

-DRAFT-

**ZONING BOARD OF ADJUSTMENT MINUTES
TUESDAY, DECEMBER 10, 2002
TOWN COUNCIL CHAMBERS – DURHAM TOWN HALL**

MEMBERS PRESENT: Jane Towle; Henry Smith; Linn Bogle,
Alternate; Ted McNitt, John deCampi

MEMBERS ABSENT: Bill Annis, Chair; Robin Rousseau; Robbi
Woodburn, Alternate

OTHERS PRESENT: Tom Johnson, Code Enforcement Officer;
Interested Members of the Public

Chair Pro Tem Towle called the meeting to order at 7:05 P.M.

I. Approval of the Agenda

John deCampi MOVED to approve the agenda. The motion was SECONDED by Ted McNitt and was unanimously APPROVED.

- II. CONTINUED DELIBERATION 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 Pro Tem stated the Board had been informed that the sale of the property was no longer viable.

Linn Bogle MOVED to suspend deliberations on the matter indefinitely. The motion was SECONDED by Ted McNitt and was unanimously APPROVED.

- III. CONTINUED DELIBERATION on a petition submitted by Stanley & Janice Aviza, Durham, New Hampshire, for an APPLICATION for VARIANCES from Article IV, Section 175-27 (B) and Article IV, Section 175-21 (B) (2) from the Zoning Ordinance to permit the placing of a septic system within the required 50-foot side yard setback and within an area greater than 30% of the required yard. The property involved is shown on Tax Map 12, Lot 4-2, is located at 6 Watson Road and is in the RC, Residence Coastal Zoning District

Adam Fogg, Atlantic Survey, stated there was no viable place to move the septic system. He provided the Board with a presentation showing where the system was at the present time and its present surroundings.

Tom Johnson stated while the State has strict regulations, the Town has some leeway to move the septic system, as it is a potentially failing one.

Lorraine Morong, 117 Piscataqua Bridge Road, Madbury, asked the Board to be cautious when making its decision regarding the septic system.

Chair Pro Tem Towle closed the public hearing.

Ted McNitt stated the options on the property were limited and he was reluctant to support leaving the septic system where it was.

Linn Bogle stated if the new system fails the sewage could overflow onto the adjacent property and that if the Avizas were able to acquire land next to them owned by Lorraine Morong, the system could be placed on it.

Stanley Aviza stated he would buy the property from Ms. Morong but that she wanted to sell him the land with restrictions.

John deCampi stated he believed the two choices were to reconstruct the driveway or to leave the system where it was.

In response to a question from Chair Pro Tem Towle, Lorraine Morong stated her well was downhill of the septic system.

Chair Pro Tem Towle stated she was concerned about the current system and that she believed that a newer system would be safer.

Lorraine Morong stated the concern comes from having more than one bedroom and that the issue was intermingled with the placing of the septic system.

In response to a question from Henry Smith, Chair Pro Tem Towle stated the current system was a tank with a drywell and there was no leech field on the property.

Adam Fogg stated there was no evidence of failure regarding the septic system.

Ted McNitt MOVED to continue the deliberations until the next meeting when more information could be obtained regarding the placing of the septic system. The motion was SECONDED by Henry Smith and was unanimously APPROVED.

IV. PUBLIC HEARING on a petition submitted by Ron Peterson, Barrington, New Hampshire, for an APPLICATION for VARIANCE from Article XII,

Sections 175-102(A) & (G) of the Zoning Ordinance to allow for another sign on commercial property. The property involved is shown on Tax Map 5, Lot 5-11, is located on 17 Newmarket Road and is in the LBD, Limited Business Zoning District

Ron Peterson, owner of the Three Chimneys Inn, stated the sign was needed to inform the public when parts of the Inn would be open.

Chair Pro Tem Towle closed the public hearing.

Linn Bogle stated he believed the application was a reasonable request.

Henry Smith stated he did not have a problem with the application.

Tom Johnson stated that the kind of sign the applicant was requesting was only allowed in the Central Business District under 175-102(G) in the Zoning Ordinance.

Ted McNitt stated he was concerned the Board would be setting a precedent if it allowed the sign into the LBD district.

Chair Pro Tem Towle stated she had no problem with the sign and that it may calm the traffic on School House Road.

In response to a question from Ted McNitt, Ron Peterson stated the sign will only be out during the Inn's operations.

John deCampi stated while he disliked sign proliferation, but that the application did not create that much of a disturbance.

Henry Smith stated he was concerned about the sign proliferation.

Ted McNitt MOVED to approve the application. The motion was SECONDED by Linn Bogle and was unanimously APPROVED.

- V. PUBLIC HEARING on a petition submitted by Chester Dunn, Durham, New Hampshire, for an APPLICATION for VARIANCES from Article IV, Section 175-27(B), Article X, Section 175-38(A,) Article V, Section 175-41(A) and from Article III, Section 175-16(A) of the Zoning Ordinance to build an addition on a nonconforming lot within the shore land and wetland setbacks. The property involved is shown on Tax Map 12, Lot 9-8, is located at 30 Mathes Cove Road and is in the RC, Residence Coastal Zoning District

Bill Schoonmaker, the applicant's architect, stated the applicant wanted to build an addition no larger than a portion of the existing deck and that the addition would not move closer to the property line or to the inlet. He stated the improvements would increase the value of the property and the neighborhood and that the property would

be unchanged in appearance. Mr. Schoonmaker stated the application would not increase the impacted footprint on the lot.

John E. Simone, 4 Mathes Cove Road, spoke in favor of the application.

Paul R. Stacey, 23 Mathes Cove Road, spoke in favor of the application.

Jon W. Sobel stated he believed the application was against the spirit of the law and spoke against the application.

Chair Pro Tem Towle closed the public hearing.

John deCampi stated he had been out to look at the property and that it did not look to have a problem with flooding.

Henry Smith stated the property was in the flood zone.

Tom Johnson stated the deck was a structure and that it was a part of the footprint.

Ted McNitt stated before he could vote on the application he would need to see an architect's rendering of the elevation.

Ted McNitt MOVED to continue the hearing until the Board sees an architect's rendering of the elevation on the property. The motion was SECONDED by Linn Bogle and was unanimously APPROVED.

VI. PUBLIC HEARING on a petition submitted by Brian Geiger, Durham, New Hampshire, for an APPLICATION for VARIANCE from Article VIII, Section 175-70(C)(1) of the Zoning Ordinance to allow for the creation of a second curb cut on a residential property. The property involved is shown on Tax Map 1, Lot 5-3, is located on 13 Davis Avenue and is in the RA, Residence A Zoning District

Brian Geiger stated he was planning to build a garage and that he was now parking his cars on the curb cut.

Ted McNitt stated the cars were parking in the front yard along the street.

Steve Brunet, 7 Hampshire Avenue, spoke against the application.

Chair Pro Tem Towle closed the public hearing.

Linn Bogle stated he did not want to see the curb maintained as a parking lot and that the parking area on the driveway could be expanded.

John deCampi stated the application was against the ordinance.

Henry Smith spoke against the application.

John deCampi MOVED to deny the application. The motion was SECONDED by Ted McNitt.

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

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

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

Denial of the variance would result in unnecessary hardship to the owner seeking it. **DISAGREED 0-5**

By granting the variance substantial justice would be granted. **DISAGREED 0-5**

The use must not be contrary to the spirit and intent of the ordinance. **DISAGREED 0-5**

The motion was unanimously APPROVED.

VII. PUBLIC HEARING on a petition submitted by Christopher L. Boldt, of Donahue, Tucker & Ciandella, Exeter, New Hampshire, on behalf of James W. Knowlton & Jill E. Knowlton, Tilton, New Hampshire, for an APPEAL of ADMINISTRATIVE DECISION from a decision by the Zoning Administrator, Tom Johnson, on the number of occupants allowed in a residential structure. The property involved is shown on Tax Map 2, Lot 2-7, is located on 6 Meadow Road and is in the RA, Residence A Zoning District

Christopher L. Boldt stated he believed there were two units on the property and that the applicant was allowed to have three occupants in each unit. He stated the additional unit was built in 1972 and that the Board should apply the 1972 Zoning Ordinances to the property. Mr. Boldt stated a member of the neighborhood had received a letter from the Town Planner telling them the structure was considered to be two units.

Tom Johnson stated the Zoning Ordinance reads that an accessory apartment needs to be an integral part of the home and that a person had to move to and from each unit from within the units.

Christopher L. Boldt stated the word integral was used in the current Zoning Ordinance and not when the structure was built.

John deCampi stated a decision on the application may apply to other properties in Town.

Chair Pro Tem Towle stated the issue was the substantial change of use and that the apartment was a subordinate use.

Christopher L. Boldt stated he believed the apartment was not an accessory use, as it was not integral. He stated the applicant had vested rights to the property as nothing structurally has ever changed

Jim Schulte, attorney for Jay Gooze, 9 Meadow Road, stated the property was a single unit with an accessory apartment and that he believed the use was integral. He stated he believed the property had changed regarding occupancy and structure. Mr. Schulte stated that he believed the current Zoning Ordinance should apply to the property, as the change of use is happening now. He stated that the letter from the Town Planner does not apply, as the Planner is not the Zoning Administrator and under the Zoning Ordinance only the Zoning Administrator can interpret the ordinance.

Matt Davis, 2 Maple Street, spoke against the appeal.

Donna Brown, 34 Edgewood Road, spoke against the appeal.

Mary Hagstrom, 61 Madbury Road, spoke against the appeal.

Ken Fuld, 8 Meadow Road, spoke against the appeal.

Christopher L. Boldt stated the property was sold to the Knowltons as a duplex.

Henry Smith stated that a letter from a former owner of the property reads that the property was sold to the Knowltons as one house with an apartment.

Chair Pro Tem Towle closed the public hearing.

John deCampi MOVED to deny the appeal and uphold the Code Enforcement Officer's decision. The motion was SECONDED by Henry Smith and was unanimously APPROVED.

Chair Pro Tem Towle called a 5 minute recess at 9:24 P.M.

Chair Pro Tem Towle reconvened the meeting at 9:33 P.M.

VIII. PUBLIC HEARING on a petition submitted by Timothy Powers and Jennifer L. Powers, Durham, New Hampshire, for an APPLICATION for VARIANCE from Article IV, Sections 175-28(B) & (C) of the Zoning Ordinance to allow for the creation of a lot of 5.23 acres to contain an existing 5-unit dwelling.

The property involved is shown on Tax Map 18, Lot 3-2, is located on 257 Newmarket Road and is in the Rural Zoning District.

Jennifer L. Powers stated the applicants wanted to sell 92 acres to the Nature Conservancy for conservation and the 5.23 acres would be sold to an interested buyer to continue to use it as a multi-unit dwelling.

Tom Johnson stated an applicant normally needs 13.7 acres to divide the property in such a fashion.

Duane Hyde, Nature Conservancy, stated the Conservancy wants to obtain the property, that there has been an appraisal done and that it is going through a federal review process before the property comes under contract. He stated no structures would be placed on the property and that the property would be sold again through the Conservancy with deed restrictions.

Jennifer L. Powers stated the only change on the property would be a boundary line adjustment.

Jan Vettuling, broker for the property, stated there was a buyer for the 5.23 acres.

Chair Pro Tem Towle closed the public hearing.

John deCampi MOVED to approve the variance with the condition that the 92 acres be sold for conservation use only. The motion was SECONDED by Henry Smith and was unanimously APPROVED.

IX. PUBLIC HEARING on a petition submitted by Brian Geiger, Durham, New Hampshire, for an APPLICATION for VARIANCES from Article V, Section 175-39(B)(2,) Section 175-41(A) and Article III, Section 175-16(A) of the Zoning Ordinance to allow for the creation of a second dwelling on a structure currently within the 50 foot wetland buffer zone. The property involved is shown on Tax Map 1, Lot 9-35, is located on 6 Hampshire Avenue and is in the RA, Residence A Zoning District

Brian Geiger stated he wanted to place an addition on the back of the house that would not encroach any closer to the wetlands. He stated there were duplexes in the neighborhood and another one would not bring property values down.

In response to a question from John deCampi, Mr. Geiger stated he would make sure his property was within the 10 foot setback.

In response to a question from Henry Smith, Mr. Geiger stated the property is currently being rented to 3 UNH students.

Steve Brunet submitted into the record a petition against the application signed by 37 property owners in the neighborhood. Mr. Brunet spoke against the application.

Corinne McCrone, 3 Wood Road, stated there were no other duplexes in the neighborhood.

David J. Dryer, 2 Scotland Road, spoke against the application.

Cheryl Glaove, 2 Lundy Lane, spoke against the application.

Patty Bedker, 5 Hampshire Avenue, spoke against the application.

Richard E. Downs, 8 Hampshire Avenue, spoke against the application.

Jane Grota, 4 Lundy Lane, spoke against the application.

Liz Hagner, 123 Madbury Road, spoke against the application.

Kathy Brunet, 7 Hampshire Avenue, spoke against the application.

Chair Pro Tem Towle closed the public hearing.

All of the Board members stated they believed the application went against the spirit of the ordinance.

John deCampi MOVED to deny the application. The motion was SECONDED by Ted McNitt and was unanimously APPROVED.

- X. PUBLIC HEARING on a petition submitted by John MacArthur & Catherine MacArthur, Durham, New Hampshire for an APPLICATION for VARIANCES from Article IV, Section 175-28(B) and from Article III, Section 175-16(A) of the Zoning Ordinance to build a pool, shed and surrounding fence on a nonconforming lot. The property involved is shown on Tax Map 17, Lot 46-7, is located at 4 Constable Road and is in the R, Rural Zoning District.

Catherine MacArthur stated the application meets the setbacks and none of the neighbors were against the application.

Chair Pro Tem Towle closed the public hearing.

Henry Smith stated he had some reservations about approving a pool, shed and fence all at once.

Catherine MacArthur stated the shed was needed to have the pool, that it would house pool equipment and that there would be no deck around the pool.

Linn Bogle MOVED to approve the pool. The motion was SECONDED by John deCampi and was unanimously APPROVED.

- XI. PUBLIC HEARING on a petition submitted by Duane C. Carlisle & Dorothy Carlisle, Durham, New Hampshire for an APPLICATION for VARIANCE from Article IV, Section 175-27(B) of the Zoning Ordinance to build a pool and deck within the 50 foot side yard setback. The property involved is shown on Tax Map 14, Lot 11-1, is located at 265 Packers Falls Road and is in the R, Rural Zoning District

Duane C. Carlisle stated the application would put the property two feet into the setback and that it was the only side of the house the deck could go on. He stated the closest neighbor was 400 feet away.

Dorothy Carlisle spoke in favor of the application.

Duane C. Carlisle stated the deck and pool exist on the property.

Dorothy Carlisle stated the deck was built in 1992 and the pool in 1998. She stated the need for the variance was discovered while the property was being refinanced through a bank.

Henry Smith stated the Board should have a policy regarding applications where the property has been enhanced before Board approval.

Ted McNitt stated if an application was in violation then it did not have to be approved by the Board.

Henry Smith stated he believed each time the Board approved an application that was in violation it was powerless.

Ted McNitt stated if the Board believes an application violation has been abused the Board will react.

Tom Johnson stated applicants that change the property before the Board approves it are charged double the permit fee.

Linn Bogle MOVED to approve the application. The motion was SECONDED by Ted McNitt and was unanimously APPROVED.

- XII. PUBLIC HEARING on a petition submitted by Slania Enterprises, Durham, New Hampshire for an APPLICATION for VARIANCE from Article IV, Section 175-29(B) of the Zoning Ordinance to seek relief from the 2,500 square foot, per unit area requirement for multi-unit housing. The property

involved is shown on Tax Map 4, Lot 9-0, is located at 12 Jenkins Court and is in the Central Business Zoning District

Chair Pro Tem Towle recused herself from the discussion and Henry Smith became Chair Pro Tem.

Tom Johnson stated the application that was approved last year was for the existing building and the one before the Board was for a proposed addition.

Tom Christie, president of Slania Enterprises, spoke to the application regarding size, square feet, number of occupants and units, design and how it fit into the Zoning Ordinance. He stated the property would be rented to UNH students.

Ted McNitt stated the Town did not have an ordinance that would approve the application but that the matter exists in the 2000 Master Plan.

Chair Pro Tem Henry Smith closed the public hearing.

John deCampi MOVED to deny the application. The motion was SECONDED by Linn Bogle and was unanimously APPROVED.

Chair Pro Tem Henry Smith stated the Board denied the application for its far exceeding what the Zoning Ordinance permits.

XIII. PUBLIC HEARING on a petition submitted by Slania Enterprises, Durham, New Hampshire for an APPLICATION for VARIANCE from Article VIII, Section 175-66 of the Zoning Ordinance to seek relief from the parking requirements for multi-unit housing. The property involved is shown on Tax Map 4, Lot 9-0, is located at 12 Jenkins Court and is in the Central Business Zoning District

Tom Christie WITHDREW his application.

Jane Towle returned to the meeting and became Chair Pro Tem.

XIV. Approval of Minutes

The following changes were made to the Tuesday, November 12, 2002 minutes:

Page 1, 10th paragraph which begins “CONTINUED DELIBERATION on” the word “©” was changed to “(C.)

Page 2, 4th paragraph which beings “In response to” the word “the” was changed to “individual.”

Page 2, 10th paragraph which begins “PUBLIC REHEARING on” the word “where” was changed to “in which.”

Page 4, 4th paragraph which begins “Robin Rousseau stated” the word “it” was changed to “they.”

Page 4, 5th paragraph which begins “Ted McNitt stated” the word “McNitt” was changed to “McNitt.”

Page 4, 6th paragraph which begins “Robin Rousseau MOVED” the word “second” was changed to “first.”

Ted McNitt MOVED to approve the minutes. The motion was SECONDED by Linn Bogle and was APPROVED with a vote of 4-0-1 (John deCampi abstaining.)

XV. Other Business

A. Deliberation of possible training dates

Tom Johnson stated on Tuesday, January 14, 2003 at 6:00 P.M. a member from the Environmental Protection Agency will be here to discuss wetlands.

Linn Bogle suggested moving the easy applications to the top of the agenda.

Tom Johnson stated the applications were put on the agenda as they came in. He stated he would move up on the agenda those applications concerning lot areas and frontage.

Chair Pro Tem Towle stated the deliberations on the rehearing on Watson Road will be at the next meeting.

B. Next regular meeting of the Board

The next meeting will be on Tuesday, January 14, 2003 at 7:00 P.M.

XVI. Adjournment

Henry Smith MOVED to adjourn. The motion was SECONDED by Linn Bogle and was unanimously APPROVED.

The meeting ADJOURNED at 11:40 P.M.

Michael Bornstein, Minute Taker

Henry Smith, Secretary