

## ZONING BOARD OF ADJUSTMENT

Wednesday, April 26, 2006  
Belmont Corner Meeting House  
Belmont, N.H.03220

Members Present: Chairman J. Olmstead; N. Patten, P. Harris, P. Oberhausen and L. Couture.  
Alternates Absent: E. Hawkins (E).  
Staff: C. Daigle and E. Murphy.

The chairman opened the meeting at 7p.m. All stood for the Pledge of Allegiance.

### **Abutters' Hearing – Thomas McCarron:** Request for:

- Special Exception of Article 10.A.3.c.of the Zoning Ordinance to add useable space (2<sup>nd</sup> floor) to a preexisting nonconforming footprint.
- Variance of Article 5 Table 2 of the Zoning Ordinance to reconstruct a single family structure closer (30.5') to the front property line than allowed (50').
- Variance of Article 4 of the Wetland Ordinance to reconstruct a single family structure closer (2.68') to the highwater mark than allowed (50').

Property is located at 80 Gardners Grove Road in the "RS" Zone, Tax Lot 120-024, ZBA # 0306, 0406 & 0506.

At least three members have viewed the site.

Mr. McCarron and Mr. Ray Pinkham from Burd Engineering presented the application.

Mr. McCarron stated that he is proposing to tear down the existing structure and rebuild a second story with a crawl space foundation. He will be increasing the setback to the water to 2.68'. This has been approved by the State.

N. Patten wanted to know if it is a full time residence now. Mr. McCarron stated that it is not but he intends to live there. P. Harris wanted to know when the original building was built. Mr. McCarron stated it was in the 60s and he purchased it two years ago.

P. Oberhausen wanted to know if the new house will be on the existing footprint. Mr. McCarron stated that the new house will be further back a little. This is the best location and he is not moving it any closer to the wetlands.

P. Harris wanted to know where the distance of 30' to the front property line relates to where it is

today. Mr. McCarron explained that the existing house sits back around 20 more feet. C. Daigle stated that the existing house is at 50.3'. P. Harris stated that they are moving it towards the road. Mr. McCarron stated only part of the garage is. P. Oberhausen stated that they are going 3' to the high water mark. The highwater mark is where water sits normally and last year it was up on the road so the house would be under water. He thinks the house could be moved closer to the road to keep it away from the lake to give the applicant more protection. Mr. McCarron stated that he didn't want to infringe on the road. He took a lot of time designing the house and this is the best solution for the State and Town. P. Harris stated if you took in all the restrictions on the property you could not put anything there. It is about 150' deep and setbacks are 50' from the road and 50' lake. J. Olmstead stated that both of those overlap so there is no buildable place. P. Oberhausen stated that they could cut back 30' from the road to 15' or 20' and it would give them a little more relief if Silver Lake goes over. Mr. McCarron stated that is why the foundation is at 471' the 100 year flood plain. They are proposing the retaining wall. The utilities will be on the first floor nothing will be in the basement.

Mr. Pinkham stated that the site is on the lake. They have an approved Shoreland Protection permit. The retaining wall will separate the highwater mark from the house. Because the lot is small the roadway restriction that they are looking for relief from is already in violation. J. Olmstead stated that they were discussing the fact that the house could be moved forward toward the road more to give more relief from the high water mark. Mr. Pinkham stated that the house did get shifted a little further away from the lake. With the creation of the retaining wall the land will be filled outside the highwater mark area and pushed further away.

P. Harris stated that he disagreed with Mr. Pinkham's comment on the impact of land because the proposal will create a full time use on the property and in the past it was a seasonal use. The lake will be impacted by the number of cars and people and the use of the property as a full time residence. Mr. McCarron stated that he will be living there no matter what. P. Harris reiterated that they moved it away from the lake which is an improvement but it is still an impact. Mr. Pinkham stated that based on the size of the lot and the fact that they have very little clearance from the lake and road locating the house between the two gave them a very little options. They tried to steer away from the lake to meet the Shoreland Protection regulations and they don't want to get closer to the roadway for the town's benefit.

P Oberhausen wanted to know about the proposed deck on the back and why does the retaining wall have a jog in it towards Silver Lake and back again. Mr. McCarron stated it is because the 486' mark isn't a straight line and they are trying to follow the existing highwater mark. P. Oberhausen stated that they could move it further back from the lake. The retaining wall can run along side the deck and come across to the existing porch. Mr. McCarron stated that it would be on State land which is the 468' mark. The jog is the only way it would fit in. Mr. Pinkham stated the existing porch comes out to the corner of the proposed retaining wall. When they shift the house and deck back the new deck is further back from the lake. P. Oberhausen wanted to know why they need 14' if they move the retaining wall back to the deck. Mr. McCarron stated that when people come off the porch they would be running into the wall. P. Oberhausen stated that they will need another set of stairs to get over the retaining wall. Mr. McCarron stated they will jump over the wall. The wall is only 3' at the highest point. The corner of the house is at 471' and the grade at the wall is 468'. There will be a little slope towards the lake for drainage. They will gain an extra half foot so they retaining wall be 2.5' requiring two risers.

P. Oberhausen stated that the lots were developed as campsites and not made for big houses. They are infringing on the lake by having grass and fertilizers. Mr. McCarron stated that they cannot have fertilizers the sand has to stay open. P. Oberhausen stated that they still can contaminate the lake.

L. Couture wanted to know if the retaining wall is meant to keep the land from the water. Mr. Pinkham stated that was right. L. Couture asked if the wall could touch the water. Mr. Pinkham stated that the retaining wall will be on the upland side of the highwater mark. L. Couture wanted to know when the water rose last year did it go up the sides. Mr. McCarron stated that it did.

Mr. Jim Sawicki, an abutter, stated that he has no problems with the proposal. It is better than the existing house that is in the water when the water rises.

John Cambrey, Gardners Grove Road, wanted to address the comments from P. Harris and P. Oberhausen concerning the impact on lake. He lives on the lake full time and he thinks this proposal has a positive affect. When you go from a seasonal cottage to a permanent residence you pay more attention to the property, the lake and the environment. There are several cottages on Gardners Grove Road that are full time residences and you can see the seasonal residences. They put the trash out Sunday nights and by Tuesday the residences pick up the trash that animals get into. Full time residences watch for things like that. The visual impact from the aesthetic value with a new home is positive. It is a positive thing for the town with the increase in tax revenue.

The chairman asked if anyone in the audience had any questions or comments. There being none, he closed the public hearing.

#### **BOARD ACTION – THOMAS MCCARRON:**

**MOTION:** P. Harris moved to grant a Special Exception of Article 10.A.3.c.of the Zoning Ordinance to add useable space (2<sup>nd</sup> floor) to a preexisting nonconforming footprint as it meets all the criteria

1. The use is allowed in the district
2. The specific site is appropriate for the use.
3. No factual evidence is found that property values in the district will be reduced.
4. There is no valid objection from abutters based on fact.
5. No nuisance or hazard is involved.
6. Adequate and appropriate facilities will be provided by sewer.
7. There is adequate sewage disposal.
8. Structures must otherwise meet all dimensional requirements of the Ordinance.
9. All property bounds/existing footprint certified during construction as required.
10. All required floodplain documents to be submitted.
11. No structures or additions that do not meet setback, except for those approved herein are allowed.

The motion was seconded by P. Oberhausen and carried. (5-0)

- MOTION:** P. Harris moved to grant a Variance of Article 5 Table 2 of the Zoning Ordinance to reconstruct a single family structure closer (30.5') to the front property line than allowed (50') as it meets all the criteria.
1. The variance will not be contrary to the public interest. There are similar footprints in the area.
  2. Denial of the Variance would result in unnecessary hardship to the owner seeking them:
    - A. An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property;
    - B. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance. They are bringing more relief to the highwater mark by relocating closer to the road.
  3. The spirit of the ordinance is observed.
  4. Substantial justice will be done by allowing an upgrade to the 1960 structure. This will increase safety with new electrical wiring.
  5. The variance would not diminish the value of surrounding properties.
  6. All property bounds/existing footprint certified during construction as required.
  7. All required floodplain documents to be submitted.
  8. No structures or additions that do not meet setback, except for those approved herein are allowed.

The motion was seconded by N. Patten and carried. (5-0)

- MOTION:** P. Harris moved to grant a Variance of Article 4 of the Wetland Ordinance to reconstruct a single family structure closer (2.68') to the highwater mark than allowed (50') as it meets all the criteria.
1. The variance will not be contrary to the public interest. There are similar footprints in the area.
  2. Denial of the Variance would result in unnecessary hardship to the owner seeking them:
    - A. An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property;
    - B. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance. They are bringing more relief to the highwater mark by relocating closer to the road.
  3. The spirit of the ordinance is observed.
  4. Substantial justice will be done by allowing an upgrade to the 1960 structure. This will increase safety with new electrical wiring.

5. The variance would not diminish the value of surrounding properties.
6. All property bounds/existing footprint certified during construction as required.
7. All required floodplain documents to be submitted.
8. No structures or additions that do not meet setback, except for those approved herein are allowed.

The motion was seconded by N. Patten and carried. (4-1) P. Oberhausen opposed

P. Harris stated that 2.68' looks like a terrible number but the existing structure had more of an impact than that. It sits on the highwater mark. There are some cases where it looks like we are ignoring requirements but this is an improvement to what is currently there.

**Abutters' Hearing – Marshall & Marguerite Ford:** Request for a Variance of Article 10.C of the Zoning Ordinance to construct a single family residence without the required frontage. Property is located on Jodi Drive in the "R" Zone, Tax Lot 226-020, ZBA # 0606.

Atty. Patrick Wood and Mr. Marshall Ford presented the application.

Atty. Wood explained that Mr. Ford owns property on Jodi Drive which originally they thought was a private way but after research it has been determined that it is a Class VI road. The original subdivision was about an acre and a subsequent boundary line adjustment added .83 acres so now it is 1.8 acres. The subdivision took place before zoning. The lot has been there for 25-30 years. It was around 1982 when it was originally subdivided. The property has 184.59' frontage on Jodi Drive but doesn't have the required 20' of frontage on a Class V highway, Province Road. He stated that Jodi Drive is a very good gravel road. The Ford's property is wooded with some clear areas. Beyond that the first home is a multi-family home, with a driveway on the left side of Jodi Drive. That was approved around 1980. Farther down are more woods then a beautiful large home that they are adding onto the garage now. It was built around 1990. There is a basketball court next to wetlands. Past that you go up a hill and at that point a lot of work on the land is being done. A lot of boulders and large stones have been moved. There has been a lot of heavy equipment work done in that area. There is a large house set back from there. You can't travel beyond that driveway it is blocked off by large stones and berms. The last house was built around 2000. There are three houses on Jodi Drive now. At the entrance of Jodi Drive opposite the Ford's property is another house. While the primary access appears to be on Rte 107 it has an additional access to the back of the property on Jodi Drive. There are three permanent residential structures, two are single family homes one is a multi-family unit, farther down on Jodi Drive than where they are proposing the single family house.

They are asking for a variance for a single family home on the site. It is not contrary to public interest because there are houses already on the road. The private way, Jodi Drive, is in excellent condition. It must be maintained in excellent condition because of the amount of work that is being done on one of the houses at the end of the road because there is substantial amount of movement of large rocks and boulders plus there is heavy equipment going up and down the road. The road is in good shape.

The ordinance says that single family residences can be allowed to be built on a Class VI road if you have 20' of frontage on a Class V road. He explained that Province Road goes up a hill and has a cemetery across the road then turns and goes down a hill. Between the lot and Route 107 there is a slope that drops off. Then further down it levels off. The difficulty using the 20' on Province Road means a driveway would be coming out parallel to Jodi Drive. There is about 185' to the beginning of the ROW for Jodi Drive. The speed limit is 35-40 mph in that area. 180' of sight distance is not sufficient under current standards for a driveway. They would be moving the driveway farther up the hill which would create an unsafe situation for traffic entering or exiting from the driveway. The safest situation from a traffic point of view is to maintain any traffic flow onto Rte 107 from Jodi Drive rather than create another driveway in a dangerous area. Jodi Drive is 3 rods wide which is wide enough. The condition is passable year round. The lot is preexisting, created prior to zoning. It would be impractical to get access onto Rte 107.

Atty. Wood stated initially they thought it was a private drive but after litigation it was determined that it was a Class VI road. If it was private they would not need a variance. The area variance is necessary to allow the use of the property in light of the special conditions. They can't obtain access to the lot in any other way to comply with the Zoning Ordinance. The spirit of the ordinance is observed. The purpose of having restrictions on a Class VI road is to make sure you don't have structures on roads that are impassible and in dangerous condition so that emergency vehicles can't get to them. Jodi Drive is not that kind of road. It is in excellent condition. It is passable year round which it has to be with a multi family and two single family homes already on the road. Another reason they restrict development on a Class VI road is to reduce or eliminate premature or scattered development. In this situation there is development beyond this proposal. This house would be the first house on Jodi Drive so it is not premature. It is after the fact and located before the other houses on the road.

Substantial justice will be done because the lot was subdivided before zoning and the restrictions on a Class VI road weren't in affect at that time. The cost of the additional access would be high and would not be a practical alternative from a safety point of view. Without the variance the property is non buildable.

The variance would not diminish the value of surrounding properties because there are already three residential properties that gain access to Rte 107 over Jodi Drive. Adding an additional house would complete the process and this is the last vacant lot on Jodi Drive.

Atty. Wood stated that they meet the criteria for a variance. Reviewing the staff report he noted that C. Daigle did a summary of Jodi Drive when the lot was created and the boundary line adjustment. She also referred to a prior variance that was granted to Mrs. Long on Old Ladd Hill Road that is a similar situation. Some of the reasons that variance was granted was that there was no negative environmental impact. He looked for any illegal dumping while driving around and the properties in the Jodi Drive area are well maintained and the applicant is conscious of the environment. He addressed staff's comment that this is the last lot to be developed by saying he cannot speak for the property owners across the street who own 100+ acres but this is the last lot Mr. Ford has. He continued stating that no new utilities would be needed because they are already in place to service the other homes on the road.

Atty. Wood stated that in C. Daigle's report it is noted that in order to get a building permit on a Class VI road they also need a waiver of liability, which Mr. & Mrs. Ford are prepared to sign. He also addressed R. Ball's comments that he disagrees with the premise that frontage on Province Rd is "legally possible but practically impossible". Atty. Wood stated that from a physical point of view they could do it, but from a safety point of view it isn't reasonable. Mr. Ball supports the variance because without the variance the lot is unusable. Atty. Wood stated that the Code Enforcement Officer, G. Boisvert, stated that he has no concerns but the property pins and boundary line must be clearly identified to verify the setbacks. Atty. Wood stated that they will be in place. He addressed the Town Administrator's comments that the property is in current use and he stated that they are aware of the current use penalties.

J. Olmstead wanted to know if the lot is on sewer. Atty. Wood stated that it is not on sewer. J. Olmstead stated that he doesn't see the location of the septic or well on the plans. C. Daigle stated that they do have a State approved septic design. Mr. Ford stated that the ROW is across his property and when Mr. Lewandoski and Ms. Cilley developed their property beyond him the Selectmen changed the road to a Class VI road, however the Class VI road is over his property. J. Olmstead stated that his question was where he planned to get his water from. Mr. Ford stated that the property will have its own well.

P. Harris wanted to know how long Jodi Drive is. Ms. Cilley stated that it is ½ mile from the pavement to her garage. P. Harris stated that he has a concern that someone has to come forward and put a Class V road in. He stated that from the Planning Board aspect there is no developer that comes through town that doesn't have to put down a good road with turn-arounds and access for busses and snow removal. It all contributes to a safe environment. They keep adding houses one step at a time and everyone is saying how near perfect the road is, but no one wants to bring it up to a town road. Atty. Wood stated that they could talk about it in the future with the abutters. It has not been discussed at this time. N. Patten wanted to know who plows the road in the winter. Mr. Allen Gilbert stated that he and Mr. Lewandoski do it. He has maintained it since the 80's and no one helps with anything including Mr. Ford who is always trying to stop him from maintaining it because he thinks he owns it.

Mr. Lewandoski stated that he owns 152 acres at the end of Jodi Drive. He stated that he takes offense with what was said. He stated that his property is posted and hopes that neither the applicant nor his agent went past those signs. Discussion on his boulders and fields and what is happening on his property is no concern of theirs and has nothing to do with this application. The road is well maintained, it has a firm gravel base throughout the entire winter and in the spring there is never any sink holes. During the application process when Mr. Lewandoski was going to get his building permit Mr. Ford offered nothing but resistance. Mr. Lewandoski stated that the county map from 1825 shows it as a Class VI road that actually travels across horizontally through his property onto the Mooney property and connects to Edwards Road which is also a Class VI road. Atty. Wood talks about Jodi Drive being a beautiful 3 rod wide road very accessible to fire and police equipment. It absolutely is because of Mr. Gilbert. His money went into the road. Mr. Ford didn't contribute to the road. Mr. Lewandoski stated that when he went to cut brush on the road to where the ROW is Mr. Ford confronted him gave him a hard time because he is making the road passable for emergency vehicles. Mr. Lewandoski continued stating that his father-in-law went to dig a ditch to prevent the road from washing out in the event of

heavy rains and Mr. Ford confronted him. His father-in-law had to explain where the rights were, where the road was and where the boundary lines are and Mr. Ford left. Mr. Gilbert has invested thousands of dollars worth of material in the roadway and Mr. Marshall did nothing to upgrade, maintain, plow or add material to Jodi Drive. He still claims to own the road for 400' if that is true he needs to upgrade the road to Class V standards if he wants to put a house in. He stated that he agrees with Mr. Harris that it is time for someone to step up to plate. Mr. Ford wants to put a house in and it will impact Jodi Drive. Mr. Ford at previous meeting stated that it was a hardship to see cars coming out of Jodi Drive, to see traffic, to see the landscape destroyed by a house being put in. Now he wants to add a house which will create more trash and more cars and Mr. Ford has not come out to help with the road. Mr. Ford stated that he hadn't the need to use the road. Mr. Lewandoski stated that Mr. Ford owns property along Jodi Drive and it is his responsibility to take care of the road. Mr. Lewandoski stated the road is a Class VI road that is 3 rods wide and should be upgraded to Class V. When he built on Jodi Drive he had to put in a 24' crossing to Class V standards, 20' wide with 2' shoulders and rock it so that he could access his property because the improvements needed to be to Class V standards and he did all the upgrades. Mr. Lewandoski stated that he wants a Class V upgrade and he wants the road paved. If Mr. Ford wants to put a house in that is his responsibility and he is against the application.

Mr. Allen Gilbert stated that since 1989 he lived at the second property on Jodi Drive. His parents own the property on the other side of the street. He has maintained the road since he moved there until the Lewandoskis came and now they help. Every time he tries to maintain the road Mr. Ford would tell them that they didn't belong there and it was his road. Mr. Gilbert stated that he has no problem with Mr. Ford putting a house on his property. It is a good idea and he should be able to put a house on it but he should also be responsible to help take care of the section of road he is going to use. Mr. Gilbert stated that he had no problems maintaining the road when he was there alone, but now with all the houses going in there needs to be others helping.

Ms. Donna Cilley stated that in 1825 the road was laid out. The archives states that after one year it will be classified as a town road, the selectmen had laid it out. It was never retracted. The road has been a Class VI road since then. When Mr. Ford decided to take issue with the status of the road Mr. Gilbert and Mr. Ford went to court and the judge ruled that they both owned to the middle of the road but he didn't determine the status because the status was already declared. The town would have maintained the road like they do Swallow Road, Rogers Road and all the other gravel maintained roads but because Mr. Ford decided he didn't want the development he took the position that he owned the first 400' of the road. He then created a hardship and the town refused to maintain it. Mr. Ford now wants to sell the property for financial gain. He is not going to sell his house and move to this property. His financial gain is going to pose hardship to the abutters. Mr. Gilbert has taken care of the road for years and now they help. There are plenty of options for the property. Mr. Ford could merge the lots and have one lot and then there is no issue. One lot lessens the burden on Jodi Drive. He could use Rte 107 for the lot. It has 300'+ of frontage if you come up Jodi Drive the peak comes at the top of the hill where you have sight distance. It does drop off but he can put fill in and change his boundaries but he can do from Rte 107. He has two options - he can access Rte 107 from the second lot or he could merge two of his lots and enter from Rte 107 and he wouldn't create any more work or financial harm or he could chose to upgrade Jodi Drive. The provision is in place to slow growth down on roads that other people have to maintain. Mr. Ford has been resistant on any growth and now he wants to build for

capital gain and that is wrong. He can modify his plans and get access on Rte 107 and relieve the people who maintain Jodi Drive of any more financial responsibility.

Atty. Wood stated that he did not drive on anyone's property but stayed within the ROW. He apologized to Mr. Lewandoski stating that if he misstated what they are doing on their property he was just trying to emphasize the fact that Jodi Drive is in excellent condition and heavy equipment does go down it. He did not realize the history of Jodi Drive and the abutters. If Mr. Ford had sold the lot and someone else was there for a variance then some of the arguments would not be available against the new owner. That is why the variance goes with the land and not the person. The lot exists and Mr. Ford is entitled to sell and then whoever buys it has the right to put a house on it if this variance is approved. The issues presented are valid positions as far as sharing the maintenance of the road. That is part of the waiver and there has to be an understanding that whoever gets that building permit has to agree that they are responsible for maintaining that road to get to that property or for emergency access. That's the way it works. The town neither assumes the responsibility for maintenance including snow plowing or liability from damages. Owners shall be responsible for maintaining access to subject property. That is part of waiver of municipal liability that the Town of Belmont requires and that has to be signed and recorded in the Registry of Deeds before any building permit will be granted. The owners agree that at their expense and other owners of the property similar situated they will clear and maintain Jodi Drive for a width not less than 20' and repair and maintain the travel portion of Jodi Drive in a good and passable condition. Atty. Wood stated that it doesn't take care of the past but is a commitment for the future. Ms. Cilley stated that it doesn't take care of what will happens in the future because that is a paper that gets registered but then they don't have to do a thing. Who holds them liable? Atty. Wood stated it is a commitment to the Town that is being made. It is a legal contractual obligation and if whoever owns the house doesn't do their share of the maintenance the abutters can go to the town and say they haven't done it and have the town enforce the agreement. The would have the right to go to the owner and say that this is what it will cost to do it and you have to pay it or there will be a lien on the property.

Mr. Ford stated that Mr. Lewandoski spoke about the cutting of trees and Mr. Ford stated that it is okay in the ROW but he is not allowed to cross over on his property to cut trees for a better view of the road. Mr. Ford stated he did speak to Mr. Lewandoski's father-in-law when he was up there with a backhoe because the road washed out due to the slope of the land. He cut in and diverted the water onto Mr. Ford's property. He spoke to him about not diverting the water from the road onto his property. Mr. Ford stated that Mr. Lewandoski owns construction equipment and he is using the backhoe and reaching onto his banking to use for fill along with his good gravel. He should have hauled in his own material.

Mr. Ford stated that he plans on building a house that is handicap accessible because his wife has arthritis in her back and it is easier to go this route than modify the house he has now. J. Olmstead asked if the house they are building now is one they plan to move into. Mr. Ford stated that he doesn't know when but they will when they have to.

Mr. Lewandoski stated that Mr. Gilbert wants to develop his land for his children and he has been told that he has to upgrade the road to Class V standards before he is allowed to get a building permit. Mr. Ford is trying to circumvent the system by saying it is a hardship. This is not a hardship. Mr.

Ford wants to build a house on Jodi Drive, a Class VI road so he needs to bring the road up to Class V standards. If Mr. Gilbert and Mr. Lewandoski are going to be held to that standard then Mr. Ford needs to be held to that standard.

Ms. Cilley stated that she went to the town and raised an issue about the waiver of liability because the owners of the triplex do not maintain the road. The town told her that it is for emergency access vehicles. The town doesn't take any other position with it and won't take any other position with it. If the town has to start enforcing letters of liability then it constitutes another issue for the town. The whole reason the Planning Board went to extreme they did to look at Class VI roads is to slow development down and hold those who want to develop responsible for upkeep and maintenance and that cannot be done by the letter Atty. Wood presented. That only allows for emergency access and should the town have to open it up they can charge them for it. The whole issue is it puts more of a financial hardship on the ones maintaining the road and he walks away. Whether he moves in or sells it he can recover from it financially. Mr. Ford has options and now they are enforcing the law the way it needs to be.

Mr. Gilbert stated that his only concern is that it is going to create more maintenance issues that he already takes care of and this would be the time to address that situation. He stated that he will probably come forward with a subdivision of his mother's property in the near future to subdivide a lot for his daughter. In order to do that he will have to do the engineering paper work, pave the road and bring it up to town standards at his cost. Mr. Ford wants to build on that road and not do anything and he doesn't think it is right.

P. Oberhausen wanted to know if the town is requiring Mr. Gilbert to asphalt the road. Mr. Gilbert stated that it is his understanding of what the surveyor is telling him. P. Oberhausen stated that Swallow Road is a Class V gravel road and there are a few other Class V gravel roads in town. Mr. Gilbert stated that this is to subdivide an existing lot. C. Daigle explained that what Mr. Gilbert and Mr. Lewandoski and Ms. Cilley are talking about is an approval to subdivide and create more lots. If they are going to subdivide and create more lots they are going to have to have frontage and the frontage has to be on a Class V road so they would have to create a Class V road. They would have to get the Selectmen to lay it out and the Selectmen would probably attach some levels of improvements to it. What Mr. Ford is doing is building on a preexisting lot, not creating a new lot.

Mr. Gilbert stated that his only concern is that they are creating more maintenance, that is not being addressed and who takes care of that. Ms. Cilley stated that they would love the town to take over the road unfortunately the town has taken a position that if they didn't maintain it before they won't do it. They are acting to stop development on the road before they put any more financial burden on the people maintaining the road. Mr. Gilbert stated that he has no problem with Mr. Ford building a house but he is concerned about who will maintain the road with more traffic on it creating more ruts and he will have to bring in more gravel to maintain it.

Atty. Wood stated that he talked to Mr. Ford and the Zoning Board could impose a condition on the variance and one of the conditions of granting this variance could be that Mr. Ford would share in the cost of the maintenance of Jodi Drive. He would contribute his proportionate share of the cost with

Mr. Gilbert, Mr. Lewandoski and Ms. Cilley. Mr. Ford stated it would be proportional because he is using only the first 400'.

P. Harris wanted to know if part of the interior portion of the road is Class V. Mr. Lewandoski stated that there is about a 250' section of roadway that he had to put in to cross. He had to make the road 24' wide, boulders on both sides and put in four culverts and a wetland permit. The reason was that the town was going to take it over for block grant money and maintain the road. The road was at one time maintained by the town but then Mr. Ford created some issues and the town stopped plowing it. Mr. Lewandoski stated that he had to upgrade to a Class V standard between Mr. Gilberts house and his property line. It is not right that Mr. Ford is not held to the same standards.

P. Harris stated that he does not want the grievance to affect his decision. If Mr. Lewandoski was allowed to build a house ½ mile up the road then 200' up the road should not be an issue. Ms. Cilley stated that if they have to maintain it and up keep it, it does make a difference. You have to look at the individual because Mr. Ford stated that he will live there. P. Harris stated that Mr. Ford stated that he will maintain 400' of the road. Ms. Cilley wanted to know how that will be enforced. P. Harris stated the same way they do to others on the road that signed the liability paper work. Ms. Cilley stated that the town told her that they don't enforce it. P. Harris stated that the property owners are required to do it. Ms. Cilley stated that the issue is whether Mr. Ford has 20' of frontage on a Class V road and he does not. He has other options and he will cost the people maintaining the road when he travels on the road and every time someone builds on the road. Mr. Lewandoski stated that Mr. Ford could have contacted him, Mr. Gilbert and the owners of the apartment house and explained the proposal and the need to upgrade to Class V standard and asked how they all could do it. They could have had each property owner on Jodi Road up grade the road to Class V standard and divide it fairly among the owners. Mr. Ford is trying to circumvent the system and it is unfair to the property owners that have to maintain the road. Mr. Gilbert stated that it is unfair and he has contacted the owner of the apartment house and they refuse to do so and he wants to know how they can rectify the situation. Do they set up a maintenance fund? Ms. Cilley stated that it then becomes an Association and that is not what they want. Atty. Wood stated that there is a process that the owners of the properties can petition the town to have it become a Class V road and based on the petition they can choose to accept it and then they can lay the assessment against the land owners. Because the road is in such good condition it should not be much to bring it up to standards. Maybe that is the process to explore at this time.

Atty. Wood reiterated the fact that a condition could be placed on the variance that Mr. Ford share in the maintenance of Jodi Drive based on his proportionate share. If that isn't done then the variance can be lifted and they can't use the house anymore.

The chairman asked if anyone in the audience had any questions or comments. There being none, he closed the public hearing.

P. Harris stated that he doesn't want to play abutters against abutters. The discussions and the information provided addresses the use variance talks about feasibility and methods reasonably feasible to upgrade the road or go another route. He doesn't know of any solid information supplied that allows the Board to decide what is feasible. No studies were done or any work applied for to see if it would be

feasible to bring Jodi Drive up to Class V standards that would be acceptable. He needs more information to determine if this is feasible or non feasible to bring the road up to grade. Through the discussion it was brought out the hardship of maintaining the road which is outside the Board's ability to put controls on that procedure. The Planning Board has held other developers to the road standards. He doesn't want to set a precedent by allowing this. He does have a problem with not allowing the 20' frontage on a Class V road because it is used as a standard for other developers. The feasibility study could help support the Board's decision in the approval or denial of the variance.

N. Patten wanted to know if P. Harris is suggesting that they Table the application until they get a feasibility study. P. Harris stated that a possible Table would leave the door open to continue and get more information on the feasibility of upgrading the road and any legal information. This would allow the Board a chance to get a better understanding of all the issues. There have been references to how good the road is and how much more can be done without a large cost burden to anyone. C. Daigle stated that Mr. Ford had the option to petition the Selectmen to lay out a Class V road and he didn't choose to take that option but chose to take the option of going for a variance from having the 20'. P. Oberhausen stated that they could upgrade the Class VI road. C. Daigle stated that Mr. Ford hasn't offered to upgrade the road. They could provide more information on why it isn't feasible to access through the front lot. Atty. Wood stated that there could be more information regarding cost and safety issues, the applicant could provide more information on that. The status of Jodi Drive is a Class VI highway and no evidence was given that it is not suitable for passage or is dangerous. P. Harris stated the feasibility study would address the cost to bring it up to standard as the town requires.

C. Daigle stated that Class V is a legal status for a road. There is no Class V construction standard. The only construction standard is for new roads and those standards are found in the subdivision regulations. In order for Mr. Ford to say what the standard would be he is going to have to go to the Selectmen and petition them to lay out a Class V highway and they are going to determine what the construction standards will be for the highway. He would then have to convert that information into a cost factor depending on whether he has to convert just the section of road to his property or the entire road. P. Harris asked if they deny the application does Mr. Ford have the ability to go forward to the Selectmen. C. Daigle stated that he does, it is a separate process from the variance request.

Mr. Lewandoski stated the standard he was held to for the distance of the roadway from Mr. Gilbert's property to his was laid out by the Public Works Director and was a 20' roadway with 2' shoulders and he believes that the Public Works Director would still maintain that standard plus the turnaround "T" at the end. Mr. Gilbert stated that he is in the process of having a survey because he wants to subdivide a lot for daughter.

P. Harris stated that he is asking for more information on the benefit sought by the applicant to determine if it can or cannot be achieved by some other method reasonably feasible for the applicant to pursue. The chairman reminded everyone that this is a dimensional variance, not a use variance. He is also looking for input from the Selectmen's level also. They could table the application until the next meeting to allow everyone to explore the offers brought forth at tonight's meeting. P. Harris is looking for more information to support the variance.

Atty. Wood suggested that the applicant and the abutters get together for a short discussion to go over the options and possibly reach an agreement on which options would be best. Then if it is tabled everyone would understand what the terms are. The abutters were not agreeable to a meeting at this time but will be willing to one in the future.

Mr. Ford stated that when he first applied to subdivide the house lot in 1983 there was a discussion about the road. At that time there was a decision from Atty. Bradley and the Bradley decision stated that the road was permissible to be used as a driveway. It has been since then that it has been upgraded to a Class VI road by the Selectmen. Mr. Ford stated that the Zoning Board is subject to decisions by prior Zoning Boards.

**BOARD ACTION – MARSHALL & MARGUERITE FORD:**

**MOTION:** P. Harris moved to table the public hearing for a Variance of Article 10.C of the Zoning Ordinance to construct a single family residence without the required frontage until the May 24, 2006 meeting to allow the applicant time to bring a resolution to the offers that were made during the public hearing regarding upgrading Jodi Drive to Class V status and/or to provide additional information in support of the variance application.

The motion was seconded by P. Oberhausen and carried. (5-0)

**OTHER BUSINESS:**

**A. ELECTIONS:**

**MOTION:** P. Oberhausen moved to nominate J. Olmstead as Chairman.

The motion was seconded by L. Couture and carried. (4-0-1) J. Olmstead abstained.

**B. BOARD'S ACTION - MINUTES:**

P. Oberhausen made a motion to approve the minutes of February 13, 2006. N. Patten seconded Carried (5-0)

**STAFF REPORT:**

**A. ALTERNATE MEMBERS:**

J. Olmstead explained that Ms. JoAnn Bennett is interested in being an alternate on the Zoning Board and is here tonight to answer any questions the Board may have.

Ms. Bennett stated that she was on the Northwood Conservation Commission before moving to Belmont two years ago. She does real-estate and floral design. She owns her own business and has built three houses. She is a member of the Rotary. She wants to be on the Board to learn

more about town politics especially where she is in real-estate. She wants to get a better insight on what goes on at the meetings and how they work.

**MOTION:** P. Oberhausen moved to appoint J. Bennett for a 3-year term as an alternate on the Zoning Board.

The motion was seconded by L. Couture and carried. (5-0)

**ADJOURNMENT:**

**MOTION:** On a motion by P. Oberhausen, seconded by N. Patten, it was voted unanimously to adjourn at 9:01 p.m. (5-0).

Respectfully submitted,

Elaine M. Murphy