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March 23, 2010

Chairman, Zoning Board of Adjustment
Jackson Town Offices
Main Street
Jackson, NH 03846

*rec'd 3/23/10
yhw*

In re: Siebert Application for Equitable Waiver

Dear Mr. Chairman,

Enclosed please find copies of Exhibits to be filed with the Board at the time of the hearing on the above-referenced matter, together with an outline of the arguments to be made in support of the grant of the application.

Yours very truly,

Fay E. Melendy
Fay E. Melendy

OUTLINE OF FACTS AND ARGUMENT

Application for Equitable Waiver by Laurence Siebert

FACTS:

1. Laurence Siebert is the owner of the property located at 60 Main Street which he obtained in 1991. This property is located in the Village District as defined in the Jackson zoning ordinance.
2. This property has been used for commercial purposes since May 2000. Since the 1990's there has been a boundary fence which is higher than six feet. Since May 2000 there have been display fences on the property within the set back area which are ten feet in height. At no time prior to September, 2009 has any notice of violation or enforcement action been initiated for the fences on the property. (See attached photographs of fences on property)
3. The Applicant's abutter on Main Street is the Town of Jackson. The Jackson fire station was constructed within three feet of the mutual boundary line.
4. During the years of his ownership, the Applicant has worked cooperatively with the Town concerning the fire station property. Evidence of this cooperation include a shared septic system; he has painted the fire station at his own cost in an effort to improve its appearance; he has permitted access to the chimney to permit its cleaning, and most recently in 2009, he has permitted heavy equipment on his property to dig along the station's boundary to install perimeter drains to deal with a water issue. The drains may actually be located on the applicant's property. Applicant knows of no instance where, when asked, he has not provided full access to the fire station building through his property.
5. Following the installation of the perimeter drain, with the assistance of the road agent and the fire chief, a display fence was installed by the Applicant along the mutual boundary approximately three feet from the fire station. This fence ranges in height from five feet to 16 feet in height. The fence is constructed on fence posts and contains doors to provide access to the wall of the fire station. (See photograph of subject fence)
6. The Jackson zoning ordinance does not contain a definition of what is a structure.
7. There are numerous fences in the Town of Jackson located either along boundary lines or in set back areas or both, which are greater than six feet in height. No enforcement action has been taken regarding any of these fences. (See enclosed photographs)
8. At a meeting of the Jackson Selectmen in June, 2009, the Selectmen indicated that the fence could be put up by the Applicant so long as it didn't impair access to the fire department building. (See attached transcript)
9. The Jackson Selectmen subsequently advised the applicant that a building permit was

needed for the fence which the applicant had erected. Following a denial of the building permit, the Applicant filed an application for a variance to this Board, which was denied. (See attached decision dated January 6, 2010)

10. As part of its decision, the ZBA found that a fence over six feet in height is a structure within the meaning of the Jackson Zoning Ordinance.

11. In making its determination the ZBA used the Bartlett Zoning Ordinance which defines a fence greater than 6 feet 6 inches is a structure within the meaning of that ordinance.

12. The Madison Zoning Ordinance also defines structures under the Ordinance and specifically states that fences are not structures within the meaning of its ordinance. (See Madison Ordinance)

13. The Conway Zoning Ordinance excludes fences from its definition of structure. (See Conway Zoning Ordinance)

14. The citizens of the Town of Jackson specifically voted not to amend the Zoning Ordinance to define the words "building" and "structure" as defined by the International Building Code. (Jackson 2009 Annual Report, page 5)

15. A number of abutters have written letters in favor of allowing the fence which has been constructed by Applicant (See enclosed letters in support of Applicant)

ARGUMENT:

- a. The violation was not discovered until after the fence was completed.

The current fence was constructed in May 2009 with the assistance of the road agent and fire chief. Neither the Applicant nor the town officials was aware that a building permit was required to construct a fence.

- b. The violation was not an outcome of ignorance of the ordinance but was caused by a good faith error in measurement or calculation.

- i. The Jackson Zoning Ordinance provides that a building permit shall be obtained before a building or structure is constructed. This requirement applies to swimming pools, mobile homes, modular homes and exterior signs.
- ii. The Jackson Ordinance does not define structure within the meaning of the Ordinance.
- iii. The 2008 vote against the amendment to the Zoning Ordinance made it clear that building and/or structure would not be defined by the IBC.

- iv. Provisions of zoning ordinances from other Towns in the Mount Washington Valley exclude fences from their definition of structures.
- v. The definition of a fence having a height greater than six feet as a structure within the meaning of the Jackson Zoning Ordinance came only from this Board *after* the fence was constructed so the definition was not available to the Applicant prior to the construction of the fence.
- vi. For more than 10 years the Applicant had fences on his property eight feet in height without issue. From May 2000 to present the applicant has had fences on his property of approximately ten feet in height without issue.
- vii. Fences of greater than six feet in heights can be found around Jackson along boundary lines or in set backs without notice of violation of the Ordinance.
- viii. The applicant error in calculation of the permissible height of the fence was caused by the failure of the ordinance or any other applicable regulation or enforcement action to put him on notice that the permissible height was only six feet.
- ix. By this application, applicant seeks a waiver to permit the fence to be ten feet in height which is comparable to the other fences on his property since 2000.

Permitting a fence will not diminish the values of surrounding property.

- i. Submitted herewith a letters from abutters indicating that they believe that the existence of the applicant's fence is a benefit to surrounding properties.
- ii. But for the fence, the view in this location is the side of the fire station. Given the recent improvements made to that building and the plans for further expansion, it is reasonable to conclude that this building will continue in its present location well into the future.
- iii. It is not anticipated that any abutters will present evidence suggesting that property values will be adversely affected by this fence.

The Cost of correcting the mistake outweighs any public benefit.

- i. The fence in question is a decorative fence used to mask the plain wall of the fire department and to display applicant's product.
- ii. The fence has been specifically designed to accommodate its proximity to the fire station. Doors have been built into the fence to permit access to the fire department building and to permit easy reading of the electrical meter. The boards of the fence are screwed onto the posts and struts so that the boards can be

easily taken off in case wider access is needed to the fire station.

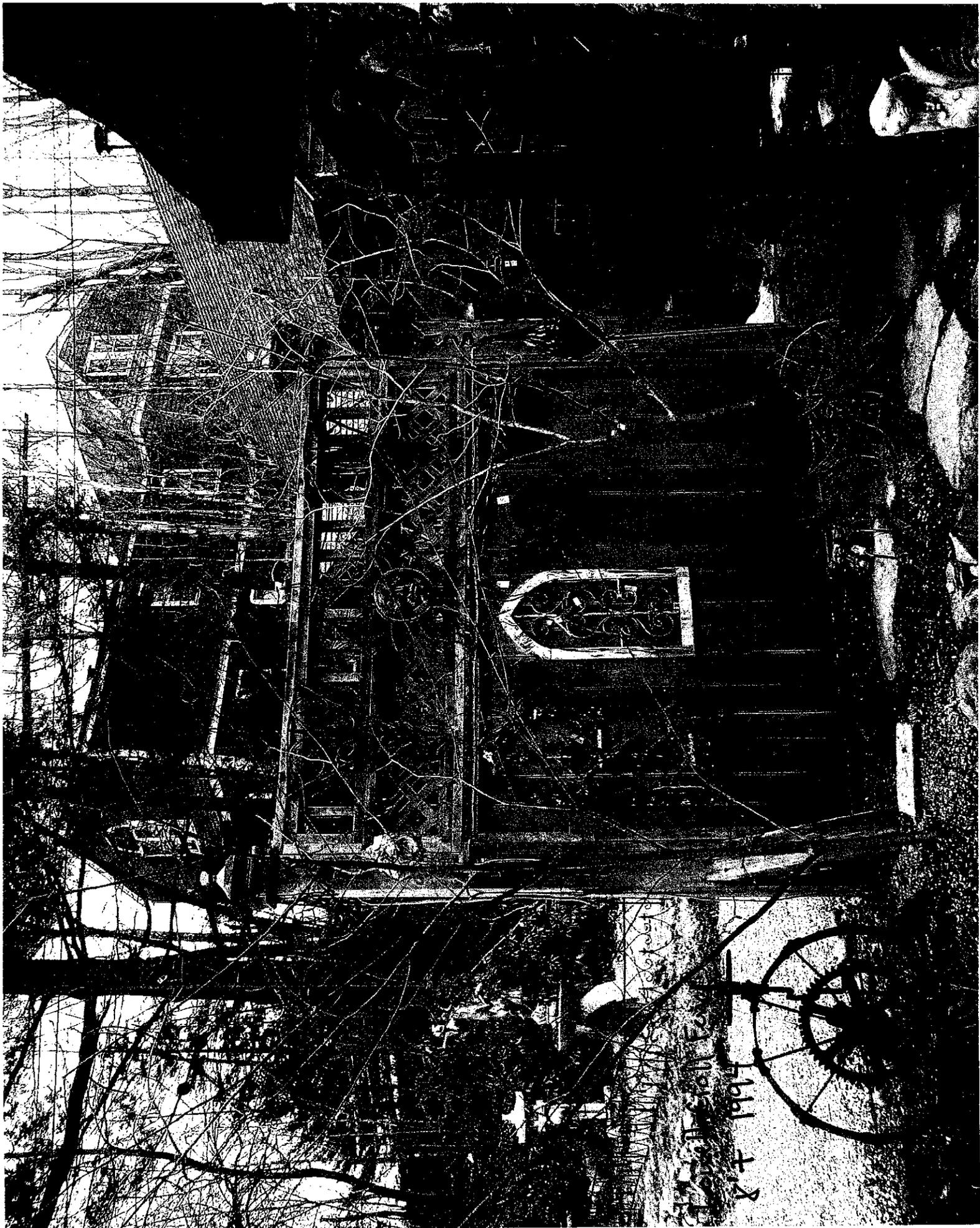
- iii. Granting permission to maintain this fence to a height of ten feet is not adverse to any public interest and greatly diminishes the cost to the applicant to reduce the fence to six feet in height.
- iv. The Applicant has had the construction of the fence engineered so that if the equitable waiver is granted, it can be constructed with foundation supports which will permit it to be free standing.

For all the foregoing reasons the Applicant requests an equitable waiver to maintain the fence along the boundary line to a height not to exceed ten feet.

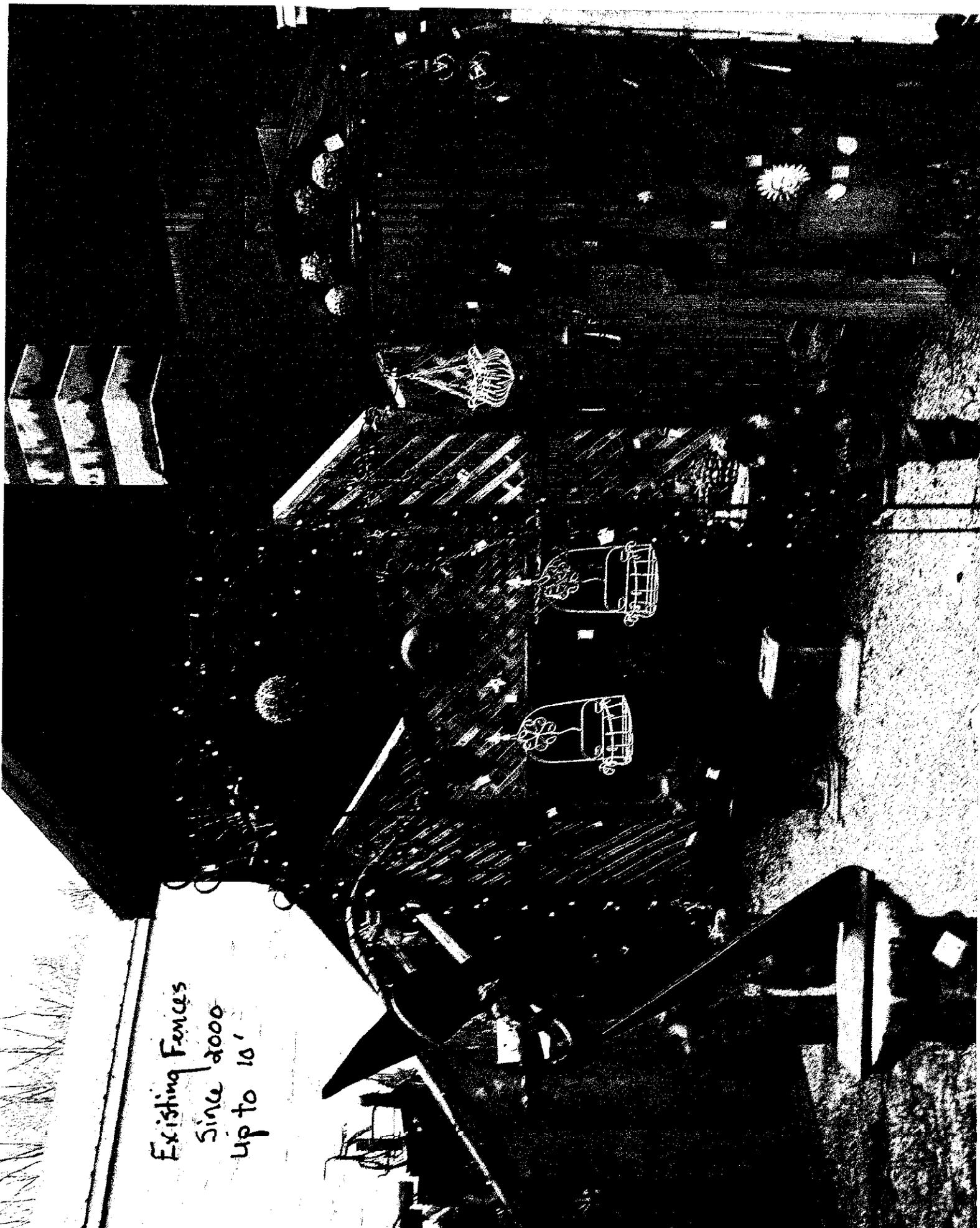
Applicant asserts that the ZBA hearing is a meeting of a Board under the provisions of RSA 91-A:2 and as such all aspects of the hearing, including deliberation and voting must occur in public.

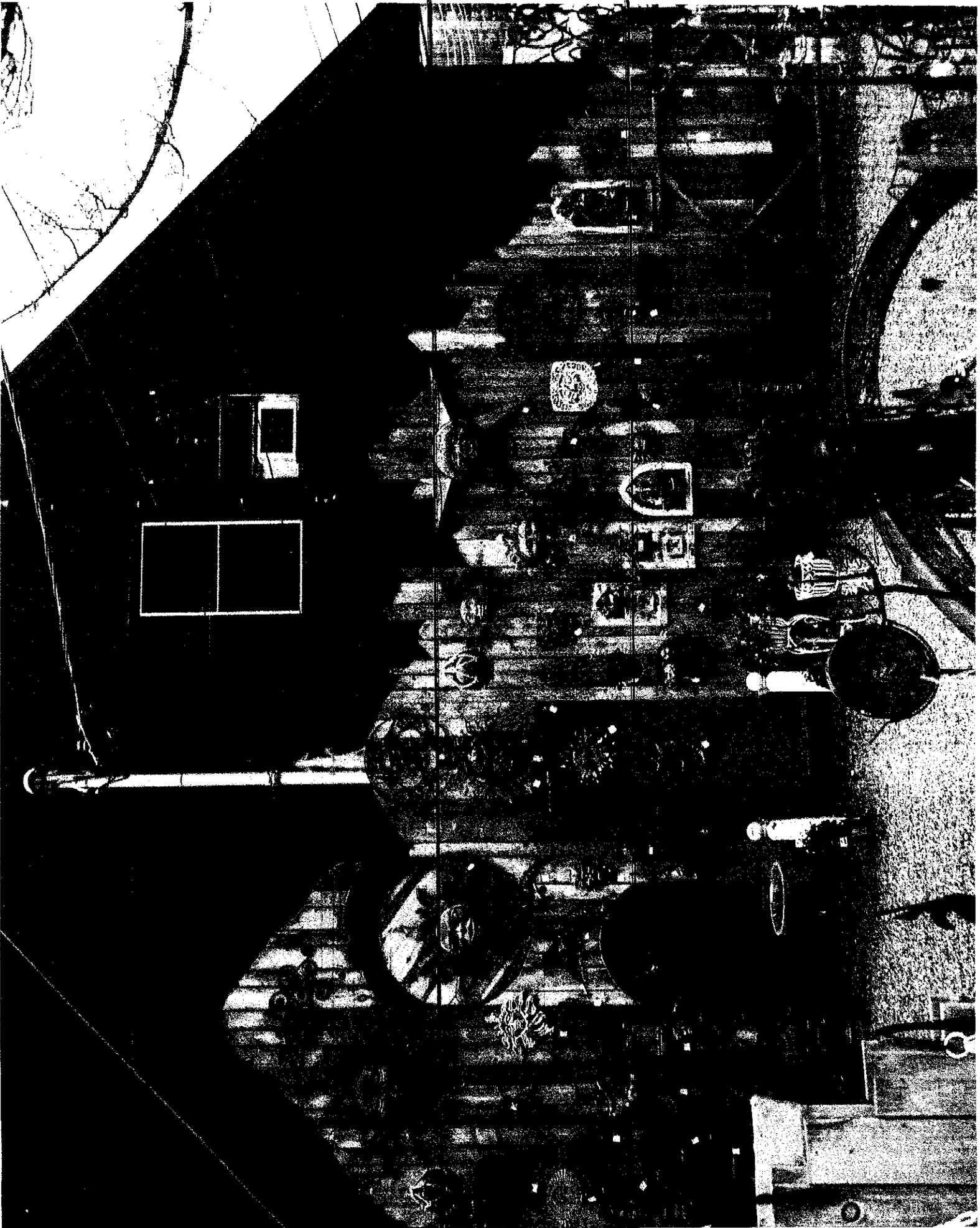
Reference is also made to *The Board of Adjustment in New Hampshire, Handbook for Local Officials*, October 2009 which provides:

“After the public hearing is closed, the board should deliberate, in public, and in a manner such that all discussions can be heard by the public, on the essential facts that the testimony has established.”



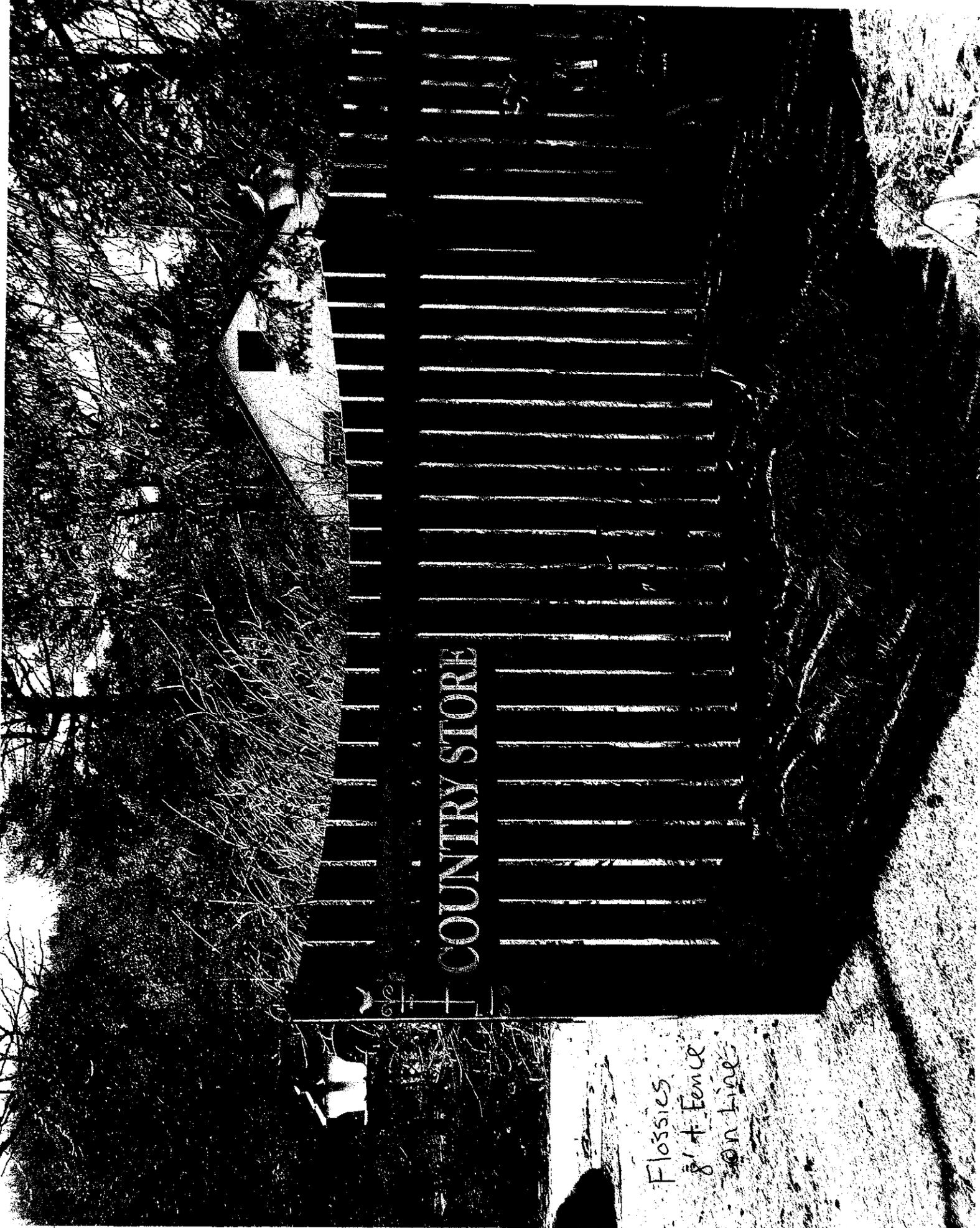
Existing Fences
Since 2000
Up to 10'





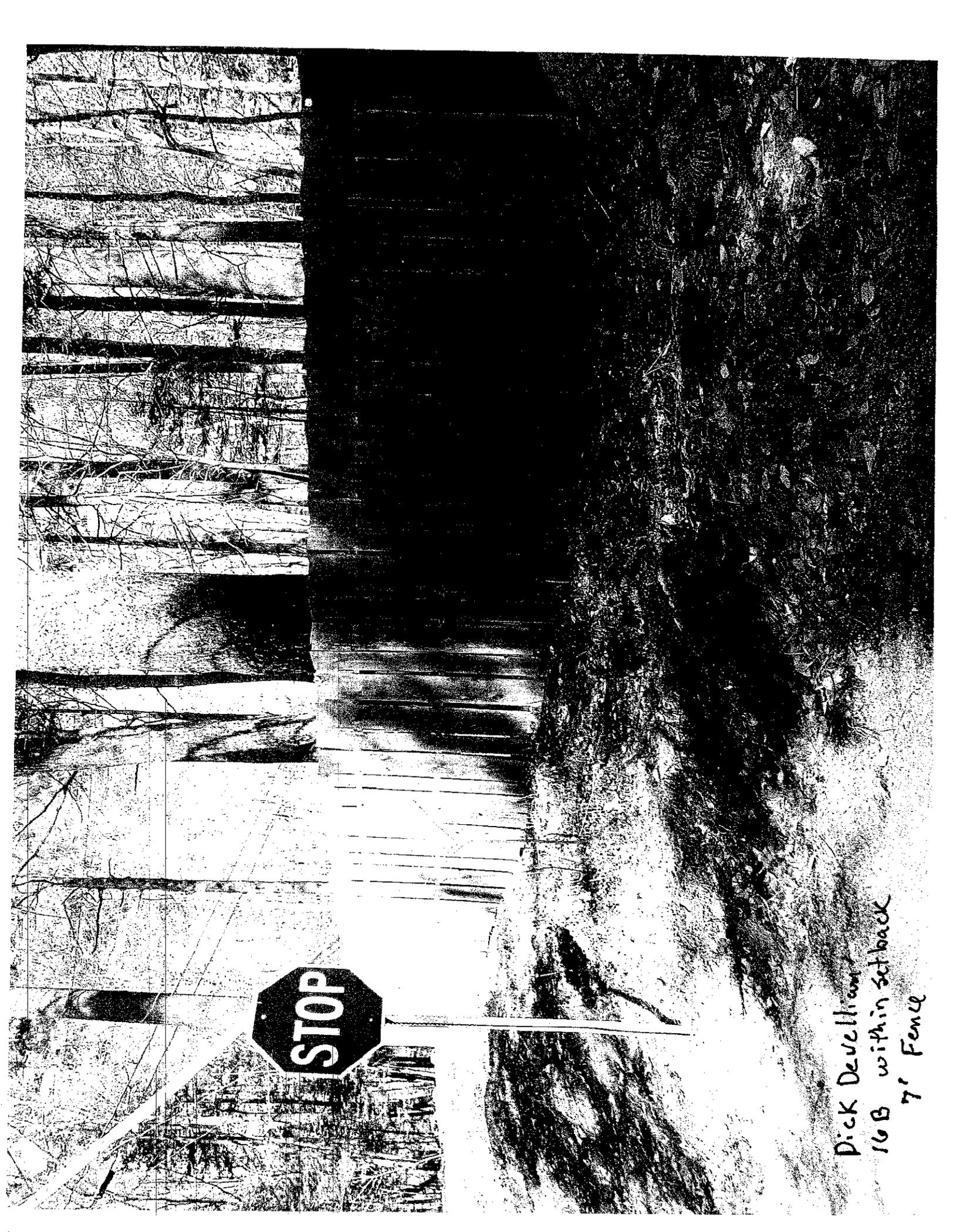
10'

6'



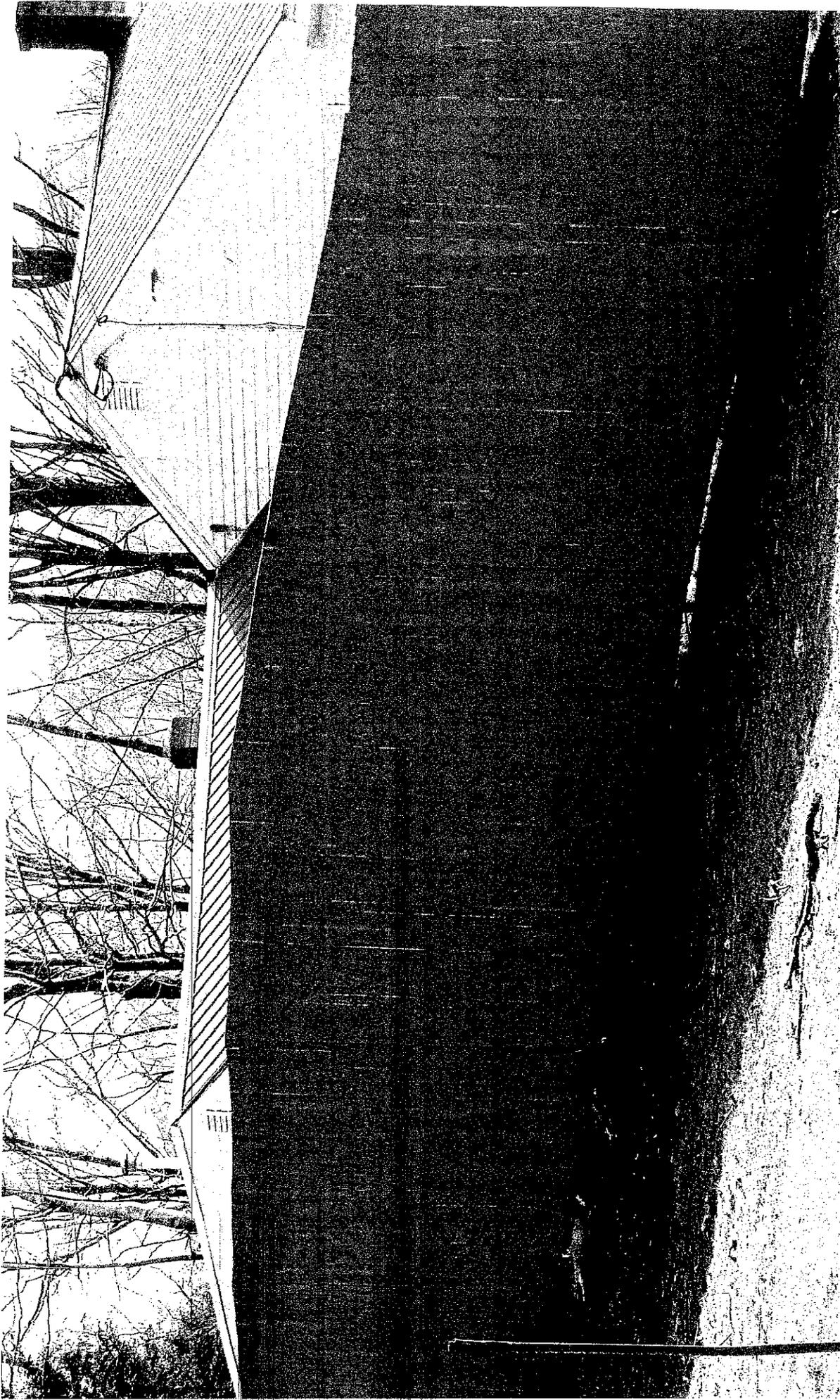
COUNTRY STORE

Flossies
8' H. Fence
on line

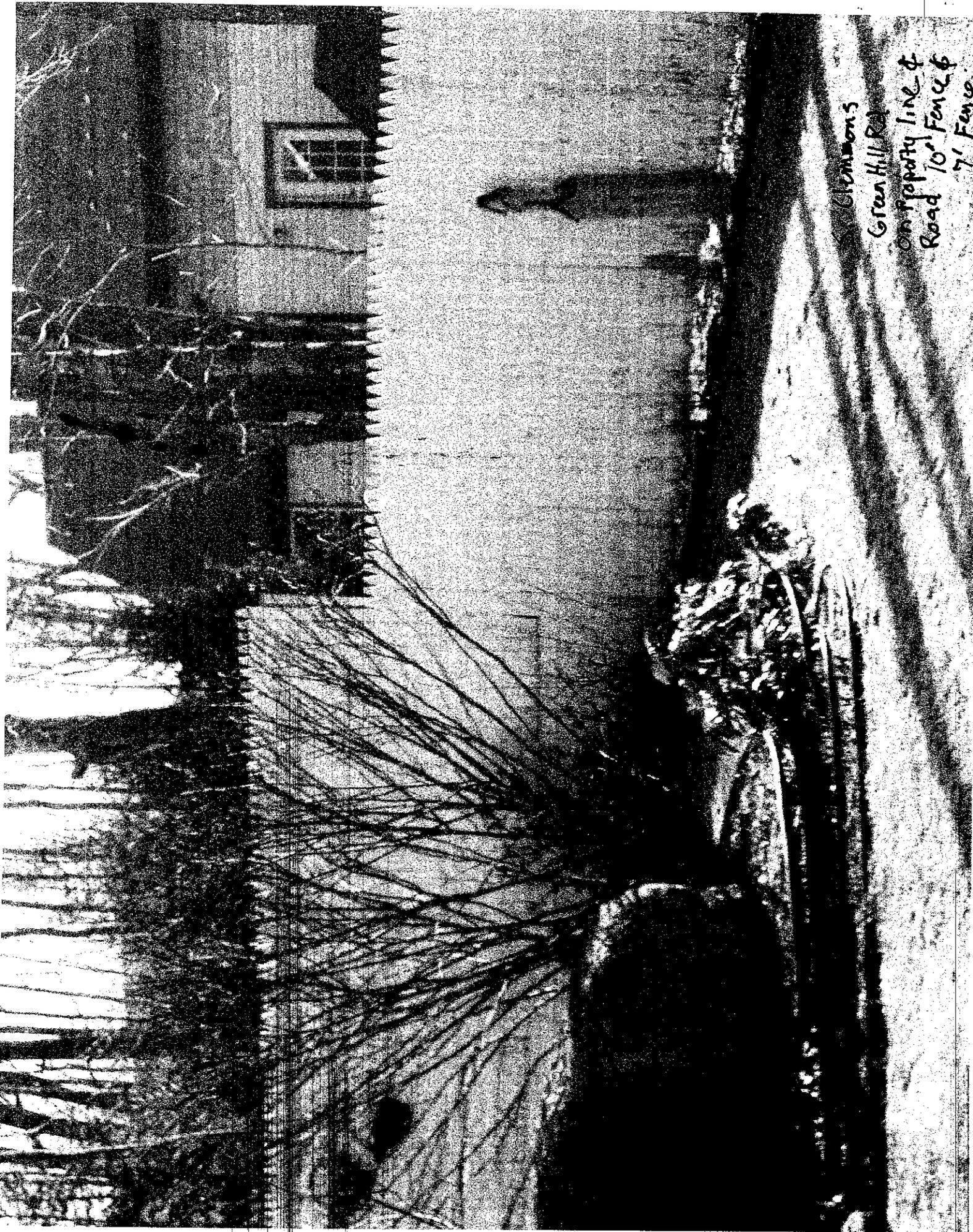
A black and white photograph showing a stop sign mounted on a wooden fence. The sign is octagonal with the word "STOP" in white capital letters on a dark background. The fence is made of vertical wooden planks. In the background, there are bare trees and a dirt path. The lighting is high-contrast, creating deep shadows and bright highlights.

STOP

Dick Devellian
16B within setback
7' Fence



Green Hill Rd
on property line & Road
10' Fence

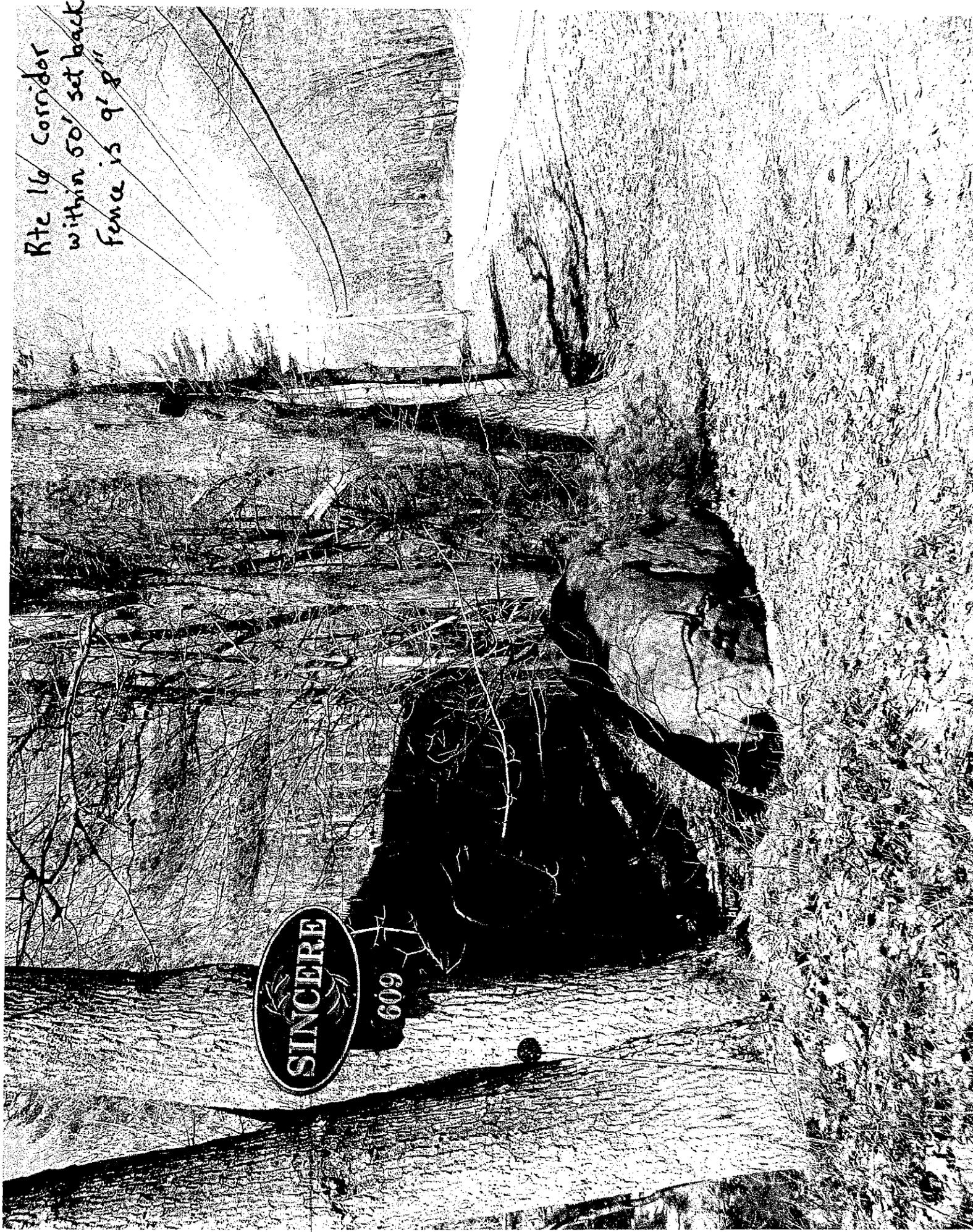


St. Clements
Green Hill Rd
on property line of
Road 10' Fence &
7' Fence.

Rte 16 Corridor
within 50' set back
fence is 9' 8"



609



Selectmen's Meeting Transcript June 18, 2009

Selectman Mason: (asking Larry), As long as you and Jay's here I'm wondering about your fence and it's attachment to the Fire Dept. uh... What's the plan there?

Larry: (after some back and forth), I used to have my things hung on the Fire Dept.. And I probably had 140 or 150 screws in the wall. I painted the building twice for the Fire Dept. and paid for the paint. I have offered Jay at any time that when that side is to be repaired I will pay for the side... of the repair. I will pay for the wood, that's without saying. At this point I have about 18 screws in the side of the wall uh... just to support that fence so that it wouldn't fall over onto the Fire Dept, but what I did was to get my things off of the side of the Fire Dept. so that it wouldn't become an issue. When he put in the trench which I let him dig on my side of the line there... he did that to drain the Fire Dept. so that it wouldn't leak. I asked him, Can I put a couple of posts in the ground at the same time and put a fence up. This way I could remove my things from the wall of the Fire Dept.. Up until this point the Fire Dept. has always been very nice and have always let me. Arthur always let me put things on. What I did was paid for the paint and gave it to Arthur and I also painted that twice.

Selectman Mason: Yes, I understand that, and you can certainly put a fence up if you want to put a fence up. It's made it a little more difficult to get to that side of the building, if you needed to. What your saying is; if the town needs to do something on that building, you're happy to take care of it.

Larry: Oh sure! No problem at all! That side of the building, what I did is leave a door so that they could get at all their electrical. The fence is well on my side; there is probably uh... 3 1/2 or 4 feet uh... 3 1/2 feet between the fence and the Fire Dept. so it's easy to work back there, and where they had a window I put a window in.

Selectman Mason: (to Fire Chief) So you don't have a problem with it?

Jay Henry: No, Nope...but what I think the question was...(now to Larry), I know when you had done it You had anchored it to the building and to the boards temporary, until everything firmed up... is that it?

Larry: No I want to leave those couple of anchors in there just so that it doesn't...

Jay Henry: It's up to you guys...

Larry: There's literally 16 screws in the side of the...

Jay Henry: I thought it was a temporary thing just to hold it.

Selectman Mason: The only thing I was concerned about was getting to the building and repairing it.

Larry: that could be removed with voop voop (imitating a screw gun)...

Selectman Mason: And you'll take care of that.

Larry: And I will pay for any work on that side of the building.

Selectman Mason: Great! That's Fine. Fine with me! I was just curious...

Selectman Funicella: (pointing to Jay Henry) Fine with you?

Fire Chief Henry: Yeah! I didn't have any issues with the building of it.

Selectman Funicella: (asking Selectman Davis) Bea?

Selectman Davis: (nods ok)

Selectman Funicella: All right! OK. I make a motion to go into Executive Session

Town of Jackson Board of Adjustment
Summary of Issues, Findings of Fact, and Decision in re
Application of an Area Variance by Lawrence G Siebert
Case No. 2009-05
January 6, 2010

Town of Jackson Board of Adjustment
Summary of Decision in re
Appeal of an Administrative Decision by Jackson Ski Touring Foundation
Case No. 2010-05
January 6, 2010

Jackson Board of Adjustment
Minutes of Meeting and Public Hearing
January 6, 2010

UNOFFICIAL UNTIL APPROVED

Town of Jackson Board of Adjustment
Summary of Issues, Findings of Fact, and Decision in re
Application of an Area Variance by Lawrence G Siebert
Case No. 2009-05
January 6, 2010

Background and Issues Raised

1. General

- 1.1. Laurence G Siebert ('the Applicant') acquired the property at V09 lot 30 (60 Main Street) in circa 1991. It was subsequently transferred to joint tenancy with Marjorie D. Siebert and Laurence G. Siebert in August 1998. The property lies in the Village District of the Town.
- 1.2. The northeastern side of the property is a 24.8 feet frontage on Route 16A (Main Street) and the property's southeastern boundary is 100.6 feet with property now owned by the Town of Jackson. The Town of Jackson's Fire Station lies within approximately 30 inches of Applicant's property line and extends for approximately 75 feet along the 100.6 feet property line. The subject parcel (V09 Lot 30) also has a boundary with lot V09 Lot 29 also owned by the Applicant and R14.
- 1.3. The Fire Station and the Applicant's property share a septic system located on the Applicant's property.
- 1.4. In 2000 the Applicant converted his use from a residential one to a commercial use operating as 'Ravenwood Curio Shoppe'
- 1.5. In 2000, the Applicant also began the practice of displaying merchandise and similar items on the wall of the Fire Station that abuts his property. This Applicant testified that this was done with the verbal approval of the Chief of the Fire Department.
- 1.6. In 2009, the Applicant permitted the Town of Jackson Fire Department to access his property for the purposes of installing a drainage system in a trench created running parallel to the Fire Station wall to alleviate flooding in the Fire Station. From the testimony it is unclear whether the drainage pipe is located on the Applicant's or the Town's property.
- 1.7. Coincident with the excavation for the Fire Station drainage system, in May 2009 the Applicant testified he installed a structure that will be referred to as a 'Display Fence'. It consisted of 6x6 posts embedded in crushed stone in the same trenching to a depth of possibly 5 ft. (Subsequently, an informal communication from the Fire Chief suggests the trench depth may be less.) The posts support fencing that extends in height from approximately 5 feet to 16 feet. This is parallel to the wall of the Fire Station and the Town of Jackson property. It is located on the Applicant's property within approximately 6" of his property line and approximately 36" from the Fire Station building. The top of the 'Display Fence' is stabilized with several supports that are attached to the Fire Station Building. The merchandise and other items that were

previously displayed on the Fire Station wall [were] are now displayed on the 'Display Fence'. The Applicant testified that the Fire Department assisted with the installation and provided the crushed stone (in conjunction with the installation of their drainage system.)

- 1.8. The work on the Display Fence was done without a Building Permit or any inquiry by the Applicant as to necessity of same, or compliance with zoning and / or building codes.
- 1.9. In a June 18, 2009 Town of Jackson Board of Selectman's ('BOS') Meeting, there was discussion by the BOS noting the new 'Display Fence' has been constructed and included a door that allowed access to a electrical box for the Fire Station. The minutes noted that "Selectman Mason noted that Larry could put up a fence as long as it doesn't make getting to the Fire Department building's wall more difficult.... This was the only concern the Board had and as long as Larry has agreed to pay for any work on that side of the building it's ok with the Selectman". (It appears the BOS was more concerned at this point about the Display Fence being attached to the Fire Station and access to the Fire Station and had not yet considered the applicability of Zoning and/or Building codes.)
- 1.10. In a letter to the Applicant dated July 20, 2009, the BOS noted that a 'fence/structure has been erected' without obtaining permits and instructed the Applicant to obtain a permit for the structure, or obtain a permit to demolish the work and return the property to its original condition.
- 1.11. A building permit application was submitted on or about August 3, 2009. This application was for a 39' long 'Display Fence' with height varying between 5 to 16 feet. The application maintained setbacks requirements were not applicable. This application was later withdrawn by Applicant at a subsequent Selectman's meeting.
- 1.12. At an August 20, 2009 BOS meeting the building permit application was discussed. Selectman Mason noted "that due to the height of the fence a permit is required. The IBC requires a foundation under the fence; it's required to be self-supporting, however, it's not easy to read the IBC and understand that a foundation is required for a fence." There was also discussion about appropriate action, including (1) not granting the permit, (2) requiring a foundation – tearing down the fence and rebuild it to code, (3) give permissive use without a permit. The matter was tabled until the next meeting.
- 1.13. A second building permit application was submitted on or about September 3rd. This application again stated that setbacks were not applicable and the work described provided for buttressing of the existing 'Display Fence'. The buttressing would have added 14 ft to the length of the 'Display Fence'
- 1.14. At a September 17, 2009 BOS meeting, the building permit was denied. In a letter dated September 23rd, the reasons for the denial were that as a fence over 6 feet in height, it was considered a standalone structure under the building code and required an engineered foundation to be installed along with an engineered bracing plan. The permit was also denied as the structure is in violation of the town's setback requirements.
- 1.15. The Applicant submitted an Application for an Area Variance on November 17, 2009 seeking relief from the setback requirement that would allow the 'Display Fence'

as built. A public hearing on this matter was held December 16, 2009. Deliberations began on that date and were then suspended until a meeting to be held at 6:30 p.m. on January 6th, 2010 at the Town Office.

2. Issues Raised

- 2.1. The Town of Jackson Zoning Ordinance (Section 4.3.2.3) states, in part, that “No building, structure, porch, or portion thereof shall be located” within 25 ft of an abutters property. The first issue raised is should the Applicant’s ‘Display Fence’ be considered a structure under the Zoning Ordinance and thus subject to the setback requirements. Though not a defined term in the Zoning Ordinance, structure is defined in Webster’s dictionary as “something (as a building) that is constructed”. This suggests that the ‘Display Fence’, in fact any fence, is a structure. In several sources related to Jackson’s ZO, , structure is defined as follows.
 - 2.1.1. RSA 155-A, New Hampshire Building Code: “Structure means structure as defined and interpreted by the International Code Council’s International Building Code.” In the IBC, Structure is defined as “That which is built or constructed”.
 - 2.1.2. Town of Bartlett Zoning Ordinance- -definition of STRUCTURE – “Anything constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground. Structures include, but are not limited to buildings, mobile homes, ground signs, and tennis courts. Septic systems and or pavement are not structures for the purpose of this ordinance. “ Town of Bartlett Zoning also states “G. Fences: Fences in excess of 6 ft 6in height are considered structures and must comply with all setback requirements.”
 - 2.1.3. The Supreme Court of New Hampshire decided, in Town of Jackson vs Town and Country Motor Inn (120 NH 699 A.2d 1034) October, 1980, that an 8 foot by 16 foot sign with supports in concrete was held to be a structure within the meaning of Jackson’s zoning ordinance. As such construction was held to be a structure, it is consistent that the Applicant’s 32 x 14 foot ‘Display Fence’ with an engineered foundation be considered a structure.
- 2.2. If the ZBA were to grant a variance, to comply with the International Building Code (“IBC”), the Applicant would have to modify the ‘Display Fence’ to have an engineered foundation and engineered supports as, per the IBC, it is a fence over six feet in height. These requirements make this ‘Display Fence’ more distant from our understanding of the word fence and more clearly a structure.
- 2.3. To grant the Applicant’s Request for a Variance from the setback requirements for any structure, the Board of Adjustment must determine that the Applicant has demonstrated that no **Decrease in Value of Surrounding Properties Would Be Suffered**. During the public hearing,
 - 2.3.1. No abutters presented evidence suggesting that values would be decreased.
 - 2.3.2. A letter was received in support of the variance from the proprietors of The Inn at Thorn Hill, Mary and James Cooper, stating that the “wall that was built as being an asset to the stated property. We feel it adds a positive visual asset to the property and the business.”

- 2.3.3. A letter was received from the proprietors of the Inn At Jackson, an abutter to the Applicant's parcel at lot V09 Lot 29. They state "as an abutter and perhaps the only property, which faces the fence in question. Simply, the fence and RavenWood has always been an asset and a joy to our guests. In my opinion the fence enhances rather than detracts from the value of the neighboring properties."
- 2.4. To grant the Applicant's Request for a Variance from the setback requirements for any structure, the Board of Adjustment must determine that the Applicant has demonstrated that **Granting the Variance Must Not be Contrary To the Public Interest.**
- 2.4.1. As abutters, the Board of Selectman have expressed a concern that the "Display Fence", in being built so close to the property line, that it limits the Fire Department's ability to access and maintain the Fire Station.
- 2.5. To grant the Applicant's Request for a Variance from the setback requirements for any structure, the Board of Adjustment must determine that the Applicant has demonstrated that **Denial of the Variance Would Result In Unnecessary Hardship To the Owner Seeking It.** To meet this requirement, the Board must determine both (a) **Special Conditions of the Property make an area variance necessary in order to allow the applicant to construct the development as designed** and (b) **The applicant cannot achieve the same benefit by some other reasonably feasible method that would not impose an undue financial burden**
- 2.5.1. In regard to part (a), the Applicant has testified that his property is unique in its surroundings as most of his southeastern property boundary has the blank wall of the Fire Station within 2 ½ feet of the property boundary for at least 75 ft along the length of the property boundary
- 2.5.2. In regard to part (b), the question of other reasonably feasible methods, the applicant has testified that he can achieve approximately the same result by displaying his merchandise on a fence that is 6 ft or less in height
- 2.6. To grant the Applicant's Request for a Variance from the setback requirements for any structure, the Board of Adjustment must determine that the Applicant has demonstrated that **By Granting the Variance Substantial Justice Would be Done.** This is interpreted to mean that the gain to the public by denying the variance must outweigh the loss to the applicant; otherwise an injustice has occurred. There is conflicting evidence on the gain to the public, versus the loss to Applicant if he must limit the height of the Display Fence to six feet.
- 2.7. A variance should be consistent with the **Spirit and Intent of the Zoning Ordinance.** The purposes of requiring setbacks from a property line involve various issues, such as, limiting density of buildings and structures, preserving views, protecting access along property lines, and the like. In this case, the density issue is a concern because of the height of the structure. While several neighboring inns have expressed support for the Applicant's Display Fence and appear not to be concerned with the "view" issue, this may in part be explained by the orientation of the adjacent Fire Station, which in any event would block a view from most directions. If the Fire Station were destroyed, razed or moved, the view issue might be quite different. There have been concerns expressed by the BOS of blocking access to the Fire Department wall. And the Town's

Road Agent has informally expressed concern about obtaining access for equipment along that side of the Fire Station. Moreover, the **Master Plan** adopted in August, 2003, page 2, states as follows: "**Policy:** Efforts will be made to decrease the non-conformity of existing land uses and structures, whenever the opportunity arises." This is followed by: "**Objective:** Require adherence to existing regulations if changes are proposed in non-conforming uses or structures." The Applicant's existing buildings, other than the Display Fence at issue, are largely non-conforming but are grandfathered. The granting of a variance for another non-conforming structure on Applicant's property would be at odds with some of the purposes of setbacks requirements in the Ordinance, and clearly not within the spirit of the Master Plan.

Findings of Fact

The Jackson Board of Adjustment finds the following:

- 1) For the purposes of the Jackson Zoning Ordinance and based on both the dictionary definition of structure and the fact that to comply with the IBC, engineered foundations and supports are required, the Applicant's 'Display Fence' is considered a structure and is required to comply with the 25 ft side setback from any abutter's property line. The Applicant has stipulated that the 'Display Fence' is approximately 6" from the property line and is thus in violation of the ZO. Accordingly, Applicant is requesting a variance of 24 feet or more from a setback requirement of 25 feet .
- 2) Should the Applicant reduce the height of the 'Display Fence' to 6 ft or less and remove the attachments to the Fire Station, we find that such a fence would comply with the setback requirements of the Zoning Ordinance. We note that this approach is consistent with our understanding of the treatment of fences by the Zoning Ordinance in the neighboring town of Bartlett, NH]
- 3) The testimony demonstrated that no **Decrease in Value of Surrounding Properties Would Be Suffered.**
- 4) Setback requirements promote the public interest in limiting density, preserving views, providing access to emergency vehicles, promoting fire safety. The testimony demonstrated that the Town of Jackson, as an abutter was concerned about access to their property for maintenance and other purposes. The Applicant has offered access via a door in the fence, but it is unclear if that sufficiently addresses the towns concerns. The hearing thus demonstrated that **Granting the Variance may be Contrary To the Public Interest** as it is injurious to one abutter and is not in the public interest unless appropriate access is ensured (as could be accomplished with a condition on any variance granted).
- 5) The presence on an adjacent property of a building that is within the setback it not an uncommon occurrence among the surrounding properties, including the applicant's own dwelling located on the adjacent parcel to the northeast. All properties so situated share the burden of setback restrictions that preclude the construction of a 16 ft tall structure within the 25' setback. This is especially true where Applicant is already making abundant use of a non-conforming building on the property from which to conduct business. Thus the Applicant has not demonstrated unnecessary hardship due to the uniqueness of his property.

- 6) The testimony indicated that the Applicant could display his merchandise on a fence of lesser height as a reasonably feasible alternative. This testimony demonstrates that the Applicant can achieve nearly the same benefit by some other reasonably feasible method that would not impose an undue financial burden. In fact, the option of building a 6 ft fence rather than a 16 ft high fence with an engineered foundation would be less costly alternative, as the engineered foundation could be avoided.
- 7) The testimony has demonstrated that **By Granting the Variance Substantial Justice Would be Done** provided the concerns of the BOS about access to the Fire Department can be satisfied, although there is evidence that would support the opposite conclusion.
- 8) The testimony demonstrated that **The Variance is Contrary to the Spirit and Intent of the Ordinance**. We find that the Spirit and Intent of the Ordinance would not be met by granting the variance, considering the various purposes of a setback that could be thwarted by such a structure so close to the property line, and the clear direction provided by the Master Plan that non-conforming structures should be reduced, not increased in the Town.

Decision

As the ZBA has found that

- a) the Applicant has failed to demonstrate unnecessary hardship as the property is not unique in it's surroundings as it relates to the construction of a new structure, such as the Display Fence, essentially on the property line,
- b) the applicant can achieve substantially the same benefit by some other reasonably feasible method, that is, constructing a 6 ft fence that would thus comply with the ZO, and
- c) that granting a variance would be contrary to the spirit and intent of the Ordinance by permitting the expansion of a non-conforming building and/or structure and thus inconsistent with the Master Plan,

the ZBA denies the Applicant's request for a Area Variance.

The Board has considered additional factors, which in the Board's opinion support's this decision. The Applicant is a knowledgeable, student of the Zoning Ordinance having long been interested in the question of the need for building permits, and having recently been appointed to the Planning Board as an Alternate. Applicant should have realized that a building permit was required prior to beginning construction of the structure. The BOS did not immediately recognize the zoning issues involved in the unauthorized construction, but this was harmless error since the structure had already been erected without a permit when the issue was first considered by the BOS. There was no reliance by Applicant on the conduct of the BOS when the unauthorized structure was put in place.

Voting in Favor: Frank Benesh, David Urey, Ted Brown, Debbie Crowther,
 Opposed: Helene Matesky
 Dated: January 6, 2010

sediment deposited by or in bodies of glacial meltwater, including gravel, sand, silt, or clay, which contains sufficient saturated permeable material to yield significant quantities of water to wells.

STRUCTURE - Anything constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground. Structures include, but are not limited to, buildings, mobile homes, ground signs, tennis courts, swimming pool enclosures, TV satellite dishes and awnings/tents not for personal use. Septic systems, driveway pavement, fences or stone walls, flag poles and well pump houses are not considered structures for the purpose of This Ordinance.

TEN-YEAR STORM EVENT - A storm of a magnitude that would only be expected to occur every ten (10) years as defined by FEMA

TOXIC OR HAZARDOUS MATERIALS - Any substance which poses an actual or potential hazard to water supplies or human health if such a substance were discharged to land or waters of the Town. Hazardous materials include volatile organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalis. Also included are pesticides, herbicides, solvents and thinners and such other substances as defined in the NH Water Supply and Pollution Control Rules, Section (WM 1403 and WS 1500), in the NH Solid Waste Rules He-P 1901.3(v), and in the Code of Federal Regulations 40 CFR 261 as amended.

TRUCK AND EQUIPMENT DEPOT - A facility whose purpose is the storage of heavy earth-moving equipment such as trucks, backhoes, graders, bulldozers, and the like.

VARIANCE - Approval to use a specific piece of property in a more flexible manner than allowed by the ordinance.

WAREHOUSE FACILITY - Primary purpose is inside storage of goods, materials, and/or equipment.

WELLHEAD PROTECTION AREA - The surface and subsurface surrounding a water well or well field supplying a community public water system, through which contaminants are reasonably likely to move toward and reach such a water well or well field.

WETLANDS - Defined as in RSA 482-A:2:X - Wetlands means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands shall be delineated on the basis of hydrophytic vegetation, hydric soils, and wetlands hydrology in accordance with the techniques outlined in the Corps of Engineers Delineation Manual, Technical Report Y-87-1, (January, 1987) as amended.

WIRELESS TELECOMMUNICATIONS FACILITY - A facility for the provision of

the purpose of an person or entity, or to communicate information of any kind to the public, whether commercial or non-commercial. Any portion of any awning, either freestanding or attached to a structure, decorated with any sign element either attached or part thereof, shall be considered wall signs.

147.15.89 SIGN HEIGHT: The measure from undisturbed ground directly under the sign to the top of the message area.

147.15.90 SIGN MAINTENANCE: Repainting; other surface renewal; change of message on the same surface; replacement of any sign surface, support framework or component with substantially similar construction material or component.

147.15.91 SIGN MESSAGE AREA - The total area used to display a sign's message including all lettering, designs, symbols, logos, together with but not including any support framework or bracing which is incidental to the sign and which is not designed to attract attention. Where the message area consists of letters, symbols, logos or devices affixed to the surface of a wall, building, awning or window, the message area shall be measure by a single, continuous, rectangular perimeter drawn to enclose the extreme limits of the sign elements. The message area of one side of a double-faced sign shall be regarded as the total message area of the sign. For double-faced signs, each face must be attached directly to the other.

147.15.92 SLOPE: The steepness of land surface. "Slope" is expressed in percent by dividing the change in elevation by a given horizontal distance and multiplying by one hundred percent (100%).

147.15.93 SMALL BUSINESS: Any business with less than one thousand five hundred (1,500) square feet of gross floor area.

147.15.94 SOIL TYPE: As defined by the Soil Survey of Carroll County, New Hampshire or as found by an on-site inspection by a soil scientist.

147.15.95 SPECIAL FLOOD HAZARD AREA: Any area having flood, mudslide and/or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, Ao, A1-30, AE, A99, AH, VO, V1-30, VE, V, M or E.

147.15.96 SPECIAL HIGHWAY - the entire layout of the public road, which travels along and within the Special Highway Corridor District as sometimes referred to as the "Conway Bypass".

147.15.97 STATE HIGHWAY: any Class I, II, III or IV road.

147.15.98 STORAGE SHED: A structure having no plumbing or heating installed, having a floor area of 125 square feet or less, being no more than fifteen (15) feet in height and used to store equipment of a residential nature owned by the occupant of the principle residential unit on the property.

147.15.99 STREET: A state highway or a highway, road, avenue, land and/or any other way which exists for vehicular travel, exclusive of a driveway serving not more than two (2) adjacent lots or sites. The word "street" shall include the entire right-of-way.

147.15.100 STRUCTURE: Anything constructed or erected, on or in the ground or in the water, or an attachment to something having a fixed location on the ground, including buildings, permanent or temporary; signs; carports; porches; and other building features, including stacks

and antennas, but not including sidewalks; fences; driveways; septic systems; utility poles; boundary markers and field or garden walls or embankment retaining walls.

147.15.101 STRUCTURE HEIGHT: The vertical distance from the lowest point of grade at the base of the structure to the highest point of the structure. The lowest point of grade shall be the lowest point at which the foundation is above the proposed or existing grade, whichever is less.

147.15.102 SUBSTANTIAL DAMAGE: Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would be equal or exceed 50 percent of the market value of the structure before the damage occurred.

147.15.103 SUBSTANTIAL IMPROVEMENT: Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure either before the improvement or repair is started or, if the structure has been damaged and is being restored, before the damage occurred.

147.15.104 TEMPORARY EVENT: An event whose occurrence is limited to not more than 14 days per calendar year.

147.15.105 TENT: Any structure with fabric or nonrigid walls or roof or both of which provides or is intended to provide temporary shelter.

147.15.106 THREE-DIMENSIONAL ENVELOPE: The volume and shape enclosed by the exterior dimensions of a building or other structure in plan and elevation views (length, width, height). All appurtenant structures, including but not limited to decks, greenhouses and bay windows, shall be included in the "three-dimensional envelope". Any increase in volume or change in the shape shall be considered expansion.

147.15.107 TRADESMAN: A workman in a skilled trade, such as a carpenter, plumber, electrician, carpet layer, shoe repairman, furniture restorer or cabinetmaker.

147.15.108 TRANSIENT ACCOMMODATIONS: Living quarters, which do not have a kitchen as defined in "Residential Unit". Such accommodations are not counted as residential units for density purposes, but rather are part of, or all of, a nonresidential use on the lot.

147.15.109 TRAVEL TRAILER: A vehicular portable structure, which may legally be moved on, its own wheels being a vehicle designed as a temporary dwelling for travel, recreation or vacation use.

147.15.110 TWO-DIMENSIONAL FOOTPRINT: The area and shape defined by the exterior dimensions of a building or other structure in plain view. All appurtenant structures, including but not limited to decks, greenhouses and bay windows, shall be included in the "two-dimensional footprint". Any increase in area or change in the shape shall be considered an expansion.

147.15.111 UNIT: A measure of land use density. Each building, excluding accessory buildings, with any nonresidential use(s) shall constitute one unit. Each residential unit shall constitute one unit. In cases where on structure facilitates both nonresidential and residential uses, the total number of units shall be equal to the sum of one for the structure plus one for each residential unit.

ARTICLE 3: Are you in favor of the adoption Amendment No.2 as proposed by the Planning Board to the Jackson Zoning Ordinance, to ensure that reasonable measures will be taken to minimize chances of erosion, providing greater protection for both neighboring and Town lands?

Section 4 District Regulations

4.1.6 Site Disturbance Any Site Disturbance or Land Development shall be designed and performed reasonably to prevent increased run-off, soil loss or Erosion from the site or lot.

4.1.6.1 Design guidelines which may be used by developers, Disturbance or Land Development activities will be available in the Town Office for review and use in designing site work so as to minimize Erosion and Sedimentation.

4.1.6.2 All areas of Site Disturbance and Land Development still in progress at approach of winter shall be stabilized against Erosion and Sedimentation prior to November 15th, to minimize soil depletion and degradation over winter.

Results: Yes 162 No 133

ARTICLE 4: Are you in favor of the adoption of Amendment No.3 as proposed by the Planning Board to the Jackson Zoning Ordinance, in order to make clear that compliance with the State Building Code is required?

15.2 Compliance with State Building Codes and Regulations All construction, extension, removal or alteration of a building or structure shall comply with the requirements of the State Building Code (SBC), State of New Hampshire RSA 155-A. Section R105 (Permits) within the International Residential code (IRC), and Section 105 (Permits) within the International Building Code (IBC) shall be superseded in part by the permit process described in Section 15.3 of this Ordinance. The words "building" and "structure" are defined in the IBC.

Results: Yes 141 No 175

ARTICLE 5: Are you in favor of the adoption of Amendment No.4 as proposed by the Planning Board to the Jackson Zoning Ordinance, to codify existing practices reflecting compliance with the Sate Building Code. Some work will no longer require building permits; some will require permits, but no permit fees. In general, building permit applications will need to be filed for most construction and alteration work in order to ensure compliance with State codes. The threshold at which a permit fee must be paid is not changed?

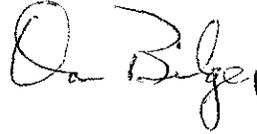
15.3 Requirement of Building Permit (formerly Section 15.2-will be re-numbered throughout as necessary)

15.3.1 (changed from existing 15.2.1) A building permit shall be obtained before a building or structure is constructed, extended, removed or altered, including, without limitation, [This requirement also applies to] swimming pools, mobile homes, modular homes and exterior signs, and

Town of Jackson
Zoning Board of Adjustment
Chairman Frank Benesh
P.O. Box 268, Jackson
N.H. 03846

As I have said previously as an abutter and perhaps the only property, which faces the fence in question. Simply, the fence and RavenWood has always been an asset and a joy to our guests. In my opinion the fence enhances rather than detracts from the value of neighboring properties.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Bilge". The signature is written in a cursive style with a large initial "D" and a long, sweeping underline.

Jackson Zoning Board,

As an abutter to RavenWood Curio Shoppe for many years, I have always felt that the shop has been an asset to the town. The construction of the fence in 2009 adds to the attractiveness of the property and to the surrounding properties. Further it would be a shame to remove the fence, as we would all be looking at an unattractive blank side of a 30-foot tall building.

Sincerely,

Burt L Day

Chairman Frank Benesh;

As a fellow business owner and neighbor we have felt that RavenWood has always been a tourist destination and an asset to the village and the surrounding businesses. We feel the artistic nature of the fence adds to the village rather than detracts from it. Thank you.

John Parton

Polly Anne Parton



Larry Siebert

From: Frank DiFruscio [fedf49@hotmail.com]

Sent: Sunday, March 21, 2010 11:56 AM

To: shop@ravenwoodcurio.com

Subject: Working with a resident businessman

To Whom IT May Concern,

My experience with Larry Siebert and wife is limited but has been positive. During my years as a selectman the town's fire department had to upgrade an inadequate septic system. The system upgrade required using some of the Siebert's lot to achieve a functional system. The town and the Sieberts worked together to resolve the situation. The two parties cooperated with one another and the Sieberts proved themselves to be good neighbors which brings me to the non-conforming fence that's at issue.

I think it's safe to say that most of the buildings in the commercial district are well within the setbacks required but I think most of you would agree it has not compromised the town's appearance or spirit of good governance. The fence has been there a good deal of time and in fact has helped Ravenwood establish its business even in these difficult economic times. The fence with its curious products has become something of an attraction next to the fire department. I can't in any way see that the fence is injurious to the neighborhood. And getting back to the tough economy we're in, I don't think the intention of the Board of Adjustment is to hurt a small businessman in our beautiful village in these difficult times. As I understand it, the BOA at one point, was going to allow a period of several years for the Sieberts to remove the fence so as not to be disruptive to the business of running a small mom and pop shop.

I would like to see the BOA work with the Sieberts and give them a fair amount of time to comply. I don't think the public good is in any way being compromised by giving the Sieberts a timeline of several years to remove the fence.

The property boundary line between the fire department and the Siebert's property is quite narrow, but I believe the BOA can broaden its boundaries of acceptability for a period of time that will not detract from good government and good business.

Frank Di Fruscio
Selectman 1988-2003

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3/22/2010

Jackson Zoning Board of Adjustment;

During my time as Road Agent Larry and Debbie were always helpful to the road crew. In one instance we needed to clean out the chimney to the Town Garage and Larry without hesitation removed any items that may have been in the way and allowed us access from his property.

In the Spring 2009 when the road crew assisted the Fire Chief with drainage for the Fire Department Larry removed all of his displays and existing fences. In turn the Fire Chief and I, in a spirit of cooperation, helped him set the posts in the trench we dug and back-filled with stone to achieve the much needed drainage. It seems to me this on-going relationship is vital to the Town of Jackson.

Sincerely,

A handwritten signature in black ink, appearing to be "B. H. H. H." with a stylized flourish at the end.