that petitioner failed to prove hardship owing to circumstances of shape, soil conditions, or topography of the land.

5. PETER O'NEILL - Lots. 28, 29, 30, 31, 32, 33, 34 - Bevins Court, West Dennis. Dr. Carroll read legal notice requesting variances from minimum lot size of 20,000 sq. ft. to construct single-family dwellings on each of these lots. Mr. O'Neill was present, and represented by Attorney Nicholas Mazzoni, who showed a composite of assessor's maps from Lower County Road to Trotting Park and School Street in West Dennis, indicating the unbuilt lots. He said Mr. O'Neill purchased with several other gentlemen in 1973 this and another subdivision; finds six lots in one subdivision are still bona fide lots but that the lots in question had run out of protection from 1963 plan-had run out in 1970. Mr. Mazzoni pointed out on the displayed map that there is in excess of 500 lots of 500-7500 sq. ft. and these are the only ones not subdivided. He added that according to the intent of the ZBL, there could be only two lots; that Mr. O'Neill stands to lose \$40,000, a severe hardship. Mr. Mazzoni pointed out Folger, Clarlaw, Capt. Phillips Rd., and said most houses in the area were on 6000-8000 sq. ft. lots; that these seven lots would not derogate or be detrimental to the neighborhood. He referred to a Planning Board memo in file, asking the variance "to be denied, but saying it should be upgraded." He felt this admits there is a problem with these lots. Dr. Carroll said these 13 lots were bought in 1973 and asked if petitioner had not gone to Assessors recently to get taxes lowered. Mr. Mazzoni agreed that the Assessors had put in five lots instead of 8, bringing it up to size, adding that they recognized that there are two lots that might have to go to Conservation Commission. In reply to Mr. Fallon's question re hardship, Attorney Mazzoni felt this was in having to put in the roads according to Planning Board, having only two lots, and that some land might be in Flood Plain Zone. There was further discussion as to price petitioner paid for all 13 lots, the value of current buildable lots, and net profit or loss. Abutter George Ryan said Highway Dept. had said last two houses on Clarlaw are not on an approved way; that to build

PETER O'NEILL - Cont:

Five houses would make it very congested. Mr. Richard Dunn, abutter on the corner, said his own lot is very large, over \$17,000 valuation, didn't want to see small lots there. Mr. Cotter on Pine Road felt that Zoning had been changed to get away from small lots and said that there is marsh land, had been told it was in the Flood Plain Zone by Federal Government. Mr. Flinkstrom read letters in opposition from Mr. Clement Derby, Robert Day, Palmer Sampson, Innocenzo Fossella, as well as Planning Board Memo recommending against granting variance unless upgraded to no more than three lots instead of seven. Hearing closed 9:30 P.M. The Board of Appeals voted to deny Peter O'Neill, Apt. C36, 165 Quincy Shore Drive, Quincy, Ma., variance from minimum lot size of 20,000 sq. ft. to construct seven single-family dwellings on each of Lots 28, 29, 30, 31, 32, 33, 34, Bevins Court, West Dennis. The Board's vote was unanimous (Flinkstrom, Carroll, Fallon, McCarthy, Lizotte) in concluding primarily that the petitioner did not prove hardship as it relates to soil conditions, shape, or topography in the area of the petitioner's land. The Board also did not find that financial hardship had been proven.

6. MRS. RICHARD BARKER, - Lot 3, Ferry Street, West Dennis, appeared before the Board. Acting Chairman Flinkstrom explained that her petition had been denied on 4-30-79 for a sideline variance; that the Barkers had appeared before the Planning Board, who voted 4-0 to allow them to request a re-hearing. He read memo so stating from Planning Board. Mrs. Barker explained that they had revised their plans for a garage and breezeway addition to 16 x 27 ft. so as to request variance of only 1.61 ft.; she further explained their hardship in locating addition and need for storage of valuables. Mr. Flinkstrom noted that there appears to be a substantial change in request, and moved to have the Board approve the Barkers returning to present their case; seconded by Dr. Carroll. VOTE UNANIMOUS.


John J. Carroll, Clerk

6/4/79
Date

Distributed:

- Members & Associates
- Building Commissioner
- Town Clerk
- File

TOWN OF DENNIS
BOARD OF APPEALS

June 4, 1979

Convened: 7:30 P.M. Adjoined: 8:57 P.M.
Sitting: Skelly, Carroll, Flinkstrom, Fallon, Muse, (Simon Present)
Staff: Perry
Public & Press: Approximately (15)

1. ALBERT D. BARBO - 228 Depot Street, Dennisport
Dr. Carroll read legal notice requesting Special Permit, under Sect. 2.4.3.7, and variances from sideyard and rearward setback requirements to construct addition to existing warehouse at above location. Mr. Barbo was present, and represented by his builder, Mr. Craig Lohr, who explained the request; said they wish to construct 50 x 60 building and 40 x 30 building to solve storage problems. He said the GC II Zone calls for a 25 ft. setback and that because of the shape of the lot, they wanted to go by 10 ft. instead. In reply to Dr. Carroll, Mr. Barbo stated that the two trailers presently on the lot would be removed, that there is about a 40 ft. space and the Fire Department had looked at this for access. He added that the Dennis Pizza is the abutter, and the area in back is trees and brush. In checking plan, it seemed that to go by the 25 ft. setbacks, only less than 15 ft. would be left for a building if ZBL strictly enforced. Mr. Barbo agreed the cone shape of the lot made it difficult to build any structure. Board members were agreeable to Special Permit requested, but concerned about proposed building invading other lot since Mr. Barbo owns two separate lots for his business; they felt it might be better to combine into one lot to solve problem. Mr. Muse questioned that the additions would be more than the 33 1/3% coverage permitted by the ZBL. Mr. Skelly read memo from Planning Board in opposition to granting for the reasons that; this consists of two parcels of land; concern for addition being converted to retail; over percentage coverage of lot. Mr. Barbo said he had a problem because of now renting two off-premises buildings and needing the storage space, and discussed withdrawing. Dr. Carroll moved to allow petitioner to withdraw without prejudice; seconded by Mr. Fallon
VOTE: UNANIMOUS. Hearing closed 7:56 P.M.

2. DONALD W. LINDSAY - Lot 24, Federal Lane, Dennis (Z-346)
Chairman Skelly explained that the Board heard this case on June 19, 1978, denied a variance from minimum lot size to construct single-family dwelling, and the case has been in litigation. He said the Superior Court has now issued a Consent Judgment ordering the Board of Appeals to grant the requested variance; that there was a stipulation of Town Counsel and Lindsay's attorney which was approved by the Superior Court. Mr. Skelly read the Court Judgment:

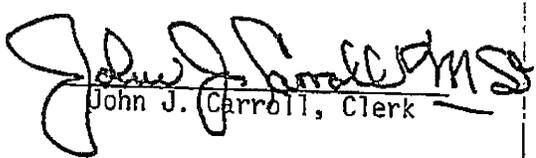
Now come the parties in the above entitled action and agree to the entry of judgment forthwith for the plaintiff as follows:

1. That the decision of the defendant Zoning Board of Appeal of the Town of Dennis is hereby annulled.
2. That the Defendant Zoning Board of Appeal of the Town of Dennis is hereby ordered and directed to grant to the plaintiff a variance from the terms and conditions of the Zoning By-Law of the Town of Dennis so as to authorize and allow the construction of a single family residential dwelling on a particular parcel of land situated in the Town of Dennis, Massachusetts at Lot 24 Federal Lane notwithstanding said that lot contains 16,000 square feet of land more or less.

DONALD W. LINDSAY CONT:

There were abutters from Federal Lane present, Mr. & Mrs. Ball, Mr. & Mrs. Paul Rothfeld. Mr. Ball questioned why they hadn't been notified of this hearing; Mr. Skelly explained that according to Town Counsel's memo, it was not necessary. Mr. George Fallon commented that at the original hearing he and David Spruill, no longer on the Board, were the only ones to vote to deny. He suggested the Board could vote to grant or go against the Court Order, and wanted to know on whose advice the Town Counsel acted in this way. Mr. Skelly said the Town Counsel had consulted him, that it was a case of professional advice, and that perhaps he (Mr. Skelly) had exceeded his authority by agreeing. Mr. Fallon felt he had been disenfranchised. Board members did feel there have been some legal cases on which their wishes were not carried out. Mr. Rothfeld, 23 Tory Lane, asked the Board if he understood correctly that an individual citizen could contest the Court decision. Mr. Fallon felt Mr. Rothfeld should consult legal counsel on this point, especially as to time since Order is dated 5/15/79. They were informed it was Superior Court Decree #38183, signed by Justice Francis W. Keating. Mr. Fallon said that the Order does not say that it can't be granted with conditions, feeling that it should not prejudice an abutter's appeal if brought. Mr. Skelly felt that if the Order is vacated, then the Board's decision would be vacated also. Mr. Fallon moved to withhold action on the Court Order until the next regular meeting on June 18th in order to review the subject file; seconded by Mr. Flinkstrom.

VOTE: UNANIMOUS.


 John J. Carroll, Clerk

6/12/79
 Date

- Distributed:
- Members & Associates
 - Building Commissioner
 - Town Clerk
 - File

TOWN OF DENNIS
BOARD OF APPEALS

June 18, 1979

Convened: 7:30 P.M. Adjourned: 8:16 P.M.
Present: Flinkstrom, Carroll, Lizotte, Muse, Simon
Staff: Perry
Public & Press: Approximately 18

1. KENT G. GARDNER & SHARON W. LEWIS - 316 Depot Street, Dennisport
Dr. Carroll read legal notice requesting use variance from Section 2.2.2 of Zoning By-Law to operate auto repair business at home location as above. Petitioners were present and represented by Attorney Myer Singer, who requested on their behalf to be allowed to withdraw without prejudice. He explained that applicants came to him after filing for hearing; that after reviewing facts, it appears they have not applied for sufficient relief. Mr. Singer felt there could be grounds for a Special Permit or an appeal of the decision of the Building Inspector. He said he has already filed in Appeals Office for Appeal, Special Permit and Variance; that tonight's hearing might be repetitious or might be denied, and therefore requested to withdraw without prejudice. He showed pictures of property, which in error was advertised as 326, rather than 316 Depot St. Dr. Carroll moved to allow petitioner to withdraw without prejudice; seconded by Mr. Muse. VOTE: UNANIMOUS. The secretary confirmed that new hearing will be advertised for July 16, 1979 at 7:45 P.M. Acting Chairman Flinkstrom assured abutters present that correspondence received will be added to new file for July 16th hearing. Hearing closed 7:43 P.M.

2. DONALD W. LINDSAY - Lot 24, Federal Lane, Dennis
Acting Chairman Flinkstrom said the above matter is still before the Board based on vote of June 4th to continue action on Judge Keating's Court Order regarding Lindsay case, which orders and directs Board to grant required variance. Mr. Ball, abutter from Johnson Lane, asked if the matter could be held over again until the next meeting since they intend to take it up with the Board of Selectmen; he also felt the regular Board of Appeals was not present. Mr. Flinkstrom assured that it is an official Board with Associate Members sitting. Attorney Joseph Malloy, representing Mr. Lindsay, stated that there has been a Consent Decree entered in Superior Court which orders this Board to issue the variance; that it was issued May 15, 1979, now June, and asked Board to carry out the Court Order. Dr. Carroll, noting he had originally voted to grant, said he would still like to see trees kept 10 ft. in rear. Mr. Donald Lindsay said he had agreed to this at the original hearing, that he was still completely agreeable. Mrs. Ball said their neighborhood is very much concerned that this might become rental property. She also questioned if the Judge had the right to tell this Board what to do, if the Chairman gave permission without the whole Board; she wanted it postponed, or would like to know what Mr. Lindsay plans to build. Attorney Malloy assured the Judge has every right, and felt sure Town Counsel would agree. Mr. Lindsay said he has no intention of building rental property; that he would only build for himself or sell to new owner. He added he had sold other lot in neighborhood granted a variance to a John Scallar from Yarmouth for a residence. Mr. Flinkstrom pointed out that this Board has no control over what is built. There was discussion as to those present voting when they had not been present at original hearing. Mr. Simon, Newest Associate Member, preferred to abstain. Mr. Muse questioned if there were a completely new Board who would vote, and preferred to have Town Counsel tell him that he must vote and follow the Court's Order; he added that he liked Dr. Carroll's idea of maintaining trees. Attorney Malloy explained that this is an affirmative.

DONALD W. LINDSAY CONT:

Order of the Barnstable Superior Court; that it wouldn't matter if none of the Board had heard before, and not to follow the order would be in contempt of Court. Dr. Carroll moved to accept order of Judge Keating, with the provision that trees and shrubs be retained 10 ft. on each side and 25 ft. in the rear; seconded by Mr. Muse. Hearing closed 8:08 P.M.

The Board of Appeals voted to grant Donald W. Lindsay, 20 Old Coach Road, Canton, Ma., variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling on Lot 24, Federal Lane, Dennis, with the stipulation that all natural vegetation for a distance of 10 ft. on each sideline and 25 ft. on the rear line of said lot be retained. The Board's vote was 4 (Flinkstrom, Carroll, Lizotte, Muse) to grant - 1 abstention (Simon). The majority vote to grant was based on Consent Judgment, Barnstable Superior Court No 38183, issued by Justice Francis W. Keating on May 15, 1979.


John J. Carroll
Clerk

6/19/79
Date

Distributed to:

Members & Associates
Building Inspector
Town Clerk
File

TOWN OF DENNIS
BOARD OF APPEALS

July 2, 1979

Convened:	7:30 P.M.	Adjourned:	8:55 P.M.
Present:	Flinkstrom, Carroll, Fallon, McCarthy, Simon		
Staff:	Perry		
Public & Press	Approximately (5)		

1. THACHER'S EXXON STATION - 31 Route 28, Dennisport
 Dr. Carroll read legal notice requesting Special Permit for sale of used motor vehicles and variance from Section 2.2.3.3 for outdoor display of used motor vehicles at above location. Mr. Skip Thacher and his son were present. Mr. Thacher explained that he has always sold a few cars at his gas station, but with his sons getting older, would like to expand; that they keep a clean and neat place. He said the cars would only be on the side, and probably would not cause any more traffic than he already has. Acting Chairman Flinkstrom explained that with the request for a Special Permit and the variance, the Board needed to hear some explanation as to hardship, particularly in relation to soil conditions, shape, or topography. Mr. Simon noted that the advertisement contained a topographical error in citing the section of ZBL to be varied. Mr. Thacher said the station is paved with concrete and black top and cars would not be in front because of pumps; that gasoline shortage has caused problems, causing everything to shut down, even repairs, and that this would help with his income. Dr. Carroll pointed out that the lot is very small for gas station work and that law states that cars for sale must be indoors. Mr. Thacher said he had talked with officer from Registry of Motor Vehicles, who suggested that if he wanted to sell more cars, he should get a license from the Town. The Board discussed the options of Mr. Thacher requesting to withdraw without prejudice or to be continued in order that he might better prepare his presentation if he wishes to return. At Mr. Thacher's request, Dr. Carroll moved to allow petitioner to withdraw without prejudice; seconded by Mr. Fallon. VOTE: UNANIMOUS. Hearing closed 7:48 P.M.

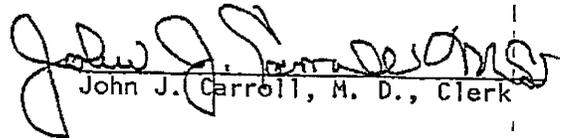
2. RICHARD D. BARKER - Lot 3, No. 62 Ferry Street, West Dennis
 Dr. Carroll read legal notice requesting variance from sideline setback requirement to construct garage and breezeway to existing dwelling at above location. Mrs. Barker was present, and explained that their petition for a variance of 3.16 ft. had been denied on April 30th, and are now requesting a variance of only 1.61 ft. She said they have more than a car to store - boats, bikes, etc., - and have no cellar, only a porch. She did not think they could put the garage on any other part of lot because of a 5 ft. embankment down to Uncle Barney's Road, a very busy street; that whereas the first plan was for 18 x 24 ft., this plan is for 16 x 27 ft. She added that they are close to Rt. 28, and many times people cut through, knock down fence, and that they must keep their belongings under cover or they are taken. In response to Mr. Fallon, Mrs. Barker said abutting Lot 4 belongs to relatives and that the topography does create a hardship. Mr. Simon asked about the common driveway shared and if the garage could be located to enter from Ferry Street. Mrs. Barker explained that they use that area for family use and she doubted that either lot would ever be sold out of the family. Hearing closed 8:00 P.M. The Board's vote to grant variance was unanimous (Flinkstrom, Carroll, Fallon, McCarthy, Simon) based on finding that the shape of the existing structure as it relates to the land creates a uniqueness

RICHARD D. BARKER: CONT:

that almost requires that a garage be placed at the requested location. The Board also found that the topography of the land and the heavy traffic in area is such that it would make it difficult to have access to a garage in an alternate location. In addition to finding hardship with the shape of the structure and topography, the Board believed that granting variance would cause no substantial detriment to the public good or neighborhood, nor any derogation from the Zoning By-Law.

3. DOROTHY L. LOVELL - Lot 15, No. 25 Sea Gull Lane, West Dennis
 Dr. Carroll read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling at above location. Mrs. Lovell and her son were present, and she explained that she needed to sell this lot abutting her home, has a buyer, and needs the money. She agreed this is one of only two unbuilt lots on the street. In answer to Dr. Carroll she said the taxes on this lot paid for over 27 years are about \$116 per year. Mr. Simon questioned if contiguous lots were both in same title preceding Mr. Lovell's death; the secretary confirmed that in checking it appeared they were. In response to Mr. Fallon, Mrs. Lovell said they had not built or sold before because her husband wanted the privacy. Mr. Flinkstrom explained that if granted, variance would be valid for only one year, and other ZBL and Health Dept. requirements must be met. Hearing closed 8:12 P.M. The Board's vote to grant variance was 4 (Flinkstrom, Carroll, McCarthy, Simon) to 0 (Fallon abstaining). The majority vote was based on finding that the neighborhood is such that creating a divisive size lot as it presently stands, 80 ft. by 160 ft. frontage, whereas the standard on Sea Gull Lane is 80 ft. frontage, could cause a hardship. The Board members voting to grant found that the existing shape as it relates to the neighborhood and the owner is a hardship. The majority vote also found financial hardship with the petitioner owning the land and paying taxes for over 27 years. They did not believe that issuance of the variance would substantially affect the neighborhood, nor derogate from the Zoning By-Law.

7/5/79
 Date


 John J. Carroll, M. D., Clerk

Distributed to:

Members & Associates
 Building Inspector
 Town Clerk
 File

TOWN OF DENNIS
BOARD OF APPEALS

September 5, 1979

Convened: 7:35 P.M.
Sitting: Flinkstrom, Carroll, Fallon, McCarthy, Simon (Lizotte present)
Staff: Perry
Public & Press: Approximately 22

1. HERBERT E. WEBER - Lot 3, Alburmar Road, West Dennis

Dr. Carroll read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling at above location. Mr. and Mrs. Weber were present. He presented Board members with a written brief, and explained they had purchased in 1967 with intent to build; following this they purchased abutting Lot 7 with home from Mr. Field as first refusal under the latter's will in 1972. He said they had planned to sell Lot 3 with area of 9300 sq. ft., now prohibited by change in ZBL and being contiguous. Mr. Webber described Lot 3 as a corner lot, which if combined with Lot 7, would be a hardship in his opinion, especially if sewers should be installed and assessed; that Lot 3 with a slight rise is not conducive to being used with Lot 7, and is hard to take care of. Mr. Weber said he felt it would not be detrimental to the neighborhood, with lots almost the same size, to have a house built on Lot 3, and not derogate from intent of ZBL. Pictures were shown of the lot in question. He thought it was assessed for \$7,000, with taxes of \$112. Rev. Herbert Potter spoke in favor and presented petition from the neighborhood with eight names in favor. Those speaking in favor were: Mr. Philip Pendel, Marion Kenney, Laura Stever. Acting Chairman Flinkstrom noted telephone call from Mrs. Clarence King in favor; read Planning Board memo not recommending because he knowingly bought an undersized lot. Rev. Potter wished it to be part of record that he believed this was a buildable lot when purchased, that the Planning Board was in error. Mr. Webber agreed with Mr. Fallon that he bought Lot 3 because option was available and that ZBL then changed in 1973, grandfather's clause removed. Hearing closed 8:10 P.M. The Board of Appeals voted to deny Herbert E. Weber, 19 Maple Ridge Drive, Farmington, Conn., variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling on Lot 3, Alburmar Road, W. Dennis. The Board's vote to deny was 4 (Flinkstrom, Fallon, McCarthy, Simon) and 1 to grant (Carroll). The majority vote to deny was based on finding that substantial hardship arising from a literal enforcement of the Zoning By-Law, relative to soil conditions, shape, or topography, was not shown. The minority vote was based on finding hardship in the shape of the lot and in the fact of being a corner lot; also that it would not be detrimental to the neighborhood, nor derogate from the Zoning By-Law.

2. JOHN C. COTTER - 13 Bain Road, Dennisport

Dr. Carroll read legal notice requesting variance from front yard setback requirement to construct addition to existing dwelling at above location. Mr. Cotter was present and explained they have been owners for 15 years, summer only, and have never rented; that his family is larger and needs more room, a 16 ft. addition. He said the original house is only 12 ft. from the street; that in order to have access to addition, they requested variance to set back 22 ft. instead of 25 ft.; that they are planning bedroom and bath with full new septic system, having gotten permission for the latter from Mr. Dumas. Mr. Cotter said they needed variance to carry line of the house; otherwise, would have no way to get into the addition without passing through another bedroom. In response to Mr. Fallon, the petitioner said he has five children, two married with grandchildren; that they are overcrowded with present three bedrooms and one bath, and that youngest child is 16; that they have a full basement under half the house. Responding to Mr. McCarthy, Mr. Cotter did not think they could put hall through existing bedroom because it is only 10 x 12 ft. Hearing closed 8:25. The Board of Appeals voted to deny John C. Cotter, 64 Stearns Drive, Randolph, Ma. variance from front yard setback requirement to construct addition to existing dwelling at 13 Bain Road, Dennisport. The Board's vote to deny was 4 (Flinkstrom, Fallon, McCarthy, Simon) and 1 to grant (Carroll). The majority vote was based on finding that the petitioner failed to prove sufficient hardship and that the addition can be constructed in such a way as not to require a variance. The minority vote was founded on hardship with the existing structure, that it would not be detrimental to neighborhood, nor derogate from the Zoning By-Law.

3. ALICE SYLVIA & FRANCIS C. SYLVIA - Lots 25 & 26, Maloney Lane, Dennisport

Attorney Robert Sylvia was present to represent for his family, and explained that his parents had bought one lot about 1948, near their home, and his aunt the other lot; both were used for parking; that together they total 7455 sq. ft., just under the 7500 sq. ft. required for a single lot, or equal to most in the area. Mr. Sylvia further stated that they had been before the Board about a year ago, variance was granted, but that they have not been able to sell with the year running out. He said it was a hardship to maintain since his relative do not have other property nearby any longer, and wish to sell combined lots. Mr. Simon questioned size, which from assessors lot size appeared to be over 7500 sq. ft.; secretary had had this checked by Engineers, and it appeared to be correctly about 7455 sq. ft. Acting Chairman Flinkstrom read Planning Board memo that they had "no objection;" letter from Mrs. McCauly an abutter, about her concern for heavy traffic on narrow lane; letter from Paula and Edward Arms objecting relative to access from Winwood Lane. Sylvia noted Winwood never used and not planned for use, only from Maloney Lane. Hearing closed 8:45 P.M. The Board of Appeals voted to grant Alice Sylvia, 4 Cliff Street, Middleboro, Ma., and Francis C. Sylvia, 17 Prospect Street, Middleboro, Ma., variance from minimum lot size of 7500 sq. ft. to construct single-family dwelling on Lots 25 and 26, combined, Maloney Lane, Dennisport.

September 5, 1979

The Board's vote was unanimous (Flinkstrom, Carroll, Fallon, McCarthy, Simon) and based on finding hardship proven with regard to ownership since 1948, that it would not be detrimental to neighborhood, actually an improvement in combining lots, and that it would not derogate from the Zoning By-Law.

4. CHARLES E. & LAURA F. McLEAN - 92 Harbor Road, East Dennis

Dr. Carroll read legal notice requesting variance from front yard and side setback requirements to construct addition to existing dwelling at above location. Mr. Ralph Carter, builder for McLeans, was present to represent, and explained there is no problem with side setback. He said they are asking for 2 ft. front variance, 23 ft. instead of 25, and have problems with Conservation Commission; that access would be from water side and would not have to touch present hardtop and shubbery. He added that there is a bedroom window they do not want to lose; that they want to disturb a minimum of soil and sand, but do not have Conservation Order of Conditions yet, not until hearing on 9/11. Mr. Carter said McLeans need garage for a depth of 22 ft.; that hardship is that it would be more difficult to build without variance. Hearing closed 8:53 P.M. The Board of Appeals voted to deny Charles E. and Laura F. McLean, 77 Peach Tree Road, Glastonbury, Conn., variance from front yard setback requirement to construct addition to existing dwelling at 92 Harbor Road, East Dennis. The Board's vote to deny was 4 (Flinkstrom, Fallon, McCarthy, Simon) and 1 to grant (Carroll). The majority vote was based on finding sufficient hardship was not proven. The minority vote to grant found that hardship was proven with topography of land, that it would not be detrimental to the neighborhood, nor derogate from the Zoning By-Law.

5. ROBERT H. McPHEE - 1382 Route 134, East Dennis

Dr. Carroll read legal notice requesting Special Permit and variance from Parking Requirements to construct Office Building at above location. Mr. McPhee was present with Attorney Myer Singer representing. Mr. Singer explained his client wishes to construct office building on east side of Rt. 134 between Cape Cod Cooperative Bank and Restaurant-Retail complex to the south; that a permit had been granted previously for dog grooming on this site. He showed artist's rendering of proposed building, and presented Board members with brief. He said property is in LB I Zone, that all requirements of ZBL can be complied with, except for having more than two permitted parking spaces in the front of building; has been approved by O.K.H.R.H.D; that a Special Permit should normally be granted if it does not create nuisance, hazard or congestion. He added it is an office building that would not have unusual features, would not have any manufacturing with noise, any restaurant creating odors; would be 1½-2 stories with walk-out basement. Attorney Singer displayed topographical map, showed building, parking, drive and access from Rt. 134, which would house three potential office suites on lower floor, four on ground floor and four on second floor. He said the lot is only near road at grade and then falls off, making a natural walk out basement; that its use is compatible with the area and needed for more services in a growing area, such as medical, accounting, law office, etc., and will not interfere with the environment.

Mr. Singer acknowledged it will bring more traffic, but he felt not more than any new business, and that it would be in and out as a retail business would, with probably little evening or holiday use. He explained that Mr. McPhee would like Special Permit as "office building," not requiring each and every tenant to come before the Board for Special Permit. He quoted from Section 3.1.3.2 of ZBL: "...No parking area shall be located in a front yard in an LB-1 District." Mr. Singer discussed the intent of this Section, feeling intent would not have. However, they wish 50 ft. of parking, this building would not have. However, they wish 50 ft. setback. In relation to hardship, Mr. Singer discussed the topography of the lot, map showing about 101 ft. at front, and going down to about 85 ft. He pointed out that in order to comply with ZBL, it would be necessary to fill the lot to a depth of 10-20 ft. so that the grade of the lot would be similar to grade of road; that drainage and retaining in order to have all parking in the rear. He said the other solution would be to continue use of about 25% of the lot. Mr. Singer stressed that this was to the neighborhood, would not be unsightly. He noted the abutting bank, parking hood, other retail businesses in area, some of which have parking almost on road's edge because of pre-existing. He continued that ZBL is concerned with property values, safety; that a new office building will not be detrimental to property values; that driveway would have good visibility, and He felt if all parking were in rear Rt. 134 than Bank and others. He felt it difficult for many retired citizens. Mr. Simon inquired about Building Commissioner's intention as to two or three stories; Mr. Singer said considered had been told there was no difficulty in that it was considered a walk out basement, not a third floor.

In response to Mr. Fallon, he said by removing 13 front parking spaces, it would come below ZBL requirement. He added that retaining wall will prevent draining onto about 6 yards Dr. Carroll expressed some concern about parking spaces that traffic in front relative to backing up. Mr. McPhee explained that fire/flow plan would be one way; that code would be followed re fire/smoke alarms; that soft test has not been done yet, but if clay/There was discussion of trees, which and will be used with clean fill. There was building. Abutter Hudson Eldredge spoke in front of 50 ft. to screen building. Abutter Hudson Eldredge spoke in favor of some ing he had been there for over 20 years, and gave the Board some background on the terrain and drainage of the area; feeling the soil was generally very good. Hearing closed 10:10 p.m. The Board of Appeals voted to grant Robert H. McPhee, P.O. Box 67, So. Dennis, Ma.; Special Permit for Office Building Complex of 5706 sq. ft. at 1382 Route 134, East Dennis, and variance from parking requirement in front yard at this location, with the condition that petitioner place traffic flow lines in appropriate manner in accordance with plan dated July 16, 1979, submitted as Exhibit A. The Board's vote

September 5, 1979

to grant was unanimous (Flinkstrom, Carroll, Fallon, McCarthy, Simon) based on finding that issuance of Special Permit would not create nuisance, hazard or congestion in the area, would not be of substantial harm to the neighborhood, nor derogate from the intent of the Zoning By-Law. Vote to grant variance found that with the topography of the land affecting the parcel, but not generally affecting the zoning district in which it is located, a strict enforcement would create hardship because it would not permit the use of the land; also that a literal enforcement of the Zoning By-Law would cause a substantial hardship financially to the amount of some \$30,000 and unreasonably deny the petitioner use of the front portion of his land. The Board also found that granting variance would not be detrimental to the neighborhood, nor derogate from the intent of the Zoning By-Law.

6. Acting Chairman Flinkstrom called the following cases:
NICHOLAS MAZZONI,

Continued from 7/16; it was agreed to continue and request that Mr. Mazzoni appear at next hearing; SULLIVAN & LEVINE, continued from 8/20; Mr. Sullivan was not able to appear, will be requested to do so at next hearing. Mr. Fallon moved, seconded by Dr. Carroll, to continue the above hearings. VOTE UNANIMOUS.

7. MR. PETER L. MC DOWELL appeared informally to present proposed plan for a business complex on Route 6A between Dennis Post Office and the entrance to the Cape Playhouse. He explained there is presently an old house, which he would retain, building attached units to the rear for arts and crafts shops, etc., and probably maintaining two living units in the house. He had architect's rough plan, showing proposed parking, access, etc. Mr. McDowell said he would be asking only for a Special Permit, no variances, and is currently seeking potential tenants. The Board's reaction was generally favorable.

9/25/79
Date


John J. Carroll, M. D. Clerk

Distributed to:
Members & Associates
Building Inspector
Town Clerk
File

TOWN OF DENNIS
BOARD OF APPEALS

October 1, 1979

Convened: 8:00 P.M.

Adjourned: 9:00 P.M.

Sitting: Skelly, Carroll, Fallon, Creeden, Lizotte

Staff: Perry

Public & Press: Approximately 14

1. ERNEST L. MORRELL - Lot 1, #87 Beaten Road, Dennisport

Dr. Carroll read legal notice requesting variances from minimum lot size of 7500 sq. ft. and minimum lot width to construct single-family dwelling at above location. Mr. Morell was present, and explained that he was owner of single lot, bought about ten years ago; that when he went to sell, found it was not buildable because the law had changed. He said there have been complaints from the neighbors and Police Dept. because of improper use by transients and that he had to maintain brush to try to discourage this use. Mr. Morrell said he now has a buyer who would build single-family house if he can get variance, and submitted plan of house. In discussion with Board, he agreed there is a real estate sign on lot, that there is another vacant lot next door, that proposed house would be 42 ft. wide, but could be turned sideways to meet setbacks. Mr. Benjamin, owner of nearby Kenabar Motel, described the street - two lots together next to motel, then Mr. Morrell's lot; that he had numerous problems with kids congregating on vacant land and would love to see a house built there. Dr. Carroll felt the Board should have a plan showing the house on the lot to see if other variances might be needed. Chairman read memo from Planning Board: "not recommended because it was undersized when he purchased it." Mr. Morrell questioned Planning Board's statement about being undersized when he bought, and asked what happens to the lot if he can't sell. Mr. Skelly agreed statement of size was in error and that lot would become a free lot to citizens without compensation. Mr. Morrell felt he would like to continue to provide plan. Dr. Carroll moved to continue hearing until 10/15 for petitioner to provide plan showing house on the site; seconded by Mr. Fallon. VOTE: UNANIMOUS. Hearing closed 8:24 P.M.

2. ALBERT A. & EDITH C. UTO - Lots 117 and 118, Riverdale North, So. Dennis

Dr. Carroll read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling on each of above lots. Mr. Uto was present, and explained that his request involves two lots, each approximately 19,000 sq. ft., on which the Board granted a variance a little over a year ago; that he gave up building himself because of wife's illness, now has a builder from Braintree willing to build, and needs the variance for another year. Chairman Skelly commented that he did not expect this case to arise because he thought with Approval Not Required plan for these lots signed in July, 1978, it would have protection, but that Town Counsel had ruled otherwise. He also noted unanimous decision granting variance on 6/19/78.

October 1, 1979

Mrs. Bernice Knole, an abutter, said she had no objection because these lots are larger than many others in the area. Mr. Uto said his two large lots were originally three lots. At Mr. Lizotte's request, Mr. Skelly read Town Counsel's memo on need to re-hear; also read Planning Board's memo in favor of request. Hearing closed 8:33 P.M.

The Board of Appeals voted to grant Albert A. and Edith C. Uto, 111 Hollingsworth Avenue, Braintree, Ma., variance from minimum lot size of 20,000 sq. ft. to construct single-family dwellings on Lot 117 and Lot 118, Riverdale North, South Dennis, Ma. The Board's vote was unanimous (Skelly, Carroll, Fallon, Creeden, Lizotte) in finding hardship in long-time ownership and paying taxes and that the variance would be diminimus. They believed that having created two lots from three lots is an improvement to neighborhood, not detrimental, and would not derogate from the intent of Zoning By-Law.

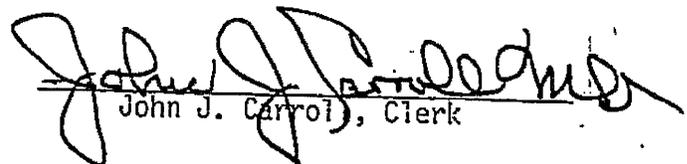
3. JOSEPH E. & MARJORIE MAGNUSON - 24 Whortleberry Lane, Dennisport

Dr. Carroll read legal notice requesting variances from side and rear setback requirements to construct addition to existing dwelling at above location. Mr. Magnuson's brother was present, and stated that he thought he was just supposed to attend hearing, did not realize he was to make a presentation. He said his brother had written letter to Board, and wanted to make present dwelling into retirement home; that he is presently in Saudi Arabia. Mr. Skelly informed him of options: to withdraw without prejudice and come back at some later date; or present case and take chances whether it is approved or disapproved; if denied, request cannot return for two years. He added that it is necessary for the Board to receive evidence of hardship, which should relate to hardship with the land in shape, soil condition, or topography. Mr. Jack McCarthy, abutter, asked to be heard; stated that petitioner's house is presently only 10 ft. from line, that even another five feet would be very close; he did object to granting variance, and presented a list of six signatures of families in the neighborhood who also object. Mr. Fallon moved that applicant be permitted to withdraw without prejudice; seconded by Dr. Carroll. VOTE: UNANIMOUS. Mr. McCarthy inquired about it coming up again; was told he would be notified again and could write a letter if he could not appear. Hearing closed 8:50 P.M.

4. NICHOLAS MAZZONI - 28 Bridge Street, East Dennis

Hearing was originally advertised for July 16, 1979, heard on July 30th, and continued for further plans. After Board's discussion with Mr. Mazzoni for need to repeat presentation, Mr. Skelly moved to continue to 11/5/79;... seconded by Dr. Carroll. VOTE: UNANIMOUS.

10/15/79
Date


John J. Carroll, Clerk

Distributed to:
Members & Associates
Building Commissioner
Town Clerk
File

TOWN OF DENNIS
BOARD OF APPEALS

October 15, 1979

Convened: 7:36 P.H.

Adjourned: 9:05 P.M.

Sitting: Skelly, Carroll, McCarthy, Creeden, Muse

Staff: Perry

Public & Press: Approximately 8

1. PATRICK J. HEALY - Lot 18, No. 35 Flax Street, Dennis

Dr. Carroll, Clerk, read legal notice requesting variance from minimum lot size of 7500 sq. ft. to construct single-family dwelling at above location. Mr. Healy was present, and explained that he had built foundation on the lot in 1975 after permit was issued, but due to finances could not continue. He said lot is 80 x 80 ft.; that now law requires 7500 sq. ft. Petitioner said he would like to get new permit since foundation is already in, and would build right away. Mr. Muse asked about need to be here if permit was issued and foundation is in. Mr. McCarthy looked at permit that had issued, and questioned if it was not still valid. In response to Dr. Carroll, Mr. Healy said it would be a two-bedroom house, hoped to have built by Christmas. Couple representing Mary and Norman Cutler as notified abutters were present; it was determined that the incorrect Cutlers were mailed notice of hearing. The secretary will contact Assessors Dept. concerning error in their records. Hearing closed 7:55 P.M.

The Board of Appeals voted to grant Patrick J. Healy, 19 Duncklee Street, Brighton, Ma., variance from minimum lot size of 7500 sq. ft. to construct single-family dwelling on Lot 18, No. 35 Flax Street, Dennis. The Board's vote was unanimous (Skelly, Carroll, McCarthy, Creeden, Muse) in finding hardship in ownership of property when it was a buildable lot, the petitioner thereby having constructed a foundation for house on the lot, but unable to continue due to financial hardship. The Board also found that such variance would not be detrimental to the neighborhood, nor substantially derogate from the intent of the Zoning By-Law.

2. ERNEST MORRELL - Lot 1, No. 87 Beaten Road, Dennisport

Dr. Carroll read legal notice requesting variance from minimum lot size of 7500 sq. ft. and minimum lot width to construct single-family dwelling at above location. Hearing advertised for 10/1/79 had been continued for presentation of house plans. Mr. Morrell was present, and presented a plan showing "Tara" 3-bedroom house on lot that his builder wishes to use if variance granted. He indicated it shows the house sited sideways, showing septic system, and meeting other setbacks. Dr. Carroll felt it would be crowded on the lot, and questioned if it should be a three-bedroom house which would add to congestion, especially if rental property. Mr. Morrell felt it would probably be a summer house, said there is a three-bedroom house next door, and parking would be in drive. Mr. Muse questioned the porch showing on the house plan, feeling it would cut into sideline setback. Mr. McCarthy indicated that the slider shown on plan would usually lead to porch or steps, taking up more room; also pointed out that even front steps on the side would go into the setback. Mr. Muse was also concerned with community intent to reduce density, and felt it should not be more than a two-bedroom house. There was discussion of continuing for purpose

of new plan; Chairman Skelly felt the Board could accomplish the same purpose by concluding hearing and voting. Mr. Morrell was agreeable to seeking a reduced plan from his buyer/builder. Dr. Carroll moved to continue until November 5th in order to have petitioner bring back two-bedroom house plan; seconded by Mrs. Creeden. VOTE: UNANIMOUS. Hearing closed 8:25 P.M.

3. MELVIN R. THACHER - 31 Route 28, Dennisport

Attorney Samuel Carideo represented Mr. Thacher informally to present his intention to apply for a Special Permit for sale of used cars from his service station location, and made available summary brief to members present. He explained there is a repair room (28 x 32 ft.) which can be used for inside storage of 5-10 cars to avoid need for variance for outside display, plus an office for paper work. Mr. McCarthy questioned if previous hearing had been withdrawn or denied (it was withdrawn without prejudice), and noted that this new request would be for SP only. The Board's consensus, without comment, was that the petitioner should file his application if he wishes to do so. Discussion closed 8:35 P.M.

4. Chairman Skelly raised question of NORTHSIDE AUTO BODY, granted a Special Permit on October 3, 1977, with the requirement of a review in two years. Following discussion, Dr. Carroll moved to send a letter to owner requesting his presence on November 5, 1979, with copies to Messrs. Gill, Dumas, H. Kelley II, and Proctor.

10/23/79
Date

John J. Carroll
John J. Carroll, Clerk

Distributed to:

- Members & Associates
- Building Commissioner
- Town Clerk
- File

TOWN OF DENNIS
BOARD OF APPEALS

December 3, 1979

Convened: 7:35 P.M.

Adjourned: 8:15 P.M.

Sitting: Flinkstrom, Carroll, McCarthy, Creeden, Simon
 Staff: Perry
 Public & Press: Approximately 5

1. JAMES M. O'BRIEN - Lot 36, No. 68 Buckley Road, West Dennis

Dr. Carroll read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling at above location. Attorney William Howes represented, and explained his client was not present since the secretary had informed him they did not expect a quorum to be present. He gave the background of the petition: petitioner's mother, Mary O'Brien, bought Lots 36 and 37 from Davenport in 1964; in December, 1973, sold Lot 36 to her son James, not being aware there had been a zoning change increasing to 20,000 sq. ft. minimum. When she went to sell, found she had common ownership lots. He said he discussed with Mr. Robert O'Neil, who suggested petitioning for variances for both lots. Mr. Howes continued that on 10/21/74, he appeared before this Board for Lots 36 and 37; that because of then different ownership and the fact that there was a buyer for Lot 37, the Board said they would look favorably on Lot 37 only, suggesting that petition be withdrawn and revised. Following this, variance on Lot 37 was granted. Attorney Howes said that now five years later Mr. O'Brien has a buyer for Lot 36, and presented Purchase & Sales Agreement for a consideration of \$25,000. He added that the buyer, a Mr. Brennan, went to Building Commissioner and was told that he could be issued a permit because the Building Commissioner felt that one variance freed the other lot. He explained that Lot 36 contains 11,600 sq. ft., most lots on Merchant Avenue to the rear are about 8000 sq. ft. He felt there are conditions which affect this lot and no other: not built as most others; has frontage on both streets, the shape is unique in that the front of the lot is almost twice that of others; that literal enforcement of ZBL would be a hardship, leaving the lot worthless. He felt relief could be granted without being detrimental to the neighborhood or derogating from the intent of the zoning. If granted, he added, the buyer would have to comply with other requirements of setbacks, Board of Health, etc. There was discussion with Board regarding a recent Flood Plain Zone variance having been granted on Lot 37. Attorney Howes again mentioned the shape, frontage being twice as much on one street as the other, and said he was seeking only variance from minimum lot size. Dr. Carroll noted that back in 1974, the Board was granting variances for a two-year period, that now variance is good for only one year unless utilized. Mr. Flinkstrom felt each case should be on its merits, regardless of background. Mr. Don Thompson, direct abutter, said he had no objections to variance, saying topography was compatible with area. Mr. David Lamers, builder, from audience, said he had plans for the proposed house, and asked if a Flood Plain variance would be needed, as for Lot 37. Acting Chairman Flinkstrom explained that the Building Commissioner would determine if necessary to file for such variance. Mr. Flinkstrom read letter in favor of granting from John K. Davenport, which noted previous variance granted and background. Hearing closed 7:58 P.M.

JAMES M. O'BRIEN continued

December 3, 1979

The Board of Appeals voted to grant James M. O'Brien, 23 Wyndmere Road, Milton, Ma., variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling on Lot 36, No. 68 Buckley Road, West Dennis. The Board's vote was unanimous (Flinkstrom, Carroll, McCarthy, Creedon, Simon) in finding hardship in the trapezoid shape of the lot. The Board did not believe that granting variance would be detrimental to the neighborhood, or that it would derogate from the intent of the Zoning By-Law. The Board also found financial hardship in the duration of ownership.

12/17/79
Date

John J. Carroll
John J. Carroll, Clerk

Distributed to:

- Members & Associates
- Building Commissioner
- Town Clerk
- File

TOWN OF DENNIS
BOARD OF APPEALS

Convened: 7:33 P.M.

January 21, 1980

Adjourned: 11:40 P.M.

Sitting: Skelly, Flinkstrom, McCarthy, W. Crowell, Simon, Creedon

Staff: Perry

Public & Press: Approximately 12

1. SEA COLONY HOMES, INC. & CARLTON M. ELLIS - Lot 11, #24 Supreme Way, Dennisport

Acting Clerk McCarthy read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling at above location. Chairman Skelly announced that a continuance had been requested and granted until February 4, 1980, because of attorney's difficulty in attending; that the Board would hear any comments from abutters who were present this evening. Mr. Harry Harris, 12 Supreme Way, requested information about Planning Board decision on this matter. Mr. Skelly read memo from Planning Board that they "feel this should not be granted for reasons stated on Internal Distribution." The latter was also read. Mr. Harris also raised the need for hardship to be proven to grant a variance. Abutter Raymond Gagnon spoke of using 40 percent of the pie-shaped lot, and said it would be very detrimental to his home next door. Mr. Oliva Croteau, another direct abutter, said they would be permanent residents next June; that a realtor told them not to buy this lot because it couldn't be built. Mr. Harris asked about granting to new owner who was aware of the problem, and added that he could not locate the name of Sea Colony in Town of Hanover's assessor's records. Mr. Gagnon added that he thought an environmental committee would look at property and recommend no building. Chairman announced hearing was closed to continue until February 4, 1980. (7:45 P.M.)

2. ROBERT J. PERRY - Lots 8A & 8B combined, Salt Meadow Road, West Dennis

Mr. McCarthy read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling at above location. Attorney Myer Singer represented, and explained that this request is to extend or re-grant same variance granted a few years ago to the late father of the petitioner, with a time limit of two years. He indicated that the land was subdivided in 1964, Mr. Joseph Perry had lived in house on a third contiguous lot; that he had not utilized the previous variance largely due to ill health, and now his son was the owner of property. Mr. Singer felt that the combined size of 15,000 sq. ft. was substantially close to ZBL requirement, and a house could be built to meet all other Town requirements. He made the argument that the shape is a function of the area of the lot, and that topography shows all measures of physical features of the land, one of these being the outside boundary lines. He felt that to deny would amount to a taking of the land, which he felt unjust. Total assessment of the lots is \$12,550, taxes are \$178.20. Mr. Crowell asked if property is in Flood Plain Zone; Mr. Singer said he did not know positively, but did not consider it to be low land. Mr. McCarthy asked about other property in the neighborhood owned by the Perry family. Mr. Singer explained that there is a third abutting lot with house and others from the same Perry family had owned in the area over many years. He did not agree with Mr. McCarthy that the lots would have as much value if sold with the existing house; said there is presently a purchase and sales agreement. He acknowledged that a new owner might possibly have the need to return for Flood Plain variance, but he did not anticipate this. Mr. Skelly read Planning Board's recommendation not to grant. Hearing closed 8:15 P.M.

ROBERT J. PERRY continued

January 21, 1980

The Board of Appeals voted to grant Robert J. Perry, 3108 Villa Rosa Avenue, Tampa, Florida, variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling on Lots 8A and 8B, combined, Salt Meadow Road, West Dennis. The Board's vote to grant was 4 (Skelly, Flinkstrom, Crowell, Simon) to 1 to deny (McCarthy). The majority vote found hardship in the long ownership of the land; that combining the two lots is in keeping with the neighborhood and size of lots, rather than adding to a third parcel. They believed that granting of variance would not be detrimental to the neighborhood, nor substantially derogate from the intent of the Zoning By-Law. The minority vote found that sufficient hardship had not been proven with the land.

3. ERNEST P. & LOTTIE SHAEFFER - Lot 4, No. 17 Seascape Lane, West Dennis

Mr. McCarthy read legal notice requesting variances from minimum lot size of 20,000 sq. ft. and minimum lot width to construct single-family dwelling at above location. Attorney Myer Singer represented petitioner, and explained that this lot has irregular shape, area is approximately 13,643 sq. ft., and is contiguous with Lot 5 with house owned by the Shaeffers. He said it is R-20 Zone, a 1962 subdivision of 17 lots, and this is the only unbuild lot; that a house could be built to meet all other setbacks and Board of Health. Attorney Singer suggested that this lot has unique conditions of shape and topography, is different from all others, being open and vacant. He added assessment is \$11,900, and Lot 5 with house is greater; explained that the Shaeffers do not want to sell, but to build a more substantial home for themselves on Lot 4 in the near future. He felt another home on a similar sized lot would not be detrimental to the public good or derogate from the ZBL, and explained his reasons for citing Sect. 2.4.1.2, that an individually owned lot of at least 7500 sq. ft. and 50 ft. frontage would normally be buildable. Mr. Simon stated that in observing the property, he questioned whether or not the lot has 75 ft. frontage as plan shows. Mr. Singer offered to have Surveyor Sweetser produce a plan to establish the frontage. Mr. McCarthy commented that it looked as though the petitioner has landscaped some frontage on Lot 4 along with Lot 5, and thought they had enjoyed the benefits of the extra lot in the past. Mr. Skelly read Planning Board memo opposing because of creating two non-conforming lots. He noted telephone call from Abutter Hurley in opposition, call from Mr. Iannuzzi to inquire and remain neutral. Mr. Crowell said he had found covenant to Planning Board is still outstanding and asked if this is a Town road. Mr. Singer did not know, but said it is paved. Hearing closed 8:50 P.M.

The Board of Appeals voted to deny Ernest P. and Lottie Shaeffer, 625 Highland Avenue, Salem, Ohio, variances from minimum lot size of 20,000 sq. ft. and minimum lot width to construct single-family dwelling on Lot 4, No. 17 Seascape Lane, West Dennis. The Board's vote was 3 to deny (Flinkstrom, McCarthy, Simon) to 2 to grant (Skelly, Crowell). The majority did not find sufficient hardship in the shape, soil conditions or topography of the land. The minority vote to grant believed there was sufficient hardship, financial, and in the shape and topography of the land within the subdivision itself; that it would not be detrimental to the neighborhood nor derogate from the Zoning By-Law.

4. GORDON W. & LOUISE C. ROSS - Lots 24A, 26 thru 35, Coles Pond Drive, East Dennis

Mr. McCarthy read legal notice requesting variances from minimum lot size of 60,000 sq. ft. and minimum lot width to construct six single-family dwellings at above location. Attorney Robert Smith represented, and said Mr. & Mrs. Ross were sorry not to be able to attend because of health reasons. He continued that the subdivision at hand was done in 1962; that the request is to combine and redesign into larger lots, which still would not meet 60,000 sq. ft. zoning requirement; that new lots would vary from 21,808 to 72,200 sq. ft. For background, he explained that for Lots up through 23, roads were installed and many have houses; that in 1962 his clients went to the Planning Board, and with some confusion about covenant signed, they thought they had more time to construct road. He said the yellow area on the plan submitted indicates where road has been cut in, and pointed out Lots 36, 37, 38, 39, which he said would come in later on a conforming plan. The rough cut road was put in about 1969 as well as water mains, after seven years had expired. Mr. Smith said the topography and soil conditions determined where road must go and was the hardship. In 1975 there was a land swap between Abutter Hopkins and Ross to settle law suit. He added that Mr. Ross has invested close to \$20,000, and has been taxed for individual lots; that in 1977 he did receive an abatement based on expired plan, but still assessed as individual lots. He did not believe granting of variances would be detrimental or derogate from ZBL; he confirmed that original plan had not been rescinded and that new plan to come in would probably be for two lots of 60,000 sq. ft. in place of present four. There was discussion of guarantee amounts to Water District. Mr. McCarthy questioned if proposed road could be reduced, especially in light of approximate cost of \$55 per ft. He also questioned about rights in the road, if other land to be subdivided would open up. Mr. Crowell stated that his office might represent the bank holding mortgage and that he had written an opinion for a third party about abutter Hopkins having rights; also questioned about water guarantee signed in 1971. Mr. Flinkstrom asked if petitioner had checked about wetlands application; Mr. Smith said they would abide by all restrictions. Mrs. Felt, Mrs. Dahlstrom and Mr. William Mullin came forward to look at plan and ask some questions. Chairman Skelly read Planning Board memo urging disapproval and letter from Mr. & Mrs. John O'Brien, abutters, in opposition. Attorney Smith said they had talked to Planning Board before with different number of lots, which they did not approve; would go back to them with a new plan. Hearing closed 9:30 P.M.

The Board of Appeals voted to deny Gordon W. & Louise C. Ross, Briar Lane, Brewster, Ma., variances from minimum lot size of 60,000 sq. ft. and minimum lot width to construct six single-family dwellings on Lots 24A, 26 through 35, redesigned, Coles Pond Drive, East Dennis. The Board's vote was unanimous (Skelly, Flinkstrom, McCarthy, Crowell, Simon) based on finding that sufficient hardship in the shape, soil conditions or topography of the land had not been proven; that the petitioner has sufficient land with additional options available to redesign property in such a manner as to minimize or eliminate the need for variances.

Chairman Skelly stepped down; Mr. Flinkstrom assumed Chairmanship. Mr. William Crowell stepped off the Board, to be replaced by Mrs. Charlene Creeden.

5. NEIL F. McLAUGHLIN & WOODLAND COUNTRY HOMES, INC. - 1644 Route 6A, East Dennis

Hearing advertised for 12/17/79, continued to 1/7/80, continued to 1/21/80. Mr. Peter McDowell, representing petitioner, briefly reviewed testimony and discussion of previous dates: 190,000 sq. ft. for 13 condominium units. Acting Chairman Flinkstrom read correspondence received: Board of Health memo of 12/5/79 with reference to 12 units; Water District memo of 12/12; Fire Dept. memo of 12/11 with request re hydrants; Planning Board memo of 12/14 questioning compliance with density; Conservation Commission memo of 12/17. There was discussion of Fire Dept. suggestion and the fact that it was based on previous plan before revision in location of buildings. In response to Mr. Skelly, Mr. McLaughlin said he does not intend to have further commercial development in front of property because he believes it would detract and that they now have 13 units instead of 12, taking up allowable space. Mr. McCarthy spoke of possible approval with restrictions as to no further subdivision and no additional units. Mr. McDowell said that would not prevent someone from coming forward; it would have to be processed and he was not sure it would hold up; he added that when a condominium master deed is created, it is permanent, but one is not available as yet. Mr. Skelly noted that the Appeals Board carries the burden of granting Special Permits and should have all information and input from other departments before them, based on a final and complete plan, before granting. There was discussion of plan, showing Nuthatch Way as a paved road, which the Board members expect to follow through as shown on plan. Mr. McDowell said Planning Board has approved and signed linen of subdivision plan, ready for recording; that they have talked with Planning Board about waiving some paving, which they will request at a later date, and would go by what was asked by both Boards. Mr. McCarthy questioned if there is enough space for backing out of garage driveways as shown. Hearing no one present opposed, hearing closed 10:22 P.M.

The Board of Appeals voted to grant Neil F. McLaughlin and Woodland Country Homes, Inc., P. O. Box 395, Medfield, Ma. 02052, Special Permit to construct thirteen (13) condominium units at 1644 Main Street (Route 6A), East Dennis. Special Permit shall be subject to the following conditions: (1) approval of all necessary Town Boards and Departments to be secured, and their approval to be based on revised plan submitted, dated December 24, 1979; (2) that there be no further subdivision of the land or additional units beyond 13 or commercial uses on the land shown on a plan for T. Feinstein approved November 13, 1979. The Board's vote was unanimous (Skelly, Flinkstrom, McCarthy, Creeden, Simon) based on finding that granting of the Special Permit will not cause nuisance, hazard or congestion, would not be detrimental to the neighborhood or derogate from the general purpose and the intent of the by-law, and the stated district objectives will be served.

2/12/80
Date

Gerald P. McCarthy
Gerald P. McCarthy, Acting Clerk

Distributed to:

Members & Associates
Building Commissioner
Town Clerk
File

TOWN OF DENNIS
BOARD OF APPEALS

February 4, 1980

Convened: 7:33 P.M.

Adjourned: 10:20 P.M.

Sitting: Skelly, Flinkstrom, W. Crowell, Lizotte, Simon

Staff: Perry

Public & Press: Approximately 13

1. HAJAC, INC. - Lots 6 & 7 combined, Old Chatham Road, So. Dennis

Chairman Skelly read the legal notice requesting variance from minimum lot size of 30,000 sq. ft. to construct commercial building at above location. He explained that representing attorney had requested a slight delay from advertised time of hearing, which had been granted.

2. SEA COLONY HOMES, INC. & CARLTON M. ELLIS - Lot 11, #24 Supreme Way, Dennisport

Mr. Skelly read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling at above location; this hearing was advertised for 1/21/80, and continuance granted to this date. Attorney Russell Wilkins represented Carlton Ellis, and thanked the Board for continuance. He explained that Mr. Ellis had owned a number of lots in Dennisport; that he (Wilkins) had come to this Board a year ago October for a variance to allow building on three combined lots at Ellis Drive. He added that combinations were made of Lots 1, 2, 3 and 5, 8, 9 (the latter with a variance), Lots 7 and 6 sold to abutters, leaving Lot 11 and Lot 4; that abutting Lot 10 had been sold in 7/74. He further explained that when Mr. Ellis sold Lot 10, leaving Lot 11, he felt he was all right based on a newspaper article which incorrectly stated that there would be a seven-year grace period following changes in ZBL. He continued that Lot 11 is 8,237 sq. ft., has recently been conveyed to Sea Colony Homes with the condition that they are able to secure a building permit; spoke of uniqueness of Lot 11 in shape, three sides on the street, and no contiguous property to add to; did not feel it would be detrimental to the public good to grant relief, and compared it as typical in size with other lots, other than larger ones Ellis has created by combining. Mr. Skelly questioned the responsibility of a land owner of 11 lots who would rely solely on a newspaper article. Attorney Wilkins stated that Mr. Ellis came to him in 1974 to put the property through Land Court; that Ellis did not live here, and thought it would be all right until 1980. He added that Conservation Commission is now interested in acquiring Lot 4 and Cedar Pond Way abutting; that the abutting neighbors have indicated they are not interested in buying Lot 11. Attorney William Marcella, representing Sea Colony Homes, said they had acquired with stipulation they could get a building permit; that they have a buyer for a home similar to one they have built on Lots 1-2-3; showed Board members plans for three-bedroom house they propose to construct. Mr. Crowell asked about Town water; some abutters stated it is not available on Supreme Way, that they have wells. Mr. Skelly read Planning Board memo recommending against granting. Abutter Harry Harris wanted more information about Sea Colony Homes; Attorney Marcella said they were a Mass. corporation organized about a year ago, has a mutual company office with Pilgrim Colony Homes, and has been building on the Cape. Mr. Harris stated that he could not find any

hardship, only a question of how much profit has to be made. Abutter Raymond Gagnon, spoke in opposition, saying it would be detrimental to his home next door, where he has a well on a lot of about 12,000 sq. ft. Abutter Croteau also spoke against granting, had believed the lot not buildable, and said he would like to buy and give to the Town. In rebuttal, Attorney Wilkins said Mr. Ellis has been paying taxes for years, can't build without a variance; that Mr. Croteau has refused to purchase property now and in the past. Hearing closed 8:08 P.M.

The Board of Appeals voted to deny Sea Colony Homes, Inc., & Carlton M. Ellis, 700 Washington Street, Hanover, Ma., variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling on Lot 11, No. 24 Supreme Way, Dennisport. The Board's vote was 2 to deny (Crowell, Simon) and 3 to grant (Flinkstrom, Skelly, Lizotte). Those voting to deny did not believe that sufficient hardship had been proven and that granting would derogate from the intent of the Zoning By-Law. Those voting to grant believed that the petitioners had hardship in the configuration of the land and long time ownership; also that granting would not be detrimental to the neighborhood, nor derogate from the intent of the Zoning District.

3. HAJAC, INC. - Lots 6 & 7 combined, Old Chatham Road, So. Dennis

Hearing called at 7:30 p.m., and delayed, commenced with Attorney Myer Singer representing. He said the petitioner owns three lots, one with building, and wishes to combine, making a reduced total of two buildable lots. He further explained that this entire GC I Zone is made up of 16 lots in a 1970 subdivision, with no other land owners affected; the lots all range from 10,000 to 14,000 sq. ft., and the two lots in question might be the two largest except for Lot 11. Combined they are approximately 24,000 sq. ft. He added that petitioner purchased in 1973, well before zoning size was increased; that others with contiguous lots were permitted to build before change and that it would be unfair to penalize the owner now because if different titles existed, each lot would be buildable. Attorney Singer suggested regarding hardship that the shape of the lots has an area and topography shows the boundary lines. He pointed out an appraisal by Charles Chamberlain, which indicates that the Lot 8 with building would have a value of \$35,000; Lots 6-7-8 as one site would be \$40,000; Lots 6 and 7 as one lot would have value of \$15,000. This would mean a loss of \$10,000 without variance, a substantial hardship. He felt this combined lot at 2½ times any other in size would not be detrimental to the neighborhood as all others are commercial buildings, mostly metal; that the use would be whatever is allowed in the ZBL Use Schedule. Mr. Simon said he saw this as a variance on Lot 8, and suggested the three lots together be subdivided into two lots of about 17,000 sq. ft. each. Mr. Singer said this was possible, but they wanted to try to bring one lot up larger and also avoid expensive engineering costs. He said the building on Lot 8 is leased to Super Automotive; that Mr. White (petitioner) only has a purchase and sales agreement for Lots 6 and 7, and that any building would meet all other setback requirements. Mr. Richard Hamlin, owner of nearby Evergreen Landscaping, spoke in favor of granting, feeling that Mr. White is trying to make the lot as large as possible; that Lot 8 is already separate and the same size as others. He felt it would be a hardship to force him to subdivide three into two lots. Chairman Skelly read memo from Planning Board with no recommendation because they felt there was insufficient information given. Mr. Singer noted that until petitioner was able to get the variance, he can't really offer to a potential buyer. Hearing closed 8:43 P.M.

HAJAC, INC. continued

February 4, 1980

The Board of Appeals voted to grant Hajac, Inc., 99 Betty's Path, West Yarmouth, Ma., variance from minimum lot size of 30,000 sq. ft. to construct commercial building on Lots 6 and 7, combined, Old Chatham Road, South Dennis. The Board's vote was unanimous (Skelly, Flinkstrom, Crowell, Lizotte, Simon) in finding hardship in the land and in combining two lots into one buildable lot. The Board did not believe that granting would be detrimental to the neighborhood, which is largely built up, or that it would derogate from the intent of the Zoning By-Law since the property would be put to the use for which it is intended.

4. Mr. Ron Girelli, Asst. Building Inspector, and member of BUILDING ADDITION NEEDS COMMITTEE, appeared informally to present general idea of annex building on present Town Hall site to the Board for their comments. He pointed out several parcels owned by Town, including Ancient Cemetery, and said the parking lot on the south side of building is on leased land. Mr. Girelli said they are considering an annex building, perhaps connected to present structure, and moving most of parking to area to the northwest. It seemed that if no special permits or variances were required, a Site Plan Review would be in order according to ZBL Use Schedule. Chairman Skelly inquired as to how the space need was determined without consulting with various Boards and Departments as to their individual requirements. Other Board members had comments or questions on the projected size of 2500 sq. ft. for an annex. Mr. Girelli said he would look into the matter of assessing needs.

Feb. 13, 1980
Date

Henry J. Skelly
Henry J. Skelly, Acting Clerk

Distributed to:

Members & Associates
Building Commissioner
Town Clerk
File

TOWN OF DENNIS
BOARD OF APPEALS

Convened: 7:30 P.M.

May 19, 1980

Adjourned: 9:50 P.M.

Sitting: Skelly, Flinkstrom, McCarthy, Lizotte, Creeden
Staff: Perry
Public & Press: Approximately 22

1. CEDAR MEADOW ASSOCIATES - 574 Main Street (Rt. 6A), Dennis

Mr. McCarthy read legal notice requesting Special Permits for Business Offices, Wee Ship It, Downeaster Weather Instruments, and others, and Retail Stores, B & B Instruments, and others, plus one residential apartment at above location. Mr. & Mrs. Bechard, principals of Cedar Meadow Associates, were present, and explained the location of property in LB I Zone on Rt. 6A, said they have been in business down the street for about two years and local business people for 11 years. Mrs. Bechard said the building on plan is designed for about 21 percent coverage of the lot with structure and parking, only 2.63 percent for building only. They explained their three businesses: Wee Ship It, a small shipping company, Downeast Weather Instruments for the repair and manufacture of instruments, and B & B Instruments, the sale of instruments. The Board and Mrs. Bechard discussed the pros and cons of apartment, whether it is an automatic "Y" as single-family dwelling in ZBL, or whether it is a "security apartment" requiring a variance. Mrs. Bechard noted that an abutter with same kind of application came before the Board maintaining there was no need for Special Permit or variance, but a permitted use.

Chairman Skelly stated that his own feeling is that any further retail uses should return for a permit; that the Board could grant "blanket permit" for offices, but not for retail unless specific. Parking on the plan was discussed, and Mr. Ira Thacher, surveyor for petitioner, said the plan was changed, but square footage is updated. He felt there was more parking than required, and said they intend to leave as much as possible undisturbed. Mr. Skelly read Planning Board memo, which noted no objection but would like to review site plan relative to Sect. 3.1.4.5 - 1 tree for each 5 parking spaces.

Mrs. Bechard agreed they would be very willing to return if they have others who wish to rent space. She explained the fence showing on the plan is a stockade fence to shield the dumpster; said they would like to pave the drive and parking area, and would have to get State approval for drainage basins. Mr. Thacher said there would probably be a couple of basins and graded to run into property. Hearing closed 7:50 P.M.

The Board of Appeals voted to grant Cedar Meadow Associates, P. O. Box 925, Dennis, Ma., Special Permits for Business Offices, including Wee Ship It and Downeaster Weather Instruments, and for Retail Store for B & B Instruments at 574 Main Street (Route 6A), Dennis. Any further retail business at this location must come before this Board for a permit. The Board's vote to grant was unanimous (Skelly, Flinkstrom, McCarthy, Lizotte, Creeden) in finding from review of plot plan of structure and parking that this use would not create nuisance, hazard or congestion; also that to grant would not cause substantial harm to the neighborhood or derogate from the intent of the Zoning By-Law; further, that the stated objectives of the district would be addressed.

BOARD OF APPEALS

May 19, 1980

2. RAYMOND T. SPEAKMAN - 87 Stafford Circle, Dennisport

Mr. McCarthy read legal notice requesting variance from sideline setback requirement to allow existing structure at above location. Mr. Speakman and his son, Dan, were present. Mr. Dan Speakman explained that his father is seeking variance from 10 ft. sideline, that the house was built by Carl Maloney in early 1960's; that at the time his father was working for Canham Electricians who were setting poles. He said there were no bounds definitely set, and they wanted to build house as close as possible to line because of underneath garage, so used telephone poles to stake the house in 1964. It appeared a 1.32 ft. variance was needed. Mr. Ray Speakman said he expects the house to be for sale. After the Board looked at plot plan, Mr. Skelly read Planning Board memo indicating "no objection." Hearing closed 7:55 P.M.

The Board of Appeals voted to grant Raymond T. Speakman, 87 Stafford Circle, Dennisport, Ma., variance of 1.32 ft. from sideline setback requirement to allow existing structure at above location. The Board's vote to grant was unanimous (Skelly, Flinkstrom, McCarthy, Lizotte, Creeden) in finding that this variance would not be detrimental to the neighborhood, nor derogate from the intent of the Zoning By-Law. The Board found hardship in the shape relationship of the existing dwelling to the lot.

3. FRIENDS OF DENNIS SENIOR CITIZENS, INC. - 1069 Route 134, East Dennis

Mr. McCarthy read legal notice requesting Special Permit for Club Building and Parking at above location. Mr. Eugene Koenig represented, and said there were plot plans available, plus scale model of project, which he displayed to Board. He said the site is on the corner of Setucket Road, that model does not show other half of land area which will remain as is; that they wish to utilize the lower land for parking for two-story building. Mr. Tom Martin, an abutter, asked how much traffic this would create. Mr. Koenig said they will have parking for approximately 100 cars, but there is only one entrance from Rt. 134 and one exit on Setucket Road. Mr. Martin took this to mean to anticipate about 100 people per day. Chairman Skelly read Planning Board memo that they have no objection to Club Building but would like to see more trees in parking area. Mr. Koenig indicated that if more parking is required, they will provide more trees. Mr. Skelly read reply from Water District as having no objection; memo from Mr. Ted Dumas commented on septic system for commercial kitchen and bath facilities, but had no objection; Conservation Commission, no comment; Police Dept., no comment. Mr. Koenig showed that he had signatures of other agencies on plan.

Mrs. Creeden inquired as to what type of activities are anticipated and if open only to Senior Citizens. Mr. Koenig replied that the upper floor has office space, rooms for blood pressure tests and the like, rooms for luncheon and dinner meetings; downstairs there is a dining room for luncheon or dinner and craft rooms; that the Council on Aging makes arrangements for bus trips, etc.; said if not used completely, it can be used for other civic purposes; would have 9-5 hours, usually daytime and only at night for special occasions; added that the building is 6400 sq. ft. Mr. McCarthy asked regarding percentage of coverage; Mr. Koenig thought about 30 percent; that there are 4½ acres and they are only using two acres for the project; expect to pave because of use of wheelchairs and such. He later clarified his statement to say about 15-20 percent coverage

of the entire parcel. There was discussion of traffic pattern and lower level parking with retaining walls. Mr. McCarthy said he had some reservations about the depressed parking arrangement and was concerned about proper safety. Mr. Koenig felt they would have sufficient signs, barriers and landscaping.

Mr. Oren Howell, of East Dennis and President of the Friends of Senior Citizens, spoke in favor, saying they wanted an entrance on the lower level so that people could avoid stairs, and also have entrance on upper level, would have elevator in building. He added that safeguards for parking would be erected and trees left and/or added. Mr. Koenig clarified that plan shows 64 parking spaces but said they can be added to; felt that some cars will drop people off and not stay. He acknowledged that plan does not show trees to be planted, would leave parking area open for cars and truck deliveries, have natural greenery in the rear. Hearing closed 8:30 P.M.

The Board of Appeals voted to grant Friends of Dennis Senior Citizens, Inc., 1069 Route 134, East Dennis, Ma., Special Permit for Club Building and Parking at above location. The Board's vote was unanimous (Skelly, Flinkstrom, McCarthy, Lizotte, Creeden) and found that granting would not cause nuisance, hazard or congestion to the area. The Board did not believe that this use would derogate from the intent of the Zoning By-Law in this zoning district.

4. CHARLES DE SIMONE - Lot 51, No. 24 Courier Drive, Dennis

Mr. McCarthy, as Clerk, read legal notice requesting variances from minimum lot size of 20,000 sq. ft. and front yard setback requirement to construct single-family dwelling at above location. Mr. DeSimone explained that he was requesting variance for front yard only, that the minimum lot size was requested in error. The Chairman checked with the secretary, who indicated recent note in file; while it had appeared to be contiguous undersized lots, at Mr. DeSimone's request, she had checked deeds in assessor's vault and found that Lot 51 had been owned previously by Joseph McAleney alone and abutting Lot 44 on Crown Grant Drive was owned by Joseph McAleney et ux. It was agreed this was perfectly legal and Lot 51 was a buildable lot as to minimum lot size. Mr. DeSimone continued that one point of the front setback is only 23 ft. 4 in., rather than required 25 ft. He said the reason was that he was trying to hold the dwelling as close to the front because of topography, land drops off in rear, but that he did not allow for the angle of the road in front, where there is a slight arc. He added that the foundation is in and they stopped work. Mr. Skelly read Planning Board memo indicating no recommendation. Hearing closed 8:36 P.M.

The Board of Appeals voted to grant Charles DeSimone, 42 Independence Way, Dennis, Ma., variance of 1.6 ft. from front yard setback requirement to construct single-family dwelling on Lot 51, No. 24 Courier Drive, Dennis. The Board's vote to grant was unanimous (Skelly, Flinkstrom, McCarthy, Lizotte, Creeden) and found hardship owing to the shape and topography of the lot. They believed that granting of variance will not cause substantial detriment to the neighborhood or derogate from the Zoning By-Law and the intent of the zoning district.

May 19, 1980

5. MARION J. & AGNES E. HALBRITTER - Lot 10A et ali, Beach Hill Road, Dennisport

Mr. McCarthy read legal notice requesting Special Permit under Sect. 2.4.3.7 to separate ownership of existing dwelling on Lot 10A and existing cottage colony on Lots 9A, 7A & 8A, 5A & 6A, 3A & 4A, 1A & 2A, A2, Beach Hill Road. The Halbritters were present and represented by Attorney Lawrence Spaulding, who presented brief and pictures of locus to the Board. He explained that the entire property was purchased in 1948 and operated as a cottage colony; that Halbritters now feel they would like to retire from the upkeep, but have made their home on Lot 10A, and Special Permit is to allow them to separate Lot 10A from remaining lots. He felt that because of increased zoning and setback requirements, the property is now a non-conforming cottage colony. Attorney Spaulding quoted from Sect. 2.4.3.7: "Pre-existing non-conforming structures or uses may be extended, altered, or changed by special permit, provided the Board of Appeals finds that the extension, alteration or change will not be substantially more detrimental than the existing non-conforming use of the neighborhood."

He continued that petitioners intend to sell the cottage colony as a group, with no intent to condominiumize, and the other seven cottages would remain together. He did not believe anything would be done to be detrimental, just the cottage colony and the Halbritter's home. Mr. Skelly read letters from Henry Covello, direct abutter, who approved of separating with no objection; from Frances and John Murphy, who have "no objection and approve of plan;" from the Brantings with no objections.

Chairman Skelly noted that on the Assessor's map the lots are shown as separate parcels, and asked how they were billed for taxes. Ms. Marion Halbritter said the bills were for 10A, 3A & 4A, etc., one for each cottage. Mr. Skelly noted seven tax bills for separate lots, and inquired as to legal difficulty in separating. Attorney Spaulding said that once they increase the minimum lot size and setbacks, the assessors never change their bills, but that they really become one and you could not separate the two or more lots. He felt it would have been different if house Lot 10A had been owned by a realty trust as opposed to the other cottages, but as is, it was common ownership. Mr. Skelly agreed that to build would be a different story but noted that it is already built. Attorney Spaulding did not think a conveyancer would certify the title without a Special Permit. In reply to Mr. Flinkstrom about a pending buyer, Mr. Spaulding said they plan to run the cottages thru the summer; that if they had started sooner, it would be on the market. Mr. Flinkstrom noted that if it should come under separate ownership, historically the ownership has been by a party that has been in residence on the site; that in the future it could be by a non-resident owner. Mr. Spaulding felt that the cottages are very nice and a new owner could reside in one. Messrs. Skelly and Lizotte felt that these lots are not merged into one by the Zoning By-Law, as Mr. Spaulding suggested, but only rendered unbuildable by Zoning By-Law. Mr. Spaulding offered to submit a brief to support his position. Mr. Flinkstrom suggested that the Board could condition the Special Permit so that units could not be conveyed out separately, feeling also that without involvement of a mortgage, a lot could be conveyed.

MARION J. & AGNES E. HALBRITTER continued

May 19, 1980

Attorney Spaulding suggested that there was a question of use that the petitioners wish to change in separating. Mr. Sanborn, an abutter for 22 years, spoke in favor. Mr. Larry DiNoia, also abutter, spoke in favor. Ms. Sandy Taubert, an abutter, wanted to be assured that the cottages could not be sold separately. Mr. Skelly said that in the future he felt they could be deeded out but not built upon further, though counsel disagrees. There was some further discussion on this point, with Mr. Spaulding saying that perhaps the lots had not "merged," but still need a Special Permit. Mr. Skelly read Planning Board memo that "it was the consensus of the Board that they are strongly opposed to granting this Special Permit." Mr. Lizotte questioned that if things are other than as we see them and it is one lot, shouldn't petitioner be seeking a variance. Attorney Spaulding did not agree, felt it is a pre-existing non-conforming use, and hoped the Planning Board did not think they wanted to split up all the cottages. He concluded by stating that there will be no substantial change in the property; that nothing will take place that will be detrimental to the neighborhood. Hearing closed 9:07 P.M.

The Board of Appeals voted to grant Marion J. & Agnes E. Halbritter, One Beach Hill Road, Dennisport, Ma., Special Permit under Sect. 2.4.3.7 to retain ownership of existing year-round dwelling and outbuilding on Lot 10A, Beach Hill Road, separately from the series of adjoining cottage dwellings contiguous thereto on Lots 9A, 7A & 8A, 5A & 6A, 3A & 4A, 1A & 2A, and A2, Beach Hill Road, Dennisport. The Board's vote to grant Special Permit was unanimous (Skelly, Flinkstrom, McCarthy, Lizotte, Creeden) and found that there would not be substantial detriment to the neighborhood to continue this non-conforming pre-existing use. The Board found it would not cause nuisance, hazard or congestion to be greater, nor derogate from the intent of the Zoning By-Law in this district.

June 27, 1980
Date

Gerald P. McCarthy
Gerald P. McCarthy, Clerk

Distributed to:

Members & Associates
Building Commissioner
Town Clerk
File

TOWN OF DENNIS
BOARD OF APPEALS

Convened: 7:47 P.M.

Adjourned: 10:12 P.M.

June 2, 1980

Sitting: Skelly, McCarthy, Crowell, Lizotte, Creeden, Jason
 Staff: Perry
 Public & Press: Approximately 16

1. MARCIA J. & DONALD L. DORNBACH - 586 Main Street (Rt. 6A), Dennis

Mr. McCarthy read legal notice requesting Special Permit for Antique Shop, Hand-crafts/Art Gallery, and Real Estate Office at above location. Mr. Dornbach was present, and explained that he wishes to use part of the house to have gift shop and art gallery, one room for real estate office, and live in the rest of the house. He said they have adequate parking and believe it is a suitable use for him and his wife to operate. Mr. Dornbach added that present owner, Mrs. Grace Salisbury, will continue to operate antique business for which she has a Special Permit; that they will have arts and crafts; explained that antiques would be in rear and pointed out areas on sketch for gallery and room to side for real estate. As to parking, Mr. Dornbach said there is a circular drive and parking for ten cars, more if needed. Businesses would be run by him and his wife with assistance from Mrs. Salisbury, who still lives on premises. Mr. McCarthy asked about family car parking, but Mr. Dornbach said this does not take away from the ten, and assured that there would not be any structural changes; was agreeable to hours of 10 a.m. to 6 p.m. He added that if business increased substantially, they would come back to Board. Chairman Skelly read Planning Board memo that they have no objections as long as off-street parking is provided. Hearing closed 7:59 P.M.

The Board of Appeals voted to grant Marcia J. & Donald L. Dornbach, 586 Main Street (Rt. 6A), Dennis, Ma., Special Permit to operate Antique Shop, Hand-craft/Art Gallery and Real Estate Office at above location. Hours of operation will be limited to 10 a.m. to 6 p.m. The Board's vote to grant was unanimous (Skelly, McCarthy, Crowell, Lizotte, Creeden) in finding that there was no likelihood of nuisance, hazard or congestion. The Board believed that the Special Permit would not substantially derogate from the intent of the Zoning By-Law.

Board Member Peter Lizotte stepped down, to be replaced by Associate Member Otis Jason.

2. BRADFORD W. & BARBARA A. SHAW - Lots 52 & 53, Avon Lane, So. Dennis

Mr. McCarthy read legal notice requesting variances from minimum lot size of 20,000 sq. ft. to construct single-family dwelling on above numbered lots. Petitioner was represented by Attorney Michael Ford, who gave a brief background of how the shaws acquired these lots: that Mrs. Shaw and her brother had owned property in this area, were approached by a developer to sell; in return they could choose six lots in the subdivision plan. For Mrs. Shaw this included Lots 52 and 53 plus Lot 41 on Dunstable Cross Road; took title in 1967 when these lots conformed to the Dennis Zoning By-Law. Since they are residents of Brockton, they were not aware of zoning change in 1973, and took no action to put the lots into separate ownership. Following this they were told by someone at Town Hall that the lots would be considered as one, and as two lots were unbuildable, but that when ready to build, to go to Appeals Board. Mr. Ford said Mr. Shaw has

BRADFORD W. & BARBARA A. SHAW continued

June 2, 1980

now retired and wishes to come here to live. He felt the shape is unique from the zoning change itself; said that almost all the other lots in this area were built and had been in separate ownership. He suggested that this has created a substantial hardship for the Shaws, having paid taxes from 1967 to 1973 on separate buildable lots and since 1973 at lower assessment; also Water District taxes as though there were two lots. Mr. Ford felt the inability to build causes a loss in value and that relief could be granted without substantial detriment to the neighborhood or derogation from the Zoning By-Law since the ZBL contemplates their being built separately if they were in different titles. He added that the lots could meet all the other requirements, setbacks, width, of the Zoning By-Law.

He offered a letter sent to all abutters to give them more information than the legal notice, and listed responses: across the street abutter Kenneth Towers, no objection; John Tansey on Lot 10, no objection; also abutters Santora on Lot 48 and Payea on Lot 47, no objections. Attorney Ford also said the Shaws had plans for home to build on Lot 53, and then sell Lot 52, that this was their retirement fund. Mr. Rogers, Mrs. Shaw's brother, said he was able to use his plan for three lots because they were not contiguous, could build on one and sell the other two; felt it was unfair to the Shaws. Mr. Wiler, 11 Charing Cross Rd., said his house was built about a year ago on a lot 80 x 100, and felt this would be a welcome addition. Mr. Skelly read letter of "no objection" from Helen LaPlante and Mrs. Saffie. In reply to Mr. McCarthy's inquiry about value of combined lots, Mr. Ford did not have appraisal, but gave figures for tax assessment: Lot 52 at \$3650 and Lot 53 at \$7950 after 1973. In response about question of hardship, Attorney Ford said the Shaws would build on Lot 53, and need to sell the other two lots to be able to build. Mr. McCarthy pointed out that Mr. Tower has built on two lots combined across the street. Mr. John Boyington, 12 Charing Cross Road, said he was abutter to the rear, and that they had been told only one house could be built there when they bought their home about 3 years ago. In rebuttal, Attorney Ford noted the Shaws have owned since 1967, and had believed the lots to be buildable separately. Hearing closed 8:27 P.M.

The Board of Appeals voted to deny Bradford W. & Barbara A. Shaw, 29 Stebbins Avenue, Brockton, Ma., variance from minimum lot size of 20,000 sq. ft. to construct single-family dwellings on Lot 52 (#7) and Lot 53 (#1), Avon Lane, South Dennis. The Board's vote was 3 to grant (Skelly, Crowell, Creeden) and 2 to deny (McCarthy, Jason). Those voting to grant found that these are two of the largest lots in the neighborhood, which is almost completely built up, and that granting would not be detrimental to the area, nor derogate from the Zoning By-Law; further that the boundary lines in relation to the entire subdivision affect the shape, causing hardship. The Board members voting to deny did not believe sufficient hardship had been proven.

Mr. Jason stepped down, and Mr. Lizotte returned to the Board.

3. SALVATORE ALLIA - 34 Mayfair Road, South Dennis

Mr. McCarthy, as Clerk, read legal notice requesting variance from rear setback requirement to construct tool shed at above location. Mr. Allia was present, and represented by Attorney Stephen Jones, who described the tool shed Mr. Allia has built, nearly complete, only one foot from rear line, following which the Building Commissioner issued a Stop Work Order. He said the petitioner has a

June 2, 1980

garden, and indicated trees that would have to be removed to move shed, which is 10 x 10 ft. He said Mr. Allia believed he did not need a building permit because of small size under 100 ft. Mr. Jones did not believe that granting variance would be detrimental to the neighborhood, and described a stockade fence running along the rear line, which hides almost all of tool shed. He also did not feel this would derogate from the Zoning By-Law because the intent was to put the tool shed as close as possible to the garden and not near the rear sun deck. Mr. Allia did not believe the abutters to the rear had any objection to the shed, which was put together with 20 bolts. Mr. McCarthy questioned a variance of 9 ft. and the shed being only one foot from the line, or possibly closer. In reply to Mr. Lizotte's question about cost to move the shed, Mr. Allia said the cost of materials to build was \$327. Hearing closed 8:40 P.M.

The Board of Appeals voted to grant Salvatore Allia, 34 Mayfair Road, South Dennis, Ma., variance of 9 ft. from rear setback requirement to maintain a tool shed on the property at above location. The Board's vote to grant was 4 (Skelly, Crowell, Lizotte, Creeden) and 1 to deny (McCarthy). The majority vote found hardship in the shape of the land, that it would not be detrimental to the neighborhood nor substantially derogate from the intent of the Zoning By-Law. The minority vote was based on finding that hardship had not been proven as to shape, soil conditions or topography of the land.

4. BERNARD O'REILLY - Lot 18, #22 Lower-County Road, Dennisport

Mr. McCarthy read legal notice requesting variance from frontage requirement of 50 ft. to construct single-family dwelling at above location. Mr. Emil Mueller, representing, said this lot meets all requirements except has only 20 ft. frontage, rather than 50 ft. required; that it is part of an old 15-lot L. C. subdivision, which had problems develop with Conservation Commission and building plans. He felt there are special conditions affecting this lot, irregular in shape. There are two other redesigned lots which have no problems. He mentioned the soil, which is peat, sand and loam in the front and rear of the lot, but with marsh separating front from back area. Mr. Mueller said former Land Court plan allowed a 20 ft. access to Lot 6, which is the front portion of Lot 18, which widens to about 100 ft. a short distance back from road.

Mr. Mueller felt this is the nearest and most direct access to a lot of over 49,000 sq. ft., and would mean the least disturbance to topography. He indicated another way but said it would result in three 50 ft. frontages fronting on Lower County Road opposite Old Wharf Road, plus a fourth drive for existing dwelling. He felt this would create a hazardous traffic situation. He was also not sure if this alternate access would gain Conservation approval. Mr. Mueller said this all creates a hardship; the owner has paid over \$3000 in taxes, though taxes have been partially abated this year. He believed there would be no detriment to the neighborhood, said this lot is far larger than most.

Mr. Mueller felt it would be contrary to the public good to use the alternate solution; that it would benefit abutters to use proposed access and would generate more taxes after a house is built. There was discussion of location of bog and need for Conservation Commission to rehear the case if variance is granted. Mr. Albert Pearson, direct abutter to the west and owner of Fisherman's Village Cottages, spoke in favor of granting, but asked the Board

BERNARD O'REILLY continued

June 2, 1980

to require that no other variances be requested from other Town agencies; said he is a registered civil engineer and that this parcel of land is in the Flood Plain Zone needing a variance. Mr. Pearson said he has a plan drawn by the Town engineer relative to an easement, that there is a ditch draining an old cranberry bog. He mentioned that Mr. Mueller had previously approached him about buying the property, but there is no agreement. Mr. O'Reilly stated that in the past he had Dept. of Natural Resources approval as well as meeting all Town regulations to build on this land. Hearing closed 9:09 P.M.

The Board of Appeals voted to grant Bernard O'Reilly, 24 Myrtle Street, Hyannis, Ma., variance from frontage requirement of 50 ft. to construct single-family dwelling on proposed Lot 18, #22 Lower County Road, Dennisport. The Board's vote was unanimous (Skelly, McCarthy, Crowell, Lizotte, Creeden) in finding that circumstances relating to the soil conditions, shape, and topography have created substantial hardship in this instance with existing bog land. The Board did not believe that granting would be detrimental to the neighborhood or would derogate from the intent of the Zoning By-Law.

5. THOMAS O'NEIL - 126 Lower County Road, Dennisport

Mr. McCarthy read legal notice requesting Special Permit for Ice Cream Parlor and variance from parking requirement at above location.

There was no one present to represent petitioner. Chairman Skelly moved to continue hearing for two weeks until next regular meeting and to notify petitioner accordingly; seconded by Mr. Crowell. Vote: unanimous.

June 27, 1980
Date

Gerald P. McCarthy
Gerald P. McCarthy, Clerk

Distributed to:

Members & Associates
Building Commissioner
Town Clerk
File

TOWN OF DENNIS
BOARD OF APPEALS

Convened: 7:34 P.M.

Adjourned: 10:40 P.M.

June 16, 1980

Sitting: Skelly, Flinkstrom, Crowell, Lizotte, Creeden, Simon
 Staff: Perry
 Public & Press: Approximately 90

1. REEVES P. RELYEA - Lots 1 & 2, No. 5 Dexter Snow Avenue, Dennisport

Acting Clerk Lizotte read legal notice requesting Special Permit under Sect. 2.4.3.7 to construct addition to existing dwelling extending into front yard setback requirement at above location. Mr. & Mrs. Relyea were present, and he explained their wish to extend a 4 x 11 ft. addition into the front setback; that the existing cottage is 20 x 22 ft. structure with a 4 ft. extension which is presently into the front setback. He added that they want to eliminate the shed-like roof, making it symmetrical and enhancing the appearance. The Relyeas showed present pictures of house where addition is planned, said they were looking for more closet space, and would carry over roof line. Chairman Skelly read Planning Board memo indicating no objection, feeling this would not be detrimental to the neighborhood. Hearing closed 7:42 P.M.

The Board of Appeals voted to grant Reeves P. Relyea, 9 Willow Street, Foxboro, Ma., Special Permit under Sect. 2.4.3.7 to construct addition to existing dwelling extending into front yard setback on Lots 1 & 2, 5 Dexter Snow Avenue, Dennisport. The Board's vote was unanimous (Skelly, Flinkstrom, Lizotte, Creeden, Simon) in finding that granting of Special Permit would not create nuisance, hazard or congestion; that it would not harm the neighborhood or derogate from the intent of the Zoning By-Law, but instead, would serve the public good.

2. EDGAR T. HOWES, INC. - Lot 40, No. 68 Bleak House Downs, Dennis

Mr. Lizotte read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling at above location. Mr. Donald Kattanack, realtor from Peter McDowell's office, represented, and explained that they had had the lot under agreement but found that buyer would have to have building completed by 5/15/80, which was impossible, because prior variance would expire; said the buyer was still interested. Mr. Skelly explained that this would be a new variance since the Board cannot grant extensions. There was discussion of original hearing for contiguous undersized lot denied on 10/20/75; following Court litigation, variance was granted on 5/15/78, and now expired. Mr. Kattanack indicated the lot is about 2200 sq. ft. under required 20,000, and spoke of uneven topography in the area. Mr. Skelly read Planning Board memo supporting original decision to deny; he again referred to Court remanding case to be granted. Hearing closed 8:04 P.M.

June 16, 1980

The Board of Appeals voted to grant Edgar T. Howes, Inc., 1590 Linda Vista Avenue, Pasadena, Calif., variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling on Lot 40, No. 68 Bleak House Downs, Dennis. The Board's vote to grant was unanimous (Skelly, Flinkstrom, Lizotte, Creeden, Simon), finding that the topography of the land causes severe hardship. The Board further found that it would not be detrimental to the neighborhood, which is almost completely built and developed on same size lots. They believed that variance would not be a derogation of the intent of the Zoning By-Law.

3. PAUL G. ASACK ET ALI - Off Old Bass River Road, South Dennis

Mr. Lizotte read legal notice requesting Special Permit under Sect. 4.4, Open Space Village Development, to construct 71-lot subdivision for single-family dwellings Off Old Bass River Road Easterly, North of Debbie Lane and South of Oldbury Place, as shown on Subdivision Plan of Land in So. Dennis, Ma., for Paul G. Asack et ali, March 31, 1980, S. R. Sweetser, Engineer.

Mr. Paul Asack was present, accompanied by Surveyor Paul Sweetser, and represented by Attorney Jay Murphy, who described request for Special Permit for Open Space Village Development and indicated subdivision plan sheets 1 (an overview) and sheets 2, 3, 4 (showing greater detail). He spoke of filing plan with Planning Board, some subsequent changes made including road drainage, covenant and agreement to be filed with plan at Registry of Deeds; said the linen itself shows location of existing foundations and well in central part of area; that all drainage complies with Planning Board Rules & Regulations. Mr. Murphy said that as of today's date the Town Clerk certified that more than 60 days had passed and the plan was deemed approved. He indicated some minor changes in protective covenants from that previously filed with application: ancient foundations which some think may have historical value will be left in present state and not be disturbed; at Planning Board's request, it will require builder to install light post in front of each lot. He added that Agreement required underground utilities to be installed; development of this subdivision will take place entering from Jay's Drive, with no access for construction vehicles from Meadowspring Drive.

Attorney Murphy quoted from Sect. 4.4.2.4, Criteria for Open Space Village Development; said they feel final plan is far superior to other proposals made for this land, either grid plan or alternate open space plans. He displayed several other preliminary plans originally submitted to the Planning Board for consideration, and spoke of the difficulty in developing an area almost square, with little access on some sides; saying the plan showing the most advantageous use of land is the one before the Board now. Mr. Murphy felt that this plan with less road surface, would be more in harmony with the intent of the Zoning By-Law, and calls for more open space for conservation and recreation land; said there is 46 percent of entire area devoted to open space.

Mr. Murphy continued that there were many discussions between the developer and the Planning Board, with the latter feeling they would like to see two access roads, including Meadowspring Drive used as a second access. He said the developer is not concerned if Meadowspring Drive or O'Connor Lane is used.

as long as plan meets requirements. Further, he said that though the Planning Board's ideas were very unpopular with many people, the developer has just rights to gain access to his land by a Town road, and both Meadowspring and O'Connor are Town roads. Since the plan is in its final form with provisions for three roads, Meadowspring, O'Connor and Jay's Drive, the developer has no difficulty with any Board restrictions as long as there are two accesses. He also pointed out the summary sheet prepared by Engineer Sweetser relative to Open Space land formula calculations. Attorney Murphy noted sections of Sect. 4.4 and compliance thereto: Sect. 4.4.3.3 - protective covenant indicates allowable use; Sect. 4.4.3.4 - conforms to intensity requirement; Sect. 4.4.3.5 - improvements designed with requirements of Planning Board, such as drainage; Sect. 4.4.3.6 - provisions for Open Space will be met according to covenants and documents, but deeding of the common area into common owners has not been done because plan was not approved until today, Chairman Skelly noted that the plan had been certified by the Town Clerk as of 6/16/80; also that an easement should be filed giving the Town access. Mr. Murphy acknowledged the latter statements, and said the linen will be recorded as soon as incorporation papers are filed with Secretary of State.

Mr. Murphy spoke of Sect. 4.4.1, which he said envisages high use of land, adding that there will be almost 25 acres open space, of which only 5 percent can be developed for recreation use. He replied to Mr. Simon that deeding of lots will be as shown in protective covenants, with the open space under the control of the corporation to be set up; name may be changed from Tucker Heights Corp. to Tucker Oaks. Mr. Crowell asked about recording deed, plan and easement, as well as development schedule. Mr. Murphy confirmed all will be recorded, and said development would be within two years.

Mr. Arthur Grimley, Cemetery Commissioner, addressed the Board on the subject of serious vandalism in Oak Ridge Cemetery, which abuts the subdivision, and requested that a wire fence be put up by the developer to help with their problem. It would appear that the fence was desired near Meadowspring near Lot 24.

Selectman William Shanahan spoke, indicating that he was in favor of the subdivision, but concerned about access areas. He did not believe Meadowspring Drive should be cut through to the subdivision, although he felt there should be sufficient access for fire and emergency vehicles. He felt that with 71 house lots, a few years hence, there would be 30-40 people in the easterly end of the subdivision creating substantial traffic on Meadowspring going to and from work. He said this is a very straight road and has very poor access at Rt. 134. Mr. Shanahan recounted that the developer of Meadowspring wanted to put in two access roads for 74 house lots in the past, but that Planning Board did not want this; he noted that there can be additional entrances on O'Connor Lane and Carriage Drive.

Chairman Skelly read Planning Board memo stating satisfaction that this is a "better use of this parcel than a conventional grid subdivision," but indicating they were awaiting responses from Police and Fire as to abandonment of Meadowspring as a thru road. Mr. Skelly then read memo from Police Chief Santamauro and Fire Chief Hersey, dated 6/16/80, addressed to Board of Appeals and Planning Board, as follows:

June 16, 1980

"In reviewing the above mentioned plan, it is quite obvious from the public safety aspect that two means of access and egress are desirable in an area of this size. Although Meadowspring Drive would be the most direct route for emergency vehicle response, the other ways illustrated in the Asack plan could be utilized to provide the required means of access and egress from the Asack property."

Also read was memo from Board of Health that "all lots are approved pending soil tests on each lot..." and "underground fuel storage tanks shall comply with Board of Health regulations." There was also response from Conservation Commission that "since there were no stakes on the property we could not determine the location of the bog...we cannot at this time make definite comment." Relative to the latter, Surveyor Paul Sweetser stated that there is definitely not any bog in the area.

Mr. Richard Dalzell, 43 Meadowspring Drive, spoke in opposition to opening up Meadowspring, and read letters from Rev. William L. Butler and Mr. S. Quincy Newcomb as opposed to Meadowspring cut thru not being necessary.

Mr. Charles Chamberlain spoke in favor of residents of Meadowspring Drive, to whom he said he has sold property, saying their property could be depreciated at least 10 percent by cutting thru, noting that people on Carriage Drive did not want to be a Town way. He said he could see where the Water Dept. might want to tie together, but felt the Board should consider leaving portion of Meadowspring to Jay's Drive unpaved.

Mrs. Ellen Springer, 47 Meadowspring Drive, said the neighborhood was not against the subdivision but only concerned for safety with over 40 children in the area, mostly under five years. She doubted that O'Connor Lane would have the same problem as Meadowspring, and said that Officer Campbell felt there would be an enormous safety hazard for Meadowspring. Mrs. Springer said their lots are only one-third size of present requirement, and do not have street lights. She claimed that the General Laws do not say you have to connect roads in a subdivision.

Mr. Hersberg, corner of Windmill and Meadowspring, spoke about a blind spot there. Selectman Shanahan again spoke, saying he believed the Boards in this Town must reflect the mood of the people; that if they decide strictly by law, they are wrong. He said we have Boards to take the law and bring personal aspect into their decision, whether it is a situation like this, or a liquor license, it is the same. He hoped the Board will consider this, that it is our responsibility to make these decisions.

Mr. Walsh, Kelley Way, asked why there can't be more than one access from Old Bass River Road. Attorney Murphy said he has discussed this with Police and Fire, who had serious reservations about two accesses off Old Bass River, that response time is cut down if access is only on one side; that if there were a problem on Old Bass River Road, it could shut off the entire subdivision.

Mr. Gallagher asked what road would heavy equipment be using; Mr. Skelly said Jay's Drive. Mr. John Nagel, O'Connor Lane, said they also would be concerned about an increase in traffic, and asked if Carriage Drive would also be an access. Paul Sweetser replied that Carriage Drive is a private way, and

PAUL G. ASACK ET ALI continued

June 16, 1980

Meadowspring and O'Connor are public ways; that the Town can't force access on Carriage. He said it shows on the plan that all roads are connected except Brian Lane, and Carriage would not be connected until it becomes a Town road. Mr. Nagel commented that since Carriage probably will not be connected, they are more concerned on O'Connor.

Sandy Dalton, resident of Windmill, spoke of only one access to Meadowspring, said there were no problems. Ms. Joanne Stanley said she was concerned about the type of dwellings since these are smaller lots, and asked about Association dues.

Mr. Bernard DuBay, Oldbury Road, stated that this land is suitable for 51 homes on 40,000 sq. ft. lots, and felt this is a capricious use of the land. Attorney Murphy objected to the statement that it is a capricious use of the Zoning By-Law, saying that the entire ZBL was voted at Town Meeting.

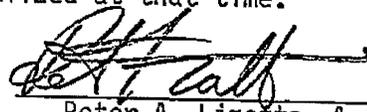
Mr. Dan Long, noted that the road gets slippery at Meadowspring and Rt. 134 in winter. Board Member William Crowell asked about status of Old Almshouse Road. Paul Sweetser said it is merely a dirt road, goes down Debby Lane and into Old Bass River Road, that space has been left between lots to preserve as Planning Board wanted.

In rebuttal, Attorney Murphy noted that the vast majority speaking tonight had pointed out that they do not object to the development except they have concerns about the accesses. He said the developer and the Planning Board were also concerned, but that it is hard to satisfy both Meadowspring and O'Connor. He also noted that there were several other proposals the Planning Board had turned down, and he believed the developer has met the criteria of the Special Permit by enhancing the character of the area and providing open space for conservation and recreation; that this will also facilitate housing in this area. As to the Cemetery Commission request for a fence, he felt that when residential lots were built, the dirt and motor bikes would be eliminated for the betterment of the area; he was not sure a fence would do the job since they can be cut. In response to Mr. Simon about the easement wording, he said it is necessary according the ZBL..."sufficient to ensure its perpetual maintenance as conservation or recreation land."

Mr. DuBay again asked why they didn't decide to put in 51 houses instead of 71; that he was concerned about leaching fields on 12,000 sq. ft. lots. Chairman Skelly responded that according to Sect. 4.4.3 there is an incentive factor to determine number of lots in Open Space Village Development. Hearing closed 9:40 PM.

The Board voted unanimously to grant Paul G. Asack et ali Special Permit for Open Space Village Development of 71-lot subdivision at this location. The Board's vote is contingent on receiving and approving all pertinent legal documents at July 7, 1980 meeting. Decision will be finalized at that time.

7/7/80
Date


Peter A. Lizotte, Acting Clerk

Distributed to:
Members & Associates
Building Commissioner
Town Clerk
File

TOWN OF DENNIS
BOARD OF APPEALS

July 7, 1980

Convened: 7:30 P.M.

Adjourned: 10:10 P.M.

Sitting: Skelly, Flinkstrom, McCarthy, Lizotte, Jason (W. E. Crowell)
Staff: Perry

Public & Press: Approximately 20

1. ELLIOTT BASSETT - Lot 13, No. 26 Garden Road, Dennis

Clerk Gerald McCarthy read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling at above location. Petitioner was represented by Col. McAbee, who explained that at one time Mr. Bassett had owned the abutting property with house, then acquired abutting Lot 13, but has since sold the house; that he needs approval for this lot (about 18,000 sq. ft.) to get a building permit. He thought it was about three years since acquiring Lot 13, but Chairman Skelly suggested it was acquired on 9/25/78, less than two years. Mr. Skelly also noted that Mr. Bassett had gotten variances for abutting Lots 15 and 16 on 11/7/77, then acquired Lot 13, knowing it was unbuildable. He asked Mr. McAbee what the hardship is as to shape, soil conditions, or topography. Mr. McAbee felt that if petitioner had been aware that the lot was unbuildable, he could have cut off a small piece from the abutting house lot of 22,400 sq. ft. to add to undersized Lot 13. He felt the hardship was in thinking it was a buildable lot. Mr. Lizotte asked if Mr. Bassett has recently tried to buy a strip of land from the house lot he had sold. Mr. Flinkstrom noted that the lot is only about 1300 sq. ft. substandard and was not contiguous as of April, 1980. Despite receiving previous variances, Mr. McAbee did not believe Mr. Bassett was knowledgeable about buildability of the lot in question. Mr. Skelly read Planning Board memo stating no objection to granting variance.

Mr. William Hanger spoke in opposition, citing background of Mr. Bassett's land transactions; that it was all for sale, but taken off the market until after variances were granted, then for sale again; that he had told Mr. Hanger that he only bought Lot 13 from a Mr. Minty for protection. He felt sure Mr. Bassett knew that 20,000 sq. ft. is minimum; noted that lots on the other side of the road run from 30,000 - 60,000 sq. ft. Mr. Roger Hayman, abutter at 66 New Boston Road, stated that Mr. Bassett had told him he had no intention of developing the lot, and that he was aware that he could not build on the lot. Mr. Hayman said he was very opposed to variance. In rebuttal, Col. McAbee confirmed that abutting house lot was sold in April, 1980; commented on larger lots mentioned as having much marsh and bog. He said that if in different title, this lot would still be buildable; felt this variance would not change the intent of the Zoning By-Law. Hearing closed 7:53 P.M.

The Board of Appeals voted to deny Elliott Bassett, 43 Meadow Brook Drive, Barrington, R. I., variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling on Lot 13, No. 26 Garden Road, Dennis. The Board's vote to deny was unanimous (Skelly, Flinkstrom, McCarthy, Lizotte, Jason) and based on finding that the petitioner had failed to prove hardship as it relates to the shape, soil conditions, or topography of the land in question.

July 7, 1980

2. EUGENE H. & CAROL S. COUTU - 184 Old Wharf Road, Dennisport

Mr. McCarthy read legal notice requesting Special Permit under Sect. 2.4.3.7 to operate non-conforming bicycle - surrey rental business at above location. Petitioners were present and represented by Attorney Samuel Carideo, who read from brief as to history and background: that Mr. & Mrs. Clifford E. Marshall have conducted rental business for bicycles, kiddie carts and bicycle-built for twos since 1964, adding 28 surreys in 1971; that now Mr. and Mrs. Coutu wish to purchase business and operate at same location. He said the Coutus have experience from their own bicycle rental business, and felt the change of ownership would not be more detrimental to the area. Chairman Skelly noted the recent judgment handed down by Judge Keating relative to the rental of surreys by the Coutus at their location at 49 Sea Street; the addition of surreys was disallowed as "...a surrey differs in degree and character from a bicycle." Mr. Carideo said the legal action came about after they had added six surreys at 49 Sea Street; that this had nothing to do with location on Old Wharf Road, where Marshalls have had surreys since 1971. He maintained that the request was only for a change in name of ownership, nothing more; that the Building Commissioner said this required a Special Permit under Sect. 2.4.3.7. There was discussion of garage(10 x 36 ft.) to house equipment and parking. Mr. Carideo said this business would not be connected with the Coutu's Sea Street rental business; also that Bill of Sale for equipment would not be prepared until after this hearing. Mr. Skelly read Planning Board memo stating "no objection." Hearing closed 8:12 P.M.

The Board of Appeals voted to grant Eugene H. & Carol S. Coutu, 49 Sea Street, Dennisport, Ma., Special Permit under Sect. 2.4.3.7 to operate non-conforming bicycle and surrey rental business at 184 Old Wharf Road, Dennisport. The Board's vote to grant was unanimous (Skelly, Flinkstrom, McCarthy, Lizotte, Jason), and found that the business has been in operation for greater than ten years and does fit the definition of non-conforming use. The Board did not believe that the change of ownership would be substantially detrimental to the neighborhood or create greater nuisance, hazard or congestion in the area; that it would not derogate from the intent of the stated objectives of this zone location.

3. CAROL P. DRAKE - 56 Harbor Road, East Dennis

Mr. McCarthy read legal notice requesting variances from front and side set-back requirements to construct garage with existing dwelling at above location. Mrs. Drake was present and represented by Attorney Michael McGrath, who explained that the petitioner had acquired the property in 1970; that it is .29 acre and in R-20 zone; now wishes to construct a 20 x 20 ft. two-car garage, which would be 7 ft. from side and 10 ft. from front line, with a buffer of shrubbery. He pointed out that to the rear of the house are sand dunes and beach area down to the Bay, leaving this as the only place to build garage; felt that this topography created hardship. Mr. McGrath added that this street near Sesuit Harbor is posted no parking, but people often violate this. He showed pictures of present house, and indicated on plans where a circular drive would improve traffic flow and safety. He said the petitioner wanted to have cars less accessible to vandalism, and noted nearby properties which are at variance with zoning requirements; said they had sign-off from Conservation Commission and approval from O.K.H.R.H.D.

CAROL P. DRAKE continued

July 7, 1980

Mr. McCarthy questioned the size of variances requested and if a one-car garage would suffice. Attorney McGrath said they have two or more cars here for the summer, and felt addition would improve safety by not backing into road. Mr. Skelly read Planning Board memo which objected to granting. Hearing closed 8:27 P.M.

The Board of Appeals voted to grant Carol P. Drake, 56 Harbor Road, East Dennis, Ma., variances of 15 ft. from front yard setback requirement and 3 ft. from side yard setback requirement to construct garage with existing dwelling at above location. The Board's vote was 4 to grant (Skelly, Flinkstrom, Lizotte, Jason) and 1 to deny (McCarthy). The majority voting to grant found hardship in the topography of the lot, dunes and beach preventing building behind the house. They also did not believe it would be detrimental to the neighborhood or substantially derogate from the intent of the Zoning By-Law. The minority vote to deny did not believe sufficient hardship had been proven to allow building a two-car garage infringing on the setbacks.

4. JAMES J. KERRIGAN - 49 Bayview Road, Dennis

Mr. McCarthy read legal notice requesting variance from rear setback requirement to construct deck with existing dwelling at above location. Mr. Craig Short represented, and explained that there are two cottages that have been converted into condominiums; that they were concerned with "B" unit, which is 9.53 ft. from rear line and wish to add 8 x 12 ft. deck. He said they have tried to locate differently but a sand dune exists; that they propose to elevate structure, which has received O.K.H.R.H.D. approval to be 18 in. below roof ridge, bringing deck to 8.9 ft. from the rear line rather than 10 ft. required. Mr. Short felt the topography made this the only possible location and any smaller deck would be useless. He presented pictures of the present building, and said the deck has also received Conservation Commission approval; noted that the second unit deck was not to be built. In response to Mr. McCarthy as to shortening, Mr. Craig said it will be expensive to build because of elevation and there is a point where it becomes too small for the price. Mr. Flinkstrom noted from plan that existing dwelling is 9.5 ft. from setback, which is already an infringement into the setback requirement. Chairman Skelly read Planning Board memo "objecting because it requires 25 ft. setback." Mr. Skelly questioned that figure, believing it to be 10 ft. required. Hearing closed 8:40 P.M.

The Board of Appeals voted to grant James J. Kerrigan, 79 Cannongate Road, Tyngsboro, Ma., variance of 1.1 ft. from rear setback requirement to construct deck #1 on existing dwelling, Unit B, at 49 Bayview Road, Dennis. The Board's vote to grant was unanimous (Skelly, Flinkstrom, McCarthy, Lizotte, Jason) based on finding hardship in the pre-existing nature of the structure, which is only 9.5 ft. from rear line, as well as land, which has a coastal condition created by abutting dunes. The Board did not believe that granting of variance would be detrimental to the neighborhood or substantially derogate from the intent of the Zoning By-Law.

July 7, 1980

5. WILLIAM J. TOPPIN - 722 Old Bass River Road, Dennis

Mr. McCarthy read legal notice requesting variance from minimum lot size of 40,000 sq. ft. to maintain existing apartment with dwelling at above location. Mr. Toppin was present and explained that the case came to the attention of the Health Director by way of the renter of the apartment, and when Mr. Dumas checked at Town Hall he found there was no approval. Mr. Toppin said that when they purchased, it was with the understanding that everything was on the up and up, and they only want to continue as is. He said they have been renting year-round to a single person with no complaints or problems; that the apartment has separate septic system, heat zone and water, and appears to have been planned in the beginning. Petitioner stated that the real estate listing sheet indicated apartment (over garage) for rental income; that it is not visible from the street, has no windows facing street and is up a slight rise. He added that they depend on the apartment rent to pay more than half of their mortgage, and would probably have to give up the house without it. Chairman Skelly read from Multiple Listing Sheet indicating apartment, and said copy of building permit application does not even indicate a garage to be built.

Mr. Toppin confirmed that the listing was with Peter McDowell Real Estate; that when they bought it was with Flo Crockett and they bought from McDevitt Real Estate; that they had looked at other houses they couldn't afford without rental income; that it was built by a Mr. Harvey, but they purchased from original owner it was built for, about 1½ years after construction. Mr. Skelly read Planning Board memo stating objection to granting variance from Zoning By-Law and the fact that drive backs onto street. Mr. Toppin said they do not have to back out of driveway, and have wide parking space for tenant. Hearing closed 8:50 P.M.

The Board of Appeals voted to grant William J. Toppin, 722 Old Bass River Road, Dennis, Ma., variance from minimum lot size of 40,000 sq. ft. required by Zoning By-Law to maintain existing apartment over garage with existing house. The Board's vote to grant was unanimous (Skelly, Flinkstrom, McCarthy, Lizotte, Jason) based on finding severe hardship since the building was put up illegally by a third party and was approved by an agent of the Town. The petitioners bought in good faith through Multiple Listing which clearly stated the home with apartment. The Board members voting found sufficient hardship in the topography of the lot and in the structural condition of the dwelling. They did not believe granting would be detrimental to the neighborhood or substantially derogate from the intent of the Zoning By-Law.

6. THOMAS O'NEIL - 126 Lower County Road, Dennisport

Mr. McCarthy read legal notice requesting Special Permit for Ice Cream Parlor and variance from parking requirement at above location, advertised for hearing on June 2, 1980. Chairman Skelly explained that petitioner or representative was not present on 6/2/80; that a letter of reminder had been sent requesting their presence at continued hearing, with no response. Mr. Skelly moved to deny request with prejudice; seconded by Mr. Lizotte.

The Board of Appeals voted to deny with prejudice Thomas O'Neil, Boulder Brook Road, Sandwich, Ma., Special Permit for ice cream parlor and variance for parking requirements at 126 Lower County Road, Dennisport. The Board's vote

THOMAS O'NEIL continued

July 7, 1980

was unanimous to deny (Skelly, Flinkstrom, McCarthy, Lizotte, Jason) in that petitioner did not appear to present evidence of use not being detrimental to the neighborhood or hardship relative to variance.

Mr. Jason stepped down and Mr. William Crowell, Jr., took his place on the Board.

7. PAUL G. ASACK ET AL - Off Old Bass River Rd., So. Dennis (continued from 6/16/80)

Attorney Jay Murphy was present with various legal documents to finalize granting of Special Permit for Open Space Development. After discussion with Board members, and the apparent need for additional signatures on legal papers, it was agreed to continue until July 21, 1980.

7/31/80

Date

Gerald P. McCarthy
Gerald P. McCarthy, Clerk

Distributed to:

Members & Associates
Building Commissioner
Town Clerk
File

TOWN OF DENNIS
BOARD OF APPEALS

Convened: 7:36 P.M.

July 21, 1980

Adjourned: 10:25 PM

Sitting: Skelly, Flinkstrom, McCarthy, Lizotte, Jason
(Crowell, Simon, O'Connor)

Staff: Perry

Public & Press: Approx. 12

1. FRANK S. MORELLO - Lot 19, No. 12 Rena's Way, Dennis

Clerk Gerald McCarthy read legal notice requesting variance from minimum lot size of 20,000 sq. ft. and minimum lot width to construct single-family dwelling at above location. Petitioner was represented by Attorney Charles F. Crowell, who explained that Mr. Morello acquired property in 1963 (presented deed) and has been paying taxes since then on basis of buildable lot. He said petitioner has his dwelling on contiguous Lot 20, part of which was given up some years ago for road layout. He continued that Lot 19 is about 15,000 sq. ft. and Lot 20 with dwelling is about 11,000, both part of a subdivision. He mentioned that Mr. Morello, who has severe arthritis, will suffer financial hardship; that the petitioner also owns a lot down the road in which he has combined two smaller lots. Mr. Crowell felt that granting will create no detriment to the neighborhood, which now has several duplexes on same size lots, nor substantial derogation from the intent of the Zoning By-Law. Attorney Crowell said they also request variance from 100 ft. width since lot is only 90 ft. wide. Chairman Skelly read Planning Board memo indicating "objection to granting because there is no grandfather clause." Mr. Crowell said the rounding off of Lot 20 for road layout was done about 1975, that Rena's Way is not paved since this had not been a requirement. Hearing closed 7:47 P.M.

The Board of Appeals voted to grant Frank S. Morello, 645 Old Bass River Road, Dennis, Ma., variances from minimum lot size of 20,000 sq. ft. and from minimum lot width of 100 ft. to construct single-family dwelling on Lot 19, No. 12 Rena's Way, Dennis. The Board's vote was 4 to grant (Skelly, Flinkstrom, Lizotte, Jason) and 1 to deny (McCarthy). The majority voting to grant found hardship in the shape of the contiguous lot due to road taking. They also believed that granting would not be detrimental to the neighborhood because Lot 19 is approximately the same size as other lots in the subdivision; also that it would not derogate from the intent of the Zoning By-Law. The minority vote found that hardship, financial or otherwise, had not been proven as to shape, soil conditions or topography.

2. FAITH L. MULLANEY - Combined Lots 87, 88, Whortleberry Lane
and Lot 82, Bayberry Lane, Dennisport

Mr. McCarthy read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct one single-family dwelling on above named combined lots. Ms. Martha Kelly, sister of petitioner, represented, saying the land has been in their family since 1948; that it was willed to her and her sister in 1967. She said there is a cottage on Lots 83, 84, 85, 86, and they wish to build another dwelling on Lots 87, 88, 82 combined into one, totaling 7570 sq. ft. As to hardship, she said they had a problem with the shape

July 21, 1980

and the type of cottage to put on the land. Chairman Skelly noted that the combination gives 100 ft. frontage and 50 ft. deep, but other setbacks have to be maintained for building. Mr. Lou LaFlamme, Lett Real Estate, said the petitioner was considering a two-bedroom house, about 24 x 32 ft. fronting on Whortleberry. He confirmed that the petitioner does not own other property in this area except four abutting lots mentioned, with a total for all seven lots of 16,760 sq. ft.; that the other four lots are still separate and not combined into one. Mr. LaFlamme indicated these seven lots could not be combined into one; Mr. Skelly termed this an incorrect statement. Mr. McCarthy questioned if petitioner might not return for a further variance, splitting up the other four lots, if this is granted. Ms. Kelly said they only wanted variance for one cottage in addition to existing one. There was discussion of this land being willed to Mullaney and Kelly jointly, then in the name of Mullaney alone, and now jointly. Mr. Skelly read Planning Board memo "against granting...as the Town does not have a grandfather clause for this purpose." Hearing closed 8:01 P.M.

The Board of Appeals voted to deny Faith L. Mullaney, 626 Broad Street, Weymouth, Ma., variance from minimum lot size of 20,000 to construct single-family dwelling on combined Lots 87 & 88, Whortleberry Lane, and Lot 82, Bayberry Lane, Dennisport. The Board's vote to deny was unanimous (Skelly, Flinkstrom, McCarthy, Lizotte, Jason) based on the opinion that sufficient hardship had not been proven relating to shape, soil conditions or topography of the land.

3. CARLIN REALTY TRUST - 394-408 Route 134, South Dennis

Mr. McCarthy read legal notice requesting variance to construct and operate five (5) store shopping plaza with appropriate parking and landscaping at above location. Petitioner Roger Maloney, Trustee for Carlin Realty Trust, was present, and represented by Attorney Myer Singer, who explained the request concerns the use of property on the east side of Rt. 134, south of and behind the Henry Holden office and retail complex, for a small shopping plaza. He said the land is zoned in part commercial and in part residential; that 58-59% is in commercial zone and approximately 41% in residential. Attorney Singer presented brief containing Abutters, Assessors' Map, Zoning Map with zone line, Deed and reasons for variance. He said Carlin feels there is no practical use of the land except for commercial purposes even though some is residential, but located right on Rt. 134; that the Board could find hardship to justify this use, which would not be detrimental or derogate from the Zoning By-Law. Mr. Singer said property has been owned by the Maloney family since 1963, originally part of a larger tract, now split into three pieces; that this section is south of the railroad right of way and contains a Cape & Vineyard easement; that originally the entire parcel was long and narrow and now is made more unusual by changes and easement. He said the value of the land to be used for commercial purposes is estimated to be about \$100,000 according to appraisal; that the commercially zoned portion of the land by itself might be in the vicinity of \$40,000, but the commercially zoned area without frontage has no value at all. As to remaining residential portion of parcel, Mr. Singer thought the value might range from zero to perhaps \$7000 used for single-family dwelling lots. He said no combination of uses adds up; that the commercial area suffers most, with no use except to abutter; felt that hardship comes from the zoning line in the shape of the lot.

July 21, 1980

Mr. Singer continued that having some responsible development of the property would not be detrimental to the public good, and felt there was a need for the community services that would go into the proposed area. As to specific use, he said there might be a barber shop, insurance agency, carpet business, other small retail or office establishments. He also noted the "green belt area," saying that most area north of the traffic lights at Rt. 134 to the Mid-Cape Highway is all developed except for this section. Mr. Singer acknowledged heavy traffic on Rt. 134, and went on to describe the actual 100 ft. layout of Rt. 134, not all paved now, but felt it would be in the future to control traffic.

Mr. McCarthy inquired further about possible uses and who would retain ownership. Mr. Singer said that Carlin would likely not retain title. Mr. Harold Thompson, for petitioner, stated the size and shape of the buildings were designed to fit on the lot. Mr. McCarthy commented on the access road and size of parking spaces, feeling it would be a close squeeze for parking, especially for loading areas. Mr. Singer said there would be no objection to reducing square footage of buildings to reduce parking spaces required by about 10 less. He also said he believed the Cape & Vineyard easement was used in computing the green area. Mr. McCarthy was concerned that without considering the easement, an even higher percentage (about 66%) of commercial use would be in the residential portion. He also felt that if Rt. 134 is ever paved to 100 ft., it would mean these stores would be even closer to the road. Mr. Singer noted that the zoning was the same in 1962, though not known as GC II. Chairman Skelly questioned about specific uses, if granted, and the fact that if Limited Business Zone, each would have to come in for Special Permit. Attorney Singer said they would have no objection to coming to the Board for specific uses so the Board could have control.

Mr. Henry Holden, direct abutter, spoke not in objection, but said he has owned there for 11 years, and raised the question of similarity to the "Harney road" which the Court would not allow in 1974; he quoted from Bill of Equity in which the Judge said the Selectmen should not have put up posts to prevent passing through from residential to commercial, but that the road could not traverse from residential to commercial. Chairman Skelly said he did not feel it comparable since Harney had full access from public way to commercial zone, whereas this proposed business has no access except through the residential area which they own. Mr. Holden said he had offered Carlin a 50 ft. right of way many years ago before Henry Maloney died, then to Mrs. Maloney, but no one took him up on the offer.

There was discussion as to location of traffic island in relation to access of this property and about appraisal values of the property. Attorney Singer offered that petitioner could eliminate Location #5 on the plan, decreasing intrusion into the residential area and also decreasing required parking; he noted that the Zoning By-Law does permit extending 25 ft. into residential area. He felt hardship was financial loss and not being able to use commercial land for its purpose. Mr. McCarthy felt that as to hardship the shape of the lot has not changed during ownership. In response to Mr. Flinkstrom, Mr. Holden volunteered that C & V easement was originally 40 ft., but now is 100 ft., increased about 4-5 years ago. Mr. Flinkstrom felt this is a hardship since they would have had more useable land in the commercial portion, and could not see likely use of residential zone for residential use on Rt. 134.

July 21, 1980

Chairman Skelly read Planning Board memo that "they do not look favorably upon Commercial Use in a Residential Zone..." and concern about traffic congestion and preservation of the Green Belt. He also read letter from Selectman Joel Crowell, in unofficial capacity, who was opposed on the basis of "a road for access purposes running through a residential zone to a commercial zone..." and compared this to the "Harney Road" and the Old Hills Road-Nobscussett Settlement Road. In rebuttal, Attorney Singer said he did not believe Harney's the same at all, and did not feel they are opening the gates on zoning. Hearing closed 9:10 P.M.

The Board of Appeals voted to deny Carlin Realty Trust, Roger H. Maloney, Trustee, Box 37, Main Street, Dennisport, Ma., use variance to construct and operate five (5) store shopping plaza with appropriate parking and landscaping in R-20 and GC II Zones at Lot 1, No. 394-408 Route 134, South Dennis. The Board's vote was 3 to grant (Skelly, Flinkstrom, Jason) and 2 to deny (McCarthy, Lizotte). Those voting to grant found hardship, financial or otherwise, in the shape of the parcel of land due to the expansion of the easement of the electric company; also the fact that the only entrance to the commercially zoned land would have to be through the residential area or it cannot be used. They also believed that this case is contrary to the two other cases cited in discussion, which already had ample access to public ways. Members voting to grant did not believe that granting such use would be detrimental to the neighborhood or derogate from the intent or purpose of the Zoning By-Law when looking at the area as a whole. Those members voting to deny use variance did not believe substantial hardship, financial or otherwise, was established relating to shape, soil conditions or topography. In addition, they found that substantial violation of the residential area does deviate from the intent of the Zoning By-Law.

Messrs. McCarthy and Jason stepped down, to be replaced by Messrs. William Crowell and Robert Simon.

4. PAUL G. ASACK ET ALI - Off Old Bass River Rd., So. Dennis (con't. from 6/16/80)

Attorney Edward Veara appeared for petitioners, substituting for Attorney Jay Murphy. He explained they are continuing to have problems securing necessary signature as a result of Probate Estate. He cited Sect. 9 of "808" as calling for a decision within 90 days following public hearing; since public hearing was on 6/16/80, he asked the Board's indulgence to continue to 8/18/80. The Board unanimously agreed to continue until 8/18/80, requesting that Attorney Veara or Murphy provide the Board with the remaining completed legal documents prior to that date. The 90 days would expire by 9/14/80. Mr. Simon had question re completeness of 6/16 minutes. Other members were satisfied that completion of decision would resolve any question.

July 21, 1980

5. SEA COLONY HOMES, INC./ELLIS - Lot 11, Supreme Way, Dennisport

Chairman Skelly informed the Board members and associates that Town Counsel had asked him to bring this case, now in litigation after denial on 2/4/80, to their attention to consider the possibility of an agreed judgment. The Board was unanimous in feeling the case should go to trial, not an agreed judgment; the secretary was instructed to send a memo to Town Counsel to this effect.

8/4/80
Date

Gerald P. McCarthy
Gerald P. McCarthy, Clerk

Distributed to:

Members & Associates
Building Commissioner
Town Clerk
File

TOWN OF DENNIS
BOARD OF APPEALS

August 4, 1980

Convened: 7:34 P.M.

Adjourned: 8:38 P.M.

Sitting: Skelly, Flinkstrom, McCarthy, Crowell, O'Connor
Staff: Perry
Public & Press: Approximately 15

1. HENRY J. & MARGARET L. DUNN - Lot 14, Bass River Lane, So. Dennis

Mr. McCarthy read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling at above location. Mrs. Ruth Linderlof represented petitioners, and said they could not be present because of Mr. Dunn's illness causing him to be bedridden. She felt the topography of the land is such that there is hardship in the shape; said all lots in area are comparable size, with few smaller, and that this is only vacant one. She said that if they can't build, they can't sell the lot separately. She added that if combined, it would make an odd shape; that it is a little hilly there. Chairman Skelly noted that the Internal Notes had omitted the fact that a previous variance was granted on 4/7/75 (Z-138), which has since expired. Board Members studied the contents and variance from the latter file. Mr. McCarthy commented on five-year deed restriction noted in original variance in 1975. In response to Board, Mrs. Linderlof said the petitioners have a Purchase & Sales agreement for this lot with adjoining lot and house, indicating Lot 14 as a buildable lot with variance; acknowledged they do not live there.

Mrs. Nora Hanelt, abutter, spoke in favor of granting variance, saying it was a good house lot. Mrs. Fred Ingram, across the street, said she had no objection to granting variance. Mr. Skelly read Planning Board memo stating they do not look favorably as the lot is undersized, contiguous and there is no grandfather clause. Hearing closed 7:44 P.M.

The Board of Appeals voted to deny Henry J. & Margaret L. Dunn, 11 Pierce Street, Hyde Park, Ma. 02136, variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling on Lot 14, No. 33 Bass River Lane, South Dennis. The Board's vote to deny was unanimous (Skelly, Flinkstrom, McCarthy, Crowell, O'Connor) based on finding that no hardship had been proven as relates to shape, soil conditions or topography of the land.

2. ALBERT R. LANE - Lot 9, No. 76 Lower County Road, West Dennis

Mr. McCarthy read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling at above location. Mr. Lane was present and said he had owned this lot for close to 30 years; is practically broke, and now wants to take advantage of the lot. He said all the lots are about the same size and have houses. Chairman Skelly informed him that the zoning now calls for 20,000 sq. ft. and he must present reasons for hardship with the land according to statute. Mrs. Sperco, speaking for Mr. Lane, said his wife is ill and their house too big, now wants to use this lot; that she had picked up the application papers and

ALBERT R. LANE continued

August 4, 1980

delivered to Mr. Lane. Mr. Lane said the lot is about 120 x 80 ft., is a corner lot, and compared it with all the other lots which are built. In response to Mr. McCarthy, he said he had sold abutting lot with house and that he did not know Lot 9 was not buildable until he went to get a building permit. Mrs. Sperco confirmed that the other house was sold in January and now the Lanes want to build on this lot.

Mr. Skelly read Planning Board memo that they do not look favorably on granting because it is undersized, in a fragile land area and in a location with bad congestion and traffic. Mr. Roy Blondell, 54 Trotting Park Road, said he has had adjacent lot since 1958, 15,800 sq. ft. and they are restricted. He did not see why variance should be granted. Mr. Murray Reiser, 56 Trotting Park Road, said this corner intersection is very dangerous with many accidents; felt that putting a house there would cause more bad accidents. He said this lot is very small; that lot with house was sold and that buyer was interested in buying the extra lot; did not believe it should be granted. Mr. Reiser argued that if the lot were larger, a house could be placed back farther so that the public traffic could see; said it was common knowledge that it was not a buildable lot. Mr. Merwyn Burstein, abutter at 84 Lower County Road, said there were some doubts as to what petitioner would do if granted; that he would like to see some restrictions as to size of house and Lane living there himself. He commented that some visiting friends had a bad accident at this corner; felt he would like to see the Town buy the lot for a park and clear the brush. He explained that a car comes around a curve and suddenly there is a stop sign, which a stranger is not prepared for. Mr. Reiser also raised the question of percolation test, claiming Mr. Lane had to put in a new septic system for his existing house. In reply to Mr. Crowell, Mr. Lane said he has plans for a house the same as other house recently sold, and setbacks would be within legal limits. He felt most of the room is on the Trotting Park Road side of the lot. Hearing closed 8:07 P.M.

The Board of Appeals voted to deny Albert R. Lane, 21 Monroe Lane, West Yarmouth, Ma., variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling on Lot 9, No. 76 Lower County Road, West Dennis. The Board's vote to deny was unanimous (Skelly, Flinkstrom, McCarthy, Crowell, O'Connor) and found that sufficient hardship has not been proven as relates to shape, soil conditions, or topography of the land.

3. EDWARD J. & ANNA K. WELCH - Lot 51, No. 71 Quivett Drive, East Dennis

Mr. McCarthy read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling at above location. Mrs. Welch was present, and said this is the only lot in area that is under 20,000 sq. ft.; that they had bought intending to build, but have since built elsewhere and now want to sell as a buildable lot; that it is 18,700 sq. ft. She said there is no other way to make the lot buildable; that she had owned a partially abutting lot and considered taking from it to add to Lot 51, but that it would only have made a small box in the corner, to no purpose. Mrs. Welch confirmed that they had sold Lot 65 on Cedar Hill Road about the beginning of the year, and pointed out the location of the two lots on plan. She acknowledged she was aware of one year limitation if variance granted.

EDWARD J. & ANNA K. WELCH continued

August 4, 1980

Mr. Charles Malone, an abutter, spoke in favor of granting. Mr. Everett Watson, an abutter, was concerned that if lot is sold, they would not know what type of house would be built. He wanted any such house plans to be subject to approval or disapproval of the neighbors. Mrs. Welch commented that all plans for building in this area have to be submitted to and approved by Dennis Realty Trust, the original developers. Mr. Skelly read Planning Board memo indicating no objection "because the lots are not significantly undersized..." Mr. Russ Gustavson, another abutter, also objected because they would not know what kind of house would be built. Chairman Skelly pointed out that the Board does not have any enforcement over private covenants. Hearing closed 8:18 P.M.

The Board of Appeals voted to grant Edward J. & Anna K. Welch, 11 Marlboro Street, Newton, Ma., variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling on Lot 51, No. 71 Quivett Drive, East Dennis. The Board's vote to grant was unanimous (Skelly, Flinkstrom, McCarthy, Crowell, O'Connor) and found sufficient hardship in the shape of the lot in relationship to previously owned contiguous Lot 65. Because the variance required is only 1300 sq. ft. less than required 20,000 sq. ft., the Board believed the variance is minimal and would not be detrimental to the neighborhood, nor derogate from the intent and purpose of the Zoning By-Law.

August 7, 1980
Date

Gerald P. McCarthy
Gerald P. McCarthy, Clerk

Distributed to:

- Members & Associates
- Building Commissioner
- Town Clerk
- File

TOWN OF DENNIS
BOARD OF APPEALS

August 18, 1980

Convered: 7:30 P.M.

Adjourned: 9:40 P.M.

Sitting: Skelly, Flinkstrom, McCarthy, Crowell, Lizotte, O'Connor

1. PAUL G. ASACK ET AL - Off Old Bass River Rd., So. Dennis (cont. from 6/16/80)

Attorney Jay Murphy represented, and briefly explained the continued hearing with Board's cooperation; that there are certain legal documents that have not been fully signed by principals of the Asack family. He noted that the 90 days in which the Board must act is running out, and asked the Board's permission to withdraw without prejudice in order that they may return if signatures can be secured on legal papers; felt this would leave the property without any record of denial for the future of the project. Chairman said his personal feeling was that after two months and a major hearing, even though he was sympathetic to their problems, the petition should be denied on the specific ground of lack of signatures on requisite legal documents to be recorded. Mr. Skelly moved to deny petition of Paul G. Asack et al because the petitioner was unable to file requisite documents required by the Zoning By-Law; seconded by Mr. Flinkstrom.

The Board of Appeals voted to deny Paul G. Asack et al, 221 North Street, West Bridgewater, Ma., Special Permit for Open Space Village Development of 71 lots off Old Bass-River Road, South Dennis. The Board's vote to deny was unanimous (Skelly, Flinkstrom, Crowell, Lizotte, O'Connor) based on the grounds that petitioner was unable to file requisite legal documents according to the Zoning By-Law, despite all other requirements being met by petitioner.

2. JOHN W. & SHIRLEY A. STACY - Lots 25 & 27, Grassy Pond Drive, East Dennis

Clerk McCarthy read legal notice requesting variances from minimum lot size of 20,000 sq. ft. to construct single-family dwelling on each of above named lots. Mr. & Mrs. Stacy were present, and he explained that he needs the variance because they have a Purchase & Sales Agreement on Lot 25, which is 15,200 sq. ft.; would also like to secure a variance on Lot 27. He said they had not been aware of change to 20,000 sq. ft., have since tried to sell as one lot with no success. Mr. Stacy pointed out that there are four duplexes in the area; that it would be a hardship to have to sell as one, and area does not lend itself to selling at \$16,000 for two lots. He told the Board they had intended to build when purchased in 1965, was going to build duplexes, that things have changed and he is now involved in expanding his auto service business. The Stacys acknowledged that they had paid \$3000 for each lot, but did not know just how much had been paid in taxes; said the lots are now on the market for \$8500 and \$9500.

Mr. Skelly read Planning Board memo recommending against granting variances. Mrs. Dorothy Bell, abutter, spoke against granting variance, pointing out that very near by the zoning is R-40; also said some lots on the street are over 20,000. Mr. Stacy thought these larger lots might be under the Cape & Vineyard easement and some had land taken by the Water District. Mr. Skelly read part of letter received from abutter McNeish, who was concerned about protective covenants on the subdivision. In rebuttal, Mr. Stacy repeated that it does not lend itself to selling as one lot, he has come down as low as \$14,000, and having to give away would be a hardship. Hearing closed 7:50 P.M.

August 18, 1980

The Board of Appeals voted to deny John W. & Shirley A. Stacy, 21 Seafield Road, Dennisport, Ma., variances from minimum lot size of 20,000 sq.ft. to construct single-family dwelling on each of Lots 25 and 27, Grassy Pond Drive, East Dennis. The Board's vote to deny was unanimous (Skelly, Flinkstrom, Crowell, Lizotte, O'Connor) based on finding from petitioners's presentation of facts and viewing the subdivision plan, that the petitioner did not prove hardship that related to topography, soil conditions or shape of the lots.

3. WALTER R. ARCHER - Lot 23, No. 18 Ocean Drive, Dennisport

Mr. McCarthy read legal notice requesting variance from sideline setback to maintain existing dwelling at above location. Attorney Myer Singer represented, and explained this situation has developed because the present owner attempted to sell, the bank requested a plot plan and it was discovered the house is only 7 ft. from the sideline rather than 10 ft. required; therefore, bank's attorney would not certify the title. Mr. Singer presented copy of original building permit application calling for 10 ft. on one side of house and 12 ft. on the other; he suggested that because of a cement bound located about 2 ft. in from the corner, the house was accordingly built 15 ft. from one side and only 7 ft. from the other. He continued that without a variance, the alternatives would be to physically move the house, or not be able to sell it; that there had never been any complaints from the neighborhood or Town. Attorney Singer responded to Mr. Lizotte about the statute of limitations that would seem to cover this situation, but that the bank's attorney took a very narrow interpretation of "valid building permit." Mr. Skelly read Planning Board memo indicating no objection to granting. Hearing closed 8:05 P.M.

The Board of Appeals voted to grant Walter R. Archer, Jr., 1050 Beachlawn Terrace, Orange, Conn., variance from sideline setback requirement to maintain existing dwelling on Lot 23, No. 18 Ocean Drive, Dennisport. The Board's vote to grant was unanimous (Skelly, Flinkstrom, McCarthy, Crowell, Lizotte) based on finding that the structure was constructed under the former Chap. 40A, and variance could be granted just for the hardship caused by the error in construction. The Board also found that variance may be granted because of the shape of the relationship of the structure to the sideline. The Board found that since the size of the lot and house is approximately the same as those in the surrounding area, there would be no detriment to the area or substantial derogation of the intent of the Zoning By-Law.

4. ARTHUR G. DICKEY - 41 Hall Street, Dennisport

Mr. McCarthy read legal notice requesting variances from sideline, front and rear setback requirements to alter and/or extend existing non-conforming structure and parking area at above location. Attorney Myer Singer represented, presenting brief, and said they would like Special Permit to add on to existing business, or variances for same. He said the house was built quite some time ago; Mr. Dickey has owned since 1958 for his insurance business; that area was converted from residential to commercial about 22 years ago. Mr. Singer quoted from Sect. 2.4.3.7: "...that the extension, alteration or change will not be substantially more detrimental than the existing non-conforming use of the neighborhood." He maintained that the addition will have very little, if any, effect on the neighborhood; addition would be only 480 sq. ft. added to existing 728 sq. ft.

ARTHUR G. DICKEY continued

August 18, 1980

with the same type of architecture. Mr. Singer said the Dickeys are not planning staff additions or any substantial increase in business, just need a little more desk and record keeping space and a conference room for clients. He addressed the parking situation, noting the Town parking lot available within 300 ft., which would continue to be used by employees; added that 90 percent of their business is by mail or telephone, not walk-in. Said they would like to stay at the present six parking spaces and retain existing tree, rather than have more hardtop; noted letters from abutters indicating approval of petition. Mr. Singer said the lot is about 90 ft. deep and had been 100 ft. before the Town took land to widen Hall Street. He stressed that the building has value to the Dickeys for this type of business, would not as a residence, and would not be detrimental to the public good or derogate from the intent of the Zoning By-Law more than its present use. It was noted that being a corner lot required 25 ft. setbacks on two sides. Chairman Skelly read memo from Planning Board in opposition because "...there are insufficient setbacks and insufficient buffer between parking and lot line. They are opposed to granting variances for excessive intensive use for a very small lot." Hearing closed 8:34 P.M.

The Board of Appeals voted to grant Arthur G. Dickey, 41 Hall Street, Dennisport, Ma., Special Permit under Sect. 2.4.3.7 to alter and extend non-conforming structure at above location. The Board's vote was unanimous to grant (Skelly, Flinkstrom, McCarthy, Crowell, Lizotte) based on finding that extension of existing structure would not be substantially more detrimental than the existing non-conforming use of the neighborhood, and would be in the best interests of the Town. Two parking spaces will be added to building site if future circumstances so warrant.

5. WILLIAM A. HAFKER, JR. - 367 Main Street, West Dennis

Mr. McCarthy read legal notice requesting variance from front yard setback requirement to construct addition to existing residence at above location. Mr. Hafker was present, and explained that the plot plan indicates a 5 ft. bathroom addition; that property is located behind the former Patti's restaurant; that present bathroom is 36½ inches wide by 8 ft. long. He said it would come 18 ft. from property line, but really is about 27 ft. back from restaurant parking lot line. In response to Board members, he said the house is about 35-40 years old, has right of way coming in from Rt. 28; that to add on in another direction would not widen bathroom and would necessitate moving plumbing. Mr. Skelly read Planning Board memo indicating no objection. Hearing closed 8:42 P.M.

The Board of Appeals voted to grant William A. Hafker, Jr., 367 Main Street, West Dennis, Ma., variance of 7 ft. from front yard setback requirement to construct addition to existing residence at above location. The Board's vote to grant was unanimous (Skelly, Flinkstrom, McCarthy, Crowell, Lizotte) and found that petitioner has established hardship owing to the shape of the lot. The Board believed that granting of variance will not be detrimental to the neighborhood nor substantially derogate from the intent of the Zoning By-Law.

August 18, 1980

6. ROSENA RAY - Lot 1, No. 77 Searsville Road, South Dennis

Mr. McCarthy read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling at above location. Mrs. Ray was present, and explained that she was granted this variance before but it has expired because she lost a sale of the lot. She said she can't afford to maintain this lot since her husband died; now has a prospective buyer and needs to make some repairs on the house she lives in. Chairman Skelly noted 4/17/78 as date of previous variance, and pointed out that the State statute has changed, making it more difficult to prove hardship in the land with shape, soil conditions, or topography. Mrs. Ray said the surrounding area is mostly lots of this size; that when they bought there was an old garage but that has since been removed, including foundation. Mr. Skelly read Planning Board memo recommending not to grant since the lot is significantly undersized. Hearing closed 8:50 P.M.

The Board of Appeals voted to deny Rosena Ray, 71 Searsville Road, South Dennis, Ma., variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling on Lot 1, No. 77 Searsville Road, South Dennis. The Board's vote to deny was unanimous (Skelly, Flinkstrom, McCarthy, Crowell, Lizotte) and found that hardship has not been proven as relates to soil conditions, shape or topography of the land.

Sept. 8, 1980
Date

Gerald P. McCarthy
Gerald P. McCarthy, Clerk

Distributed to:

- Members & Associates
- Building Commissioner
- Town Clerk
- File

TOWN OF DENNIS

BOARD OF APPEALS

September 15, 1980

Convened: 7:30 P.M.

Adjourned: 9:40 P.M.

Sitting: Skelly, Flinkstrom, McCarthy, Crowell, Lizotte
 Present: Jason, O'Connor
 Staff: Perry
 Public & Press: Approximately 10

1. CLARK POTTER - Lot 5, No. 14 Knole Lane, Dennis

Clerk McCarthy read legal notice requesting variance from minimum lot width to construct single-family dwelling at above location. Mr. Potter was present and explained that the lot is under agreement, but the buyers don't want to build so far back on the lot; continued that you have to go 180 ft. back from the street to reach the 100 ft. width, putting the house very near the condominiums in the rear. He said they would like to build at 75 ft. back where the lot is 80 ft. wide; that he is asking for 20 ft. variance. Mr. Potter said the subdivision was laid out in 1974 and he is not sure how this matter slipped by; said there is a bit of a side hill and then flattens out, but there is a drop of about 15 ft. to street. Mr. Potter also noted that the cost of underground utilities going back another 100 ft. would be prohibitive. In reply to Mr. Crowell, he said Lot 4 abutting is a separate lot providing open space and will not be used as a building lot. Mr. Thomas Dean, owner of Lot 6 abutting, said he would be most adversely affected, and wanted to know how close a house could come to his line. Mr. Skelly explained the 10 ft. sideline setback. Mr. Potter added that in deed restrictions there is a 20 ft. side setback. Mr. Skelly added that deed restrictions are a private matter, not enforced by the Town. Mr. Dean said he bought because of restrictions, hoped they would be enforced, since whatever is built could cause him to adjust his plans; he added that he does not have a house on Lot 6 presently. Ms. Carol Schiffer, realtor involved in sale, stated the buyer wants to build a half-Cape, about 28-29 ft. wide, beginning back 75 ft. from the street. Mr. Potter confirmed that 20 ft. setback will be maintained. Hearing closed 7:42 P.M.

The Board of Appeals voted to grant Clark Potter, 776 Main Street, Dennis, Ma., variance from the minimum lot width of 100 ft. to the distance of 75 ft. back from the street, giving a 20 ft. width variance at that point to construct single-family dwelling on Lot 5, No. 14 Knole Lane, Dennis. The Board's vote to grant was unanimous (Skelly, Flinkstrom, McCarthy, Crowell, Lizotte), and found that the shape and topography of the lot are such that variance could be granted on basis of hardship without deviating from the intent of the Zoning By-Law. They believed that granting would not be detrimental to the neighborhood.

2. GERTRUDE PHILLIPS - Lot 65, No. 16 Fairview Avenue, Dennis

Mr. McCarthy read legal notice requesting variances from minimum lot size of 20,000 sq. ft. and front setback requirement to construct single-family dwelling at above location. Mr. & Mrs. Phillips were present and represented by Robert Kelly, who said the Phillips bought some time ago in order to build a year-round

retirement home; that this is a triangular lot which makes it difficult for setbacks. He said the Town has taken land for Fairview Avenue so that the lot is now actually smaller, a long narrow shape. He added proposed dwelling is 24 by 28 ft. and would have to pass O.K.H.R.H.D.; sanitation system can be met and there is Town water. The Board briefly discussed Chapter 808 (Sect. 6) with regard to protection of individual lots down to 7500 sq. ft. or 5000 sq. ft. Mr. Kelly said he thought the Town taking was a 6 x 129 ft. strip; that the lot did conform to zoning at the time of purchase in April, 1973, until 1978 Town Meeting zoning changes. Said the Phillips had only purchased this one lot in this area, and asked what they could do if they don't have relief. He said that percolation test would have to be redone because of time lapse. Chairman Skelly read Planning Board memo that they are "strongly opposed as this lot is grossly undersized." Hearing closed 7:58 P.M.

The Board of Appeals voted to grant Gertrude Phillips, 30 Radnor Road, Brighton, Ma., variance from minimum lot size of 7500 sq. ft. and two variances from front setbacks to construct single-family dwelling on Lot 65, No. 16 Fairview Avenue, Dennis. The Board's vote to grant was unanimous (Skelly, Flinkstrom, McCarthy, Crowell, Lizotte) in finding hardship in the shape of the triangular configuration of the lot and the fact that the lot area was decreased by road taking. The Board also found that granting would not be detrimental to the neighborhood, in which all lots are approximately the same size; that it would not substantially derogate from the intent of the Zoning By-Law, which held the lot to be buildable at time of purchase in 1973.

3. DEAN P. & DEBORAH EMERY - 1164 Route 134, East Dennis

Mr. McCarthy read the legal notice requesting Special Permits for Woodworking Shop and Beauty Shop at above location. Petitioners or representative were not present, nor any interested parties. Chairman Skelly moved to recess this hearing until the next hearing date on 10/6/80, and instruct the secretary to notify petitioners in writing that they must appear on 10/6/80 or be denied; seconded by Mr. Flinkstrom. SO VOTED UNANIMOUSLY. Hearing continued 8:03 P.M.

4. WILLIAM H. & PEARL QUAYLE - 27 Pleasant Street, Dennisport

Mr. McCarthy read legal notice requesting Special Permit under Sect. 2.4.3.7 to construct porch on existing slab extending into front yard setback at above location. Mrs. Quayle was present and explained that they want to build a small porch on the existing slab and asked for Special Permit. The Board looked at plot plan of existing property and house and sketches of proposed porch over cement slab. Proposed porch appeared to be 13 ft. from the street. Mrs. Quayle said the house is at least 30 years old, has existing cement slab of 10 x 16 ft., and the Building Commissioner said they could use the slab. Board members questioned if the slab would still be useable, but petitioner said the Building Commissioner had said yes; that they wanted to have aluminum windows plus door on three sides. In response to Mr. McCarthy's question about locating the porch on the side of the house, Mrs. Quayle said there is a bedroom on the side and pointed out location of gas line. There was some discussion of valid non-conforming status of the cement slab. Mr. Crowell asked about the porch obscuring the view down Pleasant Street; Mrs. Quayle pointed out that there are not other houses, only back yards on both sides. Mr. Skelly read Planning Board memo indicating no objection to granting. Hearing closed 8:28 P.M.

The Board of Appeals voted to grant William H. & Pearl T. Quayle, 120 Bonair Avenue, W. Springfield, Ma., Special Permit under Sect. 2.4.3.7 to construct porch on existing slab extending into front yard setback at 27 Pleasant Street, Dennisport. The Board's vote to grant was unanimous (Skelly, Flinkstrom, McCarthy, Crowell, Lizotte) and found that the change would not be substantially more detrimental than the existing use in the neighborhood.

5. WINONA W. LEIDINGER - 7 Loring Avenue, West Dennis

Mr. McCarthy read legal notice requesting variance from minimum lot width to construct single-family dwelling at above location. Mrs. Leidinger explained that this is the third year she has been in for this variance, the last two having expired; that at present there is a pending sale of her house and this lot, but in case it does not go through, she would like the variance again since it has been advertised as a buildable lot. She said the lot has only 92 ft. frontage, but is over 26,000 sq. ft. in area; that taxes have been paid for 40 years. Mr. Skelly noted that regarding hardship criteria, it is a long, narrow lot; also noted that lot narrows down to 72 ft. He commented that if 8 ft. variance were granted, when house was built, it might require a greater variance. Mr. McCarthy felt that when someone is looking for this variance, they should come in with a plan siting house; said that he does not like to give blanket approval if the Board does not know what conditions are. Mr. Flinkstrom determined from plan that about 40 ft. back from the street, the lot is 89-90 ft. wide; felt a 10 ft. variance would do it. Mr. Skelly suggested it might be better to have a conditional variance in a purchase and sales agreement. He read Planning Board memo indicating "no objection to the granting of this variance if a long, narrow house is constructed." Hearing closed 8:42 P.M.

The Board of Appeals voted to grant Winona W. Leidinger, 1 Loring Avenue, West Dennis, Ma., 10 ft. variance from minimum lot width to construct single-family dwelling at No. 7 Loring Avenue, West Dennis. The Board's vote to grant was unanimous (Skelly, Flinkstrom, McCarthy, Crowell, Lizotte) and found hardship in the long, narrow shape of the lot. They believed granting will not be detrimental to the neighborhood, nor substantially derogate from the intent of of the Zoning By-Law.

6. DEAN P. & DEBORAH EMERY - 1164 Route 134, East Dennis

Upon appearance of petitioners from hearing called earlier, Mr. McCarthy read legal notice requesting Special Permits for Woodworking Shop and Beauty Shop at above location. Mr. Emery said he would like to request to withdraw woodworking shop request since he has gotten another job; that his wife would like to put in one-person beauty shop for herself. Chairman Skelly moved to allow Dean P. Emery to withdraw without prejudice that part of his application for a Special Permit which pertains to a woodworking shop; the beauty shop still to remain for hearing; seconded by Mr. Flinkstrom. VOTE UNANIMOUS 5-0. Mrs. Emery explained that they have a building connected to their main house which she would use; that it has its own plumbing and treatment facilities, but she has yet to buy the equipment. She said there is plenty of parking, enough for six cars and she could only take care of 3-4 people at a time. When asked about employees, Mrs. Emery said she would be alone and hire someone only for the two days she

DEAN P. & DEBORAH EMERY continued

September 15, 1980

would not be working. She added that the State Board has inspected and approved with recommendation that entrance should face Rt. 134; that she would take out a window and put in a door to attain this. Mr. Emery explained that this apartment and main house are under one roof with breezeway. She would like hours of 9-4:30 Monday through Saturdays. As to driveway visibility, Mr. Emery said they would chop down some trees to the north to improve. Hearing closed 9:32 P.M.

The Board of Appeals voted to grant Dean P. & Deborah Emery, 1164 Route 134, East Dennis, Ma., Special Permit for Beauty Shop at above address. The Board's vote to grant was unanimous (Skelly, Flinkstrom, McCarthy, Crowell, Lizotte), and found that granting of Special Permit for this use would cause no greater congestion, nuisance or hazard than at present in the area. They believed that it would not substantially derogate from the intent of the Zoning By-Law.

7. Chairman Skelly reported to the Board Members and Associates present regarding his recent requested appearance before the Board of Selectmen to discuss the activities of the Board of Appeals.

8. The Board discussed recent request from Fees Review Committee as to suggestions on possibility of increasing Board of Appeals filing fee from present \$35.00. It was noted that this is the only cost to petitioner to cover completely the expenses of advertising and postage for notifying abutters of legal hearings and decisions for each case. The consensus was that the fee could be raised, but not higher than \$50.00.

October 6, 1980
Date

Gerald P. McCarthy
Gerald P. McCarthy, Clerk

Distributed to:

- Members & Associates
- Building Commissioner
- Town Clerk
- File

TOWN OF DENNIS

BOARD OF APPEALS

October 6, 1980

Convened: 7:30 P.M.

Adjourned: 9:36 P.M.

Sitting: Skelly, Flinkstrom, McCarthy, Crowell, Lizotte, Jason

Present: O'Connor

Staff: Perry

Public & Press: Approximately 35

1. CHARLES & MARIE ALEX - Lots 61 and 63, Dunstable Cross Road, So. Dennis

Mr. McCarthy read legal notice requesting variances from minimum lot size of 20,000 sq. ft. and rear setback requirement to construct single-family dwelling on each of Lots 61 and 63. Mr. Alex was present and represented by Attorney Myer R. Singer, who presented brief to Board and explained the history of these lots: that they received a variance in July, 1978, valid for one year and now has expired. He continued that Dunstable Cross Road is in a subdivision with many lots of same size, heavily developed with few lots unbuilt. Mr. Singer said that if the Zoning By-Law were enforced today, it would create a house lot that would be substantially larger than any other lot. He referred to 1978 decision (Z-350) which stipulated that each house should not be smaller than other adjoining dwellings, and said the circumstances are the same except change in ownership. Attorney Singer said that Mr. Alex misunderstood that the variance was good for two years; when there was a prospective buyer earlier this summer, it was determined that the variance had expired. He suggested that the shape, to an extent, is determined by the area of the lot, and in this case is less than the required 20,000; believed that the smaller size results in hardship. He referred to a letter from real estate office involved giving an opinion of value: that individually the lots are worth about \$12,500 each; joined together as one lot are not worth twice, but about \$16,000.

Attorney Singer referred to a recent Supreme Court case and quoted from decision that "...zoning is to stabilize property uses..." He referred to two sketch plans submitted for houses, and said area variance is all that is requested. Mr. Crowell asked about application which calls for rear yard variance. Mr. Singer felt that if Building Commissioner requires only 10 ft. rear setback, instead of current 25 ft., this variance would not be needed since plan shows 12 ft. to the rear of the proposed house; he decided not to request rear variance. He also confirmed that Mr. Alex had owned abutting Lot 65, which was sold in July, 1980, and currently there is a house under construction on this lot. Mr. Singer noted that the combined Lots 61 and 63 are about 17,000 sq. ft., and felt that shape is a function of size, creating hardship. In response to Mr. McCarthy, he said that petitioner had paid about \$12,500 for the two lots as an investment; said the lots are not under agreement, that Mr. Alex might sell them or build on them, but not for his own personal use. Chairman Skelly read Planning Board memo as "opposed to granting as these are significantly undersized lots."

Ms. Grace Oliver said she was opposed, particularly because house being built on Lot 65 does not have a garage, which she claimed was a deed requirement. Mr. James Kileen asked about Board's decision, but was confused with Planning Board

October 16, 1980

statement just read. Ms. Emma Maiden felt a precedent had been set last summer when the Board had denied similar variance in the area. Mr. Skelly explained that the Board does not establish precedents. Mr. Frank Hessian asked about requirement for garage. Ms. Ann McGordon asked about an O.K.H.R.H.D. hearing on 6/19, and what kind of house to be built. Mr. Sloky felt these lots are a little smaller than most in the area. Ms. Oliver asked why she wasn't notified about house to be built on Lot 65; Mr. Skelly explained the statute relative to notification of abutters. Mr. Flinkstrom noted that plans submitted with application do show a garage attached to house. Attorney Singer stated that his client was agreeable to the same condition in Z-350 decision about size of houses and would construct an attached or free-standing garage with each house. Hearing closed 8:12 P.M.

The Board of Appeals voted to grant Charles & Marie Alex, 13 Hamerick Road, West Peabody, Ma., variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling on each of Lots 61 and 63, Dunstable Cross Road, South Dennis. Variance is granted with the stipulation that the dwellings constructed on each lot shall not contain less than the average square footage of the three abutting homes and that each dwelling have an attached or free-standing garage. The Board's vote was 4 to grant (Skelly, Flinkstrom, McCarthy, Crowell) and 1 to deny (Lizotte). The majority believed that the petitioner has shown hardship, that granting would not be detrimental to the neighborhood, nor derogate from the intent of the Zoning By-Law. The minority believed that the petitioner failed to show sufficient hardship to satisfy the requirements for a variance.

2. DEAN W. GARFIELD - Lots 1, 2, 3, 4, 5, Center Street, So. Dennis

Clerk McCarthy read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling on a lot to be created by reducing Lots 1, 2, 3, 4, 5, No. 65 Center Street, South Dennis, into two lots. Mr. Garfield was present, and represented by Attorney Myer R. Singer, who presented brief and plans to Board. He said Mr. Garfield and his sister have acquired these lots by inheritance from their mother, Mrs. Burke, who had subdivided as five lots of about 7500 sq. ft. each when this was possible. He pointed out on the new plan an existing house on one of the two new lots, and described the approximate size of lots in the neighborhood as mostly less than 20,000 sq. ft. He stressed that the owners are not trying to get as many lots as possible, but coming as close as possible to current Zoning By-Law; said that one new lot would be over 20,000 sq. ft., and the other lot with existing house would be a little over 18,000. He felt this would not derogate substantially from the Zoning By-Law, but would be a plus for the neighborhood; said the house is now vacant and for sale, but Mr. Garfield intends to keep the 20,000 sq. ft. lot for himself. Mr. DeCoster, an abutter, said he had no objection. Mr. Skelly read Planning Board memo that they "do not oppose." Hearing closed 8:30 P.M.

The Board of Appeals voted to grant Dean W. Garfield, Baxter Street, Dennisport, Ma., variance from minimum lot size of 20,000 sq. ft. to combine five lots, being Lots 1, 2, 3, 4, 5, Center Street, South Dennis, as shown on Assessors Map Sheet 84, into two lots, as shown on Plan for Dean W. Garfield, dated

July 17, 1980, prepared by S. R. Sweetser. The Board vote to grant was unanimous (Skelly, Flinkstrom, McCarthy, Crowell, Lizotte), and found the discrepancy of one undersized lot to be minimal. The Board found hardship in the shape of the lots, did not believe that granting would be injurious to the neighborhood, and that it would conform to the intent and purpose of the Zoning By-Law.

3. LAWRENCE H. & ELEANOR A. LEVAGGI - Combined Lots 29 & 30, Honeysuckle Lane, DPort

Mr. McCarthy read legal notice requesting variances from minimum lot size of 7500 sq. ft., front yard and rear setback requirements to construct single-family dwelling at above location. Attorney Myer Singer said that on behalf of the Levaggis, he would like to request permission to withdraw petition; that some of the abutting property owners have approached them to purchase lot and not use as a buildable lot. Chairman Skelly moved to allow petitioner to withdraw application for variances as advertised; this to be without prejudice; seconded by Mr. Flinkstrom. VOTE: UNANIMOUS.

Mr. McCarthy stepped down from Board; replaced by Mr. Otis Jason, Associate Member.

4. CHARLES W. TARDANICO - Lot 13, No. 17 Atlantic Avenue, South Dennis

Acting Clerk Lizotte read legal notice requesting variances from front yard, side and rear setback requirements to construct warehouse at above location. Mr. Tardanico said his intention with the land when he purchased in 1976, then conforming, was to construct a warehouse such as others in that area; that he is now seeking only what others were allowed prior to change in setback requirements passed in 1977; that otherwise, the lot is useless because you could only build a structure about 10 x 15 ft. Mr. Tardanico said he was not aware of the change in zoning, that there are about 7-8 such buildings in that area. There was discussion of abutting cul-de-sac affecting the shape and access of the lot. Mr. Tardanico said the shape allows him to site the building in this way only; that the size of the warehouse is about the same as others, that the use would be basically for storage. Mr. Richard Hamlin, an abutter, came forward to look at plans, thought it looked fine, that use is much preferable to something like used cars. In response to Mr. Lizotte, the petitioner said that the largest building to conform to lot would be about 20 x 20 ft., and that he really needs 40 x 80 ft. building to be economically practical. Mr. Skelly read Planning Board memo that they are opposed for the following reasons: "exceeding site coverage; 21 parking spaces are required...and Zoning By-Law 2.3.4.6 will not be complied with as the rear setback is only 16 ft...requires 50 ft." Mr. Tardanico asked for consideration of Board, saying that the lot was buildable when he bought in 1976. Hearing closed 8:53 P.M.

The Board of Appeals voted to grant Charles W. Tardanico, 5 Standish Circle, Canton, Ma., variances from front, side and rear setback requirements to construct warehouse on Lot 13, No. 17 Atlantic Avenue, South Dennis. The Board's vote to grant was unanimous (Skelly, Flinkstrom, Crowell, Lizotte, Jason), and found that the area appears to be completely established as to use and structures on these lots. The Board believed this use is the general tenor of what is there, did not feel that it would derogate from the intent of the Zoning By-Law, and would not be detrimental to the neighborhood. The Board found that there is a shape factor with a cul-de-sac cutting into the lot, causing substantial hardship.

October 6, 1980

5. CARLTON M. ELLIS - Lot 11, 24 Supreme Way, Dennisport

The above matter, denial of a variance from minimum lot size of 20,000 sq. ft. on 2/4/80 (Z-441), has been in litigation since then. Town Counsel has referred Superior Court Order of Remand. Chairman Skelly has talked further with Town Counsel, who will forward Agreed Statement of Facts, which will be distributed to Board members. Following this, the secretary will notify Attorney Russell Wilkins, and the Board will plan on rehearing the case on 10/20/80 under Court Order.

October 20, 1980

Date

Gerald P. McCarthy

Gerald P. McCarthy, Clerk

Distributed to:

- Members & Associates
- Building Commissioner
- Town Clerk
- File

TOWN OF DENNIS

BOARD OF APPEALS

October 20, 1980

Convened: 7:35 P.M.

Adjourned: 11:18 P.M.

Sitting: Skelly, Flinkstrom, McCarthy, Crowell, Lizotte, O'Connor
Present: Jason, Creeden
Staff: Perry
Public & Press: Approximately 25

Mr. Crowell stepped down; replaced by Associate Member O'Connor.

1. CARL F. TARTAGLIA - Lot 503, 68 East Bay View Road, Dennis

Mr. Tartaglia was present and represented by Attorney Charles F. Crowell, who said his client feels Lot 503 should be separated from contiguous Lot 502 because there is a hardship with topography with a large drop from Lot 502 on which there is presently a house. He continued that it was originally part of a 6-lot subdivision and was sold as a buildable lot, the former owner now being deceased. He said Mr. Tartaglia has already sold Lot 502 and if granted variance, plans to build home for his daughter on Lot 503. Mr. Crowell said they did not believe it would be detrimental to public good, that most lots in the neighborhood are about the same size, some with duplexes; also that it would not substantially derogate from the Zoning By-Law as it has been there some time. Mr. McCarthy asked if Mr. Crowell represented Mr. Tartaglia when he bought Lots 502 and 503 on 5/12/80, and if buyer knew it was unbuildable. Mr. Tartaglia said he bought four lots 4-5 years ago, the last to be transferred to him were lot with house and other lot; that he was told at Town Hall that Lot 503 was a buildable lot. He said in the mean time he had sold lot with house; then came to Town Hall and found out Lot 503 was not a buildable lot, even though O.K.H.R.H.D. had passed on it before. In reply to Mr. McCarthy, Mr. Tartaglia said he did own Lot 500, is going to build a permanent home, and spoke of variance granted on this lot previously.

Chairman Skelly asked if he had hired an attorney and if he was warned that this was an unbuildable lot. Petitioner said there was an attorney present, but not hired by him. Mr. Skelly referred to minutes of 11/7/77 when variance was granted for Lot 500 and the statement was made that Lots 502 and 503 have been combined. Attorney Crowell said Mr. Tartaglia was not aware of this statement by Mr. Marshall Day, the previous owner. Mr. Jack Best spoke in favor of granting, seeing no harm to neighborhood and citing topographical difference between lots. Mr. Skelly read Planning Board memo that "consensus is that they do not oppose granting of variance." Attorney Crowell reiterated that he did not know Mr. Day would make statement about combining lots and that Mr. Tartaglia had no knowledge of this. Mr. Skelly read letters in favor from Elizabeth Best and John J. Dei. Hearing closed 7:50 P.M.

The Board of Appeals voted to grant Carl F. Tartaglia, 1164 West Street, Mansfield, Ma., variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling on Lot 503, No. 68 East Bay View Road, Dennis. The Board's vote to grant was 4 (Skelly, Flinkstrom, Lizotte, O'Connor) and 1 to deny (McCarthy). The majority found hardship in the topography of these

October 20, 1980

contiguous lots, one being lower than the other, and in forcing a lot to remain idle if relief not granted. They also believed that granting would not harm the neighborhood or substantially derogate from the intent of the Zoning By-Law. The minority vote did not believe hardship has been proven in relation to shape, soil conditions or topography.

Mr. Flinkstrom stepped down from Board; Mr. William Crowell returned to Board.

2. BEST ENTERPRISES, INC. & JAMES L. MORNEAU - Lot 7, Taunton Ave. & Horsefoot Path, Dennis

Mr. McCarthy read legal notice requesting Special Permit for Office and Bank Use and variances from front, side and rear yard setback requirements and parking requirements to construct an Office Building at above location. Mr. Jack Best was present and represented by Attorney Myer Singer, who explained the request is only for Office Building, no Bank is intended; that this was language taken from Zoning By-Law. He presented brief to Board members documenting the request, and explained the location of the property at the intersection of two roads in Limited Business I zone, noting that the property does have a very unusual shape. He said it is a triangle plus a dog-leg section running along Taunton Avenue, making it very difficult to use for commercial purposes.

Attorney Singer first addressed the matter of Special Permit, quoting from the Zoning By-Law that this use is permitted with Special Permit, and normally should be granted; he cited other businesses, such as restaurant, in the vicinity, and noted heavily travelled roads. He suggested that a real estate office is compatible with area, and building would be built in style of residence; that it would cause no interference with environment, very little evening business with no night lights. He added that plan shows traffic coming from Taunton Avenue side, with parking there, to stay further away from more residential side on Horsefoot Path. Mr. Singer said Mr. Best already has his real estate office in the area, and this would mean moving from residential to LB I zone; that he presently has a home occupation use. He said the unusual shape of the lot and the requirement to have 50 ft. setback from each street severely limits what could be built on the lot, only a building of about 500-600 sq. ft.; also mentioned the same difficulty with locating parking, both creating hardship to utilize the lot for commercial use.

Attorney Singer said it is proposed to have a garage to the rear to add to parking available; that there is substantial tree growth, most of which would remain. He suggested the Board can find to grant variance without detriment to the neighborhood or derogation of the Zoning By-Law. In response to Mr. McCarthy, he said they would combine Lot 7 and portion of Lot 6, with no intention to break up in the future; that Mr. Best might use as a combined residence and real estate office, or the second floor used as rental apartment; no apartment intended over garage. There was discussion of parking on plan, the need due to a rental unit and number of employees. Mr. McCarthy felt the building could be sited differently so as to require less variances. Mr. Singer said the building was sited for best visibility and to keep a greater distance between building and adjoining residential properties. There was further discussion about parking and possible backing onto busy streets. Mr. Best stated there would probably be three employees in addition to himself, plus others in and out; that he would like hours of 9 to 5 plus some evening and Sunday hours.

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Attorney Singer suggested this structure and proposed use can be accomplished without this Board's permission at all as it could be looked at as "Home Occupation," and quoted from Sect. 2.2.3.5 of Zoning By-Law. Mr. Skelly read Planning Board memo indicating two opposed and three not opposed to this use.

Mr. Philip J. McCarthy, direct abutter, spoke at considerable length on opposing the granting, and disputed the size of the lot, claiming it was a total of 19,490 sq. ft., not the required 20,000. He said Mr. Best had told him only an office, nothing about a residence; said no other lot could accommodate the required 50 ft. setbacks, that this lot was not substantially different with hardship. Mr. McCarthy said there had been a residence on this lot for 25 years until it burned one Halloween night; felt it could still be sold for residential use. He believed this proposed use would be detrimental to the neighborhood, and was very concerned about parking and traffic hazards. Chairman Skelly read letter in opposition from Ronald J. Howlett, another abutter. Board members studied plan submitted, which noted 22,400 sq. ft. for lot size. Mr. Singer said that if lot size is not correct, as submitted by Engineer Sweetser, he would withdraw the case. He further pointed out that this is LB I zone, that this is a proper use. Hearing closed 9:00 P.M.

The Board of Appeals voted to deny Best Enterprises, Inc., and James L. Morneau, 56 East Bay View Road, Dennis, Ma., Special Permit for Office and Bank Use, variances from front, side and rear setback requirements, and variance from parking requirement to construct an Office Building on Lot 7, at the intersection of Taunton Avenue and Horsefoot Path, Dennis. The Board vote to deny Special Permit was 4 (Skelly, McCarthy, Lizotte, O'Connor) and 1 to grant Special Permit (Crowell). The Board's vote to deny variances was unanimous (Skelly, McCarthy, Crowell, Lizotte, O'Connor). Those voting to deny Special Permit believed that nuisance, hazard and congestion would be created by the type of business proposed at this location and the way the parking is imposed on the plan. The minority vote to grant Special Permit did not believe this use would be detrimental. The Board's unanimous vote to deny variances was based on belief that sufficient hardship has not been proven as to soil conditions, shape or topography; further that the building can be sited on the lot so as not to require variances or not as much variance from the Zoning By-Law.

Mr. Flinkstrom returned to Board; Mr. Crowell stepped down.

3. WOODSIDE PARK CORPORATION - Lots 11 & 12, Rt. 134 & Setucket Rd., East Dennis

Clerk McCarthy read legal notice requesting Special Permit for Business Office and Bank Use and variances from parking requirements (Sect. 3.1.2, 3.1.3.2) to construct Office Building at above location. Mr. Craig Lohr, principal of Woodside was present, and represented by Attorney Myer Singer, who presented brief detailing the request to allow addition to existing office building in Limited Business II zone. This would be for rentable office space, of a professional or business nature, nothing retail. He suggested this expansion would not be harmful to the area; that Route 134 is now one of the most heavily travelled roads in Town, especially north to south; explained that Route 134 is part residential, some LB II, some Extensive Business. Attorney Singer asked

to withdraw the requests as filed for variances for parking, saying that Mr. Lohr feels he can meet the ZBL requirement for 64 parking spaces and the proper setbacks by omitting some landscaping.

Mr. Singer said the existing building plus a portion of the addition would continue to be used by Woodside Park Corp., except for any heavy equipment, which will no longer be there; the balance would be for rentable office space. Mr. Lizotte questioned that plan doesn't show square footage of buildings, setbacks and parking setbacks. Board members calculated total building to be 9600 sq. ft. with 64 parking spaces needed. Mr. McCarthy questioned if the intent of LB II zone is to have as large a structure as this; if this is "low or middle density?" He felt this is perhaps an over-intensive use of the property in this district. Mr. Singer felt this is within the intent of the ZBL; he acknowledged they did not know who tenants would be at this time with the exception of Woodside Park. Mr. McCarthy asked about the location of dumpster and such equipment; Mr. Singer said Mr. Lohr will use incinerator in existing building. Chairman Skelly commented that the petitioner has proved to be an irresponsible citizen of the Town, with an unsightly contractor's yard on the property; said he would like assurance that such equipment would be cleaned up. Mr. Singer said Mr. Lohr assured him such items would be removed. Mr. Lohr said the open space in new addition could be partitioned off as tenants needs are realized. Mr. Singer added that if Board wishes to approve each tenant, this could be arranged.

Mr. Eugene McLaughlin, direct abutter to the east, objected to parking adjacent to his property line and two-story building; felt the grounds could have been cleaned up before this. He felt the residents of Greenwood and Setucket Roads will be affected. He questioned if the LB II zone went only 200 ft. easterly, whereas these lots run about 300 ft. easterly. Mrs. McLaughlin also questioned the above and objected to proposal. Attorney Singer said his information from Engineer Sweetser was that the LB II extended 350 ft. deep with these two lots completely within the zone. He added that if not as represented, he would ask to withdraw request; that parking would have to be 10 ft. from the property line. Mr. Skelly noted that the Building Commissioner had not indicated that the lots invaded the residential zone. Mr. Lamonica, also abutter, objected on the basis that they did not know who tenants would be. Mr. McLaughlin presented pictures of site he had taken, asking why the Town had not cited the owner for violations.

Mr. Skelly read Planning Board memo as opposed, feeling it would have to encroach into residential zone and that it was over use of the land. Mr. Alan Collette, another abutter, also objected to the density and over use of the land. Others speaking against the petition were Mr. & Mrs. Milanese and Mr. Camberlain, who asked about a buffer from the parking area. Attorney Singer said some type of living fence could be done; that since Planning Board assumed this is an encroachment into residential, would Appeals Board like to take under advisement to verify the zone line. Hearing closed 9:55 P.M.

The Board of Appeals voted to deny Woodside Park Corporation, Route 134, East Dennis, Ma., Special Permit for Business Office Use on Lots 11 & 12, intersection of Route 134 and Setucket Road, East Dennis. The Board's vote to deny was 2 (Skelly, McCarthy) based on the belief that the proposed building of 9600 sq. ft. is an over-intensive use of the area and is not in keeping with

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stated district objectives; that substantial nuisance, hazard or congestion would be created in the neighborhood and that it would derogate from the intent of the Zoning By-Law. The Board's vote was 3 to grant (Flinkstrom, Lizotte, O'Connor) based on finding that adequate parking would be provided for the square footage of the proposed building. Those voting to grant stipulated that the developer cause to be placed a living barrier of evergreen trees of 6 to 8 ft. height, adjacent to the parking to the easterly side, to serve as a buffer between residences and this office structure. In light of this stipulation, they believed there would not be nuisance, hazard or congestion created and the district objectives would be met.

Mr. O'Connor stepped down from Board; Mr. Crowell returned to his place on Board.

4. PAUL & ELIZABETH G. WILCOX - 841 Main Street (Rt. 6A), Dennis

Mr. McCarthy read legal notice requesting Special Permit for Gift Shop and/or Retail Sales and Consumer Services at above location. Petitioner was represented by Ms. Florence Crockett, realtor; she said the petitioners intend to move permanently to Dennis within a year and wish to operate an antique and brass sales and repair in this building. Mr. Don Katenack and the seller, Charles Johnson, were also present. There was discussion of Rt. 6A traffic and visibility at this location. Ms. Crockett said they would be agreeable to same hours as other nearby businesses; said the petitioners wish to buy now and rent as residence until they move. Board members viewed plan showing parking in rear. It was noted that Special Permit could expire in a year if not utilized. Mr. Skelly read Planning Board memo as not opposed but concerned about traffic at top of rise on Rt. 6A. Hearing closed 10:09 P.M.

The Board of Appeals voted to grant Paul & Elizabeth G. Wilcox, 28 South Street, East Dennis, Ma., Special Permit for Gift Shop and/or Retail Sales and Consumer Services at 841 Main Street, Dennis. Hours imposed would be to operate from 9 a.m. to 6 p.m. The Board's vote to grant was unanimous (Skelly, Flinkstrom, McCarthy, Crowell, Lizotte), and found that there is sufficient area on plot plan to provide parking and adequate driveway access. They believed this use is not likely to cause nuisance, hazard or congestion.

5. CARLTON ELLIS - Lot 11, 24 Supreme Way, Dennisport

This case, in litigation since denial on 2/4/80, has been remanded to the Board of Appeals by Superior Court. The consensus of the Board was to continue until next hearing on 11/3/80, when the petitioner's attorney, Russell Wilkins, could be present. He will be so notified.

11/12/80

Date

Gerald P. McCarthy

Gerald P. McCarthy, Clerk

Distributed to:

Members & Associates
Building Commissioner
File

TOWN OF DENNIS

BOARD OF APPEALS

November 3, 1980

Convened: 7:38 P.M.

Adjourned: 11:08 P.M.

Sitting: Skelly, Flinkstrom, McCarthy, Crowell, Lizotte, O'Connor
Staff: Perry
Public & Press: Approximately 35

1. WILLIAM C. SNOWDEN III - 70 Main Street (Rt. 28), West Dennis

Clerk McCarthy read legal notice requesting Special Permit and variance from density, Sect. 4.2.2.4, to construct 13 Multi-Family Condominium Dwelling Units at above location. Mr. Snowden was present, and represented by Attorney Myer Singer, who made a statement prior to proceeding: that when application was originally filed, it was thought that the Zoning By-Law for the area permitted only five residential units on this parcel; that they have met with Planning Board and it has now been determined that 10 units are permitted. Rather than ask for variance for 13 units, Mr. Snowden would like to proceed asking only for Special Permit for 10 units without any variances. He said they would proceed if Board wishes, or ask continuance to bring in amended plans. He added that deleting three units would not change the basic size of the complex, but parking would decrease somewhat. Mr. Skelly moved, seconded by Mr. Crowell, to continue the hearing, but wished to know more about the change from variance request to Special Permit only. VOTE: UNANIMOUS.

Attorney Singer presented Board members with brief detailing request and location of property; plan would maximize water views, have 6 less parking spaces, possibly a swimming pool rather than deck indicated on plan. Plans also included elevations and interiors to be historically pleasing. Mr. Singer then quoted from Sect. 4.2.2.4 "...allowable density shall not exceed the permitted density for the district in which the units are to be constructed." Also from Sect. 2.2.2 that 1-2 family dwellings are permitted use in GC II Zone. He then proceeded to Sect. 2.3.2, Intensity of Use Schedule, claiming that under "Other Permitted Principal Structures," a 2-family dwelling is permitted in GC II Zone on 20,000 sq. ft.; therefore, 10 residential units were permitted legally on 100,000 sq. ft. (This parcel is 103,470 sq. ft.)

Mr. Singer then continued with reasons a Special Permit should normally be granted under Sect. 1.4.4; said these 10 dwelling units on Rt. 28 will not cause any traffic hazard; felt this project will allow for the least use on Rt. 28, much less than commercial, and freeze the use of the land as residential for many years to come. He quoted from Sect. 4.2.1.4 "...that the use is in harmony with the general purpose and intent of this by-law..." He felt the residential use would not interfere with surrounding business uses and the permitted business uses would not be offensive to a residential project. Mr. Singer said it would be orientated to the water, the parking screened from the road, and all applicable requirements would be met; that traffic from 20 parking spaces would not be noticed as compared to a business use which could attract hundreds of cars all day long; that it would add substantially to the tax base, with a value in excess of \$100,000 per unit, or a total of at least a million dollars. Attorney Singer added that brief contains copies of Orders of Condition issued by the

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Conservation Commission for previous project for 150-seat restaurant and retail stores plus necessary parking, which he felt would have been much higher density; he compared site coverage, water use, etc. Aerial photograph of site was shown to the Board.

There was considerable further discussion with Board members, Attorney Singer, Petitioner Snowden and Architect Romley about the density interpretation of the Zoning By-Law which would permit 10 legal residential units on this site in a GC II Zone. Mr. Crowell questioned if their intent was to say it is 10,000 sq. ft. for each unit; Mr. Singer said he believed it says 20,000 sq. ft. for one-family or two-family. Mr. Flinkstrom still felt a variance request was in order. There was discussion re 90 percent upland; Mr. Romley said Engineer C. Short had certified on previous plan, but such a plan had not been submitted in evidence. Mr. Crowell also questioned if adequate developmental plans had been submitted under Sect. 4.1.4.2. In response to Mr. Flinkstrom, Mr. Singer acknowledged that variance for previous commercial project has expired, but had not required a Special Permit.

Mr. McCarthy asked about building on cement pilings, how high above Route 28, and visibility. Mr. Snowden said the average grade is 6 ft. and they must be at 10 ft. elevation, making it about 4 ft. above, with sewerage system rise in land hiding the pilings. Mr. McCarthy also asked about R-20 Zone, which is 200 ft. back from Rt. 28, how many units in this zone which requires 40,000 sq. ft. for a duplex? There was also question of maximum 140 ft. for each building (Sect. 4.2.2.1) and discussion of applicability of Sect. 2.3.4.1 if there are, in fact, two buildings.

Chairman Skelly read letters from the following: Fire Dept. - on possible fire hazard due to buildings on pilings over marsh grass; Conservation Commission - Notice of Intent must be filed; Planning Board - not convinced that 10 units are allowed and opposed to granting; Planning Board Member R. Lareau - felt 10 residential units are better use than commercial use; Health Dept. - specific plans must be submitted.

Attorney Michael Stone, representing abutters Parsons, Frost and Baksa, spoke in opposition. He questioned the interpretation of density that would permit more than five units; spoke of the scenic view, the general purpose of the Zoning By-Law, and believed that this overcrowding would have a disastrous effect on the neighborhood.

Mr. Lizotte questioned 50 ft. setbacks not showing on plan; Mr. Romley said that by dropping three units they would have plenty of room to adjust to requirement. Also questioned was parking in front yard according to Sect. 3.1.3.3. Attorney Singer said that if Special Permit were granted, they would have to conform to all other requirements; he asked to continue so that Mr. Romley could produce plans that show compliance. Mr. Flinkstrom felt the plans as submitted lacked grading plan, do not show vegetation, and should bear Mr. Romley's stamp as a Registered Architect. Chairman Skelly suggested it preferable to have the petition withdrawn rather than continued. Mr. Crowell so moved to allow petitioner to withdraw without prejudice; seconded by Mr. Flinkstrom. VOTE: UNANIMOUS. Hearing closed 9:25 P.M.

2. JOHN W. ALLEN - 6 Katherine Road, Dennisport

November 3, 1980

Mr. McCarthy read legal notice requesting variance from sideline setback requirement and/or Special Permit, Sect. 2.4.3.7, to extend non-conforming structure by constructing a carport with existing dwelling at above location. Mr. Allen was present, and explained that he wished to build a carport on his home to protect his car from weather and tree damage. It would be attached to house; he said he spoke with abutters and no one objected. Chairman Skelly noted from submitted plan that a variance of 7.89 ft. on side and 9.55 ft. on front would be required, as variances, or petitioner might seek Special Permit to extend non-conforming use. Mr. Allen stated that he has owned since 1963, and conveyed the abutting lot about four years ago. In reply to Mr. McCarthy, he said his other lot to the rear would not be suitable because of septic tanks location. Mr. Skelly read Planning Board memo as opposed to granting because of small lot size and possible fire hazard. Hearing closed 9:38 P.M.

The Board of Appeals voted to grant John W. Allen, 6 Katherine Road, Dennisport, Ma., Special Permit under Sect. 2.4.3.7 to extend non-conforming use by adding carport to dwelling at 6 Katherine Road, Dennisport. The carport may be constructed 1.74 ft. from the sideline in front, 2.11 ft. from sideline in rear, and intrude into front yard 9.55 ft.; carport to be constructed on the south side of the house with access from Katherine Road. The Board's vote to grant was unanimous (Skelly, Flinkstrom, McCarthy, Crowell, Lizotte), and was based on the belief that extension of non-conforming use would not substantially derogate from the Zoning By-Law or be detrimental to the neighborhood.

3. ANTHONY AVERINOS & FRANKLIN KELLEY d/b/a FRANKLIN REALTY - Lot 1
202 Center Street, Dennisport

Mr. McCarthy read legal notice requesting variance from minimum lot size of 20,000, variance from minimum lot width to construct single-family dwelling at above location. Mr. Franklin Kelley was present, and explained that Averino is present owner and Franklin Realty is potential buyer; that he is asking to build single-family house on Lot 1, part of two-lot subdivision signed by Planning Board in 1972. He said Lot 2 contains a 3-family house, which has not been kept up and has been condemned by Board of Health about a year ago; that the bank is going to foreclosure. He would like to buy with contingency that he could build a single-family dwelling on vacant Lot 1 and reduce 3-family to a single-family dwelling; felt this would be an improvement. Mr. Kelley felt this would not derogate from the Zoning By-Law, would eliminate financial hardship of Mr. Averinos, improve neighborhood, and increase tax base of Town. He continued to explain that Averinos had sold to Branson Smith, who didn't keep up the mortgage payments, but Averinos' name was still on mortgage, so the bank holds him responsible. He confirmed that 1972 deed from Averinos was recorded, but the 1980 deed to Averinos has not been recorded.

Attorney Richard Cain appeared for the Cape Cod Five Cents Savings Bank, holder of mortgage on the property. He said there was no default until within the last year; tenants of Mr. Smith were ordered out when condemned. Mr. Cain said that if bank takes this property, they would be faced with recovering as much of their loss as possible; asked if the property would be better off with 3-family dwelling refurbished, or better to have that building razed and two single-family houses put on the two lots? He felt the latter would be more desirable, and would fit in with neighborhood. Mr. Cain said there is hardship with Mr. Averinos if bank holds him responsible for deficiency; that Mr. Smith has no responsibility, that he took a deed but did not sign mortgage. Chairman Skelly suggested hardship according to statute should be in relation to soil, shape or topography. Attorney Cain felt the shape of the land in-216-n to 3-family dwelling is unique and creates hardship.

Mr. Les St. George, a direct abutter, said he was in favor of two single-family dwellings, not to have 3-family dwelling renovated, which would be very expensive. Mr. Dan Kelley, another abutter, wanted to know if they mean refurbished or razed. Mr. Franklin Kelley replied that if property price were down so that a buyer could put substantial money into renovation, it wouldn't matter to him as long as the bank agrees. Mrs. Ann St. George said she had heard estimates of \$25,000 to refurbish. Attorney Cain confirmed that bank mortgage covers both lots; that if both lots can be built on, the bank would feel it had recouped and could refinance building of two new homes. Chairman Skelly read Planning Board memo as opposed as being detrimental to the neighborhood. Franklin Kelley felt the Planning Board had not looked at the improvement to the neighborhood.

Mr. Flinkstrom noted there is also a variance needed for lot width. Franklin Kelley said it is 75 ft. wide in front and about 78-80 ft. wide a little way back. Relative to non-conforming use of triplex and if they could re-build, Mr. F. Kelley said he believed they would have to leave one 2 x 4 standing in order to reconstruct 3-family. Mr. Cain again suggested that the Board stipulate that the 3-family building must be razed. Hearing closed 10:25 P.M.

The Board of Appeals voted to grant Anthony Averinos and Franklin Kelley d/b/a Franklin Realty, off Centerville Avenue, Centerville, Ma., variances from minimum lot size of 20,000 sq. ft. and minimum lot width to construct single-family dwelling on Lot 1, 202 Center Street, Dennisport. Variance from lot width may be 25 ft. less than required 100 ft. Variances would be subject to requirement that existing three-family dwelling, which has been rendered inoperable for public health purposes, be razed from contiguous Lot 2; at such time it is rebuilt, it shall be a single-family dwelling and meet all Health Dept. requirements. The razing and building of single-family dwelling shall be evidenced by Building Commissioner and recorded at the Registry of Deeds. The Board's vote to grant was unanimous (Skelly, Flinkstrom, McCarthy, Crowell, Lizotte), and found from materials presented that there is hardship of long standing on this land as relates to the shape of the lot in conjunction with the contiguous nature of Lots 1 and 2 and existing three-family dwelling in very close proximity to lot line. The Board did not believe granting of variances would derogate from Zoning By-Law or be detrimental to the neighborhood.

Mr. Flinkstrom stepped down; replaced by Mr. O'Connor.

4. BEST ENTERPRISES, INC. & JAMES L. MORNEAU - Lot 7, Taunton Avenue & Horsefoot Path, Dennis

This petition for Special Permit for Office and variances from front, side and rear setback requirements and variance from parking requirement was denied on 10/20/80 (Z-492). Mr. Jack Best appeared before the Board with revised plans to request a vote to permit him to refile the petition before two years' wait after denial. He showed new plans to Board, indicating the proposed building would be reduced from 40 x 30 ft. to 36 x 28 ft., thereby reducing required parking and also reducing other setback variances. Mr. Best said the percentage of variances requested is now about 50 percent less. Mr. Crowell moved to permit refiling based on substantial change in petition; seconded by Mr. Lizotte. VOTE: UNANIMOUS.

November 3, 1980

5. CARLTON ELLIS - Lot 11, 24 Supreme Way, Dennisport

This case, in litigation since its denial of variance from minimum lot size of 20,000 sq. ft. on 2/4/80, has been remanded to the Board of Appeals by Superior Court. It was continued from 10/20/80 at Attorney Russel Wilkins' request. However, he was not present; the Board chose not to act at this time.

11/12/80

Date

Gerald P. McCarthy

Gerald P. McCarthy, Clerk

Distributed to:

Members & Associates
Building Commissioner
File

TOWN OF DENNIS

BOARD OF APPEALS

November 17, 1980

Convened: 7:30 P.M.

Adjourned: 8:40 P.M.

Sitting: Flinkstrom, McCarthy, Crowell, Lizotte, O'Connor

Staff: Perry

Public & Press: Approx. 12

1. ROBERT J. HAYNES - 63-65 Sea Street, Dennisport

Clerk McCarthy read legal notice requesting variance from rear setback requirement to construct porch on existing non-conforming dwelling at above location. Mr. & Mrs. Haynes were present; he explained that they had purchased five cottages on Sea Street in July of this year; that the middle cottage is about 5½ ft. from back line and they want to square off and put on porch. He said they rent four cottages and want to have some privacy in the back of this one for themselves; that the alternative would be to move the cottage forward. In response to Mr. Crowell, the petitioner said they would like enclosed porch with glass and screened sliders plus side exit door; size would be 20 x 8½ ft. Mr. Haynes said the cottages are about 30 years old; that they would rent and use this cottage much of the time for themselves; each is a two-bedroom cottage. Acting Chairman Flinkstrom read Planning Board memo that "...this lot is already quite extensively utilized, they are opposed to granting...as porches sometimes evolve into another room. They are, however, not opposed to the addition of an open patio." Mr. Haynes stated to the Board that his hardship is the land and existing structure too close to rear line; he added that he had spoken to abutters who had no objection; that there is sufficient parking. In reply to Board's question about converting a porch to a bedroom, Mr. Haynes spoke of Board of Health registration of rental properties and number of bedrooms. Mrs. Haynes said the floor of the living room is 2 ft. higher than proposed porch, but they would like to have it more than just screened. Hearing closed 7:50 P.M.

The Board of Appeals voted to grant Robert J. Haynes, 63 Lincoln Road, Medford, Ma., variance of 4.43 ft. from rear setback requirement to construct porch on existing non-conforming dwelling at 63-65 Sea Street, Dennisport. Said variance is granted with the stipulation that cottage is to be considered not more than a two-bedroom cottage as registered with Dennis Board of Health. The Board's vote to grant was unanimous (Flinkstrom, McCarthy, Crowell, Lizotte, O'Connor), and found that petitioner has proved hardship with the shape of the land. The Board believed that because the cottage is pre-existing non-conforming dwelling, the granting of the variance would not cause substantially more detriment or derogation than existing dwelling as sited on the lot.

2. GIOSEPPINA GERMANI - Combined Lot 46, No. 17 Wades's Way and Lot 48, No. 7 Uncle John's Way, Dennis

Mr. McCarthy read legal notice requesting variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling on combined lots at above location. Mr. Ken Bova of CMA and Kings Highway Realty was present to represent petitioner. He explained that Mrs. Germani owns these two lots,

abutting but fronting on different streets, with a total of 12,270 sq. ft.; that she also owns abutting Lot 47 with a single-family dwelling. Mr. Bova said that in comparing the neighborhood, this combined lot would be larger than 53 other lots and only smaller than two existing lots. He felt that they could site a dwelling on the combined size with sufficient room for septic system on Lot 48. Mr. Crowell suggested that they could take all three lots and make two better sized lots; also that the Board should receive much better plans. Acting Chairman Flinkstrom noted that there is no guarantee that a new application would be approved; that petitioner would have to prove hardship; also that a variance from 100 ft. width might be required. Mr. Bova requested to withdraw without prejudice. Mr. Crowell so moved; seconded by Mr. Lizotte. VOTE: UNANIMOUS Hearing closed 8:05 P.M.

3. RAFF YAGJIAN & DALE ANN GINTER - 574 Route 6A, Dennis

Mr. McCarthy read legal notice requesting Special Permit to operate Special and Gourmet Retail Food Shop at above location. Acting Chairman Flinkstrom read letter from petitioner received on 11/12/80 as follows: "...a request to withdraw without prejudice...Due to sudden and personal reasons (we) cannot carry through with plans as originally formulated..." Mr. Crowell moved to allow petitioner to withdraw without prejudice; seconded by Mr. O'Connor. VOTE: UNANIMOUS. Hearing closed 8:09 P.M.

4. CARLTON M. ELLIS - Lot 11, No. 24 Supreme Way, Dennisport

This case was denied a variance from minimum lot size of 20,000 sq. ft. on 2/4/80, and has been in litigation since; it was then remanded to the Board of Appeals by Superior Court. Attorney Russell Wilkins represented for petitioner, and explained that this should have been an appeal from the Building Commissioner's decision to deny a building permit, and that a building permit should issue under Sect. 2.4.1.2. He continued that contiguous Lot 10 had been solely owned by Carlton Ellis prior to its conveyance in 1974; that Lot 11 was owned by him and his wife (tenants by the entirety). It was the unanimous consensus of the Board (Flinkstrom, McCarthy, Crowell, Lizotte, O'Connor) that a building permit should issue as a matter of right and will so direct the Building Commissioner.

5. BRADFORD W. SHAW - Lots 52 & 53, Avon Lane, So. Dennis

This petition for variance from minimum lot size of 20,000 sq. ft. was denied on 6/2/80 (Z-460). Mr. Shaw has written letter to Board of Appeals dated 11/1/80, requesting re-hearing within less than 2 years since he believed the conditions have changed since the Board of Appeals granted variances on 10/6/80 to undersized Lots 61 & 63, Dunstable Cross Road, Mayfair Section of So. Dennis, near his location. The Board discussed his request, and while sympathetic to his letter, did not believe that this fact amounted to "substantial change" in petition as called for by statute. A letter will accordingly be sent to Mr. Shaw so stating

December 1, 1980
Date

Gerald P. McCarthy
Gerald P. McCarthy, Clerk

Distributed to:

Members & Associates
Building Commissioner
File

TOWN OF DENNIS
BOARD OF APPEALS

December 1, 1980

Convened: 7:37 P.M.

Adjourned: 9:38 P.M.

Sitting: Flinkstrom, McCarthy, Lizotte, Jason, O'Connor
Staff: Perry
Public & Press: Approximately 12

1. DENNIS BAY CORPORATION - 22 Bridge Street, East Dennis

Mr. McCarthy read legal notice requesting Special Permit to operate Sporting Goods Shop at above location. Mr. Ira Dubin, manager of Dennis Bay Corp., was present, and explained the location of the property on Bridge Street; that there is an existing building formerly occupied by a TV business, but has been vacant for 3-4 years. He said they have plans to add on to the building, an addition of 30 x 32 ft., and use the property for bicycle business which is presently located in Players Shopping Plaza. Plans were shown of the site and proposed structure. Mr. Dubin indicated the addition would be for bicycle repair and present structure would be for bike sales, and noted four parking spaces on site plan. He said there is 900 sq. ft. in repair area and 600 in sales section. Mr. McCarthy questioned the need for additional parking spaces based on a total of 1500 sq. ft. Mr. Dubin stated that the Building Commissioner had told him that his parking need only be provided for the sales area, or four spaces. Board members disagreed and pointed out that such a method of computation would remove control of remaining space relative to parking. Following discussion of plan, addition plus existing building, possibly another area to be enclosed, second floor and deck, it was determined that there is a possible 2370 sq. ft., requiring 16 parking spaces.

Mr. Dubin noted his present business operation and felt 4 spaces would be ample; said that he did not prefer to pave a greater area; also that he would not have any vehicles with a motor. He acknowledged that there is room for an office on second floor and that deck might be used for display. The Board pointed out in Zoning By-Law that parking must not be in 50 ft. front setback or a variance would be needed. Mr. Lizotte noted the existing building is only 18 ft. from sideline, and adding deck is extension of a non-conforming structure, requiring a Special Permit. Mr. Dubin suggested the deck could be made 2 ft. shorter, and felt he could provide the 16 parking spaces, although he has already received an Order of Conditions from Conservation Commission based on these plans for construction. He offered to provide revised plans to Board to meet parking and setback requirements. Acting Chairman Flinkstrom read Planning Board memo indicating no objection. Mr. Douglas Newman, a direct abutter, said he had no objection to business, but was concerned that addition would block the view of marsh and harbor from his home; he came forward to view plans. Mr. Dubin asked to withdraw or have petition continued until next meeting date. Mr. Flinkstrom moved to continue hearing until 12/15/80; seconded by Mr. Lizotte.
VOTE: UNANIMOUS. Closed 8:25 P.M.

December 1, 1980

2. EDWARD & MARY PORZIO/ANNA LEVINE - Lot 6, Ocean Avenue, West Dennis

Clerk McCarthy read legal notice requesting variances from minimum lot size, minimum lot width, and two front yard setbacks to construct single-family dwelling at above location. Mr. & Mrs. Porzio were present, and presented letter from owner Anna Levine; said they are requesting variances as contained in the legal advertisement in order to build a single-family dwelling. He explained that Mrs. Levine had purchased property in 1955 and had a dwelling there until destroyed in 1960 hurricane. Mr. Porzio said Mrs. Levine had received a variance to build a new structure, but never continued. Secretary noted there was no record of previous variance in Appeals Board files. Acting Chairman Flinkstrom read letter of 11/24/80 from Mrs. Levine.

In response to Board, Mr. Porzio said he felt the topography and being in the Flood Plain Zone would be the hardship; that without variance Mrs. Levine had an unmarketable lot; added that they had not yet gotten a plan for sewerage system. There was discussion of location of Ocean Avenue Extension; the Porzios displayed several photographs of the area, saying they would like to build a two-bedroom house about 25 x 36 (showed schematic drawings of house). Acting Chairman Flinkstrom read letters in opposition from Priscilla K. Morton and Gwendolen K. Suereth, Robert D. Fisher. Dr. William Hynes, abutter, spoke in opposition, saying he had offered to buy the lot and keep as is.

Mr. Don Fisher, another abutter, said he was not really opposed, but proceeded to give some history of the area, and said there would not be any room for parking. Mr. Flinkstrom noted letter from Building Commissioner Gill to Mrs. Porzio, with particular reference to the lot being in the V-9 Flood Plain Zone; also message from Health Director Dumas as opposed because of very questionable sewerage system, as well as Planning Board memo as strongly opposed. The Porzios said they would build on pilings to meet 10 ft. elevation; the abutters felt this would be an additional problem in the neighborhood. Hearing closed 9:05 P.M.

The Board of Appeals voted to deny Edward S. & Mary A. Porzio and Anna Levine, 131 Bartlett Road, Winthrop, Ma., variances from minimum lot size, minimum lot width, and two front yard setbacks to construct single-family dwelling on Lot 6, Ocean Avenue, West Dennis. The Board's vote to deny was unanimous (Flinkstrom, McCarthy, Lizotte, Jason, O'Connor), and found that hardship has not been established as to shape, soil conditions or topography. The Board also believed that the requested variances are too substantial to be granted without derogation of the Zoning By-Law.

12/15/80
Date

Gerald P. McCarthy
Gerald P. McCarthy, Clerk

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TOWN OF DENNIS
BOARD OF APPEALS

December 15, 1980

Convened: 7:30 P.M.

Adjourned: 11:10, P.M.

Sitting: Crowell, McCarthy, Lizotte, Creeden, Jason, O'Connor
Staff: Perry
Public & Press: Approximately 80

In the absence of the Chairman and Vice Chairman, Board Member William E. Crowell, Jr., Chaired the hearing.

1. BEST ENTERPRISES, INC. - Lot 7, Taunton Avenue & Horsefoot Path, Dennis

Clerk Gerald McCarthy read the legal notice requesting Special Permit for Business Office and variances from two front yard setback requirements and from parking requirements (Sect. 3.1.3.2) to construct Office Building at above location. Mr. Jack Best was present and represented by Attorney Myer Singer, who presented brief to Board and explained that this petition was heard recently and denied. He said plans have been revised since, cutting down on size of building, amount and relocation of parking; that vote had been given by Planning Board to return based on substantial change in request. Mr. Singer said a dwelling could be built on this triangular lot meeting setbacks, but for business use in LB I zone a front setback of 50 ft. must be met on two front yards. He noted request is only for Mr. Best's real estate office with apartment on second floor and two car garage, with access to apartment from Horsefoot Path and access for real estate business from Taunton Avenue. Mr. Singer suggested the unusual shape and topographic features result in hardship in attempting to use as permitted business use in LB I zone; that a Special Permit is generally granted unless hazard, nuisance or congestion are created. He spoke of nearest abutter, Philip J. McCarthy, who was opposed at previous hearing, and said Mr. McCarthy had viewed the revised plan and no longer was opposed.

Mr. Best confirmed that the building had not yet been approved by O.K.H.R.H.D., that someone from office would rent the apartment, that much of existing landscaping would remain as a buffer; he said they do not anticipate excessive rental business congestion on Saturdays; that this will replace his present real estate business in his nearby home. Acting Chairman Crowell read Planning Board memo stating no objection; also letters in favor of petition from abutters Gibbons, Farrell, Querijero, Brann, DeSiata, Watkins, and Wallace; letter in opposition from abutter Ronald J. Howlett. Hearing closed 7:50 P.M.

The Board of Appeals voted to grant Best Enterprises, Inc., 56 East Bay View Road, Dennis, Special Permit for Business Office, variances from two front yard setback requirements and variance from parking requirements (Sect. 3.1.3.2) to construct office building on Lot 7, intersection of Taunton Avenue and Horsefoot Path, Dennis. The Board's vote to grant was unanimous (Crowell, McCarthy, Lizotte, Jason, O'Connor), and found hardship existing owing to the triangular shape of the lot. The Board did not believe the proposed use would derogate from the intent of the Zoning By-Law, nor be detrimental to the neighborhood.

2. CONRAD NOBILI - Lot 13, Trudy Circle & Lot 17, Golf Course Road, East Dennis

Mr. McCarthy read legal notice requesting variances from minimum lot size of 20,000 sq. ft. to construct single-family dwelling on each of above named lots. Attorney Myer Singer represented, presented brief to Board, and explained that these two lots front on different streets and are only contiguous for a distance of about 15 ft.; felt that their configuration is such that they could not be used as one building site. He felt the unusual shape of the lots causes hardship, in particular financial; that individually they have a value of \$12-13,000, but combined have a value of only \$15,000; noted that the Town has been assessing as separate lots. Mr. Singer suggested that building a house on each lot would not be detrimental to the neighborhood, in which all lots are of similar size; said such houses would meet all other setback requirements. He acknowledged that petitioner has owned other lots in this subdivision, but presently owns only five; said that Lot 17 has been sold, pending variance. Mr. Crowell read Planning Board memo indicating no objection. Hearing closed 8:12 P.M.

The Board of Appeals voted to grant Conrad Nobili, 9 Byron Street, Boston, Ma. 02118, variance from minimum lot size of 20,000 sq. ft. to construct single-family dwelling on each of Lot 13, Trudy Circle, and Lot 17, Golf Course Road, East Dennis. The Board's vote to grant was unanimous (Crowell, McCarthy, Lizotte, Jason, O'Connor), and found hardship in the shape and configuration of the lots, making it impractical to use as one lot. The Board found that granting of variance would not substantially derogate from the intent of the Zoning By-Law, nor be detrimental to the neighborhood since these lots are of approximately the same size as others in the area.

Mr. Peter Lizotte stepped down from Board; replaced by Mrs. Charlene Creeden.

3. JAMES RUHAN & NORMA DI BONA - Lot 23, No. 38 Route 134 (e/s), South Dennis

Mr. McCarthy read legal notice requesting Special Permit to construct and operate Family Recreation Facility-fun cart track and service building at above location. Attorney Myer Singer represented petitioner, and explained that open recreational use on Rt. 134 just north of Rt. 28 required a Special Permit according to Zoning By-Law; that this is for a fun cart or go cart facility maintained as the only use on the approximately 6 acres of land; said part of lot is zoned General Commercial II, part zoned residential, but that facility would be maintained completely within the GC II area of the lot, leaving the residential portion as open space and buffer. Plans and brief were presented to the Board, as well as an artist's rendering in color of the proposed facility, showing a 24 x 40 ft. building for service and storage, plus bathroom facilities.

Mr. Singer continued to describe proposal: parking would be closest to Rt. 134 road; service building in the center of lot and the track in front of that; added that existing stakes do not apply to proposal. He said the Zoning By-Law allows one-third of the lot to be used; that building itself would be less than one percent of the lot, and including the track, it would be less than 15 percent; this leaves 85 percent of the total land area as open space, and all other requirements would be met. He pointed out on plan that track would be 50 ft. back from Rt. 134, more than 200 ft. from nearest house, and several hundred feet from north and south sides of lot. Parking would be more than amply met with 28 parking spaces, plus room for expansion if needed. Attorney Singer quoted from Sect. 1.4.4 of Zoning By-Law re quisites for Special Permit.

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Mr. Singer then discussed alternative uses of the land, and said most commercial uses would be allowed; he felt any business would bring traffic; also that this proposed use would not bring any more noise or pollution; he suggested that an animal kennel is allowed with a Special Permit, which could bring greater obnoxious activity, and which the ZBL requires to be located more than 100 ft. from residential district. He also noted that the land on the westerly side of Rt. 134 is zoned GC II; that the two nearest homes on Baxter Street are on higher ground. Mr. Singer suggested the Board could impose a requirement for a natural barrier of living fence and/or screened fence. He said the operation would be from spring through fall and at all times subject to amusement license requirement, to be obtained from Board of Selectmen, with hours of use approved by them; added that it would be mostly weekends in off season and a 7-day week operation in the summer season; that it is intended to be an activity for young children, not intended to attract adults or older children and not open until early hours of morning, but instead for family entertainment hours.

Attorney Singer addressed the problem of noise, referring to a report from Arnold Greene Testing Laboratories, Inc., Natick, Ma., who made a study of sound in a similar operation in Harwichport on July 10, 1980, at 5:30 p.m., taking decibel readings at 100, 200, 300, and 400 ft. distant from go cart track at Rt. 28 and Sisson Road. Mr. Singer said average decibel was indicated as 70 down to 48, with 18 go carts in operation. (copy of Greene report may be found in case file Z-501) He also referred to Mass. Dept. of Public Health having an unwritten standard which states that the ambient noise level should not be exceeded by more than ten (10) decibels. Mr. Singer presented several photographs of the Harwichport go cart track.

Mr. Singer noted proposed plan with dotted line indicating the edge of woods; said it is intended to leave the woods as buffer to block sound. He said plans re sewerage and drainage are included in booklet; also commented on the word "substantial" harm in the ZBL, feeling that if there is any harm caused, it must be "substantial." As to any concern that it might be a "junkyard," he suggested this would not be the case and thought the Board might wish to place restrictions, with future review that all conditions are being met.

Mr. O'Connor addressed the situation of children walking to the site, with no sidewalks, which he felt would be a traffic hazard for them. He also commented that he did not believe there were any residences near Harwichport go cart track closer than one-quarter mile. Mrs. Creeden asked if there was a hill to the rear; Mr. Singer said, no, quite flat, a slight rise to the far rear. In response to Mr. Crowell about lighting, Mr. Singer said there would be a lighted sign and lighting on the track itself, directed inward; also parking lot would have to be lighted. As to hours of operation, Attorney Singer suggested probably from 10 a.m. to 10 p.m., with the "season" being from mid-June to Labor Day. Track would have a maximum of 18 go carts, with repair for only the carts used on site.

Regarding landscaping, Mr. Raymond Chasse (the proposed operator of facility) said they planned on grass and wood chips in addition to leaving the woods intact. Attorney Singer confirmed they did not plan on "old tire" barriers, only something proper to protect track. Re parking, he said they felt 28 spaces ample, allowing 2-3 for employee use since it would be a family-run operation. In response to Mr. McCarthy, petitioner said there would not be any food sold except from machines; that there would not be any amusement machines. Mr. Singer said they did not



intend to subdivide the property in the future, and would accept a condition to that effect. Mr. McCarthy questioned if the go carts would calssify as motor vehicles, thus coming under Sect. 2.2.3.3, which prohibits outdoor display. Mr. Singer did not agree, believed they fall under amusement.

There was further discussion of noise levels as presented in the Greene report, with several Board Members questioning the accuracy of the figures presented. Acting Chairman Crowell noted that this site in question has not been tested, only the go cart track in Harwichport. Mr. McCarthy commented that he was familiar with some of Mr. Chasse's buildings, which he considered very neat, clean and well cared for. Mr. Singer again stressed the possible businesses which could automatically be allowed at this location, for example a McDonald's restaurant.

Acting Chairman Crowell read the following correspondence received: Planning Board - opposed as the proposed use does not meet the intent of GC II district as set forth in ZBL; Board of Health - "soil test performed...reveals that the soil will accept a septic system...;" Conservation Commission - "...this project does not affect wetlands...;" Dennis Taxpayers Association - opposed because the use does not meet the purpose of the ZBL and GC II intent. Mr. Crowell noted that there were about 15 additional letters in opposition, which were available for reading in the file.



Attorney James Falla, representing the residents of abutting Baxter Street (Megargee, Bernheimer, Eldridge, Fisher) spoke in opposition at some length. He addressed Sect. 1.4.4 (Requisites for Special Permits), felt strongly that this use does not meet the standards; believed it would cause nuisance, noise and traffic congestion, was concerned also that it was primarily a nocturnal use. He pointed out that no testing of noise was done at Baxter Street, only at Sisson Road in Harwichport, where he contended the addition of go carts might show up more favorably than at Baxter Street; submitted that the addition of go carts at this location would be far greater than the 10 decibel increase in the unwritten guide lines. Mr. Falla said that there is no one at Bud's Go Cart in Harwichport at 5:30 p.m. when the noise test was made; that it is at 11 p.m. when the crowd arrives. He maintained this was not the same as a bank or office; felt that if there is a loophole in the ZBL it should be fixed. He further said that a go cart track has a high roll over of business to be successful, with people there only about 15 minutes, and the busiest hours in the evening. He felt this would be detrimental to residential area and also to adjacent commercial uses, citing Mr. Charles Chamberlain opposed as an abutter. Attorney Falla also felt cars would try to cut through Baxter Street to avoid the intersection lights. He again referred to Sect. 1.4.4, citing "shall normally grant," and presented additional letters and a petition with about 200 signatures in opposition.



Mrs. Mary Hood Hagler spoke in opposition, feeling this was a highly visible intersection which should make a favorable impression on visitors, and noted the abutters' homes are permanent, not summer cottages. Mr. John Megargee spoke against the use, citing the backup of traffic from the lights presently. Mr. Charles Chamberlain was opposed, believing this was the lowest class use that could be made, and felt it would seriously effect property values. Ms. Martha Withstandley felt it would have bad effect on renting cottages. Mr. Joseph Eldridge asked the Board Members if they would like this go cart track next to their property.

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Selectman William Shanahan said he knew (the Board) have certain criteria to make decisions, but the Town wants the Board to have the input of the towns-people's feelings; that 134 is a very critical area; added that you (the Board) might have to step over the rules and regulations. Mr. Bob Briggs said he was surprised the Fire Chief is not here because most of their runs go up Rt. 134. Mr. Richard Rudo noted Attorney Singer's reference to a kennel as not being more obnoxious than a go cart track. Mr. Larry Lovequist read letter in opposition from abutter Green. Ms. Evelyn Kelley noted the abutting package store, believing this would create a drinking problem with the young people. Mr. Herbert Potter felt the testing figures on noise levels showed a substantial increase. Acting Chairman Crowell noted for the record that the Fire and Police Departments were notified of hearing but did not respond; also that he would vote according to the testimony tonight. Attorney Singer commented that it is not within the power (of the Board) to look beyond the rules and regulations; also that he believed that "shall" in Sect. 1.4.4 is a definitive directive. Mr. Singer offered that if the Board would like any noise testing studies done of this site, the petitioner would be glad to submit any additional data; also that the petitioner is willing to have the entire area along the zoning line fenced. Abutter George Fisher spoke in strong opposition. Attorney Falla added that the word "shall" with a modifier changes the word. Hearing closed 10:18 P.M.

The Board of Appeals voted to deny James Ruhan & Norma Di Bona, 168 South Street, South Yarmouth, Ma., Special Permit to construct and operate Family Recreation Facility-fun cart track and service building on Lot 23, No. 38 Route 134 (east side), South Dennis. The Board's vote to deny was unanimous (Crowell, McCarthy, Creeden, Jason, O'Connor) based on finding that substantial nuisance, hazard and congestion would be created by this use, causing substantial derogation to homes and residents on adjoining streets. The Board found that this type of business is not in keeping with the stated objectives for this General Commercial II district.

Mrs. Creeden stepped down; replaced by Mr. Lizotte.

4. DENNIS BAY CORPORATION - 22 Bridge Street, East Dennis (con't., from 12/1/80)

Mr. Ira Dubin was present with revised plan showing 16 parking spaces and the deck being shortened to conform to sideline setback. Mr. McCarthy briefly reviewed the testimony and discussion at the 12/1/80 hearing, and asked if Conservation Commission had approved of this revised plan. Mr. Dubin said a plan was submitted to Mr. George Macdonald, NRO, who did not think there would be any objection; said the parking area to the rear would be treated but not paved. Hearing closed 11:00 P.M.

The Board of Appeals voted to grant Dennis Bay Corporation, Box 67, East Dennis, Ma., Special Permit to operate Sporting Goods Shop at 22 Bridge Street, East Dennis. Submitted revised plan must be approved in writing by Dennis Conservation Commission. The Board's vote to grant was unanimous (Crowell, McCarthy, Lizotte, Jason, O'Connor), and found that the proposed use was in keeping with the intent of the Zoning By-Law and would not create any substantial nuisance, hazard or congestion.

12/15/80
Date

Gerald P. McCarthy
Gerald P. McCarthy, Clerk

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November 3, 1980

5. CARLTON ELLIS - Lot 11, 24 Supreme Way, Dennisport

This case, in litigation since its denial of variance from minimum lot size of 20,000 sq. ft. on 2/4/80, has been remanded to the Board of Appeals by Superior Court. It was continued from 10/20/80 at Attorney Russel Wilkins' request. However, he was not present; the Board chose not to act at this time.

11/12/80
Date

Gerald P. McCarthy
Gerald P. McCarthy, Clerk

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