

NC Department of Commerce  
Division of Community Assistance

Board of Adjustment Training Materials

Variance Activity

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Application No. 2010-1

**TOWN OF BUENA VISTA**  
**APPLICATION FOR A VARIANCE**

Month April Day 21 Year 2010

TO THE BUENA VISTA BOARD OF ADJUSTMENT:

I, John Brown, hereby petition the Board of Adjustment for a VARIANCE from the literal provisions of the Buena Vista Zoning Ordinance because, under the interpretation given to me by the Zoning Enforcement officer, I am prohibited from using the parcel of land described in the attached General Application Form in a manner shown by the plot plan attached to that form. I request a variance from the following provisions of the ordinance (city paragraph numbers):

\_\_\_\_\_ so that the above-mentioned property can be used in a manner indicated by the plot plan attached to the General Application form or, if the plot plan does not adequately reveal the nature of the variance, as more fully described herein: [If a variance is requested for a limited time only, specify duration requested.]

Request a 2-foot front yard setback variance (relief from minimum 40 foot requirement)

**Factors Relevant to the Issuance of a Variance**

The Board of Adjustment does not have unlimited discretion in deciding whether to grant a variance. Under the state enabling act, the Board is required to reach three conclusions before it may issue a variance: (a) that there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance; (b) that the variance is in harmony with the general purposes and intent of the ordinance and preserves its spirit; and (c) that in granting the variance, the public safety and welfare have been assured and substantial justice has been done. In the spaces provided below, indicate the *facts* that you intend to show and the *arguments* that you intend to make to convince the Board that it can properly reach these three required conclusions.

a. **There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance.** The courts have developed three rules to determine whether in a particular situation "practical difficulties or unnecessary hardships" exist. State facts and arguments in support of each of the following:

(1) ***If he complies with the provisions of the ordinance, the property owner can secure no reasonable return from, or make no reasonable use of, his property.*** [It is **not** sufficient that failure to grant the variance simply makes the property less valuable.]

*Due to a physical handicap the approach to the front door requires an ADA compliant wheelchair ramp. A front yard setback variance is necessary because without it there will be practical difficulties and unnecessary hardships related to the reasonable use of the property. The ramp is necessary to provide us with proper access to the home. It would be impractical to refuse a disabled person, such as my wife, access to her own home.*

(2) ***The hardship of which the applicant complains results from unique circumstances related to the applicant's land.*** [Note: Hardships suffered by the applicant in common with his

neighbors do not justify a variance. Also, unique personal or family hardships are irrelevant, since a variance, if granted, runs with the **land**.]

*The side yard setback is necessary because the lot layout demands that the ramp be constructed on the north end of the house. There is a bog on the south side of the house that has created a unique natural wetland and prevents placement of the home in this area.*

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**(3) The hardship is not the result of the applicant's own actions.**

*When we purchased the lot, we were unaware of the wetland's presence. Furthermore, the automobile accident that led to the disability and the necessary wheelchair ramp was neither our fault nor the result of our own actions, the other driver involved was found liable.*

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**b. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit.** (State facts and arguments to show that the variance requested represents the least possible deviation from the letter of the ordinance that will allow a reasonable use of the land and that the use of the property, if the variance is granted, will not substantially detract from the character of the neighborhood.)

*The variance requested is a minor one (only 2 feet into the front yard setback) that will not detract from the character of the neighborhood. Construction of our new home will actually raise property values in the subdivision and add to the Town's tax roles. The ordinance states: "This district [R-1] is composed of certain quiet, low density residential sections of the community, plus certain open areas where similar residential development appears likely to occur... The regulations of this district are intended to discourage any use which, because of its character, would substantially interfere with the development of single family residences in the district and which would be detrimental to the quiet residential nature of the areas included within this district." The variance we are requesting would not interfere with future development and is more likely to encourage it. If granted, this action will not be detrimental to the quiet residential nature of the area. Also, there is a section in the ordinance that takes into consideration porches, eaves, steps and the like. The variance for a wheelchair accessible ramp is related to the intent of this section.*

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**c. The granting of the variance secures the public safety and welfare and does substantial justice.** (State facts and arguments to show that, on balance, if the variance is denied, the benefit to the public will be substantially outweighed by the harm suffered by the applicant.)

*If denied, there will be a serious injustice done because we have only the best intentions in building this home in this location. The unique combination of circumstances regarding the layout of the lot, including the bog, and the necessity for a wheelchair ramp to gain access to the front of the home are undeniable. Granting a minimal variance of two feet on a 40 foot setback will not harm the public in any way, but refusing it will cause harm to our family.*

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I certify that all of the information presented by me in this application is accurate to the best of my knowledge, information and belief.

*John Brown*

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Applicant

## VARIANCE SCENARIO 1 FRONT YARD SETBACK

A landowner proposes to build a single-family residence in the Town of Buena Vista. The county will not issue the proper building permits without the town first having issued a zoning permit. The landowner presented plans for his residence to the Zoning Administrator of Buena Vista, and the Zoning Administrator denied the request because the residence does not meet the front yard setback requirement of the town's zoning ordinance. The Zoning Administrator informed the landowner that the plans must be revised to comply with the zoning ordinance before a permit can be issued. The landowner asked the Zoning Administrator if there were other options because the plans could not be revised due to several factors. The landowner was informed that he could petition the Board of Adjustment for a variance from the dimensional requirements of the ordinance. The landowner decides to submit the request. The Administrator sets the date for the public hearing and provides public notice consistent with statutory requirements.

### Staff Report

In the staff report to the board, the Zoning Administrator relates that the petitioner had submitted a request for a zoning compliance permit to construct a single-family residence with an attached garage located on a half acre parcel in the Wynn Brooke subdivision. The Wynn Brooke subdivision, an area consisting of single-family homes on approximately one quarter of the lots, with the remainder yet to be developed, is zoned R-1 for low-density residential land use. The dimensional standards for the R-1 district are 40' front, 35' rear, and 15' side yards. The petitioner's request for a zoning compliance permit was denied because the plans that were submitted did not meet the dimensional requirements. Specifically, a proposed handicapped ramp and the eave of the roof would encroach five feet into the front yard setback. Therefore, the owner has requested a variance of two feet from the requirements of the zoning ordinance, which requires a minimum front yard of 40' excluding up to three feet of any porches, steps, eaves, gutters, or similar fixtures.

### Applicant

The applicant states that he and his wife purchased a lot in the Wynn Brooke subdivision approximately three years ago with the intention of constructing their retirement home. He and his wife are semi-retired artists and had planned to use the home as their studio. The applicant stated that he had retained an architect after purchasing the property who had prepared plans for their residence which met the dimensional standards for the R-1 district. The applicant stated he and his wife love the WNC mountains and wanted to be a good neighbor, therefore, he had obtained information from the city on code requirements before purchasing the property.

However, exactly one year ago from today's date, he and his wife were involved in an automobile accident resulting in the paralysis of his wife from the waist down. Although she has adjusted reasonably well, she will be confined to a wheelchair for the remainder of her life. The

applicant stated that he and his wife were committed to moving forward with their life and plans to construct their retirement home in the WNC mountains. The applicant stated that he had met on numerous occasions with the local building inspector and his architect in order to redesign the home with handicapped accessibility features. The new plans include a wheelchair ramp in the front yard which will provide his wife with access to and from the residence and the carport. He and his wife have purchased a specially equipped van, which will allow her to drive and enjoy some of those activities most of us take for granted. The local building inspector has approved the design for ADA standards. Furthermore, the building inspector and architect have jointly considered several design scenarios and concluded, primarily due to the topography of the lot, that the proposed design is the only configuration which will meet ADA standards. The ramp, as designed, will encroach approximately five feet into the minimum front yard setback. The eaves of the house will be extended to provide cover for the ramp.

The owner stated that his architect and the building inspector would testify that reducing the size and width of the home may jeopardize the ADA requirements for doorways, hallways and other related structural elements. The owner stated that he had considered moving the house back or closer to the rear setback; however they had discovered the rear yard contained a small “mountain bog” and plant species that were indigenous to “certified wetlands.”

#### Witness 1 -- County Building Inspector

The county building inspector stated that he concurred with the applicant’s statements. The inspector stated that he was certified by the State of North Carolina to inspect any aspect of residential construction, including ADA requirements. In his opinion, this was the only design which would meet code requirements. The inspector also stated that he had noticed the “wet” area in the rear of the property and requested an inspection by the county Soil & Water Conservation staff. The staff had concluded the area qualified as a “mountain bog” or wetland, and should not be disturbed.

#### Witness 2 -- Soil Scientist, Soil & Water Conservation Service

Wayne Wetfoot, Soil Scientist, testified that he had inspected the site and determined that an area at the rear of the property measuring approximately 36’ x 120’ met the criteria for being designated as a “mountain bog.”

Application No. 2010-2

**TOWN OF BUENA VISTA**  
**APPLICATION FOR A VARIANCE**

Month April Day 22 Year 2010

TO THE BUENA VISTA BOARD OF ADJUSTMENT:

I, George Hernandez, hereby petition the Board of Adjustment for a VARIANCE from the literal provisions of the Buena Vista Zoning Ordinance because, under the interpretation given to me by the Zoning Enforcement officer, I am prohibited from using the parcel of land described in the attached General Application Form in a manner shown by the plot plan attached to that form. I request a variance from the following provisions of the ordinance (city paragraph numbers):

so that the above-mentioned property can be used in a manner indicated by the plot plan attached to the General Application form or, if the plot plan does not adequately reveal the nature of the variance, as more fully described herein: [If a variance is requested for a limited time only, specify duration requested.]

Request a 9-foot height variance (relief from Maximum 35 foot requirement) to construct a single-family residence.

**Factors Relevant to the Issuance of a Variance**

The Board of Adjustment does not have unlimited discretion in deciding whether to grant a variance. Under the state enabling act, the Board is required to reach three conclusions before it may issue a variance: (a) that there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance; (b) that the variance is in harmony with the general purposes and intent of the ordinance and preserves its spirit; and (c) that in granting the variance, the public safety and welfare have been assured and substantial justice has been done. In the spaces provided below, indicate the *facts* that you intend to show and the *arguments* that you intend to make to convince the Board that it can properly reach these three required conclusions.

a. **There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance.** The courts have developed three rules to determine whether in a particular situation "practical difficulties or unnecessary hardships" exist. State facts and arguments in support of each of the following:

(1) ***If he complies with the provisions of the ordinance, the property owner can secure no reasonable return from, or make no reasonable use of, his property.*** [It is **not** sufficient that failure to grant the variance simply makes the property less valuable.]

*We are requesting the height variance because we have already purchased the home plans and ordered custom components for the roof. To be made to revise the plans at this late time will not only make the property less valuable but will cause no reasonable return on investment and may contribute to being forced to sell at a loss due to the very poor real estate market and the extremely lean budget for this project from the outset.*

**(2) The hardship of which the applicant complains results from unique circumstances related to the applicant's land.** [Note: Hardships suffered by the applicant in common with his neighbors do not justify a variance. Also, unique personal or family hardships are irrelevant, since a variance, if granted, runs with the **land**.]

*The height variance is appropriate because the lot is located at the greatest elevation within the subdivision and it will not have a major impact on the viewshed of surrounding properties. That is, no surrounding properties are higher than this one so the roofline will not significantly obscure long-range views of the mountains.*

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**(3) The hardship is not the result of the applicant's own actions.**

*When the property was purchased, the realtor assured us that these home plans would be allowed and that there were no major restrictions in the HOA as long as it was a site-built home with at least 1200 square feet.*

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**b. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit.** (State facts and arguments to show that the variance requested represents the least possible deviation from the letter of the ordinance that will allow a reasonable use of the land and that the use of the property, if the variance is granted, will not substantially detract from the character of the neighborhood.)

*This variance is requested for construction of a single family residence in the least dense zoning district of the town. It will not detract from the character of the neighborhood and will actually contribute to the community's future well-being. Lots in this subdivision have not sold as promptly as many expected. New construction, especially of upscale homes such as the one proposed, will help create a more vibrant neighborhood and hopefully spur additional construction in the near future. If granted, this variance will not be detrimental to the quiet residential nature of the district and will allow a reasonable use of the property as a residence.*

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**c. The granting of the variance secures the public safety and welfare and does substantial justice.** (State facts and arguments to show that, on balance, if the variance is denied, the benefit to the public will be substantially outweighed by the harm suffered by the applicant.)

*To deny this request would not serve the public welfare in any way. During these difficult economic times we need to encourage all the residential construction possible. The project will help stimulate the local economy and will use "green-building" techniques that will conserve energy and help save the environment. If denied, my business will suffer serious losses and may be harmed irreparably.*

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I certify that all of the information presented by me in this application is accurate to the best of my knowledge, information and belief.

*George Hernandez*

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Applicant

## VARIANCE SCENARIO 2 HEIGHT REQUIREMENT

A local real estate developer proposes to build and sell a single family residence in the town of Buena Vista. The county will not issue the proper building permits without the town first having issued a zoning permit. The developer presents plans for the project to the town's Zoning Administrator. The Administrator determines that this project does not meet the height standards of the town's zoning ordinance for the R-1 district. The Administrator has informed the applicant that the plans must be changed to comply with the zoning ordinance before a zoning permit will be issued. The developer has already spent a considerable amount of money having the plans prepared and is reluctant to have them redrawn. The applicant questions the Administrator regarding his options and is informed that he may petition the town's Board of Adjustment for a variance from the dimensional requirements of the ordinance, but traditionally variances have rarely been granted. The developer decides that he will apply for a variance. The Administrator sets the date for the public hearing and provides public notice according to the zoning ordinance requirements.

### Staff Report

In the staff report to the board, the Zoning Administrator relates that the petitioner had applied for a zoning permit to construct a single-family residence on a half acre parcel in the Wynn Brooke subdivision. The Wynn Brooke subdivision, an area consisting of single-family homes on approximately one quarter of the lots, with the remainder yet to be developed, is zoned R-1 for low-density residential land use. The petitioner's request for a zoning permit was denied because the plans that were submitted did not comply with the maximum height requirements. Specifically, the height of the proposed residence is 44 feet and the maximum height for buildings in the R-1 district is 35 feet. Therefore, the property owner has requested a variance of nine feet from the requirements of the zoning ordinance. In the staff report to the Board, the Zoning Administrator relates that the property is situated on top of Wynn Mountain, at an elevation of approximately 3545 feet.

### Applicant

After hearing the staff report from the Administrator, the applicant provides his testimony. He states that although his home plans do not meet the ordinance standards for height, the variance he is requesting is minor, will not harm the public welfare, and meets the spirit of the ordinance for low density residential land uses as required in the R-1 district. The applicant also states that the home he is building will be energy efficient and constructed using "green" building techniques. They are using plans that include an open floor plan based on revolutionary prefabricated cantilevered roof joists that allow more efficient lighting and heating of the home and necessitate a higher roof line. Plus, they have already purchased the plans and customization of the engineered drawings would be very costly.

### Witness 1 — HOA President

The President of the Wynne Brooke Homeowner's Association (HOA) says he has two petitions to give to the Board and asks that they be entered into the record—one is signed by every homeowner in the subdivision (it has 11 homes) and the other has been signed by over 150 property owners in a two-mile radius of Wynne Brooke. The petition signers are opposed to the height variance because they bought property in this area of the county due to its rural character and the construction of this "ultra-modern" home would ruin that character. The HOA does have minimum size requirements for homes and restricts the number of trees that may be cut on the lot, but does not regulate home designs; they are now starting to work on having that changed in the restrictive covenants. He states that the applicants have already removed more trees on the lot than are allowed by the HOA restrictions and that this alone has already disrupted the neighborhood. As for the requested variance, the Board should stick to what is required by the ordinance.

### Witness 2 – Save our Skies

A person who identifies himself as a member of the grass-roots environmental organization Save Our Skies is the next speaker. He applauds the applicant's use of green building techniques but wants there to be more restrictions on the home's lighting systems, both indoor and outdoor. He holds up a copy of their newsletter that talks about a recently-published study that documents how lights from residential dwellings on high mountain peaks, especially this type of "Super-sized house," are confusing to many species of frogs and salamanders found in the area. Nocturnal frogs and salamanders are negatively affected by light pollution. Since they are nocturnal, they wake up only when there is no light. Light pollution causes these salamanders and frogs to emerge from concealment later, giving them less time to mate and reproduce. He hands out a copy of the newsletter to each Board member and asks that it be included in the record. He too cites the ordinance, saying that this home would be injurious to the public welfare since the natural world is an essential part of public welfare.

### Witness 3 – Adjacent Property Owner

The owner of the property directly across the street from the applicant's testifies that although she too applauds her new neighbor for choosing an energy efficient home plan, the construction of such a tall roofline would directly impact the continued use of her own renewable energy system. She installed a solar hot water system several years ago and believes the home's height will block the photovoltaic collectors needed to operate her system. She adds that before the applicant purchased the lot, the previous owner had actually cut several small trees located on the proposed home site at her request. Over the years as trees on the property, which were eventually cut down, grew taller they began to shade her solar collectors and affect the temperature of her hot water. At the time they were cut the trees were 40 feet tall. For these reasons she believes a 44-foot home in the same spot will preclude her from having a reliable source of hot water and now requests that the Board deny the variance.

Application No. 2010-3

**TOWN OF BUENA VISTA**  
**APPLICATION FOR A VARIANCE**

Month April Day 21 Year 2010

TO THE BUENA VISTA BOARD OF ADJUSTMENT:

I, David Jones, hereby petition the Board of Adjustment for a VARIANCE from the literal provisions of the Buena Vista Zoning Ordinance because, under the interpretation given to me by the Zoning Enforcement officer, I am prohibited from using the parcel of land described in the attached General Application Form in a manner shown by the plot plan attached to that form. I request a variance from the following provisions of the ordinance (city paragraph numbers):

\_\_\_\_\_ so that the above-mentioned property can be used in a manner indicated by the plot plan attached to the General Application form or, if the plot plan does not adequately reveal the nature of the variance, as more fully described herein: [If a variance is requested for a limited time only, specify duration requested.]

Request a 7 foot side yard setback (relief from minimum 15 foot requirement)

**Factors Relevant to the Issuance of a Variance**

The Board of Adjustment does not have unlimited discretion in deciding whether to grant a variance. Under the state enabling act, the Board is required to reach three conclusions before it may issue a variance: (a) that there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance; (b) that the variance is in harmony with the general purposes and intent of the ordinance and preserves its spirit; and (c) that in granting the variance, the public safety and welfare have been assured and substantial justice has been done. In the spaces provided below, indicate the *facts* that you intend to show and the *arguments* that you intend to make to convince the Board that it can properly reach these three required conclusions.

**a. There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance.** The courts have developed three rules to determine whether in a particular situation “practical difficulties or unnecessary hardships” exist. State facts and arguments in support of each of the following:

(1) ***If he complies with the provisions of the ordinance, the property owner can secure no reasonable return from, or make no reasonable use of, his property.*** [It is **not** sufficient that failure to grant the variance simply makes the property less valuable.]

*The side yard variance is necessary because without it there will be no possible way to build a home at this location. It would be unreasonable to expect us to purchase additional land beyond the half acre we already own here just to accommodate a wastewater system.*

(2) ***The hardship of which the applicant complains results from unique circumstances related to the applicant’s land.*** [Note: Hardships suffered by the applicant in common with his neighbors do not justify a variance. Also, unique personal or family hardships are irrelevant, since a variance, if granted, runs with the **land**.]

*The side yard setback is necessary because unique land characteristics demand that the home be constructed closer than the required fifteen feet. There is a large rock outcropping and considerable rocks and boulders that prevent placement of the system in approximately half the property. Between the setbacks, the terrain, and the rocks there is little room left for a house, much less a septic tank drainage field.*

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**(3) The hardship is not the result of the applicant's own actions.**

*We have no experience with septic systems and have never heard of a town that didn't supply its residents with adequate public utilities. Given the choice we would readily connect to a sanitary sewer system, like the ones in Florida.*

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**b. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit.** (State facts and arguments to show that the variance requested represents the least possible deviation from the letter of the ordinance that will allow a reasonable use of the land and that the use of the property, if the variance is granted, will not substantially detract from the character of the neighborhood.)

*The variance requested will not detract from the character of the neighborhood because our home will be of similar size and character to other nearby homes. We have asked for a small deviation from the setback laws, and only on one side of the home. The deviation is the least distance possible based upon the estimates provide by the County Health Department. Issuing this variance will allow us to use this property in a reasonable manner, especially considering that we have already been informed that without it we cannot build the house.*

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**c. The granting of the variance secures the public safety and welfare and does substantial justice.** (State facts and arguments to show that, on balance, if the variance is denied, the benefit to the public will be substantially outweighed by the harm suffered by the applicant.)

*If denied, we believe there will be a serious injustice done for the reasons stated previously. We had nothing to do with how the lots were originally laid out and have no control of the natural landscape that includes massive rock cliffs and boulders. The variance should be issued because it seems only fair that we be able to use our property as intended and not have this right taken away because of just a few feet of yard space, when there is no public sewer available.*

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I certify that all of the information presented by me in this application is accurate to the best of my knowledge, information and belief.

*Davy Jones*

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Applicant

### VARIANCE SCENARIO 3 SIDE YARD SETBACK

A landowner proposes to build a single family residence in the town of Buena Vista. The county will not issue the proper building permits without the town having first issued a zoning permit. The landowner presents plans for the project to the Zoning Administrator of Buena Vista. The Administrator determines that this project does not meet the side yard setback requirements of the town's zoning ordinance. The Administrator has informed the landowner that the plans must be changed to comply with the zoning ordinance before a zoning permit will be issued. The landowner has already consulted with the County's Environmental Health Department and was told that in order to install a septic drain field that will operate properly and for a standard duration of time, it must be laid out as indicated on the plans and that altering the placement of the home on the lot would compromise the performance of the wastewater system. The Administrator informs the applicant that the he may petition the town's Board of Adjustment for a variance from the dimensional requirements of the ordinance, but that traditionally variances have rarely been granted. The landowner decides that he will apply for a variance anyway. The Administrator sets the date for the public hearing and provides proper public notice.

#### Staff Report

In the staff report to the Board, the Zoning Administrator relates that the petitioner submitted a request for a zoning permit to construct a single-family residence on a half acre parcel in the Wynn Brooke subdivision and was refused. The Wynn Brooke subdivision, an area consisting of single-family homes on approximately one quarter of the lots, with the remainder yet to be developed, is zoned R-1 for low-density residential land use. The petitioner's request for a zoning permit was denied because the plans submitted did not meet the side yard setback requirements. Specifically, the plans for the proposed residence show the building encroaching approximately eight feet into the required 15-foot side setback. Therefore, the owner has requested relief from the requirements of the zoning ordinance. The Zoning Administrator also relates that the property is situated on sloping terrain that has a large rock outcropping and boulder field covering much of the parcel. A report from the County Health Department was included in the application detailing the size and type of drain field that would be required for construction of a residence the size indicated on the submitted plans (4 br/3 ba). The report also indicated that the most acceptable and pre-approved location for the drain field takes up a significant portion of the lot and a structure cannot be placed in this area.

#### Applicant

The applicant states that he has spoken with the folks at the County and is requesting a variance in order to comply with their public health requirements that regulate septic systems. If there was a public system in the area that was operated by the Town, he would gladly connect to it. He states that this variance will not harm the public welfare and will indeed provide for a safer and healthier community

due to a properly installed and functioning wastewater system. Without the variance he says he will not be allowed to use his property for its intended use, a use that the Town was well aware of when they approved this residential subdivision and its lot configurations.

#### Witness 1 — StreamWatchers

The first witness says he represents the local chapter of the StreamWatchers organization. Their mission is to educate and motivate people to help protect water quality. He says his organization has been working closely with the state and county to help ensure against the placement of septic tanks in the region that are likely to fail due to erroneous installation. The poor soil conditions and steep slopes in the area have made this a challenge. He encourages local governments to work with developers and homeowners to address the problem adequately, whether through land use regulations or ultimately, through the installation of public infrastructure. He says that in the course of his work he has been in contact with several other surrounding property owners and has heard many stories of septic systems in the area failing long before they were designed to. He implores the Board to grant the variance in order to prevent another failing system and to help keep the surface waters in the region clean.

#### Witness 2 – Neighborhood Resident

The next speaker says she lives on Valley Drive just south of the lot in question on a waterfront lot overlooking Swift Creek. She states that when she was getting ready to build her house last year she asked the Board for a variance from the zoning ordinance because she wanted her home to be nearer to the creek. She says there is a requirement in the ordinance that there be a 35-foot back yard setback and she just wanted to move her house a little closer to the creek so she could hear it better from her deck, but at that time the Board denied her request. She says that the rules should apply to everyone and if she wasn't allowed to adjust her setbacks then neither should anyone else.

#### Witness 3 – Adjacent Property Owner

An owner of property adjacent to the applicant testifies that he purchased his vacation home in the mountains because he wanted to occasionally get away from it all and have plenty of "elbow room" far from the congestion and crowded conditions of the city where he normally lives. He states that the granting of the variance would allow his neighbor's new house to be constructed within only 22 feet of his home because he was already hugging the 15-foot setback line on the same side. Furthermore, although he also experienced difficulty placing his own septic system when he built his home years earlier, eventually he was able to work it out and comply with the town's zoning requirements (at considerable expense, no less). He agrees with the previous speaker that the rules should be applied fairly across the board and that the variance should be denied.