

Role _____; **Exhibit** _____

Script for Mock BOA Hearing

Vickey as ANNOUNCER: Before we begin our hearing, let me call your attention to the worksheet in your packet labeled “Sample Decision Tool.” I would like to ask each of you to be referring to this worksheet as we proceed through the hearing. When we move from the public comment part of the hearing to the deliberations, I will be conducting a poll of everyone here to see if you think each standard has been met, before the Chair asks the Board members for their opinion. I will now turn the meeting over to the Chair.

CHAIR CARTER:

Good morning and welcome everyone to the Board of Adjustment meeting of the Town of Buena Vista. We are going to hear one case today, number 04.01. 2014, an application by Desmond and Molly Jones for a variance under the Zoning Ordinance; they wish to build an addition to their house.

Before we begin, it is important for everyone to understand some facts related to this meeting. This is known as a quasi-judicial proceeding, which means it functions much like a court, where one's individual rights are being determined. Only persons who can demonstrate that they will be affected by the outcome of the decision are allowed to participate as parties in the proceeding. Testimony will be limited to only those issues concerning whether the variance application should be granted under the Zoning Ordinance. The purpose of the hearing is to gather relevant evidence so we can make a decision that is fair to the applicant, neighbors, and community and respects the procedures and standards established in the Zoning Ordinance.

Are there any Board members who feel they cannot sit as an impartial decision-maker in today's proceeding? I received an e-mail from Ms. Wade regarding a possible conflict. Would you please inform all of us of your conflict?

BOARD MEMBER WADE: In the interest of fully disclosing any conflicts, I am stating for the record that I live in the applicants' subdivision, a couple of blocks away from their home. My husband and I have spent time together with the Joneses at some neighborhood events. We also attend the same church, and serve on a volunteer committee together. We are friendly but do not socialize together on a regular basis. I believe I can be impartial at this hearing today, and would like to participate.

CHAIR: What do the other Board members think of this matter? Shall we take a vote? All those in favor of allowing this Board member to participate in the hearing...

SPEAKER FROM AUDIENCE INTERRUPTS: I object to this Board member participating.

CHAIR: Would you please state your name and the nature of your objection.

SPEAKER BROWN: My name is Robert Brown and I live next to the Joneses who are the applicants. I have seen this Board member visiting with the Joneses on more than one occasion, and I believe this Board member will have a bias in favor of them and cannot be impartial.

CHAIR: Since Mr. Brown is a party to the case, the Board will take action on his objection. Ms. Wade, do you wish to proceed with the vote to determine whether you can participate in the hearing?

MEMBER WADE: While I would like the record to state that I continue to believe that I can be impartial, in order to ensure Mr. Brown believes the Board has made a fair decision, I offer to withdraw at this time.

CHAIR: Let us take a vote on this matter so the record is clear. All those in favor of allowing Ms. Wade to participate in the meeting, please raise your hand. **(Vote takes place, no one raises hand).** Let the record show the vote was 0 in favor, and 4 against. Very well, Ms. Wade, you are excused from participating in the meeting. As per our practice for Board members who have been excused due to a conflict, please step out of the room.

I am stepping out of my role briefly as Chair—Vickey is only going to the back of the room, but if this were a real meeting, she would actually be leaving until this case was concluded.

Since we do not have any alternates in attendance, this means that the membership of the Board has been reduced by one person, which means there will need to be a unanimous vote in favor of the applicant for the variance to be granted. Board members, at our last meeting we came to an agreement that in the event of a reduced membership, we would give all the parties to the proceeding the opportunity of asking that the meeting be continued to our next regular meeting. Will the applicant and all those who received letters notifying them of the hearing today please step forward?

All parties come forward, including Ms. Jones, Mr. Brown, Ms. Green. Chair addresses: I will ask all the parties if you wish to continue with the hearing, understanding that all four members of the Board must vote in favor of the application. You also have the option to wait until our meeting next month and we will ensure that an alternate is present. In that case four of the five members must vote in favor.

JONES: Ms. Carter, we cannot afford to wait another month to have an answer regarding our request. We will take our chances with the Board members who are here.

All the other parties: We would like to continue with the meeting at this time.

CHAIR: Very well, we will proceed with a reduced membership of four members. We will review what that means before we vote.

Next, we move on to the point of whether there are any Board members who have received any information concerning this application beyond the information which is a public record, or have special knowledge about the case that may not come out at the hearing today. If so, please indicate what information you have received so that it can become part of the record for today.

MEMBER SMITH: I drove by the house of the applicant, and when I couldn't get a clear view of the side yard I parked my car and tried ringing the doorbell of the applicant's home. When no one answered I went around to the side yard and looked over their fence to try to get a view of the back yard. However, I did not enter the backyard.

CHAIR: Thank you, Ms. Smith

MEMBER POWELL: I was approached by someone who lives in the subdivision while I was standing in line in the grocery store. When they started talking about the case I told them I couldn't discuss it then but urged them to come to the meeting if they had information they wished to share with the Board.

CHAIR: Thank you, Mr. Powell. Are there any other Board members who would like to disclose any information? If not, we will proceed with the hearing.

CHAIR: The Order of Business for this hearing will be as follows:

- First the Zoning Administrator will provide an overview of the application.
- Then we will hear from the applicant who will present evidence in support of the request and answer questions about the evidence.
- Anyone else who has expressed a desire to be a party and who the Board has recognized as a party, will then be allowed to present their evidence. All parties will be given an opportunity to ask questions of all parties and witnesses testifying in this proceeding. The Board members will also be given an opportunity to ask questions.
- After all of the evidence is presented, the Board will discuss the evidence in the context of the ordinance standards, make findings of fact, draw conclusions, then make a decision.

All persons who speak and participate, including any witnesses that will be called, will be placed under oath; it is also acceptable to affirm.

Parties may cross-examine other parties and witnesses after the person testifies if there are questions. If you want the Board to see written evidence such as reports and maps or exhibits, the person who is familiar with the evidence should ask that it be introduced during or at the end of his or her testimony. In addition, in order for the testimony to be considered as evidence used in making the decision, it can only be given by persons in attendance at the meeting; otherwise, it is considered hearsay.

We will now proceed with the swearing-in. All parties to the proceeding and all witnesses that any party intends to call should now come forward to be sworn; it is also acceptable to affirm.

“Do you swear or affirm that the testimony you are about to give is true?” **All swear**

When each person comes forward, please state your name and address to the clerk so we can have an accurate record of testimony.

I now open the public hearing on Case # 04.01.2014 and ask for testimony from the Zoning Administrator.

ZONING ADMINISTRATOR McHARGUE: My name is Cameron McHargue and I am the Zoning Administrator for Pleasant County.

The 0.50 acre (21,780 sf) parcel is currently occupied by a single-family dwelling approximately 1,000 sf in size; the home was built in 1965, has two bedrooms and one bath, and is served by a septic system. The Wynn Brook subdivision was recorded in 1960 at the Pleasant County Register of Deeds; there are 35 lots in the subdivision and all of them have been built upon. The applicant submitted plans to build an 800 sf addition to the house, which would expand the number of bedrooms to three and add two baths.

When the Building Inspector reviewed the plans for the addition, he noted that the increase in the number of bedrooms would likely require an expansion of the septic system. He sent the plans to the Environmental Health section, and their staff went out in the field to evaluate the existing system, as well as determine where an additional drain field should be located, if necessary. This process took several weeks due to a backlog of work orders and staff reductions. The Environmental Health section staff analyzed the lot and is requiring an expanded drain field to accommodate the additional wastewater that will be generated by the new bedrooms. Due to the rock outcrops and wet soil located on part of the property, the Environmental Health staff determined there is only one area where the expanded septic drain field can be located which, in turn, is dictating where the planned addition to the house can be built.

The original plans for the addition met the side yard setback, but the location of the addition had to change in order to meet all of the site constraints. The applicants need a variance of three feet for the side yard setback on the east side of their home.

CHAIR: Are there any questions for the Zoning Administrator from the Board members?

MEMBER SMITH: In your professional opinion, do you believe the proposed addition can be placed anywhere else on the lot, given the report from the Health Department?

ZONING ADMINISTRATOR: I don't believe that it can. The applicant made several trips to the Inspections Department to meet with the Building Inspector to try to figure out another way to make everything fit, and this was the only configuration that works.

CHAIR: Are there any other questions from the Board for the Zoning Administrator? Are there questions for this person from the other parties? If not, then you are excused.

Z. ADMINISTRATOR: I ask that the staff report be entered into the record.

CHAIR: We will mark this as exhibit "A." We will now hear from the applicant.

JONES: My name is Molly Jones and I live at 248 Oak Drive. As my husband and I stated in our application, my aging parents need additional care, and I am their only child. Our unemployed adult son plans to move back in with us to help care for his grandparents. Our existing home is very small, and we must build an addition to make room for three more people—my parents and our son. Between the setbacks, the rocks, wet soil, existing house and drain field, and area for the expanded drain field, there is no other way to configure the placement of the addition.

I would now like to pass out an artist's rendering of what the addition will look like from the street, and would like to enter it into evidence.

CHAIR: We will make a note in the record that this is the applicant's exhibit, and label it as exhibit "B." I will now pass this exhibit to the other parties.

JONES: You can see that the addition will be very attractive and an asset to the neighborhood. Issuing this variance will allow us to use this property in a reasonable manner, especially considering that we have already spent a great deal of money on renovations to make the interior of our home handicapped accessible. Please don't let the length of one yard stick (*shows yard stick*) prevent us from using our property. After a great deal of anxiety and lowering the price of their home, my parents finally have an offer to purchase and so we must move quickly to build this addition.

I said on the application form that the variance requested will not detract from the character of the neighborhood because with this addition, our home will still be of similar size and character to other nearby homes. It will actually raise property values in the neighborhood.

I would now like to call on an expert witness who will be able to provide more information about how property values in this neighborhood will go up with this addition. Will Ms. Teal please come forward?

REALTOR TEAL: My name is Alison Teal and I live at 302 Oak Drive, a block away from the Joneses. Not only do I live in this subdivision, I grew up here and I worked with the sellers of the past three homes here that changed hands. I have been working in a real estate office for the past two years, and will be taking the Realtor exam shortly. I consider myself qualified to speak regarding property values in this subdivision. I have seen tax values go up for the homes in this neighborhood more than the average in the area, and I feel sure it's because of all the improvements people have made to their homes. This addition will certainly help boost tax values in the neighborhood, given its very lovely design.

MEMBER SMITH: Ms. Teal, did you perform an analysis of other properties in other areas for a comparison?

REALTOR TEAL: No, I didn't, because what's important are market values in this neighborhood.

CHAIR: Are there other questions for this witness from the Board?
Are there questions from the other parties? If not, then you are excused.

Ms. Jones, are you done with your testimony?

JONES: Yes I am.

CHAIR: Are there any questions for the applicant from the Board members?

MEMBER POWELL: Have you thought about building a smaller addition, with fewer bathrooms?

JONES: As it is, it is going to be very cozy with five people living in this house, and for privacy my husband and I, my parents, and our son, will all need our own space, with our own bathrooms. We have been working on these plans for close to a year, figuring out every inch of space, deciding what furniture is going where. We cannot deviate from these plans. As we noted in our application, we did a survey of the homes in our subdivision in the tax office, and many of them are as large as or larger than what we are trying to build. We are not asking for a special privilege that no one else in the neighborhood has.

MEMBER SMITH: What will you do if this variance is denied?

JONES: We have spent all our energy making the addition work with our existing home, and a whole lot of money. It has really taken a toll on us and our finances that this is happening. We just can't imagine what we'll do if this doesn't work out today.

CHAIR: Are there additional questions for this person from the Board?

Are there questions for this person from any of the other parties? If not, then you are excused and we will call our next witness. **(Looks at list)** I invite Mr. Brown to please come forward.

BROWN: My name is Robert Brown; my address is 250 Oak Drive. I purchased this land to build my dream home in the mountains because I love this area and want to have plenty of 'elbow room' far from the congestion and crowded conditions in the city where I used to live. Granting this variance would allow my neighbors' addition to be constructed within only 27 feet of my home because I had to build it on the side setback line due to the steep slope on my lot. Furthermore, although I also experienced difficulty placing my own septic system when I built my home several years ago, eventually I was able to work it out and comply with the town's zoning requirements, at considerable expense, no less. I'm sorry my neighbors are running into difficulties, but that doesn't mean I should have to sacrifice my views and peace and quiet for them and their family. If they need a bigger house, they should put this one on the market and buy one someplace else. The rules should be applied fairly across the board and the variance should be denied.

I would like to read a letter that has been signed and notarized by a property owner who lives catty-corner to the applicant across the creek and who couldn't come to the meeting today. He can clearly see the applicant's property from his deck and so has a vested interest in the outcome of this hearing—he had actually planned to come today but an emergency came up so he couldn't be here.

CHAIR: Mr. Brown, pardon me, but if the person is not available to be questioned, then the Board will treat this testimony as hearsay. You may proceed with reading the letter.

BROWN: This is the letter from my neighbor:

“150 Maple Lane, Buena Vista, NC 27766

To the Members of the Town of Buena Vista Board of Adjustment:

I live across Swift Creek from Mr. and Ms. Jones, and can see their house from my back deck. My wife, Mildred, and I received a letter notifying us of the variance request. We had planned on attending the variance hearing, but a sudden medical emergency that my wife experienced now makes it impossible for either one of us to be present.

We would like to go on record as opposing the variance request from Mr. and Ms. Jones. One of the reasons my wife and I moved here was to have plenty of views and open space, and we believe this addition so close to the property line will be unattractive and disruptive. We hope that you will deny this request. I am signing on behalf of my wife as well.

Sincerely, James (and Mildred) Thomas”

CHAIR: Thank you for your testimony, Mr. Brown. We will mark this letter as exhibit “C.” Are there any questions for this person from the Board members?

MEMBER COLETTA: Mr. Brown, what would you think if the applicant were to build a fence, or provide some other buffer—would that help make this addition more acceptable to you?

BROWN: Like I said, I want plenty of room!

MEMBER COLETTA: But Mr. Brown, the applicant is perfectly within her rights now to put up a fence—so would having a fence there make this more acceptable?

BROWN: Well, it can’t be just any old fence. I insist on seeing the design before I say it’s OK, and I really don’t want a fence or this addition. I like having lots of space!

CHAIR: Are there any other questions for this person from the Board?
Are there questions from the other parties?

JONES: What is it about my addition that bothers you?

BROWN: If I wanted to live on top of the people around me I would have stayed in Atlanta—and maybe I should have!

CHAIR: Are there any other questions for this witness? If not, thank you for your testimony. I would now like to invite the next person, Mr. Jim White, to come forward.

WHITE: My name is Jim White and I live at 154 Maple Lane, a few lots away from this property, overlooking Swift Creek. When I was getting ready to build my house last year I asked the Board for a variance from the zoning ordinance because I wanted my home to be nearer to the creek. There is a requirement in the ordinance that there has to be a 25-foot setback from streams that run year-round.

All I wanted was to move my house five feet closer to the creek so I could hear it better from my deck, but at that time the Board denied my request. The rules should apply to everyone the same way and if I wasn't allowed to adjust my setbacks then neither should anyone else.

BOARD MEMBER POWELL TAKES OUT SMART PHONE, BEGINS LOOKING AT IT.

CHAIR: Are there any questions for this person from the Board members?

MEMBER SMITH: Can you see the applicant's house from your back yard?

WHITE: What difference does that make?

CHAIR: We are trying to determine how it affects you if the applicant builds the addition. Please be so kind to answer the question – it will help us in our deliberations.

WHITE: No, I can't see the applicant's house from my back yard.

CHAIR: Are there any other questions for this person from the Board members?
Are there any questions for this person from the other parties?

If not, thank you for your testimony. Our next person is Ms. Martha Green. (*Sees Board member fidgeting w/ smart phone*)

Before we continue with this testimony, I would like to respectfully remind all our Board members to put away their personal electronic devices for the duration of the meeting.

GREEN: My name is Martha Green, and I live at 246 Oak Drive. I'm here to support the application of Desmond and Molly Jones. I live next door to them on the opposite side to where they want to put their addition. They have been the best neighbors in the world to me, and I have collected 30 signatures of people in our subdivision who support their application—here is my petition, and all signatures have been notarized (**hands petitions to Chair**). I want this marked as an exhibit and given a letter just like all the other exhibits.

CHAIR: Ms. Green, I need to point out that because this represents people's opinions, it cannot be used as a basis for our decision today.

GREEN: Well, I don't really understand what you are saying, but I want you to have this petition and mark it as an exhibit. I worked an awfully long time on this, I can assure you.

CHAIR: Thank you. We will mark this as Exhibit "D." You may continue with your testimony.

GREEN: As I was saying, the Joneses are wonderful people. I probably would have died if it hadn't been for Desmond Jones—a few months ago when I fell in my yard he heard me yelling for help and called 911. It would be terrible if the Joneses had to move away because of a yardstick.

CHAIR: Are there any questions for this witness from the Board members?

MEMBER COLETTA: Can you see where the addition is going to be located, from your house?

GREEN: Yes, I can.

CHAIR: Are there any additional questions for this person from the Board?

Are there questions from the other parties?

If not, thank you for your testimony. I would now like to invite the next person to come forward, Mr. Adam Blue.

BLUE: My name is Adam Blue, and I live at 828 Wild Acres Drive. I represent a new environmental organization that has been formed recently, "Save Our Bogs and Seeps," and I'm the local chapter President. We are losing our precious heritage of bogs and seeps because people are making unwise choices every day, favoring their own interests over protecting our environment. I'm sure the Joneses are fine people. However, while their backyard seep is small, it is still a very special ecosystem. It is home to native plants that ought to be on the endangered list and even some salamanders. If a septic drain field system is built where they say it has to go, it would disrupt the underground stream flow as well as pollute the groundwater that feeds the seep.

MEMBER SMITH: Madam Chair, I am concerned that this witness does not have standing to participate in this hearing. Remember at our Board of Adjustment training when we learned about the General Statutes that were changed a few years ago? There are very specific rules now that control when groups can have standing.

CHAIR: That's true, however, it is more related to standing for appeal of quasi-judicial decisions to court as opposed to standing to participate in the hearing itself. However, I'm sure all of the Board members are interested in learning a little more about your organization. Mr. Blue, would you mind telling us when your organization was established?

BLUE: Why is that relevant? You haven't asked the other speakers how long they have lived at their property. I find this question objectionable.

CHAIR: Mr. Blue, it would help us in our deliberations to know this, as well as whether there are there any members of your organization living near this property.

BLUE: Again, I find these questions extremely objectionable, but I have nothing to hide. “Save Our Bogs and Seeps” was established earlier this year, and as far as I know we do have members living on this street.

CHAIR: Mr. Blue, it is important that we establish more precisely the date of when your organization was founded. Could you please tell us the month it was formed?

BLUE: It was formed in January. As I was saying, even a septic system that functions well will send pollutants into the ground. Plus I understand the Joneses are going to use this opportunity to remove the large boulders so they can build a deck out back. The boulders are an important part of the habitat as well. I implore the Board to not grant the variance in order to keep the seep and bog functioning as they were meant to.

In order to provide more detailed information to the Board, I would like to distribute the following information from an article in Wikipedia. I’ve made copies for everyone here today and will pass them out now.

CHAIR: Mr. Blue, is the author of the article here today and available to speak regarding this study?

BLUE: You’ve got to be kidding me. A world-famous scientist does not have time to come here to testify at a meeting.

CHAIR: As I stated earlier, if the persons making the statements are not present to answer questions, then their testimony or information must be treated as hearsay. However, you may hand the document to me and we will mark it as Exhibit E (**passes around**). Are there any questions for this person from the Board members?

If not, are there questions for this person from any of the parties?

JONES: Mr. Blue, are you saying that you don’t think we should dig up the large boulders in our yard, but instead leave them for the lizards?

BLUE: I would be happy to talk to you more about this after the meeting. It’s possible that there are people in our organization who would compensate you for not building your deck.

CHAIR: Are there any other questions for this person? If not, thank you for your testimony. Are there any more parties? If not, then I will ask if the applicant has any rebuttal evidence to offer, and if she or any of the parties wish to make any closing remarks.

JONES: Madam Chair, I would like to thank all of you for the opportunity to make our wishes known, and I would like to ask that you give careful consideration to our request that we can stay in our home and take care of my parents. My husband and I would be happy to work with Mr. Brown to come up with a fence design that he will find attractive, and would also be willing to do some

landscaping so he would have plantings to enjoy as well. Please don't let a yardstick stand in the way of us being able to stay in our home.

BROWN: I want to be clear that my first choice remains not having the addition be so close to my yard. It matters a great deal that I have my space all around me in my dream home. I wish Mr. and Ms. Jones every success in selling their house and finding another one that suits their needs better.

CHAIR: At this point I will close the public comment section of this case and the board will begin its deliberations.

Now begins the important task of determining whether the applicant has met the burden of proof of meeting the ordinance requirements for a variance. Shall we take out our worksheets (**show worksheet to participants**) and start to look at the standards of the ordinance? This will be our first case using the new standards adopted in the 2103 legislative session. Why don't we start with the points that are very clear.

MEMBER POWELL: I think number 2 is clear – the hardship results from conditions that are peculiar to the property. We have evidence from the Environmental Health section on that point.

CHAIR: But we also heard testimony from Mr. Brown that he had difficulties locating his septic system on his lot.

MEMBER COLETTA: And we have heard evidence that many homes in this subdivision have had additions built; I think the hardship is a result of what's happening on the applicants' property. There are not large boulders everywhere in the subdivision, nor are there lots of seeps, according to Mr. Blue.

MEMBER SMITH: What about another part of Standard Number 2, that this is not a hardship resulting from personal circumstances? If we are honest with ourselves, we could see that we sympathize with the Joneses and their situation, and that is having a bearing on our decision.

Vickey as ANNOUNCER, asking attendees: Who agrees that the standard for number 2 has been met? Who disagrees?

CHAIR: Let's keep going down the list. Are there other points that seem clear?

CHAIR: What about Number 1--is this an unnecessary hardship?

MEMBER COLETTA: It sounds like if the applicants don't receive this variance, they would need to sell their house and start over somewhere else. They have expended a lot of effort making this particular house work, and they have lived in this neighborhood a long time. I don't think it's necessary for them to have to move.

MEMBER POWELL: I agree that they have worked hard to try to meet the ordinance requirements. We heard testimony from the Zoning Administrator that the applicant met with the Building Inspector three times try to fit the addition onto the house so it would meet the setbacks. In my opinion the applicants have tried their best to meet the parameters of the zoning ordinance.

MEMBER SMITH: I'm not sure we're really getting at the meaning of "unnecessary" in this phrase. The applicants have choices. They are living in the house now as it is, and they could build a smaller addition. They may say that a smaller addition won't meet their needs, but the reality is that a smaller addition could be built onto the house, and they can get a septic permit. They might even be able to have a two story addition, still have 800 square feet, and not violate the setback.

MEMBER COLETTA: But that would mean going up and down stairs, which defeats the whole purpose of the handicapped-accessible addition.

MEMBER SMITH: Perhaps the son could go up and down stairs.

JONES: Wait a minute—you're wrong—my son can't go up and down stairs because he has problems with his knees!

CHAIR: Excuse me, Ms. Jones; the time for public comment has ended and we are no longer taking testimony. The Board members are making their deliberations now.

Vickey as ANNOUNCER: Who agrees that the standard for number 1 has been met? Who disagrees?

CHAIR: Let's move on. What about Number 3 - is the hardship a result from actions taken by the applicant or the property owner?

MEMBER COLETTA: Testimony from the Zoning Administrator and the information from the Environmental Health section provide evidence for that point, that the hardship results from conditions on the property, not from anything the applicants have done.

MEMBER SMITH: I disagree. I think the hardship is truly a result from actions the applicants have taken themselves. The applicants have spent a lot of time and money on trying to make this 800 square foot addition fit, when a smaller addition, or one of a different configuration, wouldn't cause a problem on this lot.

MEMBER POWELL: I don't see it that way. The applicants are not to blame that the addition they've planned in great detail to handle a family circumstance that all of us will probably be facing in some form or fashion doesn't fit this challenging lot—they've done everything they could possibly do to make it work.

MEMBER SMITH: I hate to sound so cruel and heartless, but I disagree. The applicants could build a smaller addition and not have this problem. They are aware of the setback requirement.

Vickey as ANNOUNCER: Who agrees that the standard for number 3 has been met? Who disagrees?

CHAIR: Let's move on to the last point, number 4. Is the variance consistent with the spirit, purpose and intent of the ordinance—such that public safety is secured, and substantial justice is achieved?

MEMBER COLETTA: We heard testimony that there are many homes in the subdivision that are larger than that of the applicants, so I feel comfortable drawing the conclusion that granting this variance will be fair, which in my mind is what is meant by achieving justice.

MEMBER POWELL: I agree; our earlier standards talked about one way to approach this is point is by considering whether granting this variance would or would not be giving the applicants a special privilege not available to others, so I think it is fair to allow them to build the addition they have planned so carefully and spent so much money on.

CHAIR: Our previous standard referred to concepts of whether the essential character of the neighborhood will not be changed by the proposed use, and the harm to the applicant from denying the variance outweighs the harm to the neighbors from granting the variance. I think this is more difficult to determine. Mr. Brown has made it clear that his first choice is to have the applicants move to a different location rather than get the variance.

MEMBER POWELL: That's true, but the applicants could put up a fence now, or the new owners could, and they would be within their rights. While I appreciate Mr. Brown's desires to have unobstructed views, when you live in a subdivision with one-half acre lots, the reality is that you will see your neighbors' houses and fences. Three feet is not a whole lot of space.

MEMBER COLETTA: I agree with my colleague. If there is a fence, Mr. Brown couldn't see whether the addition met the setback or not.

MEMBER SMITH: I sympathize with the applicants; this is a very challenging situation. However, should our decision rest on whether anyone objects to the request? I still see several standards that are not met, whether or not Mr. Brown had a problem with the addition intruding into the setback.

CHAIR: I agree; we have a very strict standard to meet regarding variances, and it looks like a case could be made that there is at least one point that may not be met.

MEMBER POWELL: I personally don't see what harm is going to be done to Mr. Brown with this variance, once a fence is installed. He won't be able to see whether the addition is there or not, and three feet is not a lot of space. There will definitely be harm done to the applicants if they have to

move, and delay the sale of the home of Ms. Jones's parents. We all know how difficult it is to find buyers for property in the current real estate market.

MEMBER COLETTA: There is certainly no question that the essential character of the neighborhood will not be changed if the variance is granted, and there are no public safety issues involved.

Vickey as ANNOUNCER: Who agrees that the standard for number 4 has been met? Who disagrees?

CHAIR: Shall we review where we are with the standards? I have heard divided opinions whether Number 1 is met; divided opinions whether all of Number 2 is met; divided opinions on whether Number 3 is met, and divided opinions whether Number 4 is met. Do I have that right? So where are we?

MEMBER COLETTA: I would like to make a motion to grant the variance the applicants have requested, for the three feet reduction from the side yard requirement of 15 feet along the east side of their property, because an unnecessary hardship would result from the strict application of the ordinance. I would like to add the condition that the applicants meet with Mr. Brown to come to an agreement about a fence design, and then the applicants build the fence.

CHAIR: We have a motion to grant the variance.

ZONING ADMINISTRATOR: Madam Chair, may I point out that the motion as currently worded is not enforceable. Requiring the applicants to meet with Mr. Brown is not enforceable. It is possible, however, to specify the height of the fence and the type of materials used in building it. It should also be specified in the motion that the fence must be built before the Certificate of Occupancy for the addition is issued.

CHAIR: Thank you for pointing that out. Mr. Brown, if we specify in the motion that a fence between 7 and 10 feet high must be built, made of wood and stone, and constructed before the addition can be occupied, would that be adequate?

BROWN: As I said before, this is not my first choice, however, those are adequate standards.

CHAIR: Ms. Jones, do you have any objections to this condition?

JONES: No, I have no objection.

CHAIR: Shall I restate the motion? There is a motion to grant the variance the applicants have requested, for the three feet reduction from the side yard requirement of 15 feet along the east side of their property, because an unnecessary hardship would result from the strict application of the

ordinance. There is also a condition that the applicants build a fence between 7 and 10 feet high, made of wood and stone, and the construction of the fence must be completed before the Certificate of Occupancy is issued for the addition. In addition, it is recommended that Mr. Brown and the applicants discuss the fence design before it is built.

In approving this motion, the Board would be concluding that unnecessary hardship would result from the strict application of the ordinance the variance is the minimum possible deviation from the terms of the ordinance that will make possible the reasonable use of the property. It is the Board's conclusion that, if granted, the variance will be consistent with the spirit, purpose and intent of the ordinance. It is the Board's conclusion that, if granted, the variance will secure the public safety and-achieve substantial justice.

MEMBER POWELL: Remember at our last training, it was emphasized that we need to say **why** we believe a particular standard has or has not been met, rather than just saying it had been?

CHAIR: Thank you for that gentle reminder – I believe the Clerk to the Board and I can pull draft Findings together based on our meeting notes. The full Board could review and approve them at our next meeting, or we can spend some time on it now.

MEMBER POWELL: It's been a long meeting already; I'm perfectly willing to let you prepare draft findings.

CHAIR: So we're agreed to wait to do that unless someone else feels strongly about working on them now. Seeing no objection, is there any additional discussion on the motion? If not, then I will poll the board. Let me remind everyone that a four-fifths vote in favor of granting the variance is required. Our membership of five members was reduced by one when Ms. Wade was excused because of a conflict, so for this case our membership is four. Four-fifths of four is 3.2 and we must round up, so that means four votes in favor are required for this variance to be granted.

Vickey as ANNOUNCER: Who would vote in favor of the motion? Who would vote against?

CHAIR: I will now poll the members:

- Member Smith: No
- Member Powell: Yes
- Member Coletta: Yes
- Chair Carter: Yes

The motion fails by a vote of 3 in favor to 1 opposed; the variance request is denied.

CHAIR: In light of the vote that has taken place, I would now like to ask Board Member Smith to specify the points with which she disagrees, so there is an accurate record for the minutes.

MEMBER SMITH: The reason for my vote is as follows.

The first standard in our ordinance states, “Unnecessary hardship would result from the strict application of the ordinance.” This standard is not met, because if the applicants chose to build a smaller addition, or one of a different configuration, they could meet the setback and continue living in their home.

The second standard in our ordinance states that hardships resulting from personal circumstances may not be the basis for granting a variance. This hardship is resulting from personal circumstances. The applicants wish to remain in their current home rather than find another one, and have spent a lot of time and money making this addition fit this lot rather than move.

The third standard in our ordinance states, “The hardship did not result from actions taken by the applicant or the property owner.” This standard is not met for the same reason – it is the action of the applicants insisting that they cannot change the size or shape of the addition that is really the issue.

The fourth standard in our ordinance states, “The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.” This standard is not met because, in my opinion, the harm that would be done to the neighbor on the side where the addition is proposed outweighs the harm that would be done to the applicants by having a smaller addition, or one of a different configuration, that meets the setback requirement.

CHAIR: Thank you, Ms. Smith. We will prepare draft Findings of Fact based on the deliberations, and approve them at our next meeting.

Thank you, everyone, for your time and attention.

We will now close this public hearing.

Vickey states: ONE MONTH LATER

CHAIR: Good morning and welcome everyone to the Board of Adjustment meeting of the Town of Buena Vista. The first item of business today is to approve the Findings of Fact for case number 04.01. 2014, an application by Desmond and Molly Jones for a variance under the Zoning Ordinance; they wish to build an addition to their house. The Clerk to the Board and I met after the meeting to prepare an Order Denying a Variance which contains the draft Findings of Fact. You all received them in your packets and should have them in front of you now. Does anyone have any questions regarding the wording? Does anyone have any changes they want to propose? If not, since this is a vote on Findings of Fact, all we need is a majority to pass them.

All in favor of approving the Findings of Fact please indicate by raising your hand.

VOTE

Let the Clerk show in the record that the vote to approve the Findings was unanimous.