

Approved at the February 11, 2003 meeting.

**DURHAM ZONING BOARD MINUTES
JANUARY 14, 2003
TOWN COUNCIL CHAMBERS –DURHAM TOWN HALL**

MEMBERS PRESENT: Jane Towle, Chair Pro Tem; Henry Smith, Secretary; Ted McNitt; John deCampi, Alternate; Linn Bogle, Alternate; Robbi Woodburn, Alternate

MEMBERS ABSENT: Bill Annis, Chair; Robin Rousseau

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

Chair Pro Tem Towle called the meeting to order at 7:01 P.M.

I. Approval of the agenda

Chair Pro Tem Towle stated she would like to move item II. to come after item XII.

John deCampi MOVED to approve the agenda with Chair Pro Tem Towle's change. The motion was SECONDED by Henry Smith and was unanimously APPROVED.

II. Request for Rehearing on a November 12 decision where the Durham Zoning Board granted a petition submitted by Stanley and Janice Aviza, Durham, New Hampshire for an Application for Variances to permit the building of a second floor addition to a home on a nonconforming lot. The petition for rehearing was submitted by Roger Burlingame, Cleveland, Waters and Bass, PA, Concord, New Hampshire on behalf of Lorraine Morong, Madbury, New Hampshire. The property involved is shown on Tax Map 12, Lot 4-2, is located on 6 Watson Road and is in the RC, Residence C Zoning District

Roger Burlingame, on behalf of the applicant, stated the variance did not meet the Board's criteria and should not have been granted.

Chair Pro Tem Towle stated the Board had mentioned at its November 12 meeting that it could not impose design restrictions but the Board could impose height restrictions.

Robbi Woodburn stated she did not get the impression at the November 12 meeting from Lorraine Morong that she had concerns.

Henry Smith stated he had expressed concern at the November 12 meeting about the size of the house.

Janice Aviza, applicant, stated that Lorraine Morong offered to sell the applicants some land but with conditions and the applicants were unwilling to buy the land with conditions. She stated the house would not be obstructing Lorraine Morong's view.

Stanley Aviza stated with the changes the house would enlarge another 18 feet in height.

Janice Aviza stated she provided a narrative when answering the Board's five criteria to help it further answer whether or not the application meets the criteria.

The Board reviewed its five criteria that it voted on at the November 12 meeting.

Roger Burlingame stated the Board was not addressing the request for rehearing but was deciding whether or not it voted the right way when approving the variance.

Chair Pro Tem Towle stated the Board needed to decide if it had enough evidence when making the decision.

Linn Bogle stated the Board receives many applications with the five criteria not filled out but the Board still weighs the criteria before voting.

Henry Smith MOVED to rehear the matter. The motion FAILED for lack of a second.

Ted McNitt MOVED to not rehear the matter. The motion was SECONDED by Robbi Woodburn and was approved on a vote of 4-1 (Henry Smith voting against.)

Lorraine Morong stated she was not against the applicants bringing up the house but that 30 feet was too high.

Robbi Woodburn stated that if Lorraine Morong had made it known that she was against the height the Board would have taken that under consideration.

- III. Continued Deliberation on a petition submitted by Stanley and 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) of 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 and is located at 6 Watson Road and is in the RC, Residence Coastal Zoning District

Stanley Aviza, applicant, spoke in favor of the application.

Tom Johnson stated the Town has its own regulations for zoning and setbacks but that there are State regulations that must be adhered to.

Lorraine Morong stated the land had a cesspool and that no septic tank had ever been on the property.

Roger Burlingame stated that Lorraine Morong was concerned that the size of the house and its septic tank would negatively affect her well and property.

In response to a question from Linn Bogle, Janice Aviza stated the Board could not look into the nature or occupation of the people who one day may choose to live in a house.

In response to a question from Annmarie Harris, 56 Oyster River Road, Chair Pro Tem Towle stated that the engineer at the December 10 meeting stated the septic tank could only go in one place.

In response to a question from John deCampi, Tom Johnson stated that the septic tank was not on a 127,000 square foot lot and the setback was 22 feet back and that was why the application was nonconforming.

John deCampi stated a new system was better than an old system.

John deCampi MOVED to approve 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. ***Agreed 5-0***

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

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

By granting the variance substantial justice would be done. ***Agreed 5-0***

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

The variance was unanimously APPROVED by the Board.

- IV. Public Hearing on a petition submitted by Ray and Helen Goodman, 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 permit the building of a deck on a nonconforming lot. The property involved is shown on Tax Map 17, Lot 47-3, is located on 4 Falls Way and is in the R, Rural Zoning District

Henry Smith recused himself from the discussion.

Ray Goodman, applicant, spoke in favor of the petition.

Linn Bogle MOVED that the application be approved. The motion was SECONDED by John deCampi and was unanimously APPROVED.

Henry Smith returned to the meeting.

Chair Pro Tem Towle called for a five minute break at 8:15 P.M.

Chair Pro Tem Towle reconvened the meeting at 8:22 P.M.

- V. Public Hearing on a petition submitted by Christopher Levesque, Madbury, New Hampshire on behalf of Francis Mooradian, Durham, New Hampshire, for an Appeal of Administrative Decision from a decision by the Zoning Administrator that an accessory apartment is not being constructed as an integral part of a dwelling and is not in compliance with Article I, Section 175-6 of the Zoning Ordinance. The property involved is shown on Tax Map 6, Lot 2-24, is located on 29 Orchard Drive and is in the RB, Residential B Zoning District

David Eckman, engineer, submitted for the record a presentation in favor of the application.

Bill Rights, 27 Orchard Drive, spoke in favor of the application.

Murle Craig, 23 Orchard Drive, spoke in favor of the application.

Jody Hicking, 32 Oyster River Road, spoke in favor of the application.

Robbi Woodburn stated the accessory appeared to be an attached apartment and was integral due to the connecting roof and utilities above.

Tom Johnson stated the house would be an asset to the neighborhood but the ordinance definitions of integral and attached made the garage an accessory structure.

John deCampi stated the accessory apartment was attached and integral.

Henry Smith stated the apartment was an integral part of the house but did not see how it was attached and suggested the applicants seek a variance.

Robbi Woodburn read from the Zoning Ordinance about accessory structures and apartments.

Linn Bogle stated the accessory was attached and was integral.

Chair Pro Tem Towle stated the accessory was attached and integral.

Robbi Woodburn MOVED to grant the appeal of administrative decision based on the fact that the accessory apartment is attached and an integral structure due to its connected roof, walkway, utilities and the distance is small compared to the size of the building. The motion was SECONDED by Ted McNitt.

In response to a question from Henry Smith, Tom Johnson stated if the Board did not reverse his decision he would rule the house as a duplex.

The motion was unanimously APPROVED.

- VI. Public Hearing on a petition submitted by Tom and Melinda Haas, Durham, New Hampshire, for an Application for Variance from Article X, Section 175-83(A) and Section 175-84(E) of the Zoning Ordinance to allow for the placement of leach field fill extension within the 150 foot Shoreland setback. The property involved is shown on Tax Map 20, Lot 3-3 is located on 583 Bay Road and is in the RB, Residential B Zoning District

Jeff Clifford, Engineer, spoke in favor of the application.

John deCampi MOVED to approve the application. The motion was SECONDED by Henry Smith and was unanimously APPROVED.

- VII. Public Hearing on a petition submitted by William Hall, Durham, New Hampshire for an Appeal of Administrative Decision from a decision by the Zoning Administrator to permit the creation of a loading zone in the parking lot of the Community Church of Durham. The property involved is shown on Tax Map 5, Lot 2-8, is located on Main Street and is in the RA, Residential A and LBD, Limited Business Zoning Districts

In response to a question from John deCampi, Dennis Matthews, Durham Community Church, stated the church had been notified about the hearing.

William Hall, applicant, stated the Town considered the change to the loading zone a minor change but he considered it a major one and that the loading zone was not in a parking lot but in a fire lane. He stated the loading zone was being used by people parking at the church at all hours for long periods of time, were parking on his property and were blocking the road and fire lanes.

William Hall stated he wanted the matter referred back to the Planning Board.

Betsy Horskins, 3 Smith Park Lane, spoke in favor of the application.

Chair Pro Tem Towle stated the Board could not hear many of the complaints and that they were better argued before the Planning Board.

Betsy Horskins stated she was told by the Town that the loading zone was going to be in the back of the church.

Annmarie Harris, alternate Planning Board member, stated the issue had remained unresolved by the Planning Board and that the last decision made by the Planning Board was that the loading zone could not be located next to a teardrop.

Dennis Matthews, Durham Community Church, stated the church went before the Traffic Safety Committee and recommended the area next to the teardrop for the loading zone. He stated there was general agreement by the Planning Board to move the loading zone though it was never voted on and that the zone was not blocking fire lanes as there was a curb that could be used.

Dr. Reverend Mary Westfall, Durham Community Church, stated people have parked in the loading zone for only 15 minutes at a time and that it would create hardship for some people if the loading zone was moved. She stated there were no compelling safety reason to move it.

David Pease, Planning Board Chair, provided a background of the loading zone and the Planning Board's involvement.

Tom Johnson gave a history of his involvement with the loading zone and stated it was a process issue that fell apart at the Traffic Safety Committee and the Planning Board but that the Zoning Board did not have the authority to solve those issues and that there was some action that could be taken by the Planning Board.

Robbi Woodburn stated there was a safety issue involved and that it was a major change. She stated the Board should grant the appeal.

John deCampi stated the matter should go back to the Planning Board.

Ted McNitt stated the matter should go back to the Planning Board.

Ted McNitt MOVED to grant the appeal and to direct Tom Johnson to revoke the permit. The motion was SECONDED by John deCampi and was unanimously APPROVED.

VIII. Other Business

A. Discussion of possible Training Dates

Tom Johnson stated that on Thursday at 7:00 P.M. in the Town Hall there would be a presentation about Shoreland Protection that would be viewed by both the Zoning Board and the Planning Board. He stated another training session would take place on February 13 at 7:00 P.M. by Strafford Regional and one of the topics covered would be the definition of integral.

Ted McNitt MOVED to continue the meeting to next Tuesday at 7:00 P.M. The motion was SECONDED by Henry Smith and was unanimously APPROVED.

At 10:40 P.M., the meeting was continued to next Tuesday at 7:00 P.M. in the Town Hall.

Michael Bornstein, Minute Taker

Henry Smith, Secretary

