

These minutes were approved at the Tuesday, November 12, 2002 meeting

**ZONING BOARD OF ADJUSTMENT MINUTES
TUESDAY, OCTOBER 8, 2002
TOWN COUNCIL CHAMBERS – DURHAM TOWN HALL**

MEMBERS PRESENT:

Bill Annis, Chair; Jane Towle;
Robin Rousseau; Henry Smith;
Robbi Woodburn, Alternate

MEMBERS ABSENT:

Ted McNitt; John deCampi, Alternate;
Linn Bogle, Alternate

OTHERS PRESENT:

Interested members of the public

Chair Annis called the meeting to order at 7:07 P.M.

I. Approval of the Agenda

Jane Towle MOVED to approve the agenda. The motion was SECONDED by Henry Smith and was unanimously APPROVED.

II. CONTINUED DELIBERATION on a petition submitted by Maynard & Brenda Jackson, Durham, New Hampshire, for an APPLICATION FOR VARIANCES from Article IV, Section 175-27 (B) and from Article III, Section 175-16 (A) of the Zoning Ordinance to build a two car garage with breezeway and screen porch on a nonconforming lot. The property involved is shown on Tax Map 20, Lot 16-5 is located at 263 Durham Point Road and is in the RC, Residence Coastal Zoning District.

Chair Annis opened the public hearing on the matter.

Bill Schoonmaker, representing the applicants, gave an overview of the application.

Chair Annis closed the public hearing.

Robin Rousseau stated she could live with the footprint in the setback area and a little bit more of a building in the setback to accommodate a better septic system.

Robbi Woodburn stated all of the property was in the 125-foot setback and wanted to know when, if ever, that became a real hardship by not being able to do anything with the property.

Ms. Woodburn stated she had some concern as to the shed. While it was away from the shoreline, it is still within the setback of a tidal creek.

Jane Towle stated she did not see the project as infringing anymore on the shoreline. She did not have a concern with the shed as it is for boat storage and it is safer to have a boat indoors instead of out in the elements.

Robin Rousseau stated the application moves a shed and boathouse away from the shoreline, making it a better situation.

In response to a question from Jane Towle, Bill Schoonmaker stated trees would be removed to make room for the garage and connector.

Henry Smith stated the application was a large increase to the old footprint by 944 square feet and that may be too big. Smith was concerned about the shed but believed moving it away from the shoreline was the right direction.

Jane Towle MOVED to approve the application for a variance from Article IV, Section 175-27 (B) and from Article III, Section 175-16 (A) of the Zoning Ordinance to build a two car garage with breezeway, screen porch and shed on a nonconforming lot. The motion was SECONDED by Robbi Woodburn.

Jane Towle stated when the size of the lot is considered with the actual total size of the coverage in the lot, the footprint increase is not a huge undertaking.

In response to a question from Robin Rousseau, Henry Smith stated that he was having reservations about the application due to the project being undertaken in the shoreline protection area..

In response to a question from Robin Rousseau, Mr. Smith stated he believed in order to get the variance, the applicant would give a little to get a little. The applicant would push back some buildings for the septic and the Town will allow for the applicant's addition, which increases their nonconformity.

The Zoning Board reviewed the following criteria, which must be met before the Zoning Board can grant a variance:

No decrease in the value of surrounding properties would be suffered. ***AGREED 5-0***

Granting the variance must not be contrary to the public interest. ***AGREED 5-0***

Denial of the variance would result in unnecessary hardship to the owner seeking it. ***AGREED 3-1-1 (Henry Smith abstaining and Robin Rousseau voting against.)***

By granting the variance substantial justice would be granted. ***AGREED 3-2 (Henry Smith and Robin Rousseau voting against.)***

The use must not be contrary to the spirit and intent of the Ordinance. ***AGREED 4-0-1 (Henry Smith abstaining.)***

The motion was unanimously APPROVED.

III. PUBLIC HEARING on a petition submitted by Paul R. Martin, Dover, New Hampshire, on behalf of Frances & Dorothy Manock, Dover, New Hampshire, for an APPLICATION FOR VARIANCE from Article IV, Section 175-26 (C) of the Zoning Ordinance to allow horses to graze on land where the keeping, boarding or training of animals is not a permitted use. The property involved is shown on Tax Map 10, Lot 8-6, is located off Dover Road on the Madbury Town Line and is in the RB, Residence B Zoning District.

Chair Annis opened the public hearing.

Paul Martin, 53 Fords Landing, Dover, stated the parcel of land was 15.7 acres with two acres in Madbury.

In response to a question from Robin Rousseau, Frances Manock, 5 Hayes Lane, Dover, stated he would submit to the record a written statement confirming that Paul Martin was authorized to represent the applicant's interest.

Mr. Martin stated the property in Town would not be used to house horses but that two horses and a pony would be walking on the land and grazing. The barn would be in Madbury and would be reached through an easement off of Route 108. The applicant has not received permission from Madbury to build the barn. There will be a 50-foot buffer around all of the property to maintain privacy and not to infringe on others. Small electric fences and hemlock fences will be put around parts of the property. Trees will be removed. In the easement, the applicant wants to create a driveway going in and out of the property. The applicant is trying to build a house on the property in Madbury but wants to keep some of the property open in Town as an alternative.

Jason Berndson, 123 Dover Road, Madbury, stated the driveway on the property is not a public road and that Town regulations only allow two houses to be served by it. From where the applicant wants to expand the driveway, there is nothing but solid ledge. He believed blasting would have to happen and trees would have to be removed.

Robbi Woodburn stated the Zoning Board could not address the driveway as it is only deciding on the grazing variance.

Bill Berndson, 123 Dover Road, Madbury, stated the driveway was mentioned in the application.

Robbi Woodburn stated the Zoning Board could only answer one question about the grazing. The other concerns may be brought to a different board or the applicant may come back to the Zoning Board to look at a different issue. If the Zoning Board allows the applicant to graze horses, the use of the roads will continue to be in question.

Geoffrey Dixon and Suzanne Young, 103 Dover Road, stated they wanted to know how much alteration would be done near their property.

Paul Martin stated the buffer would be around the area and he would be leaving the trees not in the buffer alone. There is runoff, creating erosion but the applicant wants to keep it natural. The erosion will be minimal as the applicant will be moving the horses to different parts of the land for grazing.

Annmarie Harris, 56 Oyster River Road, stated she did not believe the grazing would have much of an impact on the property but it may set a precedent that could be cited by others that want to do the same thing.

In response to a question from Jerome Chase, 191 Durham Point Road, Chair Annis stated if the application was approved, the Zoning Board could require conditions of approval that could limit the number of horses allowed on the property.

Francis Manock, 5 Hayes Lane, Dover, stated the manure pile from the horses would be in Madbury.

Chair Annis closed the public hearing.

In response to a question from Jane Towle, Paul Martin stated there were wetlands on the property but was told by a civil engineer where he could place the barn and house as to not affect the wetlands. The horses will not graze on the wetland.

Ms. Towle stated if the applicant was approved there would have to be many conditions of approval and the conditions would be based on more information than the Zoning Board had at the meeting. The conditions would include not having any of the grazing done on wetlands, the applicant must agree to a limitation of the number of animals, the applicant must document how much buffer they would leave for abutters and manure storage would be needed.

Robin Rousseau stated she had looked at the Zoning Ordinance and grazing does not fall under permitted use in the RB Residence District Zone and grazing is not permitted under a Conditional Use Permit.

Ms. Rousseau read the line in the Zoning Ordinance which states “Any use not specifically permitted or permitted by conditional use permit is prohibited.” She believed that granting the application would be changing the Ordinance and set a precedent for nonconforming use. She could not vote to approve a variance that would allow that as it is beyond the scope of the Zoning Board’s authority.

Jane Towle MOVED to table the discussion until the next meeting for clarification to determine if the Zoning Board has the authority or not to decide on the application. The motion was SECONDED by Robin Rousseau and was unanimously APPROVED.

Chair Annis called for a five minute recess at 8:34 P.M.

The meeting reconvened at 8:39 P.M.

IV. REQUEST FOR A REHEARING on a September 17, 2002 decision whereas the Durham Zoning Board granted a petition submitted by David Meyer, Durham, New Hampshire to approve an APPEAL OF ADMINISTRATIVE DECISION so as to prevent the building of a duplex on a lot. The petition for a request for rehearing is submitted by Roger G. Burlingame, Cleveland, Waters & Bass, P.A., Concord, New Hampshire on behalf of Madmack, LLC, Bedford, New Hampshire. The property involved is shown on Tax Map 2, Lot 8-6, is located at 5 Madbury Court and is in the RA Residence A Zoning District.

Jane Towle recused herself at 8:39 P.M.

Robbi Woodburn stated it was not the same people on the Zoning Board voting on the matter and she was uncomfortable with that but was unsure if it was germane or not.

Chair Annis stated who votes should not make a difference as everyone is up to speed on the information.

Mr. Annis stated the Zoning Board had to decide if it made a mistake voting on the matter, if evidence has been presented that a mistake had been made and if the Zoning Board should grant the rehearing.

Robin Rousseau stated that RSA 677:2 reads to reverse a decision, the Zoning Board needs a good reason but that Fisher V. Dover states the Zoning Board needs more information that would have changed the original vote. She believed the Zoning Board had new information to make a decision on the matter.

Henry Smith stated the argument at the previous request for a rehearing was that there was no new information but that the Zoning Board had still granted the rehearing.

Robin Rousseau MOVED to grant the request for rehearing on a September 17, 2002 decision where the Zoning Board granted a petition submitted by David Meyer, Durham, New Hampshire to approve an appeal of administrative decision so as to prevent the building of a duplex on a lot. The petition for a request for rehearing is submitted by Roger G. Burlingame, Cleveland, Waters & Bass, P.A., Concord, New Hampshire on behalf of Madmack, LLC, Bedford, New Hampshire. The motion was SECONDED by Robin Woodburn.

Ms. Rousseau stated she believed the Zoning Board was wrong when it granted a rehearing on August 13, 2002 without stating what the new evidence was and that Zoning Board members gave personal opinions on the law that had no bearing on the decision they were supposed to make. She believed that as Town officials, they were not there to vote on their opinion of the law but to make decisions by using the law as it is written.

Ms. Rousseau stated she believed Zoning Board members were swayed by comments by other Zoning Board members who were moved by sympathy for the neighborhood organization and not swayed by any evidence presented by the organization. She believed the Zoning Board's authority was limited during an appeal of administrative decision. She stated the Zoning Board does not have the authority to change the Ordinance to something members believe is fairer or more appropriate and that the Zoning Board must make supportable decisions.

Ms. Rousseau stated the Zoning Board was not in the business of "finding a way to override administrative decisions or the law" as she believed was stated by one of the Zoning Board members. She stated parsing the word "may" in Zoning Ordinance 175-10 was not appropriate and that the law was clear in its criteria for a permitted use.

The motion was unanimously APPROVED.

Chair Annis stated the rehearing was scheduled for the next meeting.

V. Approval of Minutes

Jane Towle returned to the meeting.

Robin Rousseau MOVED to approve the July 9, 2002 minutes. The motion was SECONDED by Jane Towle and was APPROVED 3-0-2 (Henry Smith and Robbi Woodburn abstaining as they did not attend the meeting.)

The following amendments were made to the September 17, 2002 Minutes.

Page 1, 1st paragraph with the line that begins "Jane Towle moved" the word "Peter" was changed to "Henry."

Page 3, 2nd paragraph with the line that begins "the Zoning Board discussed" the word "to" was removed.

Page 4, 3rd paragraph with the line that begins "in response to" the words "for the" were changed to "on which," the word "to" was changed to "would" and the word "on" at the end of the paragraph was removed.

In the same paragraph the word "sauna" was changed to "sono."

Page 4, 4th paragraph with the line that begins "Chair Annis stated" the second "that" from the paragraph was removed.

Page 6, 1st paragraph with the line that begins "Jay Gooze, 9 Meadow Road" the word "not" was removed and the word "will" was changed to "would."

Page 6, 2nd paragraph with the line that begins “Matt Davis, 2 Maple Street” the word “be” was added.

Page 6, 4th paragraph with the line that begins “Beth Olshansky, 122 Packers Falls Road” the word “an” was changed to “and.”

Page 7, 9th paragraph with the line that begins “Henry Smith stated” the word “a” was changed to “an,” the words “reasonable decision” were changed to “understandable mistake.”

Page 9, 7th paragraph with the line that begins “Jane Towle stated” the word “council” was changed to “counsel.”

Jane Towle MOVED to approve the minutes from September 17, 2002 as amended. The motion was SECONDED by Robbi Woodburn and was APPROVED 4-0-1 (Robin Rousseau abstaining as she did not attend the meeting.)

VI. Other Business

- A. Discussion about dates and times for two possible training items for the Zoning Board and Planning Board members:

- a. Gary Springs, Shore land Outreach Coordinator for DES Wetlands Bureau.

Robbi Woodburn stated she spoke with Mr. Springs about giving a presentation on wetland buffers, regulations and shore land protection. Ms. Woodburn will coordinate with the Planning Board and the Conservation Commission to let them know the presentation will be on Monday, October 28, 2002 at 7 P.M. in the Council Chambers.

- b. Zoning 101 by a representative of Strafford Regional or from the firm of Mitchell & Bates.

Robin Rousseau stated she did not believe the Town should be paying for training by Mitchell & Bates when the Zoning Board can go to the Strafford Regional Conference for free. She stated new Zoning Board members were informed about the conference but none of them showed up and she did not want to pay Mitchell & Bates to train the new members if they could not show up at the conference.

Robbi Woodburn stated Mitchell & Bates would not be giving the Zoning Board the same training it received at the Strafford Regional Conference. The law firm’s training would be about what comments can be made during a meeting and what comments could not.

Robin Rousseau stated that training was given at the Strafford Regional Conference and that Zoning Board members that went got a lot out of it.

Robbi Woodburn stated she agreed with Ms. Rousseau's statement that the Strafford Regional Conference had a lot to offer but that money for the Mitchell & Bates presentation was in the budget, that it may not be available next year and that the presentation would be geared towards situations the Zoning Board has been faced with while the Strafford Regional Conference is more general.

Henry Smith stated he would not be that hard on new members who did not attend the Strafford Regional Conference as some had other obligations.

Jane Towle stated she and other Zoning Board members had attended a Strafford Regional Conference but they had a hard time figuring out how to interpret the training as to how it would be useful to the Zoning Board. If the Zoning Board was not educated on these matters, it would cost more in legal fees in the long run.

Robin Rousseau stated she would not attend the Mitchell & Bates presentation if it was between October 8, 2002 and November 19, 2002 unless it was scheduled during a regular meeting. She did not want to use anymore free time to be trained on something she believed she has received training on.

Chair Annis stated the Zoning Board would wait until the rest of the members were at the meeting to discuss the matter more.

B. Next regular meeting of the Zoning Board: November 12, 2002

Robin Rousseau stated she may or may not be able to attend the next meeting as she will be out of Town and asked if members could change the date but the Zoning Board, after discussing alternative dates, decided to keep the meeting date as it was.

VII. Adjournment

Jane Towle MOVED to adjourn the meeting. The motion was SECONDED by Henry Smith and was unanimously APPROVED.

The meeting ADJOURNED at 9:21 P.M.

Michael Bornstein, Minute Taker

Henry Smith, Secretary
Zoning Board of Adjustment

