

**Minutes of the Town of Perinton
Zoning Board of Appeals
Meeting of February 25, 2013**

Zoning Board Members present

Thomas Young, Chairman
Sam Space
Vincent Arcarese
John N. Moose
Seana Sartori
Robin Ward Ezell

Absent

Melissa L. Barrett

Conservation Board Members present

Chris Fredette
Robert Salmon

Town Officials present

Robert Place, Town Attorney
John Beck, Zoning Officer
Lori Stid, Zoning Board Clerk

Mr. Young called the meeting to order at 7:30 pm, introduced the Board and staff present, and explained the procedures.

1. Bryan Pelkey, owner of property located at 23 Red Barn Circle, requesting a variance of the Town of Perinton Zoning Ordinance Section 208-14 G, to allow an accessory building to be 280 sq. ft. (14'x20') instead of 200 sq.ft., and to allow the proposed accessory building to have a 0' rear setback instead of 5 feet. Said property being located in a Residential A District.

He states that on February 19, 2013, he submitted to the Town a revised map showing the proposed location of the shed with a side setback of 6' and 15-20' from the rear property line. He is no longer requesting a 0' rear setback and he will meet the Town setback requirements. His only request at this time is for an oversized accessory building. He needs the larger size as he has five children and he lives on the canal and has kayaks and canoes to store. He has a garage, but wishes to use that to house vehicles.

Ms. Ezell asked if he was planning to build as per the elevations that were submitted to the Town in the application. Mr. Pelkey states that he may put a metal roof on it, rather than a shingle roof. The garage front will face the canal so it is not facing his neighbors. There will not be any windows. It will be hidden with shrubbery.

Mr. Place states that a neighbor, David Hahn, submitted comments to the Town on this request as follows:

I am the homeowner at 21 Red Barn Cir. Brian (owner of 23 Red Barn) and I spoke yesterday. The only concern I have with the planned shed is its proximity to our common lot line. 5' is appropriate for smaller sheds, but a 14'x20' building is larger than a typical one-car garage. Brian has indicated he will make every effort to visually soften the building using plantings, etc. This is an excellent solution to any concerns re the size. And he has also indicated he plans to locate the building 7' off the side lot line. But since code only requires 5' for a shed, there is no requirement that he do so. I understand plans change. As such, I would like to see a condition of the approval be that this building be placed more than 5' off the lot line due to its size.

I will not be in attendance for the meeting on Monday. Call me with any questions.

Thanks.

Mr. Place asks the applicant if he is willing to commit to some landscaping that could be a condition of approval.

Mr. Pelkey states that he is working with Heinrich Fischer, a landscape architect, who is doing a landscape design for his property and he cannot commit to anything without consulting his landscape architect. It will be evergreen and not deciduous.

Mr. Young states that as he reads the letter from the neighbor, he is not concerned with landscaping as Mr. Pelkey has told him that he will screen it. This area is already very wooded. His understanding of the neighbors concerns has more to do with location of the shed to the common lot line. The whole yard is going to be landscaped; not just this building.

Mr. Space feels that Mr. Fischer will do a good job of screening. Mr. Place states that CED can't enforce screening if they don't know what is being asked for. The ZBA could require landscaping subject to the approval of CED.

Ms. Ezell does not feel it is necessary to require screening. Mr. Pelkey states that he is willing to come in 6', as there is a tree there, and he doesn't want to take any more trees down.

Mr. Young asked if the exterior of the accessory building would match the color of the home. Mr. Pelkey states no; he wants to go with a more natural look; it is stained board and batten. It will be less visible with the trees and will look more natural.

Mr. Young asked for questions or comments from the Conservation Board.

Mr. Salmon states that the Conservation Board issued comments as follows:

Conservation Board made a site visit to the property described in Application #1. After viewing on-site conditions, CB has no concerns with this application.

Mr. Young asked for questions or comments from CED. Mr. Beck states that CED issued comments on this request as follows:

The applicant recently revised his request. The proposed shed will meet the setback requirements, and the only variance requested is that the proposed shed be 280 sq. ft. (14 x 20) instead of 200 sq. ft.

The CED Dept. has no concern with this request, a building permit to be issued within 6 months.

Mr. Beck states that DPW has no concerns with this request.

Mr. Young asked for questions or comments from Attorney Place, and there were none.

Mr. Young asked for questions or comments from the audience, and there were none.

There was discussion amongst the Board members if the side setback would be required to be 6' or held to the Code at 5', and it was determined that the Board preferred it to be 6'. There was discussion if CED would determine what type and amount of landscaping would be appropriate for screening, and it was determined that it would not need to be a condition of approval. The applicant states that he wants it to look nice and has hired a landscape architect. It was discussed if having a landscape architect for the screening would be a requirement, and it was determined that it would not need to be a condition of approval.

Mr. Space made a motion to grant a variance of the Town of Perinton Zoning Ordinance Section 208-14 G, to allow an accessory building to be 280 sq. ft. (14'x20') instead of 200 sq.ft., subject to the following conditions:

1. The proposed shed will meet the Town setback requirements. The applicant is no longer requesting a setback variance to the rear lot line. The only variance being requested is that the proposed shed be 280 sq. ft. (14 x 20) instead of 200 sq. ft.
2. The side setback to the property at 21 Red Barn Circle shall be no less than 6' from the property line.
2. Applicant to obtain a building permit within 6 months from meeting date. If you do not obtain your building permit prior to this date, the variance is null and void. If you decide that you are no longer going through with the proposal that required the variance on the property, please notify the Town (Zoning Board of Appeals Clerk) in writing of your decision, and we will mark the variance null & void.

There is no other way to obtain the benefit being sought. This applicant's home is adjacent to the Erie Canal and the Town encourages use of the canal and this accessory building will be for storage of kayaks and canoes. There will not be an undesirable change to the character of the neighborhood; the applicant has hired a landscape architect to put in landscaping around the building. There will not be any adverse physical or environmental effects caused by granting this variance; the applicant has a number of trees on the property and the natural look of this structure will blend in well.

Mr. Moose seconds the motion.

Motion carries 6 – 0.

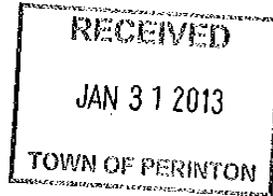
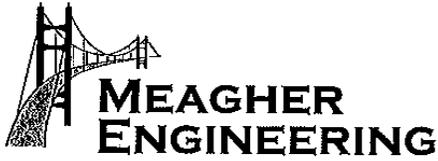
2. Meagher Engineering, as agent for 7278 Pittsford Palmyra Road, LLC, (David Cerrone), owner of property located at 7278 Pittsford Palmyra Road (Fitch Construction), requesting the following variances of the Town of Perinton Zoning Ordinance:

1. Section 208-42 D, to allow the front setback for a proposed sunroom display addition to set 57 feet from the front property line instead of 85 feet, and further to allow an additional proposed sunroom display addition to set 14 feet from the west side property line and to allow a proposed loading dock to set 12 feet from the east side property line, both instead of 30 feet.
2. Section 174-9 D of the Sign Code, to allow two building mounted signs on the main showroom building and two building mounted signs on the warehouse building (total 4 signs), in addition to the existing freestanding sign.
3. Section 174-6 D of the sign Code, to allow a proposed sign to extend 5'6" from the building face instead of 18".

4. Section 174-10 A of the Sign Code, to allow the existing freestanding sign to have a 0' front setback instead of 25 feet.

Said property being located in a Commercial District.

Ms. Meagher presented the application to the Board, as per her letter of intent as shown below:



PO Box 76 VICTOR, NEW YORK 14564
PH (585) 924-7430 FAX (585) 924-7457

Jan. 30, 2013

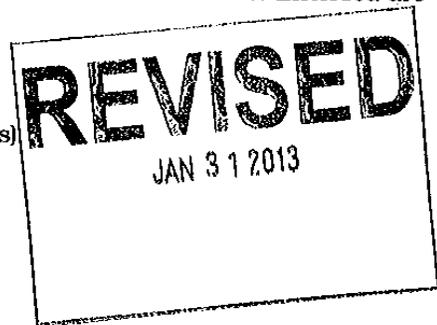
Zoning Board
Town of Perinton
1350 Turk Hill Rd
Fairport, NY 14450

RE: **Zoning Board Meeting Feb. 25th, 2013**
7278 Pittsford-Palmyra Road, LLC Site Plan
Fairport, NY 14450

Dear Chairman & Honorable Members:

We are submitting plans for review at the Zoning Board Meeting Agenda on Feb. 25th, 2013. The following is our request for the area variances of side setback of 12 ft. & front setback of 57.4 ft. for the sunroom display additions & loading dock addition, as well we are requesting a variance for the building mounted signage located at the address referenced above. Enclosed are the following:

- \$30 Review fee
- Site Plans (12 sets)
- Architectural Elevations of existing & proposed (12 sets)
- Zoning Board Application (12 sets)
- Zoning Criteria Letter (12 sets)
- SEQR Form



The building mounted signs are as follows:

Showroom/Office Building:

- Linear Footage: Building Frontage (south façade): +/-60.67 If existing, 81.67 If proposed
- Square Footage: Building Frontage (south façade): +/-1,210 sf existing, 1,435 sf proposed
- Proposed Signs: (1) South Façade: 6'-10" W x 3'-8" H (ellipse) = +/-19.33 sf
(1) East Façade: 4'-2" W x 2'-2" H (ellipse) = +/-6.97 sf

Tenant Building:

- Linear Footage: Building Frontage (south façade): +/-41.00 If existing, 41.00 If proposed
- Square Footage: Building Frontage (south façade): +/-770 sf existing, 770 sf proposed
- Proposed Signs: (1) South Façade: 6'-10" W x 3'-8" H (ellipse) = +/-19.33 sf
(1) West Façade: 6'-10" W x 3'-8" H (ellipse) = +/-19.33 sf

Zoning Letter

1

This should conclude our project for a favorable review. Please contact our office with any questions or comments.

Sincerely,
MEAGHER ENGINEERING, PLLC



Wendy L. Meagher, PE

Encl.

With her is Dave Cerrone, owner of the property. She states that the Planning Board has granted final site plan approval. They have received a C of A from HAC from the 2/12/13 meeting for both of the building mounted signs, as well as the ground mounted sign and setbacks. (see below)

The Historic Architecture Commission is in support of the signage package as proposed by Fitch Construction, with the stipulation that the monument sign be externally lit, and with the caveat that approval will be forthcoming from the Planning and Zoning Boards. Further:

- Approval is for the monument sign as described and two (2) building mounted signs on the retail building
- Catalog cuts of monument sign lighting fixtures will be submitted by Fitch Construction to the proper board for review
- Fitch Construction has withdrawn its application for signage on the warehouse building

The retail is on the west side and the warehouse, where the owner keeps his products and supplies is on the right. Over half of the property is existing mitigated wetlands. The only location to place any additional parking is in the front of the site. They proposed an additional 12 parking spaces to create a total of 27 spaces. The monument sign is located in the same location as the existing monument sign. They are only proposing to replace the sign face. Because the state took some land for the highway a number of years ago, they cannot meet the front setback for the signs. As far as the signs, they are only requesting the monument sign and the two building mounted signs on the retail. They are not asking for the warehouse building signs; they are withdrawing that request. According to the Planning Board, because they don't have a specific tenant in mind for this warehouse building, they are not going to apply for that signage at this time. She showed the Board photos of other businesses in Town that have both building mounted and ground mounted, as well as photos of other businesses that don't have building mounted signs that have a lot of lettering in their windows which takes away from the building. There are two buildings on this property and the idea is to keep trucks and traffic to one area and customers coming to another area. They would like the building mounted signs to direct folks what entrance to come to for the retail.

Mr. Young states that they will review these requests in two parts; request # 1, and requests #'s 2, 3, and 4.

Mr. Young states that the Planning Board submitted comments as follows:

PB - Section 208-42 D, to allow the front setback for a proposed sunroom display addition to set 57 feet from the front property line instead of 85 feet, and further to allow an additional proposed sunroom display addition to set 14 feet from the west side property line and to allow a proposed loading dock to set 12 feet from the east side property line, both instead of 30 feet.

The Planning Board recommends approval of the aforementioned variances because the requests are minimal and they follow the approved site plan. The applicant has worked hard to not disturb the existing wetlands in the rear of the property and they have compromised to reach this optimal solution. The applicant is also occupying a long time vacant building and making it more aesthetically pleasing.

1. *Section 174-9 D of the Sign Code, to allow two building mounted signs on the main showroom building and two building mounted signs on the warehouse building (total 4 signs), in addition to the existing freestanding sign.*
2. *Section 174-6 D of the sign Code, to allow a proposed sign to extend 5'6" from the building face instead of 18".*
3. *Section 174-10 A of the Sign Code, to allow the existing freestanding sign to have a 0' front setback instead of 25 feet.*

The Planning Board recommends deferral of the aforementioned variances until ALL Planning Board members can review the application. The Board members that were present had mixed views on these items and could not reach a final determination. This was due to the lack of 2 ea Planning Board members at the

meeting. Once the Planning Board can fully review the application and reach a determination in either direction, we would then be able to comment accordingly.

Ms. Meagher states that the Board was missing two members and was unable to carry a motion. Mr. Place states that is correct; the Board needs a consensus to get a vote.

Mr. Moose like the design and feels this will be a good improvement to the area. The other Board members agree.

Mr. Young asked for questions or comments from the Conservation Board. Ms. Fredette thanks the applicant for their respect for the wetlands.

Mr. Young asked for questions or comments from CED. Mr. Beck states that CED issued comments as follows:

- **Variance request #1 :**
 1. **The applicant received final site plan on February 6th, 2013. The CED Dept. recommends approval of this variance.**
 2. **A building permit is to be issued within one year.**
- **Variance request # 2 , #3 , and #4:**
 1. **The applicant appeared before the Planning Board on February 6th, 2013. The Planning Board did not approve any signage because there was not a majority vote, and therefore, the CED Dept. recommends deferral on any sign variance request until such time the Planning Board can reach a determination.**
 2. **The applicant withdrew its request at the Planning Board to have the future tenant signs on the warehouse building. The applicant should withdraw this request from the Zoning Board as well.**
 3. **The CED does not support the request to allow the front building-mounted sign in addition to the existing freestanding sign.**

Mr. Young asked for questions or comments from the audience, and there were none.

Mr. Arcarese made a motion to grant the following variances of the Town of Perinton Zoning Ordinance Section 208-42 D, to allow the front setback for a proposed sunroom display addition to set 57 feet from the front property line instead of 85 feet, and further to allow an additional proposed sunroom display addition to set 14 feet from the west side property line and to allow a proposed loading dock to set 12 feet from the east side property line, both instead of 30 feet, subject to the following conditions:

1. Applicant to obtain building permit within one year from meeting date. If you do not obtain your building permit prior to this date, the variance is null and void. If you decide that you are no longer going through with the proposal that required the variance on the property, please notify the Town (Zoning Board of Appeals Clerk) in writing of your decision, and we will mark the variance null & void.

There is no other way to obtain the benefit being sought. The Planning Board and CED support this request. The applicant has worked hard to not disturb the existing wetlands in the rear of the property and they have compromised to reach this optimal solution. The applicant is also occupying a long time vacant building and making it more aesthetically pleasing. This will not be an undesirable change to the character of the neighborhood. There will not be any adverse physical or environmental effects created by granting this variance.

Ms. Ezell seconds the motion.

Motion carries 6 – 0.

Mr. Arcarese made a motion to defer decision on the following variances of the Town of Perinton Zoning Ordinance:

1. Section 174-9 D of the Sign Code, to allow two building mounted signs on the main showroom building, in addition to the existing freestanding sign.
2. Section 174-6 D of the sign Code, to allow a proposed sign to extend 5'6" from the building face instead of 18".
3. Section 174-10 A of the Sign Code, to allow the existing freestanding sign to have a 0' front setback instead of 25 feet.

all, subject to the following conditions:

1. The applicant has formally requested of the Zoning Board and the Planning Board to remove from the application request, the two building mounted signs on the warehouse building.
2. Decision is deferred until ZBA meeting of 3/25/13, to allow time for the Planning Board to make a determination on the sign application that was submitted to the Planning Board, as the Board members that were present had mixed views on these items and could not reach a final determination due to the lack of 2 Planning Board members at the meeting.

Ms. Ezell seconds the motion.

Motion carries 6 – 0.

3. Edwin Summerhays, L.S., as agent for Anne M. Talarico, Executrix of the Estate of Leonard H. Talarico, owner of property located at 10 Thayer Woods Drive (Lot 2 Thayer Woods Subdivision), requesting a variance of the Town of Perinton Zoning Ordinance Section 208-38 C and 208-38 I, to allow a proposed single family dwelling to set 57 feet from the front property line instead of 70 feet as per original approved subdivision zoning (Residential AA). Said property being located in a Residential Sensitive District.

Mr. Young recuses himself from this application, due to a conflict of interest. He steps down from the dais. Mr. Arcarese will act as Chairman for this request.

Mr. Summerhays presents his application to the Board, as per his letter of intent as shown below: He states that on January 21, 2013, he modified the request to the Zoning Board of Appeals from 55 feet to the 57 feet that is shown on the site plan.

Consideration Factors
Lot 2, Thayer Woods Subdivision

A. Whether the variations requested are substantial in relation to the requirement set forth in the Zoning Ordinance:

The requested variance from 70 to 55 feet represents a 21% decrease in the zoning ordinance requirement. It is very common throughout the community that private drives in flag lots do not have the same front setback requirements that a lot would have that fronts a public highway. Though this parcel does not fit the definition of a flag lot as it lacks the narrow strip of land connecting it to the public highway, it could be interpreted to have the characteristics of a flag lot that would have the same front setback requirements of a flag lot. It should be noted that the subdivision map nor the site plan map show minimum front setback requirements.

B. Whether an undesirable change will be produced in the character of the neighborhood or whether a detriment to adjoining properties will be created, if the variance is granted:

We don't believe an undesirable change will occur by granting this variance as the proposed location of the house places it in the geographically natural location for a house on this lot. The geographical natural location for a house on this lot is the top of a knoll just west of the steep slopes. Shifting the proposed house location would result in grading that would conflict with the natural terrain of the parcel.

C. Whether the benefit sought by the applicant can be achieved by some reasonable alternate method, other than a variance:

The buildable area of this lot is bounded on the east by steep slopes. Maintaining a 70 foot setback will result in the house being constructed fifteen feet further into the steep slope district which would require a large amount of fill on the steep slope. Any house constructed in this fill would require significant stabilization.

D. Whether the alleged difficulty was self created: (this will not necessarily preclude the granting of an area variance)

Lot 2 of the Thayer Woods Subdivision was created in 1982 when the zoning designation was AA. The site plan for this lot shows a house constructed over the bank of the steep slope area. Since its approval, zoning and building codes have changed that have placed more restrictions on construction within a RS (Residential Sensitive) District. These new restrictions are not caused by the actions of the land owner.

E. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood district:

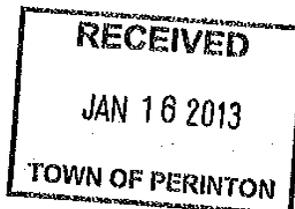
Granting this variance will not have an adverse affect on the environmental characteristics of the neighborhood. Not granting this variance will have a significant affect on the environmental characteristics.

EDWIN A. SUMMERHAYS
LAND SURVEYOR
2509 BROWNCROFT BLVD., SUITE 209
ROCHESTER, NY 14625
585/586-1450 (Phone/fax)

January 15, 2013

Lori Stid
Zoning & Planning Board Clerk
Town of Perinton
1350 Turk Hill Road
Fairport, NY 14450

Re: Lot 2, Thayer Woods
Response to adjacent owner letters



Dear Lori:

I met with town staff on February 17, 2011 to discuss the town requirements to re-new the town approval for the construction of houses on Lots 2 and 4 of the Thayer Woods Subdivision. The zoning change from AA to RS was discussed and I was informed that the AA setback requirements in place at the time of the subdivision approval would be adhered to. It is not uncommon for towns across the state to update zoning regulations in areas of approved subdivisions and it is a long standing practice to approve the construction of houses in the areas of non-conformance caused by zoning changes. For example, it should be noted that the house situated on Lot 3 is twenty feet from the property line and approximately fifty percent of the house was constructed within the LDD area. The basement elevation is approximately fourteen feet lower than the highest ground elevation at the northwest corner of the house. These issues were discussed and approved at the town meetings.

The location of the proposed house submitted with this application is situated in the same vicinity as the proposed location shown on the original site plan and only twenty five percent of the house is within the LDD zone. The proposed basement elevation is eleven feet lower than the highest ground elevation near the southeasterly corner of the house. We flipped the original house configuration placing the garage on the southerly side of the house to fit the natural grade of the lot. If the garage was on the northerly side as shown on the original plan, there would be significantly more encroachment into the LDD area. We have moved the leach field northerly to accommodate the drive on the south side, however, the location of the three percolation tests remain within the leach field area as required by the health department. We will move the location of the drywell closer to the house to eliminate its construction on the steep slope. The construction of the house with the roof gutters and leaders directing rain water to the drywell will reduce the area of the watershed draining to the roadside swale.

There have been numerous comments regarding the removal of trees and the instability of the steep slopes. The disturbance within the LDD area is approximately 2800 square feet vs the possible 4200 square feet of disturbance within the LDD area as

shown on the 1982 site plan. This represents one third less disturbance than what was originally approved. The proposed grading in two small areas adjacent to the side of the house result in a final grade of one on two which matches the existing steep slope grade. In these areas, we are specifying an erosion control blanket with a two year longevity to allow the stabilization of ground cover such as grass, myrtle or ivy.

The first item of the erosion control notes on sheet two of the site plan states that the total area of disturbance for this project is 0.3 acres which is much less than the one acre thresh hold for filing a notice of intent with the NYS Department of Environmental Conservation. This plan conforms with the town standards and the NYS DEC Standards and Specifications for Erosion and Sediment Control for erosion control.

Because Lot 2 and 3 are over five acres in size, single family use and a minimum disturbance within the LDD area was approved with the original subdivision in 1982. The town extended the approval for development within the LDD district for Lot 3 in 2004. Therefore, this application is requesting the same considerations taken into account during the updated site plan approval of Lot 3.

The traffic concerns of the neighbors are temporary in nature. The private drive was widened to sixteen feet and upgraded to town load standards in 2004 to accommodate town codes as well as the increase in traffic due to the construction of houses on Lots 3 and 6. Along with the width and stone base improvements, bypasses were also installed. Except for the occasional delivery of building supplies, the majority of the traffic will be the vehicles of the construction contractors. There should not be any more traffic than what occurred with the construction of the dwellings on Lots 3 and 6.

Questions regarding the size of the residence proposed has also been raised. The cost requirements in the tract restrictions is blank, but does stipulate that the dwelling size and habitable area shall conform to the town codes, which the proposed dwelling does.

I hope that my comments will alleviate some of the concerns expressed by the Thayer Woods community. I have made every attempt to reduce the disturbance to the environmentally sensitive nature of the neighborhood and its quiet residential attributes. I do agree with the comments received in that this application should receive the same considerations given to the previous updated site plans. I am looking forward to working with the the town planning board and staff to produce the best design possible that protects the environment, the community, and my client. Please call if you have any questions.

Very truly yours,



Edwin A. Summerhays

When he submitted his application to the Planning Board, it was his understanding of a flag lot was that the front setback was not an issue. A flag lot has a little strip of land that goes out to the public highway and anytime there was a private drive situation, there was no front setback requirement for this zoning. He discussed this with Town staff back in February, 2011 and no one brought this up to him as an issue. He was unaware that this was an issue until shortly before the most recent Planning Board meeting. He submits into the record an 8 1/2 X 11, which shows current house location and the approximate area that the house is in the LDD zone and the approximate area of the grading that would be completed in the LDD zone. The 2nd sheet is the original site plan which shows the proposed house being constructed in the LDD zone and the area allowed for approved disturbance. He also submits aerial photos of the three houses in the area. He acknowledges receipt of a number of letters from existing neighbors regarding this application that were forwarded to him by Town staff. He wants to determine what is best for the neighborhood. Is it better for the neighbors for the applicant to be held to a 70' setback and move the house back and construct more in the LDD? At 57' it encroaches less into the LDD. The house most impacted is the house on Lot 3. He states that the aerial photos show that their decks and backyards and the majority of their views are directed to the rear of the property, not to the front. Lot 3 still has a view front from the front window looking down the road, and they can see cars coming, although he assumes that they spend almost of their time in the back portion of the house enjoying that view.

Mr. Arcarese states that the Town received a number of comments from neighbors regarding this request, as shown below:

Below letter from Archer's was received by the Town on 2/20/13.

Archer Response to Lot 2 Thayer Woods Drive Zoning Variance

Page 1 of 3

**Stephen and Cornella Archer
16 Thayer Woods Drive
Fairport NY 14450**

20 February 2013

To: Town of Perinton Zoning Board of Appeals.

Re: Thayer Woods Drive Lot 2 Zoning Variance Application

In response to this application, we are writing to oppose the request for a 55 feet front setback for Lot 2. The four existing houses in Thayer Woods Drive all have front setbacks exceeding the Residential AA requirement of 70 ft. Number 16 has a front setback of 155 feet.

We strongly encourage members of the Zoning Board to visit the site and see for themselves why we object so strongly to this requested variance.

These comments are in response to the points made in the Consideration Factors document provided by Mr Summerhays on 16 January, 2013.

A. Whether the variations requested are substantial in relation to the requirement set forth in the Zoning Ordinance:

To quote from Mr Summerhays: "this parcel" (Lot 2) "does not fit the definition of a flag lot as it lacks the narrow strip of land connecting it to a public highway".

I agree with this - it is manifestly true.

Therefore I cannot accept Mr Summerhays' subsequent hopeful suggestion that Lot 2 "could be interpreted to have the characteristics of a flag lot". It does not, as he already states. It therefore cannot qualify for the reduced minimum front setback requirements allowed for a flag lot.

Mr Summerhays notes that neither the subdivision map nor the site plan show minimum front setback requirements. This would obviously be because the standard Residential AA front setback requirement of 70 feet would be known to all and not require to be called out. Note that these documents do not call for any relaxation of the 70 foot setback, as might be expected if such a reduction were intended for Lot 2.

B. Whether an undesirable change will be produced in the character of the neighborhood or whether a detriment to adjoining properties will be created, if the variance is granted:

All other houses in Thayer Woods Drive have a setback of significantly greater than 70 feet. It is clear that siting the proposed variance of only 55 feet front setback from the private drive will create an anomaly that will "stick out like a sore thumb" in the development, adversely affecting the values of the other houses.

Lot 2 is located half way down Thayer Woods Drive with no structures before it from Bluhm Road. This makes its setback particularly crucial to the character of the neighborhood. With only a 21 foot side setback to the house on Lot 3, this will give the appearance on approaching that the Lot 2 residence is sited in front yard of Lot 3.

The reduced front setback will clearly cause an undesirable, unacceptable change in the character of the neighborhood and this request should be denied.

C. Whether the benefits sought by the applicant can be achieved by some reasonable alternative method, other than a variance:

Mr Summerhays states that maintaining the 70 foot setback will result in the house being constructed fifteen feet further back into the LDD and that this would be a bad thing.

Yet in his letter to the town of 15 January, 2013, prior to the Planning Meeting, Mr Summerhays stated that "only 25 per cent of the house is in the LDD area", compared to the "approximately 50 per cent" of Lot 3 having been constructed within the LDD area. So, the Town of Perinton clearly will approve a significant increase in the area of the proposed house being in the LDD - this is the way to accommodate the 70 foot setback, as Mr Summerhays describes in the application.

Again, the 70 foot front setback should be upheld through this alternative, with Lot 3 having provided the precedent. There is no need for a variance.

D. Whether the alleged difficulty was self created:

Yes, the difficulty was self-created by the late Dr Talarico. It is apparent to any rational person that Lot 2 includes insufficient surface building land for any reasonably-sized

house. Lot 2 never included enough surface building land without significant infringement into the LDD. It still does not. Asking for a variance to overcome this self-created difficulty and squeeze in the proposed house is unreasonable and should be rejected.

I am aware of no efforts by the applicant to explore other courses of action - such as offering Lot 2 for sale to owners of adjacent lots as additional (non-building) land.

E. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood district:

Granting this variance will have a significant adverse affect on the character of Thayer Woods Drive simply by placing the house so close to the private drive. This will negatively effect Lot 3 in particular through its proximity (21 feet side setback) and forward placement.

As the proposed house has less than half the habitable area of all the other houses in the development, placing this already out of character structure in such a prominent position will negatively affect the property values of all the other houses in Thayer Woods Drive. The charm and beauty of this neighborhood will be ruined!

Rejecting this variance will have no greater environmental affect than has already been approved for Lot 3 (see point C above). Therefore I see no reason why a setback variance should be granted for this reason.

For all the above reasons, I feel that the standard Residential AA standard front setback of 70 feet should be applied to Lot 2 and this requested variance be denied.

Yours sincerely,

Stephen Archer

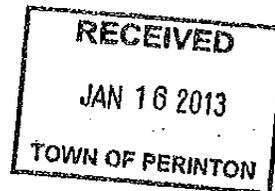
Attachments:

1. Consideration Factors, Lot 2 Thayer Woods Subdivision
2. Letter dated 15 January 2013 from E. Summerhays to Lori Stld, Zoning and Planning Board Clerk, Town of Perinton.

EDWIN A. SUMMERHAYS
LAND SURVEYOR
2509 BROWNCROFT BLVD., SUITE 209
ROCHESTER, NY 14625
585/586-1450 (Phone/fax)

January 15, 2013

Lori Stid
Zoning & Planning Board Clerk
Town of Perinton
1350 Turk Hill Road
Fairport, NY 14450



Re: Lot 2, Thayer Woods
Response to adjacent owner letters

Dear Lori:

I met with town staff on February 17, 2011 to discuss the town requirements to re-new the town approval for the construction of houses on Lots 2 and 4 of the Thayer Woods Subdivision. The zoning change from AA to RS was discussed and I was informed that the AA setback requirements in place at the time of the subdivision approval would be adhered to. It is not uncommon for towns across the state to update zoning regulations in areas of approved subdivisions and it is a long standing practice to approve the construction of houses in the areas of non-conformance caused by zoning changes. For example, it should be noted that the house situated on Lot 3 is twenty feet from the property line and approximately fifty percent of the house was constructed within the LDD area. The basement elevation is approximately fourteen feet lower than the highest ground elevation at the northwest corner of the house. These issues were discussed and approved at the town meetings.

* NOTE THIS!

The location of the proposed house submitted with this application is situated in the same vicinity as the proposed location shown on the original site plan and only twenty five percent of the house is within the LDD zone. The proposed basement elevation is eleven feet lower than the highest ground elevation near the southeasterly corner of the house. We flipped the original house configuration placing the garage on the southerly side of the house to fit the natural grade of the lot. If the garage was on the northerly side as shown on the original plan, there would be significantly more encroachment into the LDD area. We have moved the leach field northerly to accommodate the drive on the south side, however, the location of the three percolation tests remain within the leach field area as required by the health department. We will move the location of the drywell closer to the house to eliminate its construction on the steep slope. The construction of the house with the roof gutters and leaders directing rain water to the drywell will reduce the area of the watershed draining to the roadside swale.

There have been numerous comments regarding the removal of trees and the instability of the steep slopes. The disturbance within the LDD area is approximately 2800 square feet vs the possible 4200 square feet of disturbance within the LDD area as

shown on the 1982 site plan. This represents one third less disturbance than what was originally approved. The proposed grading in two small areas adjacent to the side of the house result in a final grade of one on two which matches the existing steep slope grade. In these areas, we are specifying an erosion control blanket with a two year longevity to allow the stabilization of ground cover such as grass, myrtle or ivy.

The first item of the erosion control notes on sheet two of the site plan states that the total area of disturbance for this project is 0.3 acres which is much less than the one acre thresh hold for filing a notice of intent with the NYS Department of Environmental Conservation. This plan conforms with the town standards and the NYS DEC Standards and Specifications for Erosion and Sediment Control for erosion control.

Because Lot 2 and 3 are over five acres in size, single family use and a minimum disturbance within the LDD area was approved with the original subdivision in 1982. The town extended the approval for development within the LDD district for Lot 3 in 2004. Therefore, this application is requesting the same considerations taken into account during the updated site plan approval of Lot 3.

The traffic concerns of the neighbors are temporary in nature. The private drive was widened to sixteen feet and upgraded to town load standards in 2004 to accommodate town codes as well as the increase in traffic due to the construction of houses on Lots 3 and 6. Along with the width and stone base improvements, bypasses were also installed. Except for the occasional delivery of building supplies, the majority of the traffic will be the vehicles of the construction contractors. There should not be any more traffic than what occurred with the construction of the dwellings on Lots 3 and 6.

Questions regarding the size of the residence proposed has also been raised. The cost requirements in the tract restrictions is blank, but does stipulate that the dwelling size and habitable area shall conform to the town codes, which the proposed dwelling does.

I hope that my comments will alleviate some of the concerns expressed by the Thayer Woods community. I have made every attempt to reduce the disturbance to the environmentally sensitive nature of the neighborhood and its quiet residential attributes. I do agree with the comments received in that this application should receive the same considerations given to the previous updated site plans. I am looking forward to working with the the town planning board and staff to produce the best design possible that protects the environment, the community, and my client. Please call if you have any questions.

Very truly yours,



Edwin A. Summerhays

Consideration Factors
Lot 2, Thayer Woods Subdivision

A. Whether the variations requested are substantial in relation to the requirement set forth in the Zoning Ordinance:

The requested variance from 70 to 55 feet represents a 21% decrease in the zoning ordinance requirement. It is very common throughout the community that private drives in flag lots do not have the same front setback requirements that a lot would have that fronts a public highway. Though this parcel does not fit the definition of a flag lot as it lacks the narrow strip of land connecting it to the public highway, it could be interpreted to have the characteristics of a flag lot that would have the same front setback requirements of a flag lot. It should be noted that the subdivision map nor the site plan map show minimum front setback requirements.

B. Whether an undesirable change will be produced in the character of the neighborhood or whether a detriment to adjoining properties will be created, if the variance is granted:

We don't believe an undesirable change will occur by granting this variance as the proposed location of the house places it in the geographically natural location for a house on this lot. The geographical natural location for a house on this lot is the top of a knoll just west of the steep slopes. Shifting the proposed house location would result in grading that would conflict with the natural terrain of the parcel.

C. Whether the benefit sought by the applicant can be achieved by some reasonable alternate method, other than a variance:

The buildable area of this lot is bounded on the east by steep slopes. Maintaining a 70 foot setback will result in the house being constructed fifteen feet further into the steep slope district which would require a large amount of fill on the steep slope. Any house constructed in this fill would require significant stabilization.

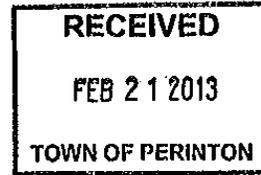
D. Whether the alleged difficulty was self created: (this will not necessarily preclude the granting of an area variance)

Lot 2 of the Thayer Woods Subdivision was created in 1982 when the zoning designation was AA. The site plan for this lot shows a house constructed over the bank of the steep slope area. Since its approval, zoning and building codes have changed that have placed more restrictions on construction within a RS (Residential Sensitive) District. These new restrictions are not caused by the actions of the land owner.

E. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood district:

Granting this variance will not have an adverse affect on the environmental characteristics of the neighborhood. Not granting this variance will have a significant affect on the environmental characteristics.

Mark and Joanne Drexler
7 Thayer Woods Drive
Fairport, New York 14450



Ms. Lori Stid
Zoning and Planning Board Clerk
Town of Perinton
1350 Turk Hill Road
Fairport, NY 14450

February 20, 2013

Re: Thayer Woods Drive Lot 2 Zoning Variance Application
Zoning Board of Appeals Hearing, February 25, 2013

Dear Board Members,

We live at 7 Thayer Woods Drive (Lot 6) of the Thayer Woods Drive subdivision. We are writing in opposition to the pending application for a variance to allow the construction of a residence on Lot 2, 57 feet from Thayer Woods Drive.

Thayer Woods Drive has six subdivided lots, located on a ridge near the southern boundary of Perinton. (A seventh lot of the original subdivision is on Thayer Road, and will not likely be affected by this application.) Four of the lots are improved by two story, single family homes, all of which measure more than 3,000 square feet. Of the four existing homes, none is closer to Thayer Woods Drive than 75 feet. Of the three within 500 feet of the proposed variance, the closest is 85 feet. The Lot 2 site plan approved by the Planning Board is for a single story 1,677 square foot home, to be located 57 feet from Thayer Woods Drive. The nature and position of the proposed home is inconsistent with the pattern of development in the neighborhood. If built 57 feet from the road, it would become the most prominent architectural feature on Thayer Woods Drive, and would devalue the other homes in the subdivision. In addition, the view from the front window of the home on Lot 3 would be the proposed house next door.

Our subdivision is zoned as Residential Sensitive, but when the subdivision was approved in

1982, the zoning class closest to what applied at that time is Residential AA. The Residential AA front setback requirement is 70 feet. In view of the 85 foot or more setback of the three homes within 500 feet of the proposed home, even a 70 foot setback would place the proposed home much closer to Thayer Woods Drive than its neighbors. Because of its inadequate building pad, Lot 2 should not have been approved in 1982. To allow a 57 foot setback now would just compound that error.

Although all six lots are five acres or larger, the flat, buildable part of each one is a small fraction of that. The flat part of Lot 2 is the smallest in the subdivision, by far. The flat portion of the lot between Thayer Woods Drive and the steep dropoff at the edge of the ridge measures only about 75 feet on the north side of the proposed house, and is too shallow to build on. By creating Lot 2 as a separate subdivision lot, the original developer, Anne Talarico's late husband, created his own hardship. He could have used this land to augment other lots in the subdivision, making them larger and more valuable.

The Talaricos have already reaped a handsome return many times the cost of purchasing the land which comprises the subdivision. According to Monroe County Clerk records, the parcels which comprise the subdivision, and other vacant land, were purchased at a total cost of about \$48,000. They have sold off lots from it for more than \$350,000. In addition to Lot 2, Mrs Talarico also still owns Lot 4, a building lot she has listed for sale at \$89,500. If practical and topographic constraints prevent the development of Lot 2, the Talaricos will still have received more than a reasonable return on their investment. In addition, the variance application contains no indication that the adjacent property owners are unwilling to purchase the lot without a variance. It is entirely possible that Mrs. Talarico could achieve a reasonable return on Lot 2 by selling it to adjacent owners. In Chandler Property, Inc. v. Trotta 9 A.D.3D 408 (2d Dept. 2004) the court upheld the denial of area variances, in part, because the applicant had not explored the possibility of selling a substandard vacant lot to an adjoining owner, eliminating the need for a variance. See also Sofo v. Egan, 57A.D. 2d 841 (2d Dept.

1977).

The applicant may argue that the 13 foot variance requested is so minimal that it should not be difficult to approve. In Four M Construction Corp. v. Fritts, 151 A.D. 2d 938 (3d Dept. 1989) the court sustained the denial of a variance for a lot which was only 10 feet short of the minimum required lot width. In arriving at its decision the court noted that the lots in the neighborhood were generally 15 to 20 feet wider than the minimum. The Appellate Division opined that "proof that petitioner's lot was uniquely substandard in the surrounding neighborhood was alone sufficient to show adverse impact." Id at 941.

The need for the requested variance was created by the Talaricos themselves. The manner in which they chose to divide the lots in the subdivision has left them with a substandard lot that is difficult or impossible to develop. This Board has previously denied developers' variance applications due to self created hardships, e.g. Amco Development, Inc. v. Zoning Board of Appeals of the Town of Perinton, 185 A.D. 2d 137 (4th Dept. 1992). In that case a property owner applied for a variance based on the fact that two thirds of the subject parcel consisted of wetlands or wetlands buffer areas. The subject parcel was the last one left after the owner had divided the property into four lots, and sold the other three for residential development. This Board's denial of the requested variance, in part due to self created hardship, was affirmed on appeal. The Court of Appeals arrived at a similar result in Cherry Hills Homes, Inc. v. Barbieri, 28 N.Y. 2d 381 (1971). Although this consideration on its own may not defeat the variance application, a balancing of this and the other four factors discussed in this letter requires the denial of the requested variance.

In Paragraph A of the Consideration Factors included in this variance application, the applicant incorrectly argues that this lot has the characteristics of a flag lot. The applicant offers no explanation for the alleged similarity, and none exists.

In Paragraph B, the applicant claims that the proposed variance will not produce an undesirable

change in the character of the neighborhood or detriment to adjoining properties. The justification offered for this claim is that the proposed location of the house is its “natural location” on Lot 2. The applicant has not addressed this consideration at all in its application, and has replaced it with a plea to build the house on the only possible location available on this substandard lot.

Paragraph C argues that there is no reasonable alternative to the variance, but does not address a possible sale of Lot 2 to an adjoining owner without a variance.

In Paragraph D the applicant claims that the hardship which necessitates the variance was not self created because the zoning and building codes have changed since the 1982 approval of the subdivision. The applicant's method of dividing lots created a lot that did not even comply with the less strict 1982 front setback requirement when it was created. The Talaricos could have drawn the subdivision lot lines in a manner that would not create a substandard lot. They chose not to do so. This is the very definition of a self created hardship.

In Paragraph E the applicant incorrectly states the variance will not have an adverse effect on the neighborhood. This ignores the significant aesthetic and economic detriment to the neighborhood the variance will create. “Although no single statutory consideration is determinative in assessing an area variance application, the effect of the requested variance on the neighborhood and community is a critical aspect of a zoning board's responsibility in balancing the relief requested against the interests of the residents of the municipality.” Lopez v. Zoning Board of Appeals of the Village of Hempstead, 2010 Slip Op 31732 (u) (Sup. Ct. Nassau Co. 2010). In ascertaining the potential effects of variances on a neighborhood, one of the most significant factors is the extent to which the condition for which relief is sought is consistent with the prevailing conditions in the area. McKinney's Practice Commentaries, Town Law §267-6 p.174 (supp. 2010). In this case, all other properties in the neighborhood substantially exceed the 70' minimum required front setback. The requested variance is

inconsistent with the neighborhood standards, and must be denied. See, Allstate Properties LLC v. Zoning Board of Appeals of the Village of Hempstead, 49 A.D. 3d 636 (2d Dept. 2008) and Grigorski v. Zoning of the Town of Hempstead, 52 A.D. 3D 832 (2d Dept. 2008).

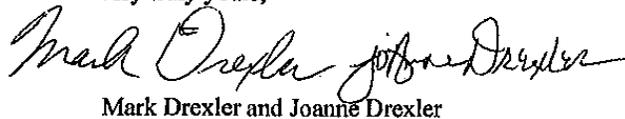
The proposed variance would produce a home significantly out of line with the neighboring homes. The small front setback requested would not be in keeping with the character of the neighborhood, and would create an unnecessary hardship for the owners of the other homes in the subdivision.

Under Town Law §267-6 (3)(b) the variance application must be denied.

1. The granting of the variance application would produce an undesirable change in the character of the neighborhood by placement of a home half the size of the other homes in the most prominent position on the street. The other homes in the subdivision all have front setbacks greater than the required 70' minimum, and the three homes within a 500' radius of the proposed variance are 85' or more from Thayer Woods Drive.
2. The applicant has provided no reason to believe she cannot achieve a reasonable return by selling the subject parcel to adjacent owners without the need for a variance. Indeed, the Talaricos have already received a healthy return on their investment from the sale of other lots subdivided from the land they purchased.
3. The requested variance is substantial, at almost 20% of the required 70' minimum. It is two thirds of the next smallest front setback in the neighborhood.
4. The proposed variance would have a substantial negative impact on the aesthetics and value of the other homes in the subdivision, and adversely affect the character of the neighborhood.
5. The difficulty which prompted the variance application was created entirely by the Talaricos themselves.

For the above reasons, the variance application must be denied.

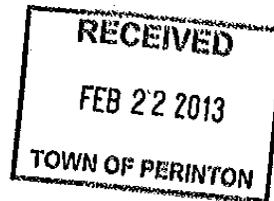
Very truly yours,



Mark Drexler and Joanne Drexler

February 22, 2013

Town of Perinton
Planning & Zoning Board
1350 Turk Hill Road
Fairport, NY 14450



Subject: Opposition to Thayer Woods Drive Lot 2 Zoning Variance Application

Dear Board Members:

We live at 1 Thayer Woods Drive. We are writing to oppose the pending application for a variance to build a home on lot 2 57 feet from Thayer Woods Drive as opposed to the required 70 feet.

1. The granting of the variance application would result in a very undesirable change to our neighborhood. The proposed home, half the size of existing homes in the neighborhood, would be in the most prominent position on the street with a significant negative impact to the home next door on lot 12.
2. The applicant has other options for her property to achieve a reasonable rate of return on her investment and to avoid a variance to the setback rules. The property can be sold for a similar value to adjacent land owners, keeping the property in its natural state, protecting the integrity of the neighborhood and the environment.
3. The variance requested is substantial. It is two thirds of the next smallest front setback in the neighborhood.
4. An approved variance would have a substantial negative effect on the values of the other properties and change the character of the entire neighborhood.
5. The reason for the setback application is self created by the Talaricos. They chose, by virtue of their own decisions, to create a non-conforming lot that clearly requires a variance for a home to be constructed.

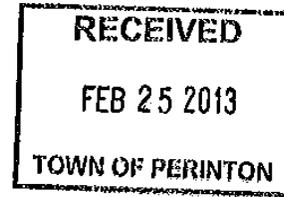
This application must be denied.

Sincerely,

A handwritten signature in cursive script that reads "Michael & Cheryl Whyte".

Michael & Cheryl Whyte
1 Thayer Woods Drive

Town of Perinton
Attn: Zoning Board of Appeals
1350 Turk Hill Road
Fairport, New York 14450



Variance Application For Lot 2 Thayer Woods Drive

February 22, 2013

Zoning Board of Appeals,

As owner of 12 Thayer Woods Drive in Fairport, New York (formerly Lot #3 Thayer Woods Drive), I am writing to express my **strong opposition** to the variance application submitted for Lot 2 Thayer Woods Drive. My home is adjacent and closest to the proposed new house and I will be most directly impacted by this proposed variance. The applicant is requesting a front setback variance from 70' to 57'; this represents an 18.6% variance to the applicable Residential AA standard and is 35' in front of the setback on my existing home.

All of the existing homes in the Thayer Woods subdivision are 3000 SF or greater and have been thoughtfully placed on the lots to provide a spacious natural environment. One of the primary reasons that the current residents chose the Thayer Woods subdivision (and paid for 5+ acre lots) was for the spacious and private environment that exists today. Each of the existing homes not only complies with the Residential AA standards but far exceed the minimum thresholds. A home built to the bare minimum standards would be noticeably different than the existing homes; granting the requested 13' / 18.6% variance would significantly alter the character of the neighborhood. The proposed home is already materially different than existing homes:

- It is one story vs. two.
- It is half the size of existing homes.
- Based on the size of the usable portion of the lot (0.3 acres), the home will have a crowded appearance.

A reduced setback requirement will further compound these issues and will make this home the most prominent & noticeable house in the subdivision. This will have a significant, undesirable impact on the character of the neighborhood.

Another point to consider is that the setback of the existing, adjacent home (12 Thayer Woods) is ~ 95' from the private driveway. A house built to the minimum Residential AA standards will be in the front view from this home. Granting an 18.6% variance will further compound this already undesirable situation and will in effect place this home almost entirely in the front yard of 12 Thayer Woods. This would block the northwest view from 12 Thayer Woods Drive and create an undesirable appearance as this home is approached.

The proposed building area of Lot 2 is simply not large enough to support a home. This hardship was self-imposed as the current owner / developer of this lot designed a non-conforming lot. This lot should be valued at and sold as vacant property.

To summarize, as the owner of the home adjacent to the proposed house, I **strongly oppose** granting the 13' / 18.6% front setback variance for the following reasons:

- It will negatively change the character of the neighborhood.
- It will have a direct and negative impact on the view from my home.
- It will have a direct and negative impact on the appearance of my home.
- It will have a direct and negative impact on the value of my home and the other homes in the Thayer Woods subdivision.
- The hardship that may exist was self imposed.
- There are other alternatives for the seller which will not harm them financially.

The costs of granting this variance far outweigh any benefits and for the reasons stated above the Zoning Board of Appeals should deny the requested variance.

Sincerely,

M. Scott Erickson

Michael Scott Erickson

cc:
James A. Marino, esq.

Mr. Arcarese asks if there is a buyer for this lot at the present time. Mr. Summerhays states he was contacted originally by an architect who was approached by the potential buyer, who had a signed contract with Mrs. Talarico to purchase the lot. This house is his design. Mr. Summerhays states that once he did the surveying, it showed that by flipping the house and having the garage on the right that it fits better on the lot. The potential buyer attended the Planning Board meeting last month and was very discouraged by what he heard, and he has since withdrawn his purchase offer for the property. Mrs. Talarico has an interest to sell the lot and it is in her interest to market this as an approved building lot and that is why she continued to pursue the variance.

Mr. Arcarese asks what happens if a potential buyer comes in and wants a completely different type of house. What if they prefer to into the LDD more; it is an approved building lot, they could do that. Mr. Summerhays states that is possible. This decision boils down to what is best for the neighborhood and this lot. By granting the variance, it would create less disturbance and it does not block views from the house on Lot 3. This proposal is not for a two story house; it is for a 1 ½ story house. This proposal would not be a massive presence in the neighborhood. Mr. Arcarese states that the slope is quite pronounced. He would have concern with pushing it back into the LDD.

Mr. Moose states that this is a balancing test. He feels that there would be an undesirable change to the character of the neighborhood by granting this variance. He understands that the Town has to allow a home on this lot, as this is an approved building lot.

Mr. Place asks if Mr. Summerhays knows what it would add to the cost to build this back more in the LDD and keep it at 70' as opposed to 57'. Mr. Summerhays states that grading and excavation into the LDD is much more expensive and would be more difficult to stabilize after. It is possible, but more expensive. It would also depend on

the size of the home. Mr. Summerhays states that he doesn't get involved in how much it costs to move earth. A project like that, there would have to be an engineer who would do that.

Ms. Ezell asks if the applicant is asking them to approve a variance for a non-existent house that may never be built. She feels that because it is a buildable lot that eventually something will be built here, but she thinks it is not appropriate to grant a variance for a blue print of a house that may never be built. She prefers to wait until there is a purchase offer for a layout of a home that someone intends to build.

Mr. Summerhays asks if it is better for his client for him to withdraw the request or to leave the application open and have it be denied without prejudice. Mr. Place states that it doesn't really matter; either way leaves the applicant in the same place. Back in 1982 when this was approved, site plan was not required for this lot. Town Code specifically states that if it was approved as a subdivision lot, then it is a developable lot.

Chris Fredette states that the Conservation Board supports the variance, as they don't want the home to go further back into the LDD, even though it is allowed as this parcel is over 5 acres.

Mr. Summerhays states that the variance would be for the footprint only; not the home or the design of the home. The site plan also approves a footprint.

Mr. Arcarese states that the Town received comments from the Planning Board on this request as follows:

The Planning Board recommends approval of this variance. This lot was approved back in 1982, and it contains more than 5 acres, so the applicant is permitted to construct a residence on this lot. The Planning Board granted final site plan approval for this lot at our 01/16/2013 meeting, and the house pad location shown on the approved plan is consistent with the applicant's request for a 57' front yard setback. Approving the front setback variance will minimize the disturbance of LDD on the lot, because there are much greater slopes at the rear of the lot than at the applicant's proposed house pad location.

Mr. Arcarese asks for questions or comments from CED. Mr. Beck states that the DPW issued comments as follows:

We support the request to allow the front setback to be 57' instead of 70', as we believe that by pushing the house back any further would encroach into the steep slope area, requiring special construction practices, and also create a disturbance to the slope that would be difficult to stabilize.

Mr. Beck states that CED issued comments as follows:

- 1. This is a pre-existing, non-conforming lot that was approved in 1982. Section 208-38 I of the Town Code allows for development of this lot. The Planning Board granted site plan for this lot approval on January 16th, 2013.**
- 2. The CED Dept. supports this request because it will move the house forward resulting in minimizing disturbance to the steep slope area.**
- 3. A building permit is to be issued with one year.**

Mr. Beck states that the site plan that was granted by the Planning Board expires within one year of granting the same.

Mr. Summerhays asks what the Zoning Officer's determination is for a definition of is it the intent of the code to have a front setback for a front setback requirement off of a public highway versus a private drive whether or not there is a strip of land going out to the street or not, and whether that question can be answered tonight. He doesn't expect that there would be an answer tonight, but he would like an investigation to be done into the answer for that. Mr. Beck states that he has already made an interpretation on that and feels that this lot is not a flag lot as it did not front out to a public road; therefore a variance is required. If it was a flag lot scenario, then the side setbacks would also apply.

Mr. Place states that this is a buildable lot. He acknowledges receipt of a number of letters from neighbors which oppose this request, which are a part of the record. He would like to know what the additional cost of construction would be to build more into the LDD and what impact that would have on the environment and the neighbors. He states it is not unusual to approve a footprint and the property owner is not required to have a buyer to obtain site plan approval for a lot.

Mr. Summerhays states that he is withdrawing his request before the ZBA, and will delay until there is something more substantial. He thanks the Board and Town staff for their time.

Discussion:

Minutes – 1/28/13

Mr. Young made a motion to approve the minutes of 1/28/13, as submitted.

Mr. Arcarese seconds the motion.

Motion carries 6 – 0.

There being no further business before the Board, the meeting adjourned at 8:38 PM.

Respectfully Submitted,

Lori L. Stid, Clerk