



**Town of Barnstable**  
**Zoning Board of Appeals**  
**Minutes**  
**April 27, 2011**

***A regularly scheduled and duly posted Public Hearing for the Town of Barnstable Zoning Board of Appeals was held on Wednesday April 27, 2011 at 7:00 PM at the Town of Barnstable, Town Hall, 367 Main Street, Hyannis, MA. A quorum was met. Also present were Jo Anne Miller Buntich – Director, Growth Management, Elizabeth Jenkins – Principal Planner and Carol Puckett – Administrative Assistant***

Laura Shufelt - Chair	Present
William Newton – Clerk	Present
Michael Hersey	Present
Craig Larson	Present
Alex Rodolakis	Present
Brian Florence	Present
George Zevitas	Present
Scott Harvey	Absent

***Laura Shufelt opens the hearing at 7:03 PM.***

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**Introduction of Board Members**

***The Board introduces themselves***

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***Approval of minutes from February 16, 2011, March 9, 2011 & March 23, 2011***

***Motion is made by Michael Hersey and seconded by William Newton to accept minutes as presented.***

***Vote:***

***All in favor***

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***Laura then calls the Gulachenski appeal and reads it into the record:***

**7:00 PM      Appeal No. 2011-020      - **New**      Gulachenski**

Dorothy L. Gulachenski has applied for a Special Permit under Section 240-92 B - Nonconforming Buildings or Structures. The applicant is proposing to construct a 7 X 7.4 square foot addition to the existing non-conforming single-family structure. Whereas the district requires a 20 foot front yard setback, the applicant is requesting a Special Permit to construct the addition as close as 14.4 feet to the property line. The property is addressed as 171 Gosnold Street, Hyannis, MA as shown on Assessor's map 306 as parcel 126. It is in a Residence B zoning district.

***Members assigned: William Newton, Michael Hersey, Craig Larson, Alex Rodolakis, Laura Shufelt***

***Roland Gonzales from Capizzi Home Improvement is here representing the applicant.***

**Mr. Gonzales points out on the certified plot plan how far the house is from the sidelines. He indicates that the proposed addition will not be going outside the existing frontage. William Newton clarifies with Mr. Gonzales exactly where the house sits on the plan.**

**Mr. Gonzales indicates that there would be no deck. William Newton clarifies that the addition is for a mud room and asks about the split rail fence and the possibility of it being in the right-of-way. Mr. Gonzales is not sure about the fence being in the right-of-way. William Newton asks Elizabeth Jenkins who indicates that she would suspect it is in the right-of-way. Craig Larson indicates that they can suggest it on the as-built plan.**

**Laura Shufelt asks if there is anyone from the public who would like to speak either in favor or in opposition. No one speaks.**

**Craig Larson makes findings.**

**Dorothy L. Gulachenski has applied for a Special Permit under Section 240-92 B - Nonconforming Buildings or Structures. The applicant is proposing to construct a 7 X 7.4 square foot addition to the existing non-conforming single-family structure. Whereas the district requires a 20 foot front yard setback, the applicant is requesting a Special Permit to construct the addition as close as 14.4 feet to the property line. The property is addressed as 171 Gosnold Street, Hyannis, MA as shown on Assessor's map 306 as parcel 126. It is in a Residence B zoning district.**

**The property is a corner lot with frontage on Gosnold and Cumner Streets. According to the Assessor's record, the subject property is 6,969 square feet (.16 acres) in area and developed with a single-family dwelling with 1,611 square of living area. The existing dwelling is set back approximately 11.6 feet from the Cumner Street right-of-way and does not conform to the 20 foot front yard setback required in the RB Zoning District.**

- **The application falls within a category specifically excepted in the ordinance for a grant of a special permit:**

**Section 240-92(B) of the Barnstable Zoning Ordinance allows for expansion of a preexisting nonconforming structure used as a single-family residence by special permit where the expansion encroaches into a required front yard setback.**

- **Site Plan Review is not required for alteration or expansion of a single-family residential structure.**
- **After an evaluation of all the evidence presented, the proposal fulfills the spirit and intent of the Zoning Ordinance and would not represent a substantial detriment to the public good or the neighborhood affected.**

**Vote:**

**AYE: William Newton, Michael Hersey, Craig Larson, Alex Rodolakis, Laura Shufelt**

**NAY: None**

**Motion is made by Craig Larson to grant the Special Permit with the following conditions:**

1. **Special Permit 2011-020 is granted to Dorothy Gulachenski for the expansion of the preexisting nonconforming residential structure at 171 Gosnold Street, specifically for the construction of a 7'5" addition that will encroach on the required front yard setback.**

2. ***The porch shall be constructed in substantial conformance with the plan entitled "Gulachenski Residence", drawn and stamped by Eastbound Land Surveying, Inc, dated March 17, 2011 and corresponding plans drawn by Capizzi Home Improvement, Inc. dated March 10, 2011.***

***The decision shall be recorded at the Barnstable County Registry of Deeds and copies of the recorded decision shall be submitted to the Zoning Board of Appeals Office and the Building Division prior to issuance of a building permit. The rights authorized by this special permit must be exercised within two years, unless extended.***

***Seconded by William Newton***

***William Newton asks Elizabeth Jenkins about the status of the fence. Elizabeth will forward to the Building Inspector.***

***Vote:***

***AYE: William Newton, Michael Hersey, Craig Larson, Alex Rodolakis, Laura Shufelt***

***NAY: None***

## **GRANTED WITH CONDITIONS**

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***At 7:15 PM, Laura calls the Stuborn Limited Partnership appeals and reads them into the record:***

**7:05 PM      Appeal No. 2011-007 - Continued      Stuborn Limited Partnership,  
Stuart Bornstein - General Partner**

Stuborn Limited Partnership, Stuart Bornstein – General Partner, has petitioned for a Special Permit in accordance with §240-94B Expansion of a Pre-existing Nonconforming Use. The petitioner is proposing to demolish and remove the majority of the existing structure and construct a new, six bedroom single-family residence with an attached garage and attached guest house on the property. The petitioner is proposing to retain approximately 1000 square feet of the structure per order of the Old King’s Highway Regional Historic District Commission. The property is addressed as 153 Freezer Road, Barnstable, MA as shown on Assessor’s Map 301 as parcel 006. It is in a Marine Business B (MB-B) zoning district.

**7:06 PM      Appeal No. 2011-008 - Continued      Stuborn Limited Partnership,  
Stuart Bornstein- General Partner**

Stuborn Limited Partnership, Stuart Bornstein – General Partner, has applied for a Variance to §240-23 Marine Business B District – Permitted Uses. The applicant is requesting a variance to allow a single-family residential dwelling (detached) in the MB-B District. The applicant proposes to demolish and remove the majority of the existing structure and construct a new, six bedroom single-family residence with an attached garage and attached guest house on the property. The applicant is proposing to retain approximately 1000 square feet of the structure per order of the Old King’s Highway Regional Historic District Commission. The property is addressed as 153 Freezer Road, Barnstable, MA as shown on Assessor’s Map 301 as parcel 006. It is in a Marine Business B (MB-B)

***Members assigned: William Newton, Michael Hersey, Craig Larson, George Zevitas, Laura Shufelt. Also present: Brian Florence. Brian indicates that he had dealings with Mr. Bornstein approximately 10 years ago and does not believe it is a conflict even though he is not voting on this tonight. Alex Rodolakis has recused himself.***

***Attorney John Kenney is representing the applicant. He indicates that he has applied for both a special permit and a variance. He has Mr. Keeran Healy from BSC Group and Norman Hayes, a wetland scientist***

*with him. He asks the chair what her preference is as far as them testifying. Would she prefer they testify for each request or together. Laura Shufelt indicates that she would prefer to take each request for relief separately and would like to take the special permit first. Also with Mr. Keeney are the applicants, Jamila & Stuart Bornstein.*

*Attorney Kenney gives a summary of the property and how Mr. Bornstein acquired it. He has slides with aerial shots of the property on the overhead system. Attorney Kenney gives a handout to the board with new figures pertaining to the square footage (ZBA Exhibit A). He wants to correct his application with his figures. There is gazebo and a dock and those plans are not finalized. He indicates that they met with the Barnstable Village Association Board of Directors regarding the original proposal of eight boat slips and has agreed to reduce the number of slips to five. He indicates that the property is served by Town water and sewer. He explains that there was zoning in the Town in 1929 and the Town was residential except for new businesses where they had to get a permit from the Selectman. He indicates that zoning was adopted in the 50's and that in 1956 zoning for Freezer Road was changed to business and residential use and changed again in 1965 to BMB Barnstable Marine Business district. It was that change that made the residential use a nonconforming use. The district was again amended in 1969 and is the MBB district which does not allow residential use. However, Section 240-94.B of the zoning ordinance specifically authorized the Board to grant a special permit to allow for the expansion or intensification of a nonconforming use as long as it meets certain criteria. One is the preservation of the nonconforming use and the other is the special permit criteria. He then has Mr. Healey address the site plan showing a slide and explains the lines on the slide. He indicates that the existing wooden wharf is proposed to be removed and enlarged to let the boats go in and out in the marina. He shows a plan that was approved by the Conservation Commission.*

*Mr. Norman Hayes is a wetland scientist and came up with the delineations and mitigation plans. He explains that, prior to this hearing, they went to the Conservation Commission and received an Order of Conditions. He indicates that there are five separate areas that they are proposing to clean-up environmentally. He indicates that Area #2 is being overgrown by bittersweet, etc., and that all of these will be coming out during the three year Order of Conditions. If necessary, an additional three year program might be possible. The foundation, asphalt, wires, etc will come out and be planted with coastal marine species sweet fern and bayberry. Towards Area #4, there is debris consisting of concrete, bricks, etc which is coming out and planted with a marine grassland habitat indigenous to Cape Cod. In Area #5 cork will be coming out with exception of a 20 foot section along the existing bulkhead and pier which has a 99 year license from DEP for navigation and what they are planning to do on this wharf is to remove the majority of the wharf and return up to 35 feet of water sheet to Barnstable Harbor. They are going to design a parallel catwalk with finger piers to service five boats and a water shed that could currently be used, under his existing permit, which will then be given back in the best interest of the harbor and navigation. What they didn't include on this plan are other areas besides the Order of Conditions areas to be cleaned up. When the wharf comes out they will also move 283 piles that are under the substrate of Barnstable harbor.*

*Attorney Keeney addresses the preservation of the nonconforming residential use and then will address the special permit criteria. He indicates that the permitting process that the applicant was instructed to follow with the deterioration of the residential property combined to create real practical and legal impediments which prevented the applicant from exercising his right to use the property for residential purposes. The residential use dates back to the 1930's according to the Massachusetts Historical Commission report which he has attached to his memo as Exhibit #2. He indicates that according to the report, the main portion of the house was moved on the property in 1932 and the structure was converted to a residence which was occupied by the Basset family. A two story addition was made to the north side of the house in 1938. A garage was added at the same time according to the report and in 1975 another two-story section of four rooms was added to the north side as separate living quarters and was a two bedroom apartment. It is unclear to him whether it was a six or seven bedroom home; therefore, he indicates that he went with a lower count of six and is clear that there were two kitchens. Members of the Basset family occupied the residence until into the 90's. Stuborn closed on the property in 1999. He had stated in his memo that the*

**Basset family had lived there until 2001 which is not correct. He indicates that Mrs. Jamila Bornstein stated that they had a rehearsal dinner on the property in 2000 and explained that she didn't recall Mrs. Basset living there at that time. He indicates that in April of 2006, Mr. Bornstein hired Coastal Engineering to do an evaluation is Exhibit #6 in his memo which states that the inspection of the residence lead Stuborn to the conclusion that the property it was no longer safe to be used for residential rental property. In 2005/2006 it was being leased in the summer only as the heating system was gone and not habitable year round and that there were problems with water in the basement. Stuborn concluded that not only was it not habitable, but not cost effective to renovate it. Exhibit #7 talks about the recommendation to demolish it and also cites a letter from Bob Burgmann. In 2007 an application to the Old King's Highway to demolish the house and cannery was submitted. In January of 2008 while awaiting approval from OKH, Mr. Bornstein made an inquiry to the Building Department about acquiring a building permit to construct a house on the property and was informed that he would need to get approval from the Conservation Commission and OKH first and then relief from the Zoning Board for relief. In 2008, the Regional Commission overturned the denial of the demolition of the cannery. At the end of June 2008, Stuborn entered into a lease with the Town of Barnstable. During that time he continued with his appeals to develop plans for this site. In April of 2009, the applicant again spoke with the Building Department about plans for a new residence on Freezer Road and was informed by Mr. Perry, who was of the opinion that the residential structure had not been used for more than three years as outlined in the zoning ordinance; therefore, lost the residential use. He stresses that Mr. Perry did not have the availability of the leases or affidavit presented tonight which is part of his memo nor the letter from the tenant in 2006. On June 26, 2009, the applicant filed appeal 2009-043 which is the appeal of an administrative official's decision. On August 4, 2009, Mr. Perry and the applicant filed a joint stipulation of voluntary withdrawal of an appeal without prejudice which is Exhibit #9. He talks about the special permit criteria.**

**Attorney Kenney quotes Belfer vs Building Commissioner of Boston (ARTHUR B. BELFER & others vs. BUILDING COMMISSIONER OF BOSTON. 363 Mass. 439 March 8, 1973 - April 4, 1973 Suffolk County) and Wood vs Newton. regarding cases which involve special permits or variances and for which the court said that the lapsing is tolled during the appeal. There is a zoning right to use for pre-existing nonconforming use. He suggests it was tolled in 2007 and not later than 2009 when he made application to the Conservation Commission. He then addresses the special permit criteria.**

**He talks about staff's comment on the parking spaces. He indicates that the applicants own four cars and two classic cars and that the other spaces are for guests. There will be a double poured foundation. Much of this land is under conservation jurisdiction. Mr. Bornstein is agreeable to an accessory unit which will only be for family and guests. If not, he is acceptable to the removal of cooking facilities. He was ordered to keep the Capt Gerald Fish House and will use it for storage and gardening equipment. The gardener will visit daily. They are agreeable to an affidavit or statement that it not be occupied as a residence.**

**Jamila Bornstein indicates there had been many rumors of what was going to be there. She had convinced her husband to have a retirement home there and hopes that tonight she can get the approval.**

**Attorney Kenney refers now to the maps he had submitted. He also indicates that many people who have submitted letters in support live on Freezer Road.**

**William Newton clarifies Attorney Kenney's position relating to the residential use. He is not sure where/how Mr. Perry made the assumption that it was vacant. Attorney Keeney indicates that he had spoken with Mr. Perry and during that period in 2009, Mr. Perry did not have the benefit of those leases and was under the impression it was vacant. Attorney Kenney indicates that the property was leased by employees of Mr. Bornstein.**

**Brian Florence indicates that in the past he has had a business relationship with Mr. Bornstein and does not have a conflict of interest. He then asks Mr. Bornstein if there was ever any intent to abandon the property.**

**Mr. Bornstein indicates that in early 2000 they were looking to build condos or residences on the property but were denied; meanwhile they were renting the property. Brian Florence clarifies that it was always his intent to have residential use.**

**Michael Hersey asks if it will be a private dock. Attorney Keeney indicates that they will agree to a condition that it will not be rented out.**

**Craig Larson wants to clarify the timeline. Craig says that there was paperwork in 2007 to board up the house. Attorney Keeney says he believes that the last overt act in the property relating to the residential use. Craig asks when the first attempt to build the house here was. Attorney Kenney indicates that in 2010 the applicant made application to the Old King's Highway and believes it was in 2009 to Conservation.**

**Laura Shufelt comments to Attorney Kenney that in April of 2006, Coastal Engineering indicated that the house was not habitable. However, the leases go to September of 2006 and Mr. Bornstein had people living there when it was determined to be uninhabitable? Attorney Kenney indicates that that someone was living there but it was in the summer months as the heating system was gone and could not be leased year-round. Laura asks what maintenance had been done to the house from the time Mr. Bornstein purchased it until 2006? Mr. Bornstein indicates that they did work on the heating system, plumbing, electrical and at one time replaced the refrigerator.**

**Laura Shufelt asks if there is anyone here from the public who would like to speak either in favor or in opposition. .**

**Mr. Louis Cataldo speaks. He is a former police chief and also involved in historical functions and lives about ¼ mile from the property and was involved in the acquisition of Trayser Museum. Has knows Mr. Bornstein and is in support of his request.**

**Laura Shufelt reads a summary of letters submitted in opposition and support.**

**Matt Purcett, president of the Barnstable Civic Association indicates that Mr. Bornstein and Attorney Kenney had made a presentation to the board of directors and that they wanted him to convey tonight that they remain in support of the local Comprehensive Plan and local marine business and that there was no consensus with respect to opposition or support to the particular project proposed.**

**Joel Rodrigues lives at 11 Freezer Road and supports Mr. Bornstein's plan to clean up harbor and build a house. There has always been residential. Freezer Road is narrow and not a two-way road.**

**Ann Canedy from Precinct 1 – indicates that the underlying issue is zoning which would not have been discussed at the Old King's Highway or Conservation meetings and would be curious as to what staff person advised him as noted earlier. She believes that the use has been abandoned for more than three years and that there have been several applications by this seasoned developer which would indicate that he had thought about abandoning the intent for a residential purpose. She indicates that he had made applications for other things such as an office building and wind turbines which would mean that he has considered abandoning the use. She indicates that she had not seen the leases submitted tonight and understands that at least two years worth (2005 and 2006) would suggest the abandonment of the year-round use. Also, she has several police reports beginning in 2004 indicating that the house was boarded up and noted that there were vagrants and trespassers present. She reads more police reports from 2004 and one from 2006 indicating that it had been vandalized. Also, she indicates that there are a number of fire department reports indicating that the house was to be boarded up which she will get copies of. She indicates that in 2008, Mr. Bornstein had a demo permit and could've demolished the house at that time and never planned to build on that site but further down the road and would suggest that the special permit be denied.**

**Craig Larson asks Ann Canedy about the Comprehensive Plan. Ann Canedy indicates that she represents the village and what she sees as a majority consensus that the marine use is the preferred use of this harbor which is rare in this Town.**

**Attorney Joseph Berlandi is representing a number of people and addresses some of the issues. He indicates that the property was intentionally neglected and that the Town didn't prevent him from taking care of the property. He believes the issue is the intent and that they deny this request.**

**Ted Theodoris of the Friends of Barnstable Harbor talks about the planning process and has been involved in it for several years and how to integrate business with the harbor. He believes that the Barnstable Village Plan and Comprehensive Plan are important and represent the will of the community. They urge continued aggressive planning in the village. Permitting the residential use would be a departure.**

**John Julius lives in Hyannis and is not a personal friend but has followed the Bornstein's travels and their paths and agrees with Mr. Cataldo.**

**Douglas Mitchell suggests that he is neither an abutter or an abutter to an abutter. He stands here in opposition to this special permit.**

**Peter Eleftherakis of 81 Millway indicates that the house has not been occupied by those pieces of paper. The garage door has been hanging off for many years and has witnessed vagrants on the property. Also, having walked that neighborhood since after the Bassets lived there, he believes any living there has been minimal and that the property has gone down hill with no attempts made to make it livable. He cannot support this as he is not sure what would end up being there.**

**Mr. Tucker from 63 Pleasant Street supports the board and doesn't think this board is discriminating against the applicant.**

**Elizabeth Nill from 3096 Main Street, Barnstable Village indicates that her family and herself had walked down Freezer Road and indicates that in all those years she had not seen the property occupied. .**

**Debbie West of Barnstable Village wants project that support the Local Comprehensive Plan.**

**David Munsell of Barnstable Village indicates that he has lived in the village for 37 years. Every project that Mr. Bornstein has brought has been turned down and thinks that the use of a single family house would be a good idea. .**

**Ann Canedy submits the fire department reports to the board.**

**Allie Pitts speaks and indicates that she had lived in the area worked at Mattakeese Wharf. She graduated from UMASS had taken a land use and zoning class and this was her final project. This proposal makes no consideration of the marine being part of a district. Secondly, this is productive proposal but is provocative. Thirdly, it is a square peg in a round hole.**

**At 9::27, Laura asks for a 10 minute recess. Back in session at 9:38 PM.**

**Attorney Kenney responds to public comment. He indicates that they are not changing use or zoning. It has a pre-existing nonconforming right. He responds to Attorney Berlandi's comments and others.**

**Stuart Bornstein indicates that from October to May this street is empty and approximately 75% are rentals. There has been a lot of vandalism from people who have come there by boat and car. About one every two or three weeks they would have to board it up. Some of the calls to the police were from them and did use it**

*during the summer months for their help. It has been a big problem to secure it. Some of the windows have been kicked in and boarded up.*

*Attorney Kenney doesn't think they have lost year-round use.*

*The board discusses.*

*Craig Larson would like to talk to the Town Attorney and possibly someone who was present at the meetings regarding the Comprehensive Plan.*

*Ruth Weil would prefer to give a written opinion. She talks about abandonment versus non-use. She cites the Dawson case. She talks about when the tolling begins for permits. She would like to research more for an opinion.*

*William Newton makes a motion to wait to get opinion and to look over the subsequent leases, etc., new evidence brought forward and an indication that he had a conversation with the Building Commissioner and would like to know what they is and how it changes and would like to know about the tolling piece. Is there case law that supports in considering in making a decision.*

*Laura disagrees with going to the Building Commissioner's as it is out of his hands at this point.*

*Michael Hersey makes a motion to continue this hearing for input and clarification from Town Counsel on definition of abandonment and the tolling statute in the Town Counsel's opinion.*

*Brian Florence calls a point of order as he believes that there was a motion on the floor.*

*George Zevitas seconds*

*Laura Shufelt indicates that it had not been seconded and indicates that this will be continued to May 25, 2011 at 7:00 PM.*

**Vote:**

**AYE: William Newton, Michael Hersey, Craig Larson, George Zevitas, Laura Shufelt**

**NAY: None**

*Attorney Kenney agrees to May 25, 2011 at 7:00 PM.*

**CONTINUED TO MAY 25, 2011 at 7:00 PM**

*Laura opens the variance portion and reads it into the record:*

*Members assigned: William Newton, Michael Hersey, Craig Larson, George Zevitas, Laura Shufelt*

*Attorney Kenney requests a continuance.*

*Continued to May 25, 2011 at 7:05 PM*

**Vote:**

**All in favor**

**CONTINUED TO MAY 25, 2011 at 7:05 PM**



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**Laura then calls the Sanford appeal and reads it into the record:**

**7:10 PM**

**Appeal No. 2011-021**

**- New**

**Walter H. Sanford, Jr., Family Trust  
Thomas N. O'Brien, Jr., as**

**Trustee**

Thomas N. O'Brien, Jr., as Trustee of the Walter H. Sanford, Jr., Family Trust has applied for a Variance to Section 240-13.E – Bulk Regulations and 240-36.D – Resource Protection Overlay District – Minimum Lot Area. The applicant is seeking to unmerge an undersized vacant lot of 21,271 square feet from an abutting developed lot of 17,031 square feet. The two undersized abutting lots have merged due to common ownership. The property is located at 167 Tower Hill Road, Osterville, MA as shown on Assessor's map 142 as parcel 005. It is in a Residence C zoning district and the Resource Protection Overlay District.

**Members assigned tonight: William Newton, Michael Hersey, Craig Larson, Brian Florence, Laura Shufelt**

**Tom O'Brien, Jr., is here representing his family. He gives a history of the property. He indicates that Mr. John Lebel, who was his great grandfather, originally purchased the property in the mid 40's. In 1948, Mr. Lebel's son-in-law, Walter Sanford, purchased the first parcel and in the next 13 years acquired the remainder of the property in 4 additional purchases. This land has been held in common ownership with an update in 2000 referencing his trust. He had two intentions to these purchases, first to increase his property size to raise his family and secondly to have property that someday his children could build on. His grandfather believed that it would be grandfathered. His intention was to leave it to his family with separate properties to build upon when he passed. As to the three prong test, owing to circumstances to shape or topography, the property as is, is not practical. Constructing an addition that fits the neighborhood would not begin to encroach on the other lots and to utilize the property would require a home that maybe more fitting to higher assessed areas of Osterville. Property values in the neighborhood do not support a much larger home on the property, and most importantly, the property is uniquely shaped with frontage on two roads. As to hardship, there would be substantial hardship to family since all 4 of Walter's children have predeceased him and there are now many beneficiaries. As the property sits now, no one is in the position to purchase the property.**

**Brian Florence comments that it looks like five lots merged. Laura comments that they weren't merged, there was one lot and added to by metes and bounds.**

**Craig Larson asks if these were all purchased by deed. Elizabeth Jenkins indicates that they were purchased through five separate metes and bounds and that there is no recorded plan that shows the lot configuration as it is today and solely done by metes and bounds. She also indicates that the last page of the trust document outlines the five purchases.**

**Laura asks if there is anyone from the public that would like to speak either in favor or in opposition. No one speaks.**

**The board discusses.**

**Brian Florence does findings:**

**The applicant failed to demonstrate that due to soil conditions, shape and topography that there is any hardship and that a literal enforcement of the provisions of the ordinance would involve a substantial hardship financial or otherwise, and he would find that desirable relief would not be able to be granted in this matter.**

**Vote:**

**AYE: Michael Hersey, Laura Shufelt**

***NAY: Craig Larson, William Newton,***

***Brian Florence makes a motion to deny the variance for Appeal 2011-021.***

***The applicant, Tom O'Brien, Jr., asks if he could withdraw or continue.***

***Craig Larson makes a motion to withdraw without prejudice Appeal 2011-021.***

***Seconded by Brian Florence.***

***Vote:***

***AYE: Craig Larson, Michael Hersey, William Newton, Brian Florence, Laura Shufelt***

***NAY: None***

## **WITHDRAWN WITHOUT PREJUDICE**

***Laura Shufelt makes a motion to go into executive session to discuss strategy with respect to litigation and that as Chair, declares that an open meeting might have a detrimental effect on the litigation on the position of the Town and not to reconvene in open session. Seconded by Brian Florence.***

***Brian Florence = Aye***

***George Zevitas = Aye***

***Craig Larson = Aye***

***Michael Hersey = Aye***

***Laura Shufelt = Aye***

***William Newton = Aye***

