

SOMERSWORTH ZONING BOARD OF ADJUSTMENTS
MINUTES OF MEETING
February 5, 2020

MEMBERS PRESENT: Matt Keiser Chair, Richard Brooks, Brad Fredette,
Keith Perkins-Alternate, Coty Donohue
MEMBERS ABESENT: Glenn Garvin-Alternate, and Donald Routhier
STAFF PRESENT: Shanna B. Saunders, Director of Development Services,
Dana Crossley Planning Secretary

The meeting was called to order at 7:00PM.

Keiser appointed Perkins as a full voting member for the meeting.

1) Approval of the minutes:

A) No minutes for approval.

2) OLD BUSINESS

A) Any old business that may come before the Board.

i. No other business.

3) NEW BUSINESS

A) Diamond Capital LLC, is seeking a variance from Table 4.A.1 and 5.A.2 to allow the use of two unit dwellings on less land area than required for a property located at Old Rochester Road, in the Residential Single Family (R-1) District, Assessor's Map 67 Lot 09, ZBA#24-2019 **PUBLIC HEARING**

Keiser opened the public hearing at 7:01 PM.

Saunders stated the applicant seeks to subdivide a 25.2 acre lot, primarily in the R1 Zone (the back portion is in the Industrial Zone). The applicant is seeking a two part variance. She stated the first part of the variance is to allow duplexes (Table 4.A.1) which are not an allowed use within the R1 zone. The second part is to allow the density they are looking for on lots. She explained, weirdly enough, the R1 zone has density requirements (odd when the only housing type allowed are SFH) The density requirement when the lot has only water (no sewer) is 1.5 units per acre or 29,040 sf. per unit. Each lot they are proposing for a duplex has between 25,500 sf and 41,000 sf. So they are looking for a variance from the density requirement (Table 5.A.2)

Keiser asked if the lots as proposed meet the other dimensional requirements of 5.A.1. Saunders stated yes, as far as frontage.

Fredette asked if they know or if the applicant knows how much of the land is wetlands. Saunders explained the map provided with the wetlands delineation.

Applicant Statement: **FX Bruton** of Bruton & Berube Attorneys at Law of Dover and **Bob Stowell** of Trittech Engineering were in attendance to represent the application. Also in attendance was **Mike Savage** of Diamond Capital LLC.

Bruton stated there is an area of wetlands that have been recently mapped out. He stated that there was not a wetlands delineation done to the rear portion of the lot due to it being difficult to access. He stated he does believe there are uplands in the back. He stated this property abuts a mobile home park in the rear of the lot.

Bruton stated the request is to create 6 lots, 5 small lots and 1 large lot. He stated the intent is to have a single family home on one of the lots and duplexes on the rest of the lots. He stated they reviewed the dimensional requirements for the R2 district, which allows duplexes, and applied it to this plan. He stated in the R2 district, it is more restrictive in respect to frontage than the R1. He stated the R2 requires 150' for frontage and 135' of frontage is required by the R1. He stated the minimum lot size in the R1 is less restrictive than the requirement for the R2. He stated they designed the plan as if they were to meet the restriction of the R2 because that is where they could put a duplex on the lot by right. He stated one of the lots cannot meet the frontage requirements of the R2 district and that is why they are putting a single family home on lot 9-3.

Bruton stated they are seeking a density variance and the R1 looks at density based on gross lot area. He stated in the context the R1 is using the 25 acres would create a density of 37 units. He stated they are not asking for that. He stated when reviewing the net lot, 385,000 sf. of uplands and the calculation would then create 15 lots. He stated they are seeking 6 lots, 5 to have duplexes and 1 with a single family home. He stated they are seeking to design the project with respect of an appropriate sized lot for a duplex based on the R2 standards and to maintain a significant buffer. He stated there are no residents along the side of their lot and one of the abutters is a large condominium parcel and a mobile home park. He stated they want to take the majority of the largest lot (when subdivided) into conservation land to protect it in perpetuity. He stated by putting a portion of the lot into conservation it would prevent it from being further developed.

Bruton stated another important aspect of this request is to provide a housing stock that does not exist in great numbers in Somersworth. He stated duplexes would be sold at a higher rate than a condominium development that has many units. He stated duplexes would fit an area of housing that Somersworth does not have a lot of and it is not affordable housing but rather more affordable than a single family home. He stated it would fit the niche of people seeking a duplex in a rural area.

Bruton stated those are the three achievable goals with respect to approving this project that will carry on in future, preserve the buffering, preserve the open space that is out there and provide for the more affordable type of unit. He stated they were advised to reach out to DOT to ensure they were on board with the proposed plan. He stated he had communications with Jim Hewitt of District 6 and they are in support and would approve the driveways. He supplied a copy of the email for the record.

Bruton spoke to the merits of the application in regards to the variance criteria. He stated given the benefits of the appropriate buffer they intend to do and considering the conservation of land proposed, the location of this parcel is appropriate for duplexes. He stated that the area is comprised of a mobile home park with many uses and a condominium project on another abutting parcel. He stated it is consistent but far less intense than the surrounding uses. He stated with those considerations the granting of this variance would not diminish surrounding property values. He stated the units would be limited to a two bedroom unit. He explained the duplexes would in total be a 4 bedroom building and would not alter the characteristics of the neighborhood. He stated the lot is unique considering the surrounding lots. He stated the lot is 25 acres and in terms of the location of the surrounding more intent multi-tenant uses and makes the lot unique.

Bruton stated does not think there is a conflict or relationship between the purposes of the ordinance or the restrictions they are looking at. He stated denying the variance would be a hardship because they think it is a reasonable use for the area. He stated because they are not overcrowding the area and what the R1 area could technically allow far greater use, their proposal is a restrictive use. He stated therefor a denial would be a

hardship to the applicant. He stated the proposed use is reasonable based on the argument he has made. He highlighted his statements to affordability, preservation and buffering. He stated in this case the benefit to the public in denying this would suggest that this lot would be intensely developed as a subdivided lot. He stated in result they think the balance for the variance test for substantial justice falls to granting the variance. Bruton stated the use is not contrary to the spirit of the ordinance when keeping in mind the affordability, preservation and buffering in addition to that they took the criteria for an R2 district and applied it to an R1 lot for duplexes. He stated they applied more restrictive design criteria that were established by the City to be what is appropriate for duplex and applied it to the lot. He stated when they could not meet those criteria they sought a single family home rather than another duplex.

Bruton stated they did speak with abutters and at the time of discussion they were not against the request. He stated he understands people may change their mind. He stated Diamond Capital LLC purchased this lot in December of 2019. They are the owner of this lot. He stated he will submit to the record the property deed and the order that allowed the applicant to purchase the property.

Keiser opened for public comment:

Ben Baumann, 186 Blackwater: stated he recently moved to the area. He stated he was aware of the undeveloped lot in the area and had researched the lots zoning. He stated he knew it was R1 and was comfortable with that in the area. He stated when he spoke with the applicant he told them they were not in favor of the proposal. He stated the neighborhood is a single family neighborhood and the condo complex is far off of the road. He stated the surrounding area is larger lots and feels they are trying to fundamentally change the neighborhood.

Sammi Yahyapour, previous owner of property: explained to the Board his circumstance surrounding acquiring the property and the sale of the property. He stated he would have a law suit against the City should they approve this variance because he was previously told he could not develop this property.

James Solloway 283 Old Rochester Road, abutter: stated he owns 12 acres neighboring this subject lot. He stated it is not an R2 zone. He stated when this property was for sale previously, he inquired with the City, and was told it was R1, very wet and likely to be able to have one house. He stated due to that conversation he did not move forward with purchasing the property because they were not worried about multiple homes going in. He stated the condo association is setback and additionally the condo and mobile home parks were previously zoned as R3. He stated the request does not fit the area, there is not a duplex on this side of Route 108. He stated the applicant makes the argument that not granting the variance would create a hardship but he feels the applicant purchased a lot that he cannot develop. He stated the surrounding properties should not have to suffer from the applicant putting in duplexes so that they can get as much money as possible. He stated he has been on the property and the entire lot is wetlands. He stated his own lot is very wet. He stated someone would purchase a house on 25 acres of land. He stated the applicant does not need to put duplexes on the lot for affordability. He stated the neighbors have received three different stories of the proposal. He stated single family homes would fit the area not duplexes. He noted the four way intersection that this lot is adjacent to has seen several accidents with fatalities. He stated the safety of that intersection needs to be addressed before adding more traffic to the intersection.

Kelly Young, 188 Blackwater Road: stated she recently purchased a home in the area and the applicant did stop to inform them of the project. She stated she is concerned because the information they were told was different than presented tonight.

Jason Trussell, 182 Blackwater Rd: stated he purchased his home in this area because of the zoning. He stated he owns 5 acres and it is quiet and there is a stream that connects to the subject property. He stated there is no City sewer in this area and they would need septic systems and concerned it will drain into the wetlands.

Fredette clarified that there are 5 lots slated for development and the 6th lot in the back, that has wetlands, may or may not be buildable. Bruton stated they understand they can build upon it and knows for certain they can build on it. Fredette asked if the applicant had documentation that shows they can build on the 6th lot. Bruton stated Bob Stowell can walk the Board through the development.

Keiser clarified the large lot has frontage but requires no variance, they believe they can build a single family home on the lot. Bruton stated or a duplex. Keiser clarified where the single family home was going to be built. Bruton stated the lot that would be single family would be lot 9-3. He explained where the duplex would be constructed on the large lot.

Fredette stated if they develop this only as single family house, taking into account wetlands, how many single family homes could be created. Bruton stated he would defer to Stowell but it would likely be more lots than what they are requesting tonight.

Keiser asked without putting a road in, just putting lots on the frontage available how many single family homes can they construct.

Stowell stated without pursuing the other upland with a road, it would be the same 6 single family lots. He stated it would then be about pursuing the back portion of land for additional lots.

Fredette stated he is trying to understand how many units they would have with this current plan compared to what could be done by right with the R1 regulations.

Keiser stated this plan proposes 1 single family home.

Fredette stated under this plan there would be 11 dwelling units and if the variance is granted it would be nearly doubling the number of units that could be built (without installing a road).

Stowell stated at this time they have not investigated building a road. At this time, without the road, the single family homes would be similar layout to the duplex proposal.

Bruton stated the proposal is for duplexes that only have two bedrooms in each unit. He stated a single family home could be a 4 bedroom home and the septic systems would support that. He stated they are asking for what they have presented. He stated the intensity aspect, that it is being alluded to, is that with the limitation they have provided in their presentation there would be the same intensity or possibly less. He stated as a condition of the variance being granted they think the duplexes should be limited to be a 2 bed unit each. He

stated for affordability, it is not affordability for them to sell, he meant as an opportunity for the community. He stated it would be an opportunity for a person to buy a two unit dwelling with a lot of land around it.

Keiser asked why they want duplexes and rather than single family homes. Bruton stated they spoke with the Planner and determined it would be something that was missing from the current market in Somersworth. He stated it was their understanding duplexes would be a good option. He stated the proposed intensity of use is again similar to what would be permitted but it is a market the developer is trying to provide for.

Donohue asked for reiteration of the hardship regarding having a duplex instead of a single family home.

Bruton stated the hardship is two parts, he stated their unique circumstance is their lot size, the surrounding multi-density, multi-use lots as he has described. He stated the next step is if there is an unnecessary hardship. He stated the general purpose of the ordinance is to protect the health, welfare and safety and provide orderly development. He stated if they propose a project that has the same intensity of use, with the same number of bedrooms likely to be seen in a single family home, they hope they have met the test that it would be an unnecessary hardship to impose the restrictions. He stated it is a unique property and it is reasonable in light of the restrictions to develop it as proposed.

Brooks stated the zoning ordinance does not point to bedrooms but rather dwelling units. Bruton stated when it does, it relates to 37. He stated when the ordinance speaks to units or number of dwellings it uses a calculation, they are not asking for that, but the ordinance says 37. He stated he would like to focus on their real intensity request. Bruton stated he thinks it is reasonable to suggest the intensity of their request is the same as 6 single family homes. He stated it could be less than what they actually could do.

Brooks asked about the open space area. Bruton explained where the open space (conservation) area is proposed to be.

Stowell showed on the plans the wetlands area, building envelopes and proposed conservation area.

Brooks asked how the 37 units play into this. Bruton stated that is not a real number, they are asking for what they are proposing. He stated 37 units come from the ordinance calculation that would be allowed.

Fredette clarified on Map 67 Lot 9-2, the lot is 0.76 acres, and does that lot take into account the shared driveway. Stowell stated the driveway is part of the 0.76 acres and it would be an access easement for the lot behind.

Fredette clarified the road frontage for the larger lot. Saunders stated it does have 180' of road frontage.

Brooks asked how the variance would not be contrary to the public interest, since there have been a number of neighbors that have spoken against it and the zoning for this area is limited to an R1 zone. Bruton stated he is not trying to mischaracterize the request. He stated if the test for granting a variance is if people speak against the application, the Board would not be here, as it is not the test. He stated what was outlined by Stowell is a probability. He stated they are looking at these 6 lots, being restricted in number of bedrooms, would be the least intensive use for the lot. He stated if they are not granted the variance they would then look to what they could do in the R1 by right and it could be more intensive. He stated contrary to public interest is the test and the court says to look at if granting would alter the essential character of the

neighborhood. Bruton stated it would be reasonable to suggest a duplex with two bedrooms in each unit would be the same as a single family home. He stated the mobile home park and condominium lot are more intensive uses even though they cannot be seen from the neighborhood. He stated because this would be less intensive than a single family home subdivision and that they are limiting the bedrooms, that creates a comparable single structure to a single family home. He stated it fits the legal framework.

Keiser stated a fundamental item of zoning is the R1, R2, R3 districts. He stated fundamentally the area is zoned for single family houses, so how is putting duplexes in that area within the spirit of the zoning ordinance. Bruton stated the spirit of the zoning ordinance is to look at the protection of the health, safety and welfare of the community but to allow for orderly development. He stated if the Board's test of the spirit of the ordinance is based on what the ordinance allows them to do is contrary to what seeking a variance is.

Keiser closed the public hearing.

Discussion of reopening the public hearing. The Board has chosen to not reopen the public hearing.

Board Discussion: Fredette stated he has found several inconsistencies with the applicant's testimony. He stated there were no comments from abutters in support of the application. He stated he has concern since all abutter testimony has been against the request. He stated he has lived on Blackwater Road for 34 years, is familiar with the neighborhood, concurs this is an R1 single family home zone. He stated he gets the impression that there is a lot of talk of further development of the land but also a question of the wetlands. He stated he has a lot of concerns and does not see how the property is different enough to support the variance.

Brooks stated he agrees with Fredette's statements. He stated a variance needs to meet the criteria to be granted. He stated he does not see a hardship for the lot because the applicant could build several single family homes. He stated it has been mentioned they could potentially build more single family homes than what they are requesting in duplexes, therefore he does not see a hardship to allow duplexes. He stated for the argument that there are surrounding uses that are similar to the R2 district, those properties are setback and not clearly part of the neighborhood. He stated the neighborhood is clearly R1, single family lots. He stated he is having a hard time seeing the hardship.

Donohue stated he agrees with the statements by Brooks. He stated from his understanding the applicant could still develop single family homes on these lots. He stated he does not see how the hardship criteria is being met. He stated he hears the argument the applicant is making but the statute says that they are looking at the specific provision of the ordinance and not just the general purpose of the ordinance. He stated public welfare is considered but the ordinance is trying to restrict building and structures that are not single family homes. He stated he has not heard anything that meets the hardship.

Fredette stated he finds that the values of surrounding would be diminished. He stated there has been abutter testimony that they sought this area of Somersworth because it is an R1 district. He stated his parents live further down on Blackwater Rd. that has duplexes near their home and it does have a different character to the neighborhood than single family homes.

Keiser stated he has a concern regarding criteria 1, he thinks it would affect surrounding property values. He stated the adjacent properties are single family homes, duplexes can change the character of the neighborhood. He stated providing reasonable housing is not a criteria for a variance. He stated the lot may be unique in that it is large but it does not warrant the allowance of duplexes versus single family. He stated the fundamental of the zoning is R1, R2, R3 and yes there is times there is justification to allow exceptions. He stated in this case he does not see it, to him criteria 1, 3 and 5 have not been met.

Fredette stated the requirements set forth in zoning are minimums. He stated just because they have 25 acres does not mean every 25 acres lot should be divided into as many lots as possible. He stated being bigger than necessary does not create a hardship. He stated he agrees that criteria 1, 3 and 5 have not been met.

MOTION: Brooks stated, after review of the application, the file and all the information presented to the Board, I feel that 1, 3 and 5 of the five criteria have **NOT** been satisfied and I move that the request of Diamond Capital LLC for a variance from Table 4.A.1 to allow the use of two unit dwellings on less land area than required **be DENIED.**

The MOTION is SECONDED by Fredette.

The MOTION CARRIES by a 5-0 vote.

Discussion of 5.A.2 for the density requirements:

Fredette stated similar to his comments on the first part of this variance, this is an R1 zone and the testimony provided by the abutters and other mitigating discussion for the first part of the variance he feels granting this variance would diminish surrounding property values. He stated the public interest in his opinion is to honor the zoning ordinance as applied, unless there is a substantial mitigating circumstance which he does not see for this request. He stated he does not see an unnecessary hardship because the land is developable. He stated the public purpose of the ordinance is to limit development and keep it R1. He stated he does not have anything for the substantial justice criteria. He stated it is in the public interest to observe the spirit of the ordinance in this situation as stated in prior discussion.

Keiser clarified the lot size requirement in the R1 district. Saunders stated 4 of the 6 (because one would be a single family home) lots do not meet the density requirement to allow two units on the lot.

Fredette stated one of the lots does not meet the density requirements for even a single family home in the R1. Saunders explained that the lot meets the minimum lot size requirement which overrides the density for a single family home in the R1.

Brooks stated in Table 5.A.2, he sees residential single family requirements in units per acre, he asked for clarification on the lot size requirements. Saunders stated she has converted the requirements of units per acre to sf. in the memo provided.

Brooks stated since this property is not serviced by City sewer and has extensive wetlands, he has concern of the private septic systems with so much wetlands and thinks water preservation is important.

Fredette stated he agrees with Brooks. He stated they do not know a lot of the scope and intensity of the wetlands.

Keiser asked the Board what criteria the request does not meet.

Fredette and Brooks stated they felt criteria 2, 3 and 5 have not been satisfied.

MOTION: Donohue stated, after review of the application, the file and all the information presented to the Board, I feel that 2, 3 and 5 of the five criteria have **NOT** been satisfied and I move that the request of Diamond Capital LLC for a variance from Table 5.A.2 to allow the use of two unit dwellings on less land area than required **be DENIED**.

The MOTION is SECONDED by Brooks

The MOTION CARRIES by a 5-0 vote.

B) Tristan Govern, is seeking a variance from Section 18.B to allow a six (6) foot fence in the front yard area for a property located at 34 Lil Nor Ave, in the Residential Single Family (R1) District, Assessor's Map 24 Lot 33, ZBA# 01-2020 **PUBLIC HEARING**

Keiser stated Perkins has recused himself from this application. He stated therefor the Board is a 4 member Board and the applicant has the choice to continue the application to a further meeting for a full board. Govern stated he wishes to move forward with the 4 member board.

Keiser opened the public hearing at 8:41 PM.

Saunders stated, the property owner put up an illegal fence without permits. When required to submit a building permit, the permit revealed it was a 6 foot fence in the front yard area, as well as violating the 20' street line intersection setback. The property owner has since moved the fence 20' back, but the fence remains 6' in height.

Applicant Statement: **Tristen Govern**, property owner, attended the meeting to represent the application.

Govern stated he is seeking a variance to allow a 6' fence in the front yard area of his property. He stated this fence is a replacement of an old 4' picket fence that received an after the fact permit. He stated the fence was installed for the purpose of his kids playing outside. He stated as the children grew and observed more cars stopping beside the property it made the kids nervous and fear they would be taken. He stated they installed the 6' fence so that his children can play in their yard without fear of the passerby's or being taken. He stated the 6' also acts as a privacy fence for their dog. He stated when other dogs walk by his dog gets excited and wants to play.

Govern stated along Tates Brook Road there are at least 4 other houses that have fences within their front yard area. He stated there is a church across the street from him, the fence would not block anything but the toys in his yard. He stated the fence does not block sight of the road but rather causes you to have to creep up forward pass the stop sign because it is setback 15' from the corner of the road. He stated the fence would provide comfort to pedestrians to ensure his dog would not come after them. He stated it acts as a buffer to his dog barking. Govern stated with his home being on a main road and the church across the way the fence will ensure the safety of his family and the public. He stated he is in the military and gone often, the fence adds a level of comfort to ensure his kids are not taken away. He stated there are people at the church often, for the gatherings and teens that hang out there. He stated people have a direct view into their yard from the church parking lot. He stated to not have the 6' fence in the front yard area, creates a hardship because his kids are unable to play as they are scared. He stated people tend to pull over in front of his home in the right-

of-way to deal with text messages or phone calls. He stated the proposal is a reasonable one because the line of sight is clear and the fence conforms to the surrounding houses with 6' fences. He stated the fence will cause drivers to slow down as they turn into Lil Nor from Tates Brook. He stated by limiting the section of fence it reduces the area of yard that his children can play in. He stated to conform to the ordinance he would have to move the fence and all of the toys would have to be condensed in the area.

Gobern stated substantial justice would be done in granting the variance because his kids would be able to play safely without the fear of being taken. He stated his dog would be able to run in their yard without the fear of him neither escaping the yard nor scaring pedestrians as they walk by. He stated the fence would not affect the general public's safety because it creates privacy and safety for his family. He stated the fence is set back the required 23' in accordance with Section 19.18.C of the ordinance. He stated the supplied pictures are not the intended finished product of the fence. He explained he received the stop work order while constructing the fence and was instructed to get the proper authorization for the work. He stated since he is proposing to construct a 6' fence the permit was denied and thus is here for the variance request.

Keiser opened for public comment.

Dave Witham, 10 Rouleau Dr. City Councilor: stated when the fence in question began to be installed in the fall he received communications from concerned residents. He stated the residents that reached out to him expressed concern of the line of sight for drivers and aesthetics. He explained that when a car comes to a stop at the stop-bar along Lil Nor, one cannot see down Tates Brook Road to the left. He stated if you inch out towards Tates Brook Rd it creates a line of sight some. He stated he reviewed the Federal Highway standard for sight line, they measure line of sight from the edge of roadway. He stated he felt the fence is still in a location that obstructs line of sight. He stated he would suggest this fence be reviewed by the City Engineer for clear line of sight should it be approved. He stated he is not speaking in support or not support of the application.

Keiser asked how far the fence comes out along the driveway. Gobern stated about 16' towards Lil Nor. Keiser clarified how far the fence is from the property line corner. Gobern stated from the corner of the edge of the street, the fence sits back 23' along Tates Brook Road. Keiser asked what the estimated distance from the back corner of the applicant's home to Tates Brook Rd. Gobern stated about 40'. Keiser stated it appears to him from the back corner of the garage to Tates Brook Road the distance is about 15-20'. Gobern stated he did not know how far it was.

Fredette stated the Councilor spoke of the other variances for fences the Board has reviewed. He referenced a few of the previous fence approvals and the characteristic of the lots that made the lots unique. He stated to be in support of a variance he needs to know what is different of the applicant's lot from surrounding properties or other City properties that would make granting the variance sensible. He stated he is struggling to find a reason to grant this and what makes the lot unique.

Gobern stated a characteristic that makes his property unique is the Church across the street. He stated they have their weekly services, gatherings, masses and other events. He stated they have a large parking lot and it is used for multiple reasons, like just playing out in the front.

Brooks stated the dog was listed as a reason for the fence request. He asked if the applicant has considered alternate ways to contain the dog outside of a 6' fence. Gobern explained that the dog has not been able to be

contained by a chain or shock collar. He stated he was a dog trainer and did train the dog, but when his dog sees another dog he wants to play with cannot be contained.

Keiser clarified the applicant previously had a 4' fence. Gubern stated yes, a 4' picket fence. He stated even with the 4' fence, if someone stopped at the stop sign it created a sight line issue because of the sharpness of the corner.

Keiser asked for more information of the dog kennel mentioned. Gubern stated it is off of the side of his garage, about $\frac{3}{4}$ the length of his garage.

Keiser asked how the applicant intends to complete the fence to make it more aesthetically pleasing. Gubern explained that he had to move the fence back to the 23'. He stated because it is winter the ground was frozen and did the best he could, he stated that needs to be straightened. He stated the fence will be painted white. He stated he will be installing capped lights on the corners of the fence. He stated he will be cutting off 6-8" from the 10' posts installed. He stated he is going to get rid of the grassy area in the front and replace with pea stone and install a flag pole.

Saunders stated nothing can be within that 20' setback for sight line purposes and the flag pole would need to be located in a different location on the lot.

Keiser closed the public hearing at 9:04PM.

Board Discussion: Fredette stated he would love to grant this request but does not see the Church creating enough uniqueness to meet the bar. He stated to him it is a corner lot, it has two front yards; he cannot support it because he does not see the uniqueness. He stated having a dog is not enough. The variance travels with the land.

Donohue stated he would echo Fredette's statement. He stated in regards to the uniqueness of the property, it has a church across the street, but does not see that as a hardship.

Keiser clarified where a 6' fence would be allowed. Saunders explained the area of the lot where up to 8' fence would be allowed. Keiser stated the house is not straight in line with the street, inquired if the fence has to be in line with the house or street. Saunders stated it would be in line with the house, not necessarily the lot line.

Keiser stated he did drive down Lil Nor and the existing fence did obscure his vision when exiting the street.

Fredette stated he does not want to get into what is safe and unsafe, he stated because of the safety question he finds that the request would be contrary to the public interest, because of the line of sight issues raised. He stated he does not consider Tates Brook to be a main road like W. High or High St.

Keiser stated it is a common cut off road.

Fredette stated to have a 6' fence that close to the road, surrounding properties and the infringement of the sight line it would diminish surrounding property values. He stated part of the reason for the ordinance is for

the streetscape and thinks this fence would affect the streetscape along with surrounding property values. He stated because of the line of sight infringement it is contrary to public interest. He stated there is nothing unique in his opinion with this property that distinguishes it from any other corner lot in the area. He stated substantial justice would be done by granting but not for reasons within purview of the Board. He stated the spirit of the ordinance is to keep fences out of the street intersection sight line and to maintain a certain streetscape in residential areas, therefore granting the variance would be contrary to the spirit of the ordinance.

Brooks stated he agrees with Fredette's statements. He stated he has no counter argument for any of the points.

Donohue stated he also agrees.

MOTION: Fredette, after review of the application, the file and all the information presented to the Board, I feel that 1, 3, 5 of the five criteria have **NOT** been satisfied and I move that the request of Tristan Govern for a variance from Section 18.B to allow a six (6) foot fence in the front yard area **be DENIED**.

The MOTION is SECONDED by Donohue.

The MOTION CARRIES by a 4-0 vote.

Any other new business that may come before the Board.

Perkins came back to the Board as a voting member.

No other new business.

Donohue **MOVED** to **ADJOURN** the meeting. Brooks seconded the Motion. The **MOTION CARRIED** 5-0 and the meeting **ADJOURNED** at 9:14 PM.

Respectfully Submitted,

Dana Crossley, Planning Secretary