

Town of Scarborough

Zoning Board of Appeals

November 14, 2007

AGENDA

1. Call to Order (7:00 P. M.)
2. Roll Call
3. Approval of Minutes (September 12, 2007)
4. Appeals
 - a. Appeal No. 2375 – A Special Exception Appeal by Nathan Clark and Sandra Sargent, 4 Blueberry Lane, Assessor’s Map R4 Parcel 11, to operate a pet grooming business in the R-F Zone
 - b. Appeal No. 2399 – A Miscellaneous Appeal by David Aranovitch, dba The Dunes Motel, 95 East Grand Avenue, Assessor’s Map U23 Parcel 92, to convert 12 motel units to 12 condominium units in the R-4A Zone
 - c. Appeal No. 2403 – A Special Exception Appeal by Roland Pinette and Diane Freelove, 7 Honan Road, Assessor’s Map R55 Parcel 27, to operate a landscape business as a Home Occupation in the R-2 Zone
 - d. Appeal No. 2404 – A Limited Reduction of Yard Size Appeal by Judith Montgomery, 8 Jasper Street, Assessor’s Map U26 Parcel 16, to construct an addition 11.3 feet from the side property line in the R-2 Zone
 - e. Appeal No. 2405 - A Special Exception Appeal by Glenn Tucker, 128 Broadturn Road, Assessor’s Map R44 Parcel 6, to create an Accessory Unit above his garage in the R-F Zone
 - f. Appeal No. 2406 - A Limited Reduction of Yard Size Appeal by Dale Higgins, 32 Church Street, Assessor’s Map U32 Parcel 54, to construct a garage 10.02 feet from the side property line in the R-4 Zone
 - g. Appeal No. 2407 - A Limited Reduction of Yard Size Appeal by Arthur and Beverly Greene, 172 Beech Ridge Road, Assessor’s Map R22 Parcel 18, to construct a porch 40 feet from the front property line in the R-F Zone
 - h. Appeal No. 2408 - A Limited Reduction of Yard Size Appeal by Fred and Kathleen Bayley, 76 Jones Creek Drive, Assessor’s Map U22 Parcel 23, to expand their second story 12 feet from the side property line in the B-1 Zone
 - i. Appeal No. 2409 - A Miscellaneous Appeal by Fred and Kathleen Bayley, dba Bayley’s Camping Resort, 275 Pine Point Road, Assessor’s Map R86 Parcel 4, to demolish and rebuild a two story office/ retail/laundry building in the R-2 Zone
 - j. Appeal No. 2410 - A Variance Appeal by Michael Emmons, 3 Morning Street, Assessor’s Map U1 Parcel 103, to demolish the second floor and the steps and rebuild with nonconforming setbacks in the R-4 Zone
 - k. Appeal No. 2411 - A Practical Difficulty Appeal by Robert Tourangeau, 1 Burnham Woods Circle, Assessor’s Map R68 Parcel 32, to construct a new sunroom and deck 35 feet from the front property line in the R-2 Zone
 - l. Appeal No. 2412 – A Miscellaneous Appeal by Hospice of Southern Maine, Hunnewell Road, Assessor’s Map U48 Parcel 34, for two additional directional signs to be placed on Route One at the corners of Route 114 and Payne Road
 - m. Appeal No. 2413 – A Special Exception Appeal by Philip and Ronda Mullin, 1 Den Drive, Assessor’s Map R22 Parcel 3201, to create an Accessory Unit in the R-F Zone
 - n. Appeal No. 2414 – A Special Exception Appeal by David and Hrysoula Vocal, 14 Colonel Dow Drive, Assessor’s Map R46 Parcel 248, to create an Accessory Unit in the DVR Zone
 - o. Appeal No. 2425 – A Practical Difficulty Variance by Ray and Jaye Smith, 244 Black Point Road, Assessor’s Map U15 Parcel 15, to construct an addition 17.03 feet from Marsh Rock Circle in the R-2 Zone
 - p. Appeal No. 2426 – A Variance Appeal by Pat Donahue, 58A Jones Creek Drive, Assessor’s Map U22 Parcel 27, to construct an addition and deck 7.2 feet from the side property line in the B-1 Zone
5. Zoning Board Comments
6. Adjournment

NO NEW APPEALS SHALL BE TAKEN UP AFTER 10:30 P. M.

Town of Scarborough

Zoning Board of Appeals

November 14, 2007

MINUTES

Members Present

Staff

Mr. Craft
Mr. Dryzga
Mr. Loisel
Mr. Maroon
Mr. Massengill

Mr. Grysk, Code Enforcement Officer
Mrs. Logan, Recording Secretary

1. Call to Order

Mr. Dryzga called the meeting to order at 7:00 P. M.

2. Roll Call

The Recording Secretary called the roll; Messrs. Blaise and Temm were absent. Mr. Dryzga authorized Mr. Loisel to vote.

3. Approval of Minutes (September 12, 2007)

Mr. Maroon moved to approve the minutes of September 12, 2007 as written; Mr. Massengill seconded.

Voted 5-0

4. Appeals

a. Appeal No. 2375 – A Special Exception Appeal by Nathan Clark and Sandra Sargent, 4 Blueberry Lane, Assessor’s Map R4 Parcel 11, to operate a pet grooming business in the R-F Zone

Mr. Clark stated that he had been before the Board earlier this year and there had been a lot of letters from neighbors who were in opposition to this business so the appeal had been tabled at that time. He stated that Blueberry Lane was a private road and not as wide as most roads and the neighbors were concerned that there would be a significant problem with traffic. Mr. Clark stated that he had told the neighbors that there would be only about six clients per day and the traffic would not be as bad as they thought. He stated that Ms. Sargent wanted to be able to work at home so she could be home with their children. He stated that the neighbors were still against the additional traffic but he talked with the previous owner of the property who had a courier service and had three to seven vans and there were no complaints from the neighbors at that time.

Mr. Dryzga and Mr. Clark addressed the criteria.

To a question from Mr. Craft, Mr. Clark replied that there were no home occupations on his street but there were businesses on Burnham Road and Broadturn Road. Mr. Dryzga noted that the Code Officer would have to be satisfied with the amount of space to be used for the business; he noted that 50% of the floor area of the house could be used in an accessory structure. To a question from the Board, Mr. Clark replied that six or seven cars could be parked but people usually dropped their dogs off and came back for them; he stated that most of their clients were through word of mouth and they did not want a large sign. Mr. Loisel confirmed that there would be no kenneling. To a question from Mr. Massengill, Mr. Clark

replied that there could be up to 10 dogs per day but the average would be six; he stated that Ms. Sargent worked only four days per week.

Mr. Dryzga opened the public hearing; no one spoke for or against the appeal; Mr. Dryzga closed the public hearing.

Mr. Maroon read the definition of a Home Occupation and stated that he was not convinced that this was customarily carried out in a home. He stated that the definition was not specific, but ten cars per day was a lot of impact. He stated that he was not convinced this proposal met the criteria for Special Exception and, based on the input from the neighbors at the previous meeting, he was against this appeal. Mr. Craft confirmed that dog kennels were allowed in the R-F Zone. Mr. Loisel noted that one of the abutters had talked about 60 dogs per week; Mr. Clark stated that that was an assumption on the part of the neighbors based on a six day work week. Mr. Massengill stated that he agreed that, because so many neighbors were against this appeal, he would not be in favor of this appeal on this narrow street.

Mr. Dryzga agreed that the street was way too narrow for business traffic and he was against this appeal because of the traffic issue; Mr. Loisel and Mr. Massengill agreed.

Mr. Maroon moved to approve the appeal; Mr. Craft seconded.

Voted 0-5 – The appeal was denied.

Mr. Dryzga stated that it was the Board's opinion that the appeal did not meet the criteria for traffic safety or for public safety; the Board agreed.

b. Appeal No. 2399 – A Miscellaneous Appeal by David Aranovitch, dba The Dunes Motel, 95 East Grand Avenue, Assessor's Map U23 Parcel 92, to convert 12 motel units to 12 condominium units in the R-4A Zone

Mr. Jim Fisher, of Northeast Civil Solutions, showed the site with the parking areas and sidewalks and distributed photos of the property. He stated that the Aranovitches had owned and operated the motel for 21 years and decided that they would like to stay in the area and cooperate with the condominium association but divest themselves of the motel. Mr. Fisher stated that a lot of their customers had expressed interest in purchasing units. He stated that the appellants could no longer run the motel because of health issues and wanted to sell the units; he stated that there would be no physical changes to the buildings and the only issue was parking. Mr. Fisher stated that the requirement was for one parking space for motel units, but condominium units were required to have two spaces. He stated that they were asking for a waiver to allow them to have 22 parking spaces rather than the required 24 spaces; he stated that the units were small and people would arrive with only one vehicle per unit. He stated that tenants were seldom on the site all at once since the parking lot was rarely full and 22 spaces should be sufficient.

Mr. Fisher stated that rental of the units would be restricted to no less than one week during the summer and no less than three months during the winter; he stated that this would address safety issues. He noted that there were about 15 letters in favor of this including the abutter who shared the driveway.

Mr. Dryzga and Mr. Fisher addressed the criteria as presented in writing.

To a question from Mr. Dryzga, Mr. Fisher replied that all the units had kitchens and were winterized. Mr. Massengill confirmed that water service would remain in common but all other utilities would be individual. Mr. Dryzga read the minutes indicating that the Planning Board had given a favorable opinion for this appeal.

Mr. Dryzga opened the public hearing and summarized 15 positive letters from neighbors and abutters. No one spoke for or against the appeal; Mr. Dryzga closed the public hearing.

Mr. Maroon stated that he was concerned about rentals with no onsite management and would like to see a minimum of 15 day rentals during the summer. Mr. Fisher reiterated that the Aranovitches would stay involved and would negotiate with the owners on the association documents to cover any issues. Mr. Dryzga stated that he thought 12 owners would self-police their neighbors. Mr. Maroon noted that most condominiums did not allow rentals and he would like to see a management company involved and the site should be either residential or rental.

Mr. Aranovitch stated that this would not be a condotel and they foresaw that the rental activity would be minimal and the units would be mostly owner-occupied; he stated that winter tenants would go through a screening process and no unit could be rented more than four times per year. He noted that there were many houses at Pine Point that were rented in the summer. Mr. Aranovitch stated that they were hopeful they would find buyers who would not want to rent. He stated that there were five properties in the area that had this kind of combination and there was never any trouble at those sites; he stated that they all had associations. Mr. Aranovitch stated that he did not think this would be much of an impact.

To a question from Mr. Dryzga, Mr. Aranovitch replied that some owners of homes and condominiums used agencies and cyberrentals to rent their homes or units. Mr. Maroon stated that his goal was to keep the neighborhood stable and limiting to four rentals per year helped toward stabilization.

Mr. Maroon moved to approve the appeal with the condition that rental be limited to four times per year with a limit of no less than three month periods during the winter; Mr. Massengill seconded.

Voted 5-0

c. Appeal No. 2403 – A Special Exception Appeal by Roland Pinette and Diane Freelove, 7 Honan Road, Assessor’s Map R55 Parcel 27, to operate a landscape business as a Home Occupation in the R-2 Zone

As the appellant was not present, this appeal was taken off the table.

d. Appeal No. 2404 – A Limited Reduction of Yard Size Appeal by Judith Montgomery, 8 Jasper Street, Assessor’s Map U26 Parcel 16, to construct an addition 11.3 feet from the side property line in the R-2 Zone

Mr. Barry Pelkey, the appellant’s builder, stated that Ms. Montgomery wanted to construct a 15 by 13 addition with a 10 by 13 foot deck; he stated that the house was built in the 1960s.

Mr. Dryzga and Mr. Pelkey addressed the criteria.

Mr. Craft confirmed that this would be in line with the existing house; Mr. Pelkey stated that this would be a single story addition at the rear. Mr. Maroon noted that the existing shed should be brought into the building envelope.

Mr. Maroon moved to approve the appeal as presented with the condition that the shed be brought in to meet the 15 foot setbacks; Mr. Loisel seconded.

Voted 5-0

e. Appeal No. 2405 - A Special Exception Appeal by Glenn Tucker, 128 Broadturn Road, Assessor’s Map R44 Parcel 6, to create an Accessory Unit above his garage in the R-F Zone

Mr. Tucker stated that he would like to create an accessory unit above the garage in his new home. Mr. Grysk stated that all the criteria were met.

Mr. Dryzga noted that the criteria had been addressed in writing; he read the Registration of Accessory Unit form.

To a question from Mr. Craft, Mr. Grysk replied that the Town Council called these Accessory Units so that there would be no stigma if someone other than an in-law lived in them; he stated that renting them out was also acceptable for an owner who may need help financially as long as the owner lived onsite.

Mr. Dryzga opened the public hearing; no one spoke for or against the appeal; Mr. Dryzga closed the public hearing.

Mr. Craft moved to approve the appeal as presented; Mr. Maroon seconded.

Voted 5-0

f. Appeal No. 2406 - A Limited Reduction of Yard Size Appeal by Dale Higgins, 32 Church Street, Assessor's Map U32 Parcel 54, to construct a garage 10.02 feet from the side property line in the R-4 Zone

Mr. Mike Richmond, who represented the appellant, stated that the owner would like to add a single car garage; he stated that because of the location of the house and the topography, the garage as shown was the safest and most aesthetically pleasing design.

Mr. Dryzga and Mr. Richmond addressed the criteria as presented in writing.

Mr. Dryzga opened the public hearing; no one spoke for or against the appeal. Mr. Dryzga read six letters in favor of the appeal. Mr. Dryzga closed the public hearing.

To a question from Mr. Loisel, Mr. Richmond replied that there was a Portland Water District easement at the rear of this property with a shed approximately five feet from Mr. Higgins' property line.

Mr. Maroon moved to approve the appeal as presented; Mr. Loisel seconded.

Voted 5-0

g. Appeal No. 2407 - A Limited Reduction of Yard Size Appeal by Arthur and Beverly Greene, 172 Beech Ridge Road, Assessor's Map R22 Parcel 18, to construct a porch 40 feet from the front property line in the R-F Zone

Mr. Greene stated that the house was built in the 1940s and they had been there 28 years; he stated that they would like to add a porch to their ranch house to give it some street appeal.

Mr. Dryzga and Mr. Greene addressed the criteria.

Mr. Dryzga opened the public hearing; no one spoke for or against the appeal; Mr. Dryzga closed the public hearing.

Mr. Craft moved to approve the appeal as presented; Mr. Massengill seconded.

Voted 5-0

h. Appeal No. 2408 - A Limited Reduction of Yard Size Appeal by Fred and Kathleen Bayley, 76 Jones Creek Drive, Assessor's Map U22 Parcel 23, to expand their second story 12 feet from the side property line in the B-1 Zone

Mr. Jim Fisher, of Northeast Civil Solutions, stated that the Bayleys had received a variance for a shed earlier this year. He stated that they now wanted to add a second story to the existing house; he stated that there was an existing second story but it was very limited with the narrow pitch of the roof and any change in the roof line needed a Limited Reduction because of the side property line.

Mr. Dryzga and Mr. Fisher addressed the criteria as presented in writing.

Mr. Dryzga opened the public hearing; no one spoke for or against the appeal; Mr. Dryzga closed the public hearing.

Mr. Maroon moved to approve the appeal as presented; Mr. Massengill seconded.

Voted 5-0

i. Appeal No. 2409 - A Miscellaneous Appeal by Fred and Kathleen Bayley, dba Bayley's Camping Resort, 275 Pine Point Road, Assessor's Map R86 Parcel 4, to demolish and rebuild a two story office/retail/laundry building in the R-2 Zone

Mr. Dryzga noted that the Planning Board had sent a positive opinion and that the applicant would have to return to that Board for site plan review.

Mr. Jim Fisher, of Northeast Civil Solutions, displayed the entire site with the existing building; he stated that the appellants had received approval for expansion of the campground and this building was out-moded and was about one-third the size needed for efficient operation of the business. Mr. Fishers stated that this was a nonconforming building in the R-4 Zone and needed approval for expansion; he stated that the structure would meet all the required setbacks. He stated that, if approved by this Board, site plan approval by the Planning Board would be required.

Mr. Dryzga noted that all criteria had been addressed in writing. To a question from Mr. Craft, Mr. Fisher replied that there was additional undeveloped land but he did not know the Bayleys' plans. Mr. Dryzga stated that this was not a big change and the structure would be brought into the building envelope.

Mr. Dryzga opened the public hearing; no one spoke for or against the appeal; Mr. Dryzga closed the public hearing.

Mr. Maroon moved to approve the appeal as presented; Mr. Loisel seconded.

Voted 5-0

Mr. Dryzga called a recess at 8:40 P. M.; the meeting resumed at 8:50 P. M.

j. Appeal No. 2410 - A Variance Appeal by Michael Emmons, 3 Morning Street, Assessor's Map U1 Parcel 103, to demolish the second floor and the steps and rebuild with nonconforming setbacks in the R-4 Zone

Mr. Jim Fisher, of Northeast Civil Solutions, stated that there were three components to this appeal; he displayed the site and stated that the building needed substantial maintenance which was exacerbated by

the Patriots' Day storm. He stated that the house had a center chimney which was separated from the building by the storm; he stated that the structure was on piles and they would like to move the chimney to the outside of the house toward Morning Street. He stated that the landing that was now in the proposed location of the chimney would be removed and the chimney would be closer to the structure.

Mr. Fisher stated that the principal entrance had a landing with no covering and they would like to put a roof over the landing for safety reasons which would not change the footprint. Mr. Fisher stated that they would raze the second story and rebuild in a more conforming way by changing the roof style.

Mr. Dryzga confirmed that this was a Variance Appeal because the site was in the Shoreland Zone. Mr. Dryzga and Mr. Fisher addressed the criteria as presented. Mr. Fisher noted that the house was unusable because the chimney was no longer operable and the house would have to be moved to repair the chimney but the DEP would not allow expansion because of the Shoreland Zone.

To a question from Mr. Maroon, Mr. Fisher replied that they had allowed for the flood zone requirements. To a question from Mr. Loisel, Mr. Paul Leddy, the builder, replied that separate footings were not an option because they could not dig in the dune to stabilize the structure. Mr. Maroon stated that this was a responsible solution to a big problem.

Mr. Dryzga opened the public hearing; no one spoke for or against the appeal; Mr. Dryzga closed the public hearing.

Mr. Massengill moved to approve the appeal as presented; Mr. Maroon seconded.

Voted 5-0

k. Appeal No. 2411 - A Practical Difficulty Appeal by Robert Tourangeau, 1 Burnham Woods Circle, Assessor's Map R68 Parcel 32, to construct a new sunroom and deck 35 feet from the front property line in the R-2 Zone

Mr. Jason Johnson, of True North Home Systems, stated that the appellant wanted to add a sunroom with a deck on the front of the house 35 feet from the front property line. Mr. Dryzga confirmed that this property had two front setbacks. Mr. Grysk stated that this house was a challenge when it was built and was very tight to the property lines and a surveyor was required to verify the setbacks.

Mr. Dryzga and Mr. Johnson addressed the criteria.

Mr. Dryzga opened the public hearing; no one spoke for or against the appeal; Mr. Dryzga closed the public hearing.

Mr. Maroon asked whether there was a standard size deck; Mr. Grysk replied that there was now an entrance landing and there was no other place for a sunroom. Mr. Grysk stated that because the house was built after 1991, the Limited Reduction of Yard Size Appeal could not be used. To a question from Mr. Maroon, Mr. Johnson replied that the sunroom was mostly glass with a three foot deck around it.

Mr. Maroon moved to approve the appeal as presented; Mr. Craft seconded.

Voted 5-0

l. Appeal No. 2412 - A Miscellaneous Appeal by Hospice of Southern Maine, Hunnewell Road, Assessor's Map U48 Parcel 34, for two additional directional signs to be placed on Route One at the corners of Route 114 and Payne Road

To a question from Mr. Dryzga, Mr. Grysk replied that the Department of Transportation allowed a number of directional signs but Scarborough allowed only two with the possibility of a total of four with Zoning Board approval.

Ms. Jody Degan, of Hospice of Southern Maine, noted that traffic flow was an issue when they were approved and she felt it would be responsible to get two more directional signs to aid traffic flow; she distributed proposed sign location maps. Mr. Grysk noted that the best route to the site was through Hunnewell Road from Green Acres and the extra signs would show that route. Ms. Degan stated that the primary sign would be on Route One across from Maine Medical Center and she was open to where the two extra signs might go to force the traffic to use Route One and not Gorham Road and Maple Avenue. Mr. Grysk noted that the Ordinance prohibited directional signs on Haigis Parkway; he stated that he could work out the location with the appellant.

Mr. Dryzga opened the public hearing; no one spoke for or against the appeal; Mr. Dryzga closed the public hearing.

Mr. Loisel asked whether there was a downside to these signs and whether they would set a precedent. Mr. Maroon stated that the Hospice House was hidden away and the signs would give better directions for traffic patterns to alleviate the previous issues of the neighbors.

Mr. Maroon moved to approve the appeal as presented with the location of the two extra signs to be determined by Mr. Grysk and the appellant; Mr. Massengill seconded.

Voted 5-0

m. Appeal No. 2413 – A Special Exception Appeal by Philip and Rhonda Mullin, 1 Den Drive, Assessor’s Map R22 Parcel 3201, to create an Accessory Unit in the R-F Zone

Mr. Mullin stated that they wanted to create an Accessory Unit off the back of their garage.

Mr. Dryzga stated that the appellant had addressed the Special Exception criteria in writing. Mr. Dryzga read the Registration of Accessory Units form.

Mr. Dryzga opened the public hearing; no one spoke for or against the appeal; Mr. Dryzga closed the public hearing.

Mr. Loisel moved to approve the appeal as presented; Mr. Maroon seconded.

Voted 5-0

n. Appeal No. 2414 – A Special Exception Appeal by David and Hrysoula Vocal, 14 Colonel Dow Drive, Assessor’s Map R46 Parcel 248, to create an Accessory Unit in the DVR Zone

Mr. Elliott Chamberlain, of Chamberlain Construction, stated that he was under contract to build a home for the Vocals who wanted an in-law apartment.

To a question from Mr. Dryzga, Mr. Grysk replied that the Ordinance had been updated to allow Accessory Units in the DVR Zone. Mr. Grysk noted that not all lots could have Accessory Units because they were not large enough.

Mr. Dryzga and Mr. Chamberlain addressed the criteria. Mr. Dryzga read the Registration form.

Mr. Dryzga opened the public hearing; no one spoke for or against the appeal; Mr. Dryzga closed the public hearing.

Mr. Maroon moved to approve the appeal as presented; Mr. Massengill seconded.

Voted 5-0

o. Appeal No. 2425 – A Practical Difficulty Variance by Ray and Jaye Smith, 244 Black Point Road, Assessor’s Map U15 Parcel 15, to construct an addition 17.03 feet from Marsh Rock Circle in the R-2 Zone

Mr. Larry Vose, of LTV Builders, explained that he had been issued a building permit for an addition but subsequently determined that there were no footings and now wanted to build a new home. Mr. Grysk stated that the original appeal was for an addition but the foundation was bad and they would have to jack up the house; he stated that the changes were minor and the best thing to do was tear down the old house and rebuild. He stated that the house would be the same distance from the street.

Mr. Dryzga noted that the criteria had been addressed in writing.

To a question from Mr. Loisel, Mr. Grysk replied that because the structure of the house was inferior it was better to demolish it, and the proposed structure could not be moved over because the addition which was permitted earlier was under construction.

Mr. Dryzga opened the public hearing; no one spoke for or against the appeal; Mr. Dryzga closed the public hearing.

Mr. Maroon moved to approve the appeal as presented; Mr. Loisel seconded.

Voted 5-0

p. Appeal No. 2426 – A Variance Appeal by Pat Donahue, 58A Jones Creek Drive, Assessor’s Map U22 Parcel 27, to construct an addition and deck 7.2 feet from the side property line in the B-1 Zone

Mr. Jim Fisher, of Northeast Civil Solutions, showed the site and noted that it was completely nonconforming because there were two houses on one lot. He stated that the houses were grandfathered and Mr. Donahue wanted to split the property to bring it into conformity. Mr. Fisher stated that the property would meet all the criteria, but with a functional division of property, the two lots had to be equitable and the property line would be right down the middle of the property. He stated that this lot line would eliminate the nonconformance on the lot to the west but, because of the location of the lot line between the houses, the house on the east side would not meet the 15 setback to the new property line. Mr. Fisher explained that if this variance were not given, whenever the appellant wanted to do something to either house he would have to return to the Zoning Board to expand a nonconforming structure.

Mr. Fisher stated that the appellant wanted to change the roof pitch on the rear one-story porch of the house to the west which would need a 7.2 foot variance; he stated that the appellant also wanted to move the stairs to get away from the existing maple tree by moving them to the middle of the house.

Mr. Dryzga noted that the appeal presented to the Board by the staff asked only for the 7.2 foot variance at the side of the property. Mr. Dryzga asked who approved a functional division; Mr. Grysk replied that that was a court ruling and could be done by changing the deeds. He stated that a functional division would eliminate the grandfathering but if a variance were granted the lots would not be nonconforming

and the appellant would not have to return to the Board each time he wanted to add something in a conforming location. Mr. Dryzga confirmed that one house would be conforming because the structure would meet all the setbacks.

To a question from Mr. Craft, Mr. Fisher replied that they did not need approval for the division of the lot but the lot would become a legal nonconforming lot with the Board's approval of the requested variance. Mr. Dryzga noted that the only request was for the house to the east and the whole variance needed to be rewritten. To a question from Mr. Dryzga, Mr. Grysk replied that once the division was done, the lots would be conforming but a lot line could not be created that made one of the lots nonconforming so that lot would lose its grandfathering and the whole property would become nonconforming and would need Miscellaneous Appeals for any work to be done on a nonconforming lot.

To a question from Mr. Maroon, Mr. Fisher replied that if they recorded the variance and the lot line at the same time it would all be one variance. Mr. Loisel asked whether that would be a self-created hardship; Mr. Fisher replied that he did not think that applied because of the functional division due to the court ruling. Mr. Maroon stated that, at face value, the appellant wanted a deck on the left property and the Board should make a decision on that. Mr. Dryzga stated that he saw this as two variances. Mr. Grysk stated that this was not self-created because there are two dwellings on the lot and creating two lots would make the site more conforming. Mr. Maroon stated that the Board was forced to address two variances because nothing was advertised for the eastern lot. Mr. Fisher stated that the Board could go forward with the published variance and he would return to raise the roof angle and do the functional division in the meantime. Mr. Dryzga stated that he liked the idea of putting the two structures on conforming lots. Mr. Loisel stated that he would like to hear what the town attorney thought about the self-created hardship.

Mr. Dryzga and Mr. Fisher addressed the criteria as presented in writing.

To a question from Mr. Maroon, Mr. Fisher replied that the roof was existing over the deck and they simply wanted to put deck planking on the roof. Mr. Craft confirmed that the footprint would not change. Mr. Maroon confirmed that there would be not stairs to the deck on the outside of the building. To a question from the Board, Mr. Grysk replied that the Variance Appeal had to be used in a Shoreland Zone. Mr. Maroon stated that he had no problem building up. Mr. Loisel stated that he had a hard time putting a deck on a house in light of the reasonable return criteria. Mr. Mike Richmond, architect, stated that they could go up with a shallower roof but it would be less appealing and what they proposed would be much cleaner aesthetically. Mr. Maroon stated that, from a practical point of view, it was a reasonable return to make the deck look right. Mr. Dryzga stated that they were splitting hairs over 20 square feet of deck.

Mr. Dryzga opened the public hearing and read two letters in favor of the appeal. No one spoke for or against the appeal; Mr. Dryzga closed the public hearing.

Mr. Massengill moved to approve the appeal as presented to the Board by the town for the deck only on the house to the west side of the property; Mr. Maroon seconded.

Voted 5-0

5. Zoning Board Comments

Mr. Maroon stated that he was sorry to hear that Mr. Dryzga was leaving the Board; he stated that the Board was losing a good member and a good chairman and he would be greatly missed.

6. Adjournment

The meeting was adjourned at 10:40 P. M.

