

**Town of Cumberland
Board of Adjustment and Appeals
Minutes of Meeting
September 14, 2006**

Present: R. Scott Wyman, Pete Wilson, Ronald Copp, Adrian Kendall, Matt Manahan,
Sam Wilkinson, Andrew Black
Absent: Mike Martin
Staff: William Longley, Code Enforcement Officer, Pam Bosarge

The meeting was called to order at 7:03 p.m.

Mr. Wyman welcomed the applicants and gave an overview of the rules of procedure for the meeting. Stating there would be opportunity for public testimony.

Hearings and Presentations:

1. Special Exception: Lori Dubois requests a special exception for an accessory apartment at 32 Lower Methodist Road, Tax Assessor Map U17, Lot 6 in the Rural Residential One (RR1) district.

Mr. Longley presented background information as follows: Ms. Dubois requests a special exception for an accessory apartment at 32 Lower Methodist Road; Tax Assessor Map U17, Lot 6 in the Rural Residential One (RR1) district.

Ms. Lori Dubois, applicant stated she would like to add an accessory apartment above her existing garage. There will be only one bedroom.

Mr. Longley stated he had calculated the maximum allowable square footage to be 867 sq. ft. and Ms. Dubois is requesting 660 sq. ft.

Mr. Wyman asked Ms. Dubois if she was the owner and resided at the property.

Ms. Dubois stated yes.

Mr. Longley stated the updated septic design for the accessory apartment has been installed.

Mr. Wyman asked for testimony from the public in favor of the application.

Ms. Stephanie Coleman of 94 Lower Methodist Road stated she was in favor of the application, this would not increase traffic, and the road is a dead end road.

Mr. Wyman asked for testimony that was neutral neither for nor against the application. There was none. Mr. Wyman asked for testimony in opposition of the application. There was none. The public portion of the meeting was closed.

Mr. Manahan asked the size of the lot.

Mr. Longley stated 1.5 acres.

The Board reviewed the Special Exception standards in Sections 603.2.3 and 603.2.7 with the following findings and conclusions.

Section 602.2.3

.1 The proposed use will not create hazards to vehicular or pedestrian traffic on the roads and sidewalks serving the proposed use as determined by the size and condition of such roads and sidewalks, lighting, drainage, intensity of use by both pedestrians and vehicles and the visibility afforded to pedestrians and the operators of motor vehicles;

The proposed accessory apartment will not create hazards to vehicular or pedestrian traffic.

The Board found this requirement to be satisfied.

.2 The proposed use will not cause water pollution, sedimentation, erosion, contaminate any water supply nor reduce the capacity of the land to hold water so that a dangerous, aesthetically unpleasant, or unhealthy condition may result;

The proposed accessory apartment and existing dwelling has a septic system which has been updated to comply with the Maine State Plumbing Code.

The Board found this requirement to be satisfied.

.3 The proposed use will not create unhealthful conditions because of smoke, dust, or other airborne contaminants;

The proposed accessory apartment will be used for residential housing, and will not create any unhealthful conditions because of smoke, dust, or other airborne contaminants.

The Board found this requirement to be satisfied.

.4 The proposed use will be compatible with the uses that are adjacent to and neighboring the proposed location, as measured in terms of its physical size, intensity of use, visual impact, and proximity to other structures and the scale and bulk of any new structures for the proposed use shall be compatible with structures existing or permitted to be constructed on neighboring properties;

The dwelling will be compatible with the uses that are adjacent to and neighboring the proposed location.

The Board found this requirement to be satisfied.

.5 The proposed use will not create nuisances to neighboring properties because of odors, fumes, glare, hours of operation, noise, vibration or fire hazard or restrict access of light and air to neighboring properties;

The proposed accessory apartment will not create nuisances to neighboring properties because of odors, fumes, glare, hours of operation, noise, vibration, or fire hazard or restrict access of light and air to neighboring properties.

The Board found this requirement to be satisfied.

.6 The proposed location for the use has no peculiar physical characteristics due to its size, shape, topography, or soils which will create or aggravate adverse environmental impacts on surrounding properties;

The accessory apartment meets State Plumbing Code and will not create or aggravate adverse environmental impacts on surrounding properties.

The Board found this requirement to be satisfied.

.7 The proposed use has no unusual characteristics atypical of the generic use which proposed use will depreciate the economic value of surrounding properties;

The accessory apartment will have no unusual characteristics that would depreciate the economic value of surrounding properties.

The Board found this requirement to be satisfied.

.8 If located in a shoreland zone, the proposed use (i) will not result in damage to spawning grounds, fish, aquatic life, bird and other wildlife habitat; (ii) will conserve shoreland vegetation; (iii) will conserve visual points of access to waters as viewed from public facilities; (iv) will conserve actual points of access to waters; (v) will conserve natural beauty and (vi) will avoid problems associated with flood plain development and use. [Amended, effective 12/2/86]

The Board found this requirement to be not applicable.

In addition, Section 603.2.7 was reviewed with the following findings.

In addition to the standards contained in Section 603.2.3, all special exceptions must conform with the performance standards set forth herein. No use already established on the date of adoption of this ordinance shall be so altered or modified as to conflict with or, if already in conflict with, to further conflict with these performance standards.

.1 The volume of sound, measured by a sound level meter and frequency weighting network (manufactured according the standards prescribed by the American Standards Association), inherently and recurrently generated shall not exceed a maximum of 60 decibels at lot boundaries, excepting air raid sirens and similar warning devices;

The proposed accessory apartment use will not create noise that would exceed a maximum of 60 decibels at lot boundaries.

The Board found this requirement to be satisfied.

.2 Vibration inherently and recurrently generated shall not exceed a peak particle velocity of .01 inches per second at lot boundaries;

The proposed use will not create vibration that would exceed a peak particle velocity of .01 inches per second at the lot boundaries.

The Board found this requirement to be satisfied.

.3 No materials or wastes shall be deposited on any lot in such form or manner that they may be transferred beyond the lot boundaries by regularly recurring natural causes or forces, and all materials which cause fumes or dust, constitute a fire hazard, or are edible or otherwise attractive to rodents or insects if stored out-of-doors shall be in closed containers;

The proposed accessory apartment will not have any waste that would cause fumes, dust, and fire hazard or attract rodents or insects. There will be no materials, other than normal household items stored outside.

The Board found this requirement to be satisfied.

.4 The emission of noxious, odorous matter across lot boundaries in such quantities as to be offensive to persons of ordinary sensibilities is prohibited; and

The accessory apartment will not give emission of noxious, odorous matter.

The Board found this requirement to be satisfied.

.5 No discharge into any private sewage disposal system, or stream or into the ground of any materials in such nature or at such temperature as to contaminate any water supply or otherwise cause the emission of dangerous or unhealthful elements is permitted, and no accumulation of solid waste conducive to the breeding of rodents or insects shall be allowed. [Amended, effective 12/2/86]

The proposed accessory apartment will have an approved septic system that will not contaminate any water supply.

The Board found this requirement to be satisfied.

The Board reviewed the standards of Section 407.1 with the following findings and conclusions:

407.1 Accessory Apartments

Any single-family dwelling or an existing accessory structure, which is either attached or detached, to the dwelling may be altered or expanded to include one apartment unit subject to the approval of the Board of Adjustment and Appeals as a special exception, and in accordance with the following standards:

.1 The unit to be added shall include no more than one bedroom and shall not exceed 40% of the total living area of the building; [Effective 5/15/89]

The accessory apartment will be no more than 660 sq. ft. and will not exceed 40% of the total living area of the building.

The Board found this requirement to be satisfied.

.2 The board may waive the lot size requirements, provided that the Plumbing Inspector indicates adequate capacity and conformity with the State Plumbing Code; but in no case shall such conversion be allowed on a lot smaller than 20,000 square feet.

The lot size is 1.68 acres in size.

The Board found this not to be applicable.

.3 This provision shall not prohibit the conversion of a single-family dwelling to a duplex or multiplex dwelling or the conversion of a duplex dwelling to a multiplex dwelling, so long as said conversion complies with all district and other zoning standards, including, but not limited to the minimum lot size per dwelling unit. [Effective 5/15/89]

The accessory apartment will comply with zoning requirements in the Rural Residential One (RR1) district.

The Board found requirement to be satisfied.

.4 An accessory apartment may be constructed in a detached accessory structure provided that the lot standards and the setback requirements from the single-family dwelling to the accessory structure, for the district in which it is located cannot be met for each structure. The parcel on which the single-family dwelling and the detached accessory structure are located cannot be split so that each structure is on a separate parcel. [Amended, effective 8/10/98]

The accessory apartment will be within the existing garage.

The Board found this to be not applicable.

Mr. Kendall moved to grant a special exception to Lori Dubois for an accessory apartment at 32 Lower Methodist Road, Tax Assessor Map U17, Lot 6 in the Rural Residential One (RR1) district.

Mr. Black seconded.

VOTE: Unanimous

2. Special Exception: Peter & Lise Wilson request a special exception for an accessory apartment at 18 Oak Ridge Road; Tax Assessor Map R06A, Lot 10 in the Rural Residential Two (RR2) district.

Mr. Wilson was recused.

Mr. Longley stated Mr. Wilson is requesting an accessory apartment at 18 Oak Ridge Road; Tax Assessor Map R06A, Lot 10 in the Rural Residential Two (RR2) district.

Mr. Wilson, applicant stated they would like to add an apartment to the back of the house for his Mother who currently resides in Hallowell. The current septic system is designed for a three bedroom house; and will be used by three adults. There is a tree buffer between his house and the neighbors and there will be no impact to the neighborhood.

Mr. Wyman asked if this would be an addition to the existing house.

Mr. Wilson stated yes.

Mr. Manahan asked if the only access to the apartment would be from the outside side of the garage.

Mr. Black asked if there was a subdivision plan that would prevent the accessory apartment.

Mr. Longley stated yes there is a subdivision plan; he has not reviewed that plan.

Mr. Black asked about subdivision covenants.

Mr. Wilson stated there is a Homeowners' Association.

Mr. Manahan asked if there were any concerns regarding setbacks.

Mr. Longley stated the State Plumbing Code requires something different than a three bedroom design for an accessory apartment; the septic system will need to be updated.

Mr. Wilson stated the house is being used as a two-bedroom with a one bedroom accessory apartment.

Mr. Longley stated to comply with Maine State Plumbing Code the septic system will need to be updated and installed.

Mr. Wyman asked if the accessory apartment met the square footage requirements.

Mr. Longley stated the expansion is within the 40% allowable square footage, he didn't include the proposed apartment in his calculations.

Mr. Copp asked the distance the addition would be from the property line.

Mr. Wilson stated 75.5 feet.

Mr. Wyman asked for testimony from the public in favor of the application. Mr. Wyman asked for testimony that was neutral neither for nor against the application. There was none. Mr. Wyman asked for testimony in opposition of the application. There was none. The public portion of the meeting was closed.

The Board reviewed the Special Exception standards in Sections 603.2.3 and 603.2.7 with the following findings and conclusions.

Section 602.2.3

.1 The proposed use will not create hazards to vehicular or pedestrian traffic on the roads and sidewalks serving the proposed use as determined by the size and condition of such roads and sidewalks, lighting, drainage, intensity of use by both pedestrians and vehicles and the visibility afforded to pedestrians and the operators of motor vehicles;

The proposed accessory apartment will not create hazards to vehicular or pedestrian traffic.

The Board found this requirement to be satisfied.

.2 The proposed use will not cause water pollution, sedimentation, erosion, contaminate any water supply nor reduce the capacity of the land to hold water so that a dangerous, aesthetically unpleasant, or unhealthy condition may result;

The proposed accessory apartment and existing dwelling will have an updated septic system which will comply with the Maine State Plumbing Code.

The Board found this requirement to be satisfied.

.3 The proposed use will not create unhealthful conditions because of smoke, dust, or other airborne contaminants;

The proposed accessory apartment will be used for residential housing, and will not create any unhealthful conditions because of smoke, dust, or other airborne contaminants.

The Board found this requirement to be satisfied.

.4 The proposed use will be compatible with the uses that are adjacent to and neighboring the proposed location, as measured in terms of its physical size, intensity of use, visual impact, and proximity to other structures and the scale and bulk of any new structures for the proposed use shall be compatible with structures existing or permitted to be constructed on neighboring properties;

The dwelling will be compatible with the uses that are adjacent to and neighboring the proposed location.

The Board found this requirement to be satisfied.

.5 The proposed use will not create nuisances to neighboring properties because of odors, fumes, glare, hours of operation, noise, vibration or fire hazard or restrict access of light and air to neighboring properties;

The proposed accessory apartment will not create nuisances to neighboring properties because of odors, fumes, glare, hours of operation, noise, vibration, or fire hazard or restrict access of light and air to neighboring properties.

The Board found this requirement to be satisfied.

.6 The proposed location for the use has no peculiar physical characteristics due to its size, shape, topography, or soils which will create or aggravate adverse environmental impacts on surrounding properties;

The accessory apartment will meet the State Plumbing Code and will not create or aggravate adverse environmental impacts on surrounding properties.

The Board found this requirement to be satisfied.

.7 The proposed use has no unusual characteristics atypical of the generic use which proposed use will depreciate the economic value of surrounding properties;

The accessory apartment will have no unusual characteristics that would depreciate the economic value of surrounding properties.

The Board found this requirement to be satisfied.

.8 If located in a shoreland zone, the proposed use (i) will not result in damage to spawning grounds, fish, aquatic life, bird and other wildlife habitat; (ii) will conserve shoreland vegetation; (iii) will conserve visual points of access to waters as viewed from public facilities; (iv) will conserve actual points of access to waters; (v) will conserve natural beauty and (vi) will avoid problems associated with flood plain development and use. [Amended, effective 12/2/86]

The Board found this requirement to be not applicable.

In addition, Section 603.2.7 was reviewed with the following findings.

In addition to the standards contained in Section 603.2.3, all special exceptions must conform with the performance standards set forth herein. No use already established on the date of adoption of this ordinance shall be so altered or modified as to conflict with or, if already in conflict with, to further conflict with these performance standards.

.1 The volume of sound, measured by a sound level meter and frequency weighting network (manufactured according the standards prescribed by the American Standards Association), inherently and recurrently generated shall not exceed a maximum of 60 decibels at lot boundaries, excepting air raid sirens and similar warning devices;

The proposed accessory apartment use will not create noise that would exceed a maximum of 60 decibels at lot boundaries.

The Board found this requirement to be satisfied.

.2 Vibration inherently and recurrently generated shall not exceed a peak particle velocity of .01 inches per second at lot boundaries;

The proposed use will not create vibration that would exceed a peak particle velocity of .01 inches per second at the lot boundaries.

The Board found this requirement to be satisfied.

.3 No materials or wastes shall be deposited on any lot in such form or manner that they may be transferred beyond the lot boundaries by regularly recurring natural causes or forces, and all materials which cause fumes or dust, constitute a fire hazard, or are edible or otherwise attractive to rodents or insects if stored out-of-doors shall be in closed containers;

The proposed accessory apartment will not have any waste that would cause fumes, dust, and fire hazard or attract rodents or insects. There will be no materials, other than normal household items stored outside.

The Board found this requirement to be satisfied.

.4 The emission of noxious, odorous matter across lot boundaries in such quantities as to be offensive to persons of ordinary sensibilities is prohibited; and

The accessory apartment will not give emission of noxious, odorous matter.

The Board found this requirement to be satisfied.

.5 No discharge into any private sewage disposal system, or stream or into the ground of any materials in such nature or at such temperature as to contaminate any water supply or otherwise cause the emission of dangerous or unhealthful elements is permitted, and no accumulation of solid waste conducive to the breeding of rodents or insects shall be allowed.

[Amended, effective 12/2/86]

The proposed accessory apartment will have an approved septic system that will not contaminate any water supply.

The Board found this requirement to be satisfied.

In addition the Board reviewed the standards of Section 407.1 Accessory Apartments with the following findings and conclusions:

407.1 Accessory Apartments

Any single-family dwelling or an existing accessory structure, which is either attached or detached, to the dwelling may be altered or expanded to include one apartment unit subject to the approval of the Board of Adjustment and Appeals as a special exception, and in accordance with the following standards:

.1 The unit to be added shall include no more than one bedroom and shall not exceed 40% of the total living area of the building; [Effective 5/15/89]

The accessory apartment will be no more than 672 sq. ft. and will not exceed 40% of the total living area of the building.

The Board found this requirement to be satisfied.

.2 The board may waive the lot size requirements, provided that the Plumbing Inspector indicates adequate capacity and conformity with the State Plumbing Code; but in no case shall such conversion be allowed on a lot smaller than 20,000 square feet.

The lot size is 2.1 acres in size.

The Board found this not to be applicable.

.3 This provision shall not prohibit the conversion of a single-family dwelling to a duplex or multiplex dwelling or the conversion of a duplex dwelling to a multiplex dwelling, so long as said conversion complies with all district and other zoning standards, including, but not limited to the minimum lot size per dwelling unit. [Effective 5/15/89]

The accessory apartment will comply with zoning requirements in the Rural Residential Two (RR2) district.

The Board found requirement to be satisfied.

.4 An accessory apartment may be constructed in a detached accessory structure provided that the lot standards and the setback requirements from the single-family dwelling to the accessory structure, for the district in which it is located cannot be met for each structure. The parcel on which the single-family dwelling and the detached accessory structure are located cannot be split so that each structure is on a separate parcel. [Amended, effective 8/10/98]

The accessory apartment will be on the back of the house.

The Board found this to be not applicable.

Mr. Kendall moved to grant a special exception for an accessory apartment to Peter & Lise Wilson at 18 Oak Ridge Road, Tax Assessor Map R06A, Lot 10 in the Rural Residential Two (RR2) district; subject to the septic system being updated to conform to the Maine State Plumbing Code.

Mr. Black seconded.

VOTE: Unanimous

Mr. Wilson rejoined the Board and Mr. Kendall asked to be recused for item # 3.

2. Variance: Cathy E. & Mark L. Brann & Kelly P. Brann request a variance of 1.20 acres from the minimum lot size requirement of 4-acres for an existing lot at 94 Lower Methodist Road; Tax Assessor Map U18, Lot 4 in the Rural Residential One (RR1) district; Alan E. Wolf, Esq., Representative.

Mr. Alan Wolf, Esq. stated he was representing Cathy, Kelly, and Mark Brann, with co-council Mr. James Poliquin, Esq. from Norman Hanson, DeTroy. Mr. Wolf stated that there was an error in the calculation and the Branns needed a variance of up to 1.8 acres. Mr. Wolf presented background as follows: The Branns owned land on Lower Methodist Road that was configured as two parcels on the Town's tax maps. One parcel designated as parcel 4 consisted of 1.6 acres and contained a one and one half story building. The other parcel, designated as parcel 3, according to tax records, consisted of 7.75 acres and was vacant. The Town has been taxing parcel 3 and 4 separately. The town tax bills showed that the house lot was 1.61 acres and the vacant parcel was 7.75 acres. In April, 2002, a portion of the vacant land was listed for sale. The land was sold in the fall of 2002 to Chase Custom Homes for \$70,000. The closing on the land occurred in January, 2003, before a full survey of the land could be completed. After the survey was completed in March, 2003, a final deed was provided, describing the sold vacant land as 5.1 acres, leaving the house lot retained by Cathy, Kelly, and Mark Brann as 2.2 acres. The Town of Cumberland Zoning Ordinance requires a 4 acre house lot in this zone. As a result, after the survey, 94 Lower Methodist Road, a parcel with an existing structure on it, became nonconforming.

The Cumberland Zoning Ordinance provides that a use that becomes non-conforming by reason of enactment or amendment of the Ordinance may continue under certain conditions. Section 501 states the lot regulations in the zoning ordinance provide that any lot of record at the time of enactment or amendment of the ordinance may be built upon, except that if two lots come under common ownership, they will merge into one. Section 205.3.2 Applying these two provisions to the facts of this case, parcel 3, the house lot, existed as a lawful non-conforming use until it came under the same ownership as parcel 4. At that time, parcel 3 and 4 merged into one lot.

The merger did not prohibit a subsequent division of the property, so long as the parcels could be divided to meet the zoning requirements. Based upon the indication of acreage in the tax records, it appeared that such a division was possible. However, at the completion of the survey (after the closing) the total land area was almost two acres smaller than it should have been, leaving the parcel with the existing structure, rather than the vacant lot as nonconforming.

In this instance, the fact is that all involved reasonably believed that the house lot and the vacant lot would be properly divided into two conforming lots. Indeed, the town issued the building permit and the buyer of the vacant lot expended substantial amounts in reliance on it to construct a home. The Branns provided Barbara McPheters, the Code Officer at the time a drawing of the proposal, which she said would conform to zoning regulations. Now that the home is constructed, the Branns cannot undo the sale and put the lots back together. Equity

prevents undoing the division, leaving no other option but to recognize the lot. The Branns are requesting no action be taken by the Town and that the lot receive a variance of up to 1.8 acres.

Mr. Manahan asked how a surveyor could be hired to do half of the job, why was the entire acreage not checked. Mr. Manahan asked how reasonable was it to assume that tax records were accurate without a survey.

Mr. Wolf stated the surveyor was told to create a lot of five acres.

Mr. Manahan stated by fact of the Town issuing a building permit it led the Branns to believe the lots were valid.

Mr. Wolf stated the situation has resulted in a comedy of multiple errors.

Mr. Black asked if the plan accurately showed the split of the lots.

Mr. Wolf stated the closing was January 2003 and the plan was completed in April 2003.

Mr. Black asked if the deed was a metes and bounds description.

Mr. Wolf stated the deed was directional.

Mr. Wyman asked if the Town issued a building permit relying on the drawing showing that the lot was conforming.

Mr. Longley stated a building permit was issued based on the proposed plot plan by Northeast Civil Solutions.

The Board discussed the conveyance of the 5-acre parcel without a completed survey of the remaining land.

Mr. Wolf reviewed his client's concern regarding value of the property and being allowed to continue use with the non-conforming lot.

Mr. Manahan stated the Branns can continue to live there. They relied on Town interpretation; there would be an equitable find for the clients.

Mr. Jim Poliquin, Esq. of Norman, Hanson & DeTroy asked if his clients would prevail with standards they would have to meet. The fact pattern doesn't warrant the Board a no action vote. The transaction was rushed and the assumption was there was enough land. The parcels had been taxed with separate tax bills and the Branns thought the property was taxed as a buildable lot.

Mr. Manahan asked why the Branns should be entitled to a variance.

Mr. Poliquin, Esq. stated because of the totality of circumstances; it is within the Board's power and ability to grant a variance.

Mr. Manahan stated the problem arises with the standards of whether this was a self created hardship.

Mr. Wyman asked for testimony from the public that was in favor of the application.

Mr. Absuman, of Northeast Civil Solutions stated the survey was done in 2002. The deed had no distances, or metes and bounds references. There is no State law requiring that properties be surveyed prior to being split. There was a bill before the Legislature which was defeated. The process of the survey was not completed when the legal description was drafted; often splits of land are done with no consideration for the remaining land.

Mr. Absuman stated that the average property owner doesn't understand the term of merger of title when abutting property is owned in the same name.

Mr. Manahan asked if it were reasonable to divide land without a survey.

Mr. Absuman stated the quality of the assessing maps seemed accurate; there as some distances on properties alluding to a survey.

Mr. Manahan asked how much effort was put into coming up with the amount of remaining land.

Mr. Absuman stated you can write a generic legal description, such as along the line of neighbor to a stream etc.

Mr. Wyman stated it seemed to be a risk to use vague language when there is only .35 acres to spare.

Mr. Absuman stated yes, he didn't think the transaction was the action of the owner.

Mr. Wyman asked if it was the action of the owner to hurry the transaction.

Mr. Absuman stated he did not know that.

Mr. Black asked if the entire piece of land had been surveyed.

Mr. Absuman stated the survey was finished in 2003; the surveyor was on the property in 2002 prior to snow to flag existing monuments.

Mr. Wilson asked why 5.01 acres.

Mr. Absuman stated to ensure 5-acres; they would know the accuracy after the survey.

Mr. Copp stated the house was built in 1955.

Mr. Wilson asked how the acreage was calculated.

Mr. Absuman stated by CAD

Mr. Wyman asked if CAD were used wouldn't it have been more accurate.

Mr. Absuman stated they are required to show a shape which was digitized from the assessor map.

Mr. Manahan asked if it would be reasonable for a surveyor to notice that the remaining land was significantly less than tax records indicated.

Mr. Absuman stated his associate was on the property; he was asked today at 3:00 p.m. to look at the file for this meeting.

Ms. Stephanie Coleman, Mark Brann's wife stated the surveyor was hired by Cathy who now resides in Ellsworth; the property was sold with the intention of purchasing Cathy's interest in the property. The transaction has been a nightmare they felt rushed with Chase Custom Homes hurrying to have the buyer build a house.

Mr. Wyman asked for testimony that was in opposition. There was none. He asked for testimony that was neither for nor against but neutral. There was none. The public portion of the meeting was closed.

Mr. Poliquin stated the surveyor indicated field work was done prior to the closing, the parties involved were not under the assumption that the surveying hadn't been done. The transaction was hurry, hurry; the surveyor was an agent of Chase Custom Homes. The Branns contracted with the surveyor who pushed to satisfy Chase Custom Homes.

Mr. Manahan asked if it were reasonable to rely on tax maps for accuracy.

Mr. Longley stated he has been Code Enforcement Officer in three different Towns and in none of the Towns should the tax maps be considered accurate until proven with deeds and more mapping.

Mr. Manahan asked if maps with distances to the 100th acre imply accuracy.

Mr. Longley stated it shouldn't.

Mr. Wyman asked if the Town had any intention of not allowing the Branns to live in the property.

Mr. Longley stated he has no intention, it hasn't been proven to him that the property is less than four acres.

Mr. Copp stated the Branns relied on information provided by professionals, it didn't think the action was that of the Branns but of the surveyor and Chase Custom Homes.

The Board discussed the difficulty of the case; the Branns didn't intentionally make the error, but were perhaps poorly advised.

Mr. Wilson moved to grant a variance of 1.8 acres to Cathy E. & Mark L. Brann & Kelly P. Brann for an existing lot at 94 Lower Methodist Road, Tax Assessor Map U18, Lot 4 in the Rural Residential One (RR1) district; Alan E. Wolf, Esq., Representative.

Mr. Copp seconded.

Discussion on the Motion: Mr. Wilson withdrew his motion.

The Board discussed the error in calculation and inaccuracy of information on the provided plan. The surveyor present this evening was not familiar with the land and only looked at the information in the file this afternoon at 3:00 p.m.

Mr. Wyman stated it would be bad policy to make a decision without all of the information.

Mr. Wolf stated his clients would have no problem tabling and the surveyor can provide an accurate survey to the Board.

Mr. Manahan moved to table until the next regularly scheduled meeting the request for a variance for Cathy E. & Mark L. Brann & Kelly P. Brann of 1.20 acres from the minimum lot size requirement of 4 acres for an existing lot at 94 Lower Methodist Road; Tax Assessor Map U18, Lot 4 in the Rural Residential One (RR1) district.

Mr. Wilkinson seconded.

VOTE: Unanimous

Administrative Matters:

Minutes of July 13, 2006 - Mr. Manahan moved to approve the minutes of the July 13, 2006 meeting with the correction that Mr. Black was absent.

Mr. Copp seconded.

VOTE: Unanimous

Mr. Longley confirmed with the members that there would be a quorum for the October 12, 2006 meeting.

Adjournment: 9:35 p.m.

A TRUE COPY ATTEST:

R. Scott Wyman, Board Chair

Pam Bosarge, Board Clerk