

Meeting of the Board of Adjustment of the Town of Ocean Ridge, Florida held on Wednesday, February 14, 2001 at 8:30 AM in the Town Hall meeting chambers.

The meeting was called to order by Chairman Barlage and roll call was answered by the following:

Richard Lucibella Barbara Souther
Dr. Vinas Geoff Pugh
 Chairman Barlage

III. APPROVAL OF MINUTES

A. September 13, 2000

Dr. Vinas moved to approve the minutes of September 13, 2000, seconded by Mr. Lucibella.

Motion carried – Yea (5)

B. January 17, 2001

Dr. Vinas moved to approve the minutes of January 17, 2001, seconded by Mrs. Souther.

Motion carried – Yea (5)

IV. VARIANCE REQUESTS

- A. An application submitted by Patricia Pugliese, 800 Andrews Avenue, #8, Delray Beach FL 33483, requesting a variance from the provisions of the Land Development Code, Article II; District Regulations, Section 26-10; Single-Family Residential Districts, Paragraph (e); RSF – Single-Family Residential Property Development Regulations (as per Section 26-12(d)(6)); Sub-Paragraph (3) maximum 36' building height to permit construction of a three story single family residence with a maximum building height of 39.7' or 47' NGVD located at 35 Hersey Drive (extreme southeast end of Hersey Dr.) or legally described as the Southerly Portion of Lot "A" and Lot "B" of Shoreview Subdivision.

Town Clerk Hancsak read the variance application by title only.

Charles Schoech, attorney representing the board, introduced himself to the board members and the public.

Town Clerk Hancsak noted for the record that all fees had been paid and additional correspondence had been received from Patricia Colbert, President of Turtle Beach Condominium, opposing the variance request. Mrs. Colbert advised that her association believed that granting this variance would set precedence for future requests. She stated that in 1994 a developer for Building 5111, within their property, had requested to build

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garages under the first floor building and they were advised that the town would absolutely not allow a variance. She also stated that they feared that the present owner for their last vacant parcel might request and receive a similar variance because otherwise it would appear that the ordinance was being selectively enforced.

Chairman Barlage and Town Clerk Hancsak read the justification of application and responses for the requested variance. The applicant also included a brief written statement which stated that she did not agree with the Town's interpretation of the code regarding the first floor elevation and three story building and she would be appealing this interpretation if the variance is not granted. The applicant advised that because the lot lies primarily seaward of the Coastal Construction Control Line (CCCL), the bottom of the structural support system must be elevated to 15.4', which means that the lowest the finished floor elevation can be is 17.3' NGVD. The applicant added that, in order to build the residence, pilings are required either in fill or through the placement of frangible walls of which the later is preferred for aesthetic and drainage reasons. This presents the reasoning for the garage, which is not being utilized for human occupancy or habitation, to be located under the residence. The applicant stated that based on the Town Manager's interpretation of taking away one floor and 10' in height from the living space, this would greatly impact what could be built on the lot. The proposed residence is 4,876 feet of space under air. It was added that the height of the house accommodates 10' high first floor ceilings and 9' high second floor ceilings with a roof pitch of 6 to 12 (revised to 4 to 12, and 39.7' or 47' NGVD as a result of the Jan. 8, 2001 Commission meeting) and the height of the house from the finished floor elevation of the first floor is less than 32 feet.

In answering the Justification of Application the applicant stated that special conditions and circumstances exist because of the CCCL and the requirement that the living area be elevated to 17.3' NGVD. Moreover, the property has a negative slope, which exacerbates the difference between the level of her property, and the level at which her habitable space must begin. She added that the CCCL is beyond her control. The applicant stated that granting the variance would not confer any special privileges that other property owners are entitled to. The applicant stated that the literal interpretation of the Ordinance as set forth by the Town Manager would severely restrict the size of the house as compared with similarly sized lots within the same zoning district. The applicant stated that the variance granted is the minimal variance that will be reasonable considering the size and location of the lot, keeping in mind that the height was not maximized. The request would also be in keeping with the spirit of the ordinance as the law allows two stories and up to 36' height for living space. The applicant stated that the improvements would not be detrimental because it would minimize the impact on the neighbors.

At this point Attorney Schoech had any and all parties intending to provide testimony sworn in.

Town Manager Dunham read his administrative comments, which included a brief summary of the events and action taken before the Commission regarding the permit for

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construction east of the CCCL and also the minimum and maximum finished floor elevations. He also explained that the applicant could actually construct the home at a total height of 53' NGVD without any approval by the town by bringing in fill to fulfill the state minimum finished floor requirements of 15.4'. However, they were proposing frangible walls as to minimize the drainage impacts, the garage underneath to minimize the height and lot coverage factors and they also agreed to reduce the overall height of the structure to 39.7' from 42'. He commented that the Commission directed staff to advise the board that they recommended the variance be granted.

His comments regarding the justification of application advised that special circumstances exist due to the state requirement that the lowest structural member cannot be any lower than 15.4' and this requirement does not result from actions of the applicant. Town Manager Dunham stated that other property owners have the ability to build similar structures provided they meet the code. He does not believe that the applicant will be enjoying a special privilege, given the fact that the applicant could build a house that meets the code but would result in a structure that would have more of a negative impact on the surrounding neighborhood. He advised that literal interpretation of the provisions of this chapter would work unnecessary and undue hardship because the state requirements create a situation that precludes the applicant from building a house to code without severely impacting the characteristics of the surrounding neighborhood. In conclusion, Town Manager Dunham commented that he felt the request was the minimum variance to allow the most reasonable use of the land and least impact. Town Manager Dunham stated that he felt that granting of the variance would be in harmony with the general intent of the ordinance because a house built within the code is less desirable and the one proposed would will not be injurious to the area involved. Therefore, he recommended approval of the height of the building and number of stories for the new house based on the agreed 39.7' or 47' NGVD as discussed at the Town Commission meeting of January 7, 2001.

Mr. Lucibella questioned when the state overrides the town concerning an issue such as the CCCL. Atty Spillias advised that the state requirement would be followed if it is more stringent.

Mr. Lucibella questioned where the measurement begins, either from the garage slab or the first floor. He was advised that the staff has concluded that the measurement begins at the lowest slab, however the code does make exceptions if no artificial fill is necessary to create a garage or first floor. Town Manager Dunham advised that there are some homes that have been built with a basement or garage built into the dune. Atty Spillias stated that the code defines a basement as not having more than 50% underground and added that the code was created to prohibit massive buildings or easy convertibility of a garage into living space by creating the FAR. Atty Spillias commented it is here that Atty Kurtz, representing the applicant, disagrees.

Dr. Vinas questioned how the state arrived at 15.4' minimum finished floor elevation to which he was advised that it is based on the wave crest. He also clarified the height of Old Ocean Blvd.

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Atty Kurtz, representing Mrs. Pugliese, provided a smaller handout of the dune and street elevations and briefly explained the state requirement of 15.4' vs. the town permitted 12' height. The handout also included revised drawings reflecting the 39.7' height of the residence. He commented that the garage was being proposed at its location and around frangible walls so as to minimize the mountain like effect. He also stated that based on the town's interpretation of the code the structure would be limited to 29.7' for the living space area if the garage is still located underneath and counted as the first floor. He added that he felt the applicant went out of her way to minimize the structure and impact in the area.

Mr. Pugh stated that based on the difference from Old Ocean Blvd. and Hersey Dr., fill being brought in would create a greater drainage problem. Town Manager Dunham stated that either way the home was built drainage would be an issue and this is why the Commission has authorized the staff to hire a civil engineer to review the drainage plans. Mr. Pugh clarified that the frangible walls would be constructed of CBS block to which Jose Obeso, architect for the applicant, advised that the walls are not completely attached to the structure of the house. Atty Kurtz stated that there would be ample landscape to minimize the walls. Atty Kurtz mentioned that there was a similar lot immediately to the north of this lot and that owner will propose to build a home in the same fashion that this home will be built, either with fill or frangible walls.

In conclusion, Atty Kurtz commented that he felt the facts as presented were very clear that the applicant tried to minimize the impact and height of the structure as evidenced by agreeing to lower the height from 42 to 39.7'. He added that he honestly believed that the outside appearance would not appear drastically different considering the 3' maximum height difference. He stated that the Commission has reviewed this property extensively since August 2000 and they too recommend that the variance be granted.

Prior to opening the discussion to the public, Town Clerk Hancsak asked if any of the members had either spoken with representatives of the owner or reviewed the site. All five members advised that they reviewed the site only.

Earl Jones, 14 Sailfish Lane, stated that he was not sitting as a board member today because he felt it would be unfair to the applicant considering that he has voiced his objections regarding this property at several Commission meetings. Mr. Jones stated that he is still concerned with the drainage issue and provided a photograph (entered as Exhibit #B) of the lot when it was flooded. He stated that he understood that the owner has a right to build on the property, however, they need to control the water. He mentioned that the board must keep in mind that the adjacent property owner will be seeking a similar variance at a future date. Mr. Jones disagreed with the overall size of the residence as stated by the applicant because he felt any space within the confines of the walls should be counted in the FAR, citing that there were walls, floors and an elevator on all three floors. He added that he is still concerned with the breakaway walls but he realizes that the applicant is here this date to request a variance on the height restrictions.

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At this point, Mr. Jones handed out a summary of the three scenarios that could or do affect the building for the applicant (entered as Exhibit #C) which included a home with no state involvement, the proposed home and the home that could be built without any need for a variance. After summarizing the alternatives he stated that the area residents would be better off with the granting of the variance than not. He added that he felt the owner would be cognizant of the drainage issue because of the potential of flooding on the garage level.

Earl Jordon, 30/32 Hersey Drive, questioned what the overall height difference would be to homes located to the west of the property. Town Manager Dunham showed a drawing that depicted Diamond Beach, the proposed Pugliese residence, and Turtle Beach. He commented that he felt the residence could have been designed with a lower overall height by possibly reducing the ceiling heights on both living area floors. He added that he too was concerned with the drainage issue. He concluded by stating that he would be more in favor of the variance than the alternative. Town Manager Dunham reiterated that at the permitting process staff will review the drainage and he also has the authority to have the plans reviewed by a civil engineer.

Atty Schoech reminded the board that they were here to review the land development issues. He added that the staff would have to deny approving the plans if they did not meet the other codes.

Joe Ward, 5 Sailfish Lane, stated that he has been a resident for 18-20 years and he enjoyed the simplistic and uniqueness of Ocean Ridge. He stated that he would hope the board would consider this and attempt to maintain the quality of the town when making the decision. He added that he too was concerned with the drainage issue.

Atty Spillias stated that the Commission has struggled with this proposed home since August 2000 and they even hired a civil engineer to review the applicants drainage plan and has since directed the staff to review the hiring of a town engineer to review future plans. He also stated that they carefully reviewed the utilization of the ground floor and approved their portion of the variance contingent on including any area with a slab in the FAR. He added that the Commission felt the home as proposed would be the best alternative for the area and for the future home to the north of this lot.

At this time Chairman Barlage declared that the board was in executive session. All five of the board members concurred that they felt the applicant did prove a hardship and could have built a home that would have had more impact in the neighboring area. They stated that given the two alternatives, including the drainage impact in the area, they were in favor of granting the variance.

Atty Schoech read the Section 26-233 (d) of the Town Code of Ordinances where it addressed the seven criteria and suggested that the motion state that the applicant met the terms as set forth.

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Mr. Lucibella moved to grant the variance as requested and recommended by the Town Commission based on meeting the requirements of the Justification of Application A-G in the Code of Ordinances, seconded by Mrs. Souther.

Motion carried – Yea (5).

Town Clerk Hancsak advised the applicant that a letter from the town would be forthcoming.

Atty Kurtz thanked the members and staff and then withdrew the appeal of the Town Manager's interpretation listed as "B" on the agenda.

Mr. Pugh moved to accept the withdrawal request for item "B" on the agenda, seconded by Mr. Lucibella.

Motion carried – Yea (5).

The meeting was adjourned from 10:10 AM to 10:20 AM.

B. A hearing of an application submitted by Patricia Pugliese, 800 Andrews Avenue, #8, Delray Beach FL 33483, requesting an appeal from the interpretation of the administrative official from the provisions of the Land Development Code, Article VIII; Other Development Review and Administrative Procedures, Section 26-707(2); Variances and Appeals from Decision of Administrative Official at Article II, District Regulations, Section 26-10; Single-Family Residential Districts; Paragraph (e) RSF-Single Family Residential Property Development Regulations (as per Section 26-12(d)(6)); Sub-Paragraph (3) maximum 36' building height in that the administrative official refers to the proposed single family residence as a three story structure of approximately 41 feet in height located at 35 Hersey Drive (extreme southeast end of Hersey Dr.) or legally described as the southerly portion of Lot "A" and Lot "B" of Shoreview Subdivision.

This item was withdrawn during discussion of item "A".

C. An application submitted by Ron Goldberg, CEO for Goldmark Builders, Inc., 22 Eleuthera Drive, Ocean Ridge, FL 33435 requesting a variance from the provisions of the Land Development Code, Article II; District Regulations, Section 26-10; Single-Family Residential Districts; Paragraph (e) RSF-Single-Family Residential Property Development Regulations; Sub-Paragraph (2)(d) 25' rear setback (as per Section 26-240 definition of lot through) to permit the construction of a single family residence that would have approximately 900 sq ft encroaching 10' into the required 25' rear setback located at 22 Eleuthera Drive or legally described as Lot 22, Inlet Cay Subdivision.

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Town Clerk Hancsak read the application by title and verified that all fees had been paid and that additional correspondence was received concerning this request. She read letters from W. Thomas/Patricia Lobaugh, 21 Eleuthera Dr., and also from John Cawood, 11 Inlet Cay Dr., objecting to the variance. The main objections cited are the obstruction of view and breeze, the decreased setback would not be in harmony with other homes in the development and would therefore appear too large for the lot, the fact that an error made by town staff should not constitute subsequent approval, and the property owner would also be violating a deed covenant. Mr. Lobaugh also submitted petitions with 35 signatures of homeowners in the area objecting to the variance.

Chairman Barlage read the Justification of Application and Town Clerk Hancsak read the applicant's responses. The applicant stated that special circumstances exist which are peculiar to the land which are not applicable to other lands in the same zoning district because the property was purchased by Goldmark Builders, Inc. on July 26, 2000 with an active building permit issued by and town and county for a single family residence. They stated that they proceeded to the Town Hall with a minor revision when it was discovered that the original permit had been issued in error with a 15' rear setback. They also mentioned that they wanted to apply for a dock at the property, however, they were denied due to an ordinance that bans docks on vacant lots which is now currently in danger of expiring with DEP. They added that by adjusting the home to the double frontage requirements the residence would lose almost 400 square feet of air-conditioned space and over 500 square feet of covered lanai. They also cited that the property was an irregular shaped lot, which has remained undeveloped. The applicant stated that these special conditions do not result from actions of the applicant because as owners they relied upon the permit issued by the town and county. The applicant stated that they did not feel granting the variance would confer any special privilege because the lot has an odd configuration and the area in question consists mainly of an exterior covered porch and would not impede the neighbors view. They added that other existing lots on the street are more uniform and rectangular shaped. The applicant advised that literal interpretation of the code would deprive them of the right to square footage, which most other homes on the street enjoy. They stated that other homes on the street are substantially larger than the residence approved for this lot and not granting the variance would force them to build a much smaller residence. The applicant stated that they felt this variance would be the minimum to build the home which was issued a valid permit and would be the most reasonable use of the land due to the awkward configuration of the lot. They added that any smaller variance would diminish the enjoyment of the waterfront lifestyle the neighbors currently enjoy. The applicant advised that after several conversations with the town representatives, they have been unable to ascertain the intent of the code requiring a double frontage situation and they felt that the general intent of the ordinance is to promote public welfare and this residence would enhance the existing community. In conclusion, the applicant stated that they did not believe that granting the variance would in any way jeopardize or negatively affect public welfare and in fact quite the opposite would occur by placing a residence on an eyesore vacant lot thereby enhancing the community.

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At this point Atty Schoech swore in all persons intending on giving testimony. The board members also announced that they had viewed the site but did not have contact with anyone.

Town Manager Dunham commented that he was at a loss how this error occurred and stated that this may have possibly been one of the first double frontage permits that he reviewed. He added that unfortunately errors do happen and he would rely on the Town Attorney to discuss the appropriate case law.

Town Manager Dunham then proceeded to summarize his administrative comments, which stated that he did not feel that special circumstances exist which are peculiar to the other lands in the same zoning district because the geometry of other lots exhibit similar odd shapes. Concerning whether special conditions and circumstances resulted from actions of the applicant, the Town Manager stated that the applicant relied on a set of plans that had been stamped as approved by the town, however, at no time did the applicant confirm that the plans met the code. He added that during a revision approval process the error concerning the 15' rear setback was discovered and the applicant was advised that construction could not commence. Town Manager Dunham stated that granting the variance would confer a special privilege because there is no structure on the lot and a new structure should and could meet all of the existing zoning regulations. He advised that literal interpretation of the provisions of the chapter would not work unnecessary and undo hardship because although the lot has an unusual shape a new house that meets all the codes could be built typical in the neighborhood. Town Manager Dunham stated that the request was not the minimum to allow reasonable use of the land because the home could be built according to code and therefore would not be harmony with the general intent of the chapter. In conclusion he stated that he did not feel the variance request met the criteria set forth in the code and recommended to deny the variance for the encroachment into the rear setback.

Michael Jonas, attorney representing the property owner, distributed a copy of the contract (Exhibit A) to purchase the property and stated that the previous owners had nothing to do with Goldmark Builders, Inc. He added that they were stockholders. Mr. Stein, representing the applicant, commented that they purchased the property from Glenn Siegler and Richard Rankin and a precondition to the closing was to re-activate the building permit.

Atty Jonas also distributed the following exhibits: copy of the building permit (B), copy of an unrelated building permit showing double frontage signed by the Town Manager and dated 1/6/99 (C), a letter from Atty Jonas addressed to Atty Spillias and Atty Schoech dated 2/13/01 (D), a letter from the Town Manager to Bill Dixon, PBC Building Dept (E), dated 1/9/01, three different letters from REMAX Realty concerning the marketing of the property (F), and a letter from Ocean & Intracoastal Properties Realtors advising of the market value based on the proposed drawings.

Atty Jonas advised that his client purchased the property in good faith relying on a set of approved plans that have even been renewed. He cited that special circumstances exist

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because in addition to the \$537,000 selling price his client has incurred additional expenses, which include; carrying fees, architectural revisions, surveys, engineering drawings and attorneys fees. He added that his letter to the other attorneys outlined the special circumstances and the facts are so egregious that equity should allow and the Town should be estopped to deny that his client should be allowed to pursue construction according to the plans. He also stated that his client is before the board because of the minor revision he planned to submit was denied when the error was discovered.

Atty Jonas commented that the angle of the property in the cul-de-sac limits the property development along with the fact that other similar type lots are at least 11,000 square feet and this property was 10,200 square feet. Atty Jonas and Mr. Stein showed an aerial of the area and explained that the circumstances were not created by the applicant, however, the fact remains that a building permit was issued and renewed to the new owner. Atty Jonas stated that his client was not asking for a special privilege because they are not asking for any relief from the FAR but only from the setback requirement. He added that this home would enhance the community.

At this point it was clarified that the minor revision submitted to the Town Hall would not affect this variance request and that the issue was only the 10' encroachment.

Atty Jonas mentioned that the letters from REMAX Realty include a statement that staff had represented that only a 2,700 square foot home could be built on the property. Town Clerk Hancsak responded by stating that staff does not quote exact square footage permitted especially since the office does not have surveys for each property. Mr. Lucibella noted that it appeared that each of the three letters had different signatures and no one from the REMAX was present.

Atty Jonas stated that the granting of the variance would be keeping harmonious with the neighborhood with the purposes of the code and added that the applicant meets the lot coverage and other requirements. Mr. Pugh disagreed and commented that he did not feel the home would be in harmony with the other neighbors. Atty Jonas also commented that the proposed home was the most reasonable use of the land and that the literal interpretation of the provisions of this chapter would deprive his client of what they thought had been approved. Mr. Lucibella questioned whether the applicant could still use the lot to which he was advised that he could. Mr. Stein estimated that he had incurred an additional \$50,000 in expenses including \$20,000 in the original architectural drawings, \$10,000 in revisions, permitting fees, etc.

Mr. Stein stated that one could actually question where the rear and front of the residence was actually situated and added that the pool location could be considered the rear of the property because of the odd shaped lot. He also stated that he believes he has a definite hardship because he did use massive due diligence before purchasing the lot and was advised that he could not build the home as approved after the purchase.

In conclusion Atty Jonas stated that based on the foregoing his client would much rather resolve this issue through this variance hearing. He added that he believed their

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justification has met all the requirements. Mr. Stein showed a colored rendering of the residence and stated that the kitchen and master bath would be the air-conditioned encroachments.

Atty Spillias, on behalf of the staff, stated that Section 26-240 concerning the definition of lot frontage clarifies the front of a residence. With regards to the issue of estoppel he stated that the board needs to consider and meet all seven of the criteria for the setback. He added that equitable estoppel may have some merit concerning the special circumstances, however, the board needs to determine that the special circumstances existed before the mistake. Atty Spillias also cited 6 cases of law concerning the zoning official approving plans in error and the court had consistently stated that this did not constitute a basis for the government not to enforce the code and therefore the staff has no authority to go outside the rules of law. He stated that he sympathized with the applicant in relying on the approved plans, however, that does not authorize the town to allow the violation to go forward.

Atty Jonas asked to rebut citing footnote 2 on one of the case laws concerning a hotel in 1976. He stated that the reason he brought up equitable estoppel was because it needed to be addressed before the board.

At this point the hearing was opened to the public and Mr. Lobaugh, 21 Eleuthera Drive, advised that he lives east of the subject property and he was present representing the 35 immediate area homeowners to object to the variance. He commented that when he purchased the property he knew the lot was vacant and would eventually be built on so he measured the 25' setback at that time and felt it would not severely restrict his view of the intracoastal waterway. He continued by stating that the 15' would greatly object his view and he then presented 12 photographs (Exhibit H) showing views with and without an obstruction with 15' and 25' setbacks.

Mr. Lobaugh also stated that the deed covenants provide for a 25' setback from the water and Goldmark Builders should have been aware of this in addition to the town setback requirements. He added that the applicant was also aware of the irregular shape of the lot. Mr. Lobaugh also stated that prior to the meeting Mr. Stein suggested to him the possibility of revising the home as such so that just the balcony and posts would encroach into the setback and no actual building would encroach. Mr. Lobaugh suggested to him that the second floor could be built over the garage and while that would still block some of his view he would still get the breeze. Mr. Lobaugh concluded by stating that he is still not in favor of a variance and he agreed with the Town Attorney that it was not the boards' decision to debate prospective damages, however, if a variance was granted he would be more in favor of the alternative.

Chairman Barlage declared the board in executive session.

Mrs. Souther stated that she did not feel there was a hardship to encroach into the setbacks and felt a home could be built in compliance with the codes.

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Mr. Pugh stated that he did not feel that blocked views were an issue because homeowners have boats, swings, etc. that may obstruct views. He did state that the rear setback is 25' and he did not feel a hardship was proven.

Dr. Vinas stated that he felt the owners should have done their homework and reviewed the codes for compliance. He added that he could not vote in favor of a variance when 35 neighboring residents were opposed to it.

Mr. Lucibella questioned whether a town code that is more generous or a deed restriction would take precedence. Atty Schoech stated that the town does not enforce deed restrictions, however, the residents can enforce them. He added that if the board was inclined to approve the request then the residents could stop the construction based on the restrictive covenants. Mr. Lucibella stated that he did not see the equitable estoppel as an issue for this board and he could not support the variance and chance 30 lawsuits. He added that he did not feel the applicant has accomplished a hardship for item C, D, E, or F.

Chairman Barlage concurred that item C was not proven and he felt the hardship would be with the adjacent neighbors and not the applicant and therefore he was not in favor of the variance.

Atty Schoech commented that on the issue of estoppel the applicant's attorney handled it properly by bringing it up to the board in the event it was brought before a court of law.

Mrs. Souther moved to deny the variance request, seconded by Dr. Vinas.

Motion carried – Yea (5)

Town Clerk Hancsak advised that a letter would be forthcoming from the town.

V. Adjournment

The meeting was adjourned at approximately 11:55 AM.

ATTEST:

Town Clerk

Chairman Barlage
Geoff Pugh
Richard Lucibella
Dr. Vinas
Barbara Souther