

**Town of Waldoboro
Board of Appeals
Meeting Minutes
February 17, 2004**

I. Call to Order

The Board of Appeals met in the Town Office Meeting Room on Tuesday, February 19, 2004. Chairman of the Board, Sam Chapman called the meeting to order at 6:32pm and roll call was done. At this time it was decided that no one on the Board had a conflict of interest.

Members present were Samuel Chapman, Art Emanuelson, Bobbi Swiderek and Russell Hansen. Staff present was Code Enforcement Officer John Black and Norma Hill recording secretary.

Public Present was Sally Lobkowicz.

II. Minutes

Mr. Emanuelson motioned to approve the minutes of November 19, 2003, seconded by Ms. Swiderek and approved 3-0-1.

III. Sally Lobkowicz, Request to reduce lot frontage at 2495 Washington Road, Tax Map R21, Lot 13.

Chairman Chapman summarized the request of Ms. Lobkowicz. She would like a variance from the 200 foot road front a requirement. She would like to retain a 160 foot wide strip of property (2.5 acres) along the northern edge of her current property.

Mr. Chapman and Mr. Hansen both drove by the property.

Jurisdiction and the type of review to be undertaken were decided. The setback waiver variance section was looked at in the ordinances. Jurisdiction was established.

Ms. Lobkowicz states the piece of land she would like to use is unusable without this variance. There is nearby house that precludes being able to use a full 200 foot road frontage. The lot would meet all other requirements for meeting lot size.

Chairman Chapman described for the Board what he noted when he went and looked at the property.

Ms. Swiderek asked for clarification of where the driveway would be located. This would be to the north, centered between the "new" property line on an old woods road. She has applied to the State for permits.

Mr. Emanuelson asked about the sale of property. This would be the current house and 9 acres with new boundaries.

Mr. Hansen asked why Ms. Lobkowicz didn't use the southern piece of property. She would like to build in the woods and not in the field. He feels this would be an obvious alternative.

Chairman Chapman asked if an access right of way had been considered.

Ms. Swiderek wanted clarification of why the 200 feet was required for frontage. No one was really sure where the figure of 200 feet came from.

The 160 feet of frontage requested went as far as possible to the abutting leech field and still be able to meet setback requirements.

An option of having 200 feet of frontage and angling the boundary line back was discussed.

The option of taking about 2 feet from the current house and it's property was discussed.

The state does not have a minimum requirement for frontage.

Ms. Lobkowicz has support from her neighbors across the road from her for this proposal.

There were no abutters or general public in attendance.

Mr. Hansen asked Ms. Lobkowicz if she wanted to continue on with the application or withdraw. She chose to continue on.

Motion: Ms. Swiderek motioned to grant the variance as requested, seconded by Mr. Emanuelson.

General Discussion:

Chairman Chapman has a hard time seeing 160 feet cut out when there is that field there with the frontage that can be used. He feels asking for this 40 feet may be a bit much.

Ms. Swiderek thinks that as there is no impact on the environment the variance request doesn't bother her.

Mr. Emanuelson sees no harm to the surrounding area and the abutters also have no objections so he is also in favor of granting the request.

Mr. Hansen does not feel Ms. Lobkowicz meets the undue hardship requirements and is not in favor of the request. He thinks there are other alternatives.

Undue Hardship issues were then looked at for justification of the variance. All four need to be in full agreement with the Board. If any are a negative then the variance cannot be granted.

- 1) **The land in question cannot yield a reasonable return unless a variance is granted. Vote is 2-2.** Ms. Lobkowicz stated that her interpretation was that these applied to the new lot she was creating. Mr. Hansen states it is for the entire lot. Ms. Swiderek stated that some folks purchase large lots with the hope to downsize in the future. Mr. Hansen discusses setting a precedent whereas there are other options available in this case. Ms. Swiderek still feels that there is no impact environmentally and it should be granted.
- 2) **The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood. Vote is 2-2.** Chairman Chapman feels that the property is only unique because of the variance request. Mr. Hansen thinks the property as a whole is not unique and one can't create uniqueness.
- 3) **The granting of a variance will not alter the essential character of the locality. 4-0 in favor.**
- 4) **The hardship is not the result of action taken by the applicant or a prior owner. 2-2.** Chairman Chapman feels the hardship is the result of the request of the variance. Ms. Lobkowicz states the ordinances caused the hardship.

Discussion ensued about meeting undue hardship since questions 1, 2, and 4 were split decisions. Mr. Hansen explained how this all comes into effect if there is ever a challenge.

VOTE: The vote on the motion noted above to grant the request is 2-2. In parliamentary laws this is a losing vote as no majority is in favor of the action.

CEO Black stated this could be reheard with a 5th member present or tabled until speaking with the Town Attorney to see what the tie vote means.

IV. Other Business

The Board then discussed an upcoming training session in Augusta this month. All members here tonight will go on 2/26/04.

Also noted was that the Land Use committee is being regrouped.

V. Adjournment.

Adjournment was at 7:55pm with a motion by Chairman Chapman, second by Ms. Swiderek and vote of 4-0.

Samuel R. Chapman, Chairman

Bob Morin

Norma A. Hill
Recording Secretary

Arthur Emanuelson

Barbara Swiderek

C. Russell Hansen