

**ZONING BOARD OF ADJUSTMENT  
TUESDAY, APRIL 8, 2003  
DURHAM TOWN HALL – COUNCIL CHAMBERS  
7:00 PM**

**MEMBERS PRESENT:** Henry Smith, Acting Chair; Robin Rousseau, Ted McNitt, Jay Gooze, John de Campi, Linn Bogle, alternate

**MEMBERS ABSENT:** None

**OTHERS PRESENT:** Tom Johnson, Code Enforcement Officer; Barbara Stoddard, Minute Taker; Interested Members of the Public

Acting Chair Henry Smith called the meeting to order at 7:00 P.M.

I. Approval of Agenda (7:01 P.M.)

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

II. Election of Officers (7:03 P.M.)

*Ted McNitt MOVED to elect Henry Smith, Chair of the Zoning Board of Adjustment. The motion was SECONDED by Robin Rousseau and unanimously APPROVED.*

*John de Campi MOVED to elect Ted McNitt as Chair Pro Temp of the Zoning Board of Adjustment. The motion was SECONDED by Linn Bogle and was unanimously APPROVED.*

*Robin Rousseau MOVED to elect Jay Gooze Secretary of the Zoning Board of Adjustment. The motion was SECONDED by John de Campi and was unanimously APPROVED.*

III. **PUBLIC HEARING** on a petition submitted by Jon and Andrea Yager, Dover, New Hampshire on behalf of Donald and Linnea Hirst, Durham, New Hampshire, for an **APPLICATION FOR VARIANCES** from Article IV, Section 175-25(C) of the Zoning Ordinance and Section 175-54, Table of Dimensional Requirements, of the proposed Zoning Ordinance re-write to allow for the building of a new dwelling unit containing a second-class home occupation. The property involved is shown on Tax Map 10, Lot 16-3, is located on 42 Coe Drive, and is in the RA, Residential A Zoning District. (7:05 P.M.)

Jon Yager, speaking on behalf of the applicants Donald and Linnea Hirst, stated that he was requesting a variance for a separate dwelling with 812-sq. ft. home pottery studio. The dimensions of the proposed structure are 38' x 34' and would include an apartment

on the second floor. The design of the building may be altered somewhat from the rectangular but would not exceed a 40' x 40' footprint. The building would be approximately 250' from Coe Drive and 20' from the eastern property line and 60' from the pond.

In response to a question from John de Campi, Mr. Yager stated there would be no sign in front of the studio but that there may be groups of small children visiting the studio for educational purposes.

In response to a question from Jay Gooze, Mr. Yager said that traffic on the road would not increase.

In response to a question from Linn Bogle, Mr. Yager said that he may hold a Christmas Open House in which there would be sales, but generally speaking he would not be selling pottery from the studio.

In response to a question from Henry Smith, Mr. Yager said the new apartment would be a one-bedroom apartment and that he was asking for a variance to increase square footage beyond the 500-foot limit.

In response to a question from Robin Rousseau, Zoning Officer Tom Johnson clarified that the hearing is for Article IV, Section 175-25(C) of the Zoning Ordinance in the RA, Residential A Zoning District and is based on the original zoning codes. Mr. Johnson further stated that his intention was for this to be a first-class home occupation with a variance to exceed the square footage allowed.

In response to a question from Ted McNitt, Mr. Yager explained that the space above the workshop would be a one-bedroom apartment for rental. There is currently an apartment in the basement of the building and Mr. Yager would like to reclaim that area for his family. The proposal includes the apartment above the studio.

In response to a question from Linn Bogle, Mr. Yager explained there is ample parking space in the existing driveway, a turn around area, and a 2-car garage. He would run a driveway back to the new building for deliveries and would require some gravel.

In response to a question from Ted McNitt, Mr. Yager stated that he had a site evaluation completed by NH Soil Consultants, Inc. and that he has been assured there is adequate area for the project.

In response to questions from Linn Bogle, Mr. Yager said is using a gas kiln and non-toxic glazes. Tom Johnson stated the structure would meet all building codes, including fire.

*Chair Smith OPENED the public hearing.*

Members of the public speaking in favor of the application included the following:

Linnea Hirst, one of owners of the property, stated that there is an overgrown parking area on the property and it is within the setbacks.

Annmarie Harris, 56 Oyster River Road, stated she knows the property and feels it is an appropriate setting for a pottery studio attached or adjacent to a house. She feels Mr. Yager's work would be a wonderful artistic addition to the community.

Beth Olshansky, 122 Packers Falls Road, spoke in support of welcoming an artist to the community.

Members of the public speaking in favor of the application included the following:

Bob Mair, 38 Beard's Landing, showed the Board pictures of the property. He stated that the applicant is asking to build a second house on a single lot. He said there are questions about traffic and deliveries and what will happen in the future with this commercial venture and hiring of up to three employees.

Mr. Yager stated that he has no intention of having any employees.

Donald Hirst, owner of the property, stated the nature of the property would not be changing with an artist on the property.

Mr. Yager stated in regards to the noise level, he uses an electric wheel that makes sound imperceptible and that there is no noise from the gas kiln, which has a suitable smokestack.

In response to a question from Jay Gooze, Mr. Yager stated that he is in need of the variance as any space less than 500 square feet would be cramped.

Malcolm Sandberg, 15 Langley Road, asked for clarification on the variance.

Tom Johnson, stated this is the problem with a first-class variance because of the square footage. He said the second-class variance would allow for more square footage, but he would comply with 1 B., C., and D. (operator resides on the premises, no visible occupation on the outside of the building, all interior storage, no noise or traffic produce, no employees). He said that because of the 812 square footage, it looks like a second-class

occupation.

Pat Tifft, 5 Beard's Landing, spoke against the application due to her concern for the residential quality of neighborhood and concerns regarding what would happen if the property were sold in the future.

*Chair Smith, CLOSED the public hearing.*

Jay Gooze suggested that the Board could vote on this application and if the applicant is not satisfied with that vote, he can reapply for a variance on a first-class occupation.

***Jay Gooze MOVED to ACCEPT the APPLICATION FOR VARIANCES from Article IV, Section 175-25(C) of the Zoning Ordinance and Section 175-54, Table of Dimensional Requirements, of the proposed Zoning Ordinance re-write to allow for the building of a new dwelling unit containing a second-class home occupation. The property involved is shown on Tax Map 10, Lot 16-3, is located on 42 Coe Drive, and is in the RA, Residential A Zoning District. The motion FAILED for lack of a SECOND.***

***Robin Rousseau MOVED to DENY the APPLICATION FOR VARIANCES from Article IV, Section 175-25(C) of the Zoning Ordinance and Section 175-54, Table of Dimensional Requirements, of the proposed Zoning Ordinance re-write to allow for the building of a new dwelling unit containing a second-class home occupation. The property involved is shown on Tax Map 10, Lot 16-3, is located on 42 Coe Drive, and is in the RA, Residential A Zoning District***

The Board reviewed the following criteria, which must be met before the Board can deny a variance.

1. The proposed use would not diminish surrounding property values. **AGREED 4-0-0.**
2. Granting the variance must not be contrary to the public interest. **DISAGREED 0-4-1. (Ted McNitt abstained.)**
3. Denial of the variance would result in an unnecessary hardship for the owner seeking it. **DISAGREED 0-4-1. (Ted McNitt abstained.)**
4. By granting the variance substantial justice would be granted. **DISAGREED 0-4-1. (Ted McNitt abstained.)**
5. The use must not be contrary to the spirit and intent of the ordinance. **DISAGREED 0-4-1. (Ted McNitt abstained.)**

***The motion to DENY the application PASSED with a vote of 4-0-1. Ayes: Henry Smith, Chair, John de Campi, Jay Gooze, Robin Rousseau. Nays: None. Abstention:***

***Ted McNitt.***

**I. PUBLIC HEARING** on a petition submitted by Irving Canner, Greenland, New Hampshire, for an **APPLICATION FOR VARIANCE** from Article IV, Section 175-6 to change the number of occupants living in a single family dwelling from three unrelated to two related and four unrelated individuals. The property involved is shown on Tax Map 2, Lot 5-0, is located on 26 Strafford Avenue, and is in the RA, Residence A Zoning District.

Irving Canner, property owner, spoke on behalf of the petition.

Mr. Canner stated that the variance would allow the property to be rented to the student athletes and/or coaches of the University of New Hampshire wrestling team. Mandates would be in place, which would prohibit living arrangements, which would be inconsistent with the local community standards. In addition, the proposed tenants have agreed that if in fact any violations of the lease occur, automatic eviction for all tenants would result. Parking would be limited to one car and other vehicles would be parked on campus.

In response to a question from Jay Gooze, Mr. Canner stated this was a one-year lease and a one-time occurrence.

Linn Bogle asked for clarification on differences between the original application and the proposal before the Board. Mr. Canner stated that the application is for a total of 6 people.

In response to a question from Linn Bogle, Mr. Canner stated that he is entering into a lease agreement with an organization known as "The Friends of Wrestling", a consortium of people wanting to promote the interests of wrestling. It is not a lease with the University.

In response to a question from Henry Smith, Mr. Canner stated the construction would include 2 walls and electrical outlets all within current footprints.

*Chair Smith OPENED the public hearing.*

Members of the public speaking in favor of the application included the following:

Ryan Holder, Danville, NH, a captain of the wrestling team, said that he would be living in the house. He stated that the team members perform better when they are able to live together.

David Butler, Coach of the wrestling team, said that these are athletes supported by

volunteer coaches. Mr. Butler stated the athletes living in the house are selected by the coaches and report to the coaches. They adhere to strict rules. In response to a question from Henry Smith, Mr. Butler said that an assistant coach would be living with the team.

Tim McMahon, 60 Strafford Avenue, stated he would not be living in house as he is graduating but feels that the team member's performance will improve by their living together and would bring other wrestlers to the program and to the University.

Ryan Holder, Danville, NH, stated he would live in the house and mentioned the bonding that occurs from living together helps the team to wrestle its best. They are a good team members and have no time to party.

Members of the public speaking against the application included the following:

Beth Olshansky, 122 Packers Falls Road, stated that she has some concerns about the future use of the property once the variance has been granted and the fine young men from the team move out. There is a serious problem with student rentals. She felt the Board would be setting a precedent for all other landlords in the town and was concerned about what that would do to the town's 3 unrelated rule.

Jim Jalbert, 13 Mill Road, stated this variance is contradictory to town by going from 3 to 4 unrelated people in one home. Believes this would set bad precedent.

Corinne Schmidt McCrone, 3 Wood Road, described the poor behavior by some other teams from the University that have lived as abutters to her property.

Fred Jervis, 14 Edgewood Rd., stated that he has lived in the house across the street since 1952 and that a lot of effort has been made to maintain the neighborhood.

Gregory Betts, speaking for his mother Eileen Betts who is an abutter, felt many of the points made in the variance made no sense. He stated concerns regarding property values, no guarantee that tenants are limited, and the setting of a bad precedent. Mr. Betts also stated a concern about fire safety issues and questioned the concept of having a mature person living with the team.

Coach Butler asked to address the comments that had been made. He felt it was important to say that these are fine upstanding young athletes.

Paul Berton, property owner, stated that there is a Rental Housing Commission for people to bring their concerns to, as stated above.

Jan Jervis, 14 Edgewood Road, stated the issue is not about the wrestling team but whether or not the application fits within the zoning ordinance.

*Chair Smith, CLOSED the Public Hearing.*

Linn Bogle had a question about the related individuals. It was stated by one of the team members that 2 of the team members are brothers.

John de Campi stated that the Board must divorce the wrestling team from the issue. It is a one-year lease.

Jay Gooze stated that granting the variance would overturn the spirit of the ordinance.

Robin Rousseau read a section from the master plan that addresses the issue in the variance.

***John de Campi MOVED to DENY the APPLICATION FOR VARIANCE from Article IV, Section 175-6 to change the number of occupants living in a single family dwelling from three unrelated to two related and four unrelated individuals. The property involved is shown on Tax Map 2, Lot 5-0, is located on 26 Strafford Avenue, and is in the RA, Residence A Zoning District. The motion was SECONDED by Robin Rousseau and PASSED unanimously.***

The Board reviewed the following criteria, which must be met before the Board can deny a variance.

1. The proposed use would not diminish surrounding property values.  
**DISAGREED 0-5.**
2. Granting the variance must not be contrary to the public interest. **DISAGREED 0-5.**
3. Denial of the variance would result in an unnecessary hardship for the owner seeking it. **DISAGREED 0-5.**
4. By granting the variance substantial justice would be granted. **DISAGREED 0-5.**
5. The use must not be contrary to the spirit and intent of the ordinance.  
**DISAGREED 0-5.**

Chair Smith stated that the *Motion to Deny Carries* and that the applicant has a 30-day period to appeal the decision.

Chair Smith called for a recess at 8:45 P.M.

Chair Smith reconvened the meeting at 8:50 P.M.

***Robin Rousseau MOVED to amend the agenda to hear Item VII as the next item. The motion was SECONDED by John de Campi and was APPROVED unanimously.***

**I. PUBLIC HEARING** on a petition submitted by T. Casey and Anne Mohr, Durham, New Hampshire, for an **APPEAL OF ADMINISTRATIVE DECISION** from a March 21, 2003, decision from the Zoning Administrator, Thomas F. Johnson, that the property is not a legal three-family dwelling. The property involved is shown on Tax Map 12, Lot 4-6, is located on 15 Watson Road, and is in the RC, Residence C Zoning District. (8:50 P.M.)

Casey Mohr spoke on behalf of his appeal. Mr. Mohr is requesting the petition in order to classify the property as a legal three-family dwelling and not a duplex as he is in the process of selling the house and a decision is needed by the Board in order for the sale to be finalized. Mr. Mohr stated that an apartment in the dwelling has been rented since 1962.

*Chair Smith OPENED the public hearing.*

Members of the public speaking in favor of the application included the following:

Anne Fleisher, co-owner of the property, stated that the apartment has been listed and taxed as a lawful apartment.

Thomas Mohr, son of Casey Mohr, stated the property had been appraised as a three-family dwelling.

There was no one speaking against the petition.

*Chair Smith CLOSED the public hearing.*

John de Campi stated that there was no evidence to show this is not a legal three-family dwelling. Jay Gooze agreed with that statement. Ted McNitt stated that the abutters seem to see this as a three-family dwelling.

Robin Rousseau stated that there was no supporting evidence that this was grandfathered property.

***John de Campi MOVED to grant relief from a March 21, 2003, decision from the Zoning Administrator, Thomas F. Johnson, that the property is not a legal three-family dwelling. The property involved is shown on Tax Map 12, Lot 4-6, is located on 15***



***Watson Road, and is in the RC, Residence C Zoning District. The motion was SECONDED by Jay Gooze and PASSED on a vote of 4-1. Robin Rousseau voted against the motion.***

- V. **PUBLIC HEARING** on a petition submitted by Emtex Realty Trust, Manchester, New Hampshire, for an **APPLICATION FOR VARIANCE** from Article IV, Section 175-6 to change the number of occupants living in an apartment unit from three unrelated to four unrelated individuals. The property involved is shown on Tax Map 2, Lot 10-3, is located on 32 Madbury Road, and is in the RA, Residence A Zoning District.

Donald Eaton, property manager, spoke on behalf of the petition. He stated that seeking relief to allow four people would assist with the under-supply of student housing in Durham. The space is large enough (1250 sq. ft.) to accommodate four people.

In response to a question from Jay Gooze, Mr. Eaton stated that the owner is marketing it as single family home.

*Chair Smith OPENED the public hearing.*

No members of the public spoke in favor of the petition.

Members of the public speaking against the application included the following:

Jim Harcourt, 4 Woodridge Road, stated that the petition is contrary to direction of town.

Beth Olshansky, 122 Packers Falls Road, stated she is concerned about the precedent the Board may be setting.

Scott Knightly, 40 Bennett Road, felt there was an issue with possibly trading favors

*Chair Smith CLOSED the public hearing at 9:40 P.M.*

Jay Gooze stated that he is in favor of the petition, as each petition should be taken individually.

John de Campi stated he is in favor of the petition, as it seems reasonable. It is in an area of multi-family housing. It seems to meet the floor space and parking requirements.

Ted McNitt considered this a unique situation. He said that the applicants have the space and surroundings and felt the application should be approved.

Robin Rousseau stated that adding more student bodies in a house is in the public's best interest. She said there is strong direction in the Master Plan and approving the application would set a precedent that the community would not care for.

Chair Smith stated his concern that this would encourage more requests.

Linn Bogle felt approval of the application would set a precedent and that he has reservations with increased density.

Robin Rousseau stated that any problems associated with increased density would affect single-family residents in the close immediate vicinity.

***Jay Gooze MOVED to approve the APPLICATION FOR VARIANCE from Article IV, Section 175-6 to change the number of occupants living in an apartment unit from three unrelated to four unrelated individuals. The property involved is shown on Tax Map 2, Lot 10-3, is located on 32 Madbury Road, and is in the RA, Residence A Zoning District. The motion was SECONDED by John de Campi. The Vote was 3-2-0. (Chair Smith and Robin Rousseau voted against the motion.)***

The Board reviewed the following criteria, which must be met before the Board can approve a variance.

1. No decrease in value of the surrounding properties would be suffered. **AGREED 4-1-0. (Robin Rousseau disagreed.)**
2. Granting the variance must not be contrary to the public interest. **AGREED 3-2-0 (Robin Rousseau and Henry Smith disagreed).**
3. Denial of the variance would result in an unnecessary hardship for the owner seeking it. **DISAGREED 2-3-0. (Jay Gooze and John de Campi agreed.)**
4. By granting the variance substantial justice would be granted. **AGREED 3-2-0. (Robin Rousseau and Henry Smith disagreed.)**
5. The use must not be contrary to the spirit and intent of the ordinance. **AGREED 3-2-0. (Robin Rousseau and Henry Smith disagreed.)**

Chair Smith explained that each person has a vote and each person has to answer in the affirmative on ALL the criteria in order for their individual vote to be an affirmative vote. If any member votes no on any of the criteria, their vote on the issue also has to be a no.

Chair Smith declared that the motion cannot pass if one of the criteria fails.

***John de Campi MOVED for a reconsideration of the motion. The vote for reconsideration PASSED on a vote of 4-1-0 ( Robin Rousseau voted against).***

Robin Rousseau left the table at 10:08 P.M. due to having to catch an early airplane flight in the morning. She asked that someone be appointed to vote in her place.

Linn Bogle requested that the Board get this issue clarified before continuing with the motion.

Chair Smith stated Linn Bogle would vote in Robin Rousseau's absence.

***Jay Gooze MOVED to continue this petition until the next meeting of the Zoning Board of Adjustment. The motion was SECONDED by Ted McNitt and PASSED unanimously.***

**I. PUBLIC HEARING** on a petition submitted by Emtex realty Trust, Manchester, New Hampshire, for an **APPLICATION FOR VARIANCE** from Article IV, Section 175-6 to change the number of occupants living in an apartment unit from three unrelated to six unrelated individuals. The property involved is shown on Tax Map 2, Lot 10-3, is located on 32 Madbury Road, and is in the RA, Residence A Zoning District.

***Ted McNitt MOVED to continue this petition for the next meeting of the Zoning Board of Adjustment. The motion was SECONDED by John de Campi and PASSED unanimously.***

**VIII. PUBLIC HEARING** on a petition submitted by Fall Line Properties, Inc., Portsmouth, New Hampshire, for an **APPLICATION FOR VARANCES** from Article III, Section 175-15 (C)(2) of the Zoning Ordinance to allow for the relocation of three nonconforming, duplex buildings to create a single multi-family building location and to intensify and extend the non-conformity of a current use. The properties involved are shown on Tax map 4, Lots 50-0, 51-0, 52-0 and 53-0, are located on Main Street/Dover Road, and are in the LBD, Limited Business Zoning District. (10:10 P.M.)

Chair Smith designated Linn Bogle as voting member in the absence of Robin Rousseau.

Paul Berton spoke on behalf of the petition. He said the applicant is attempting to redevelop the site with the goal of meeting the Durham Master Plan. This is a multi-faceted approach with a divergence from the single automotive dependent retail. The goal to meet existing regulations within the LBD, to create an attractive structure that is historic in nature, to create a positive property tax event for Durham with no impact on schools and other services, and to create an economically viable enterprise.

Mr. Berton stated that they are seeking approval for the relocation of three existing non-

conforming duplexes thus enabling them to redevelop the Main Street site. Any redevelopment would require the relocation of the three duplexes. The relocation does not increase non-conforming use, does not add units or tenants, and will not impact abutters. Units would be in a more co-compliant attractive single building and entrances would face the retail gasoline abutters. Mr. Berton further stated that he is a successful leader in the community in regard to student housing.

Attorney for the applicant, Bernard Pelech, stated that the applicant wishes to relocate the three duplexes to Lot 50, so that they are much closer together and at the rear of the property and to develop a 3-story 68 unit legitimate hotel. The overall plans would comply with parking requirements, lot coverage and green space requirements.

Attorney Pelech said the applicant is seeking two variances because it has been determined that the non-conforming use of the duplex and the non-conforming use of the apartment building are being expanded or extended. Attorney Pelach further stated that the proposal meets the five criteria. In addition, marketing analysis shows there is a demand that will serve a public need.

*Chair Smith OPENED the public hearing.*

No members of the public spoke in favor of the application.

Members of the public speaking against the application included the following:

Joanne Jelmberg, 29 Park Court, stated she felt the presentation was confusing and was speaking against variance for reasons of density. She felt the issue of the hotel needs to be taken out of the equation and that the Master Plan speaks to reducing student housing.

Jim Jelmberg, 29 Park Court, said the variance creates multi-unit housing which is not allowed in the LBD, nor is it allowed in the Master Plan as it does not have retail or professional offices on the second floor. He said this is Fall Line Properties third attempt to get a multi-unit building. The Planning Board rejected two versions of this already. Mr. Jelmberg stated he has the draft notice of denial from the Planning Board to Fall Line properties in January 2002 and from February 2002.

Scott Knightly, 40 Bennett Road, read from the Findings of Fact and Notice of Decision of Denial from the Planning Board and stated there is no justification in the Master Plan for a separate multi-unit building in this district. He also read that the Master Plan was particular in placing multi-unit dwellings in certain locations in Town and discourages them in the Professional Office and the Church Hill District. Movement of these units will impact the residents in the area. Mr. Knightly also suggested that the applicant tear

down the duplexes and concentrate on development of a hotel.

Mr. Berton stated that the denial refers to a different proposal and not the duplexes in question.

Susan King, 14 Cold Springs Road, stated that she has a concern about decreasing property values, traffic, and noise levels.

Terry Moorehead, 4 Bayview Road, stated that it is disingenuous for the applicant to imply there would be no noise nuisance.

Beth Olshansky, 122 Packers Falls Road, stated that Attorney Laughlin spoke over a year ago regarding zoning allowed in this district and stated that the density is beyond allowable density for student housing. She believes it is misleading to say that the property would be co-compliant. She also stated that multi-units are not allowed in the LBD district.

Mike Sievert, Engineer for the applicant, stated that they were connecting the three duplexes to make a better conforming building and that they are not creating a multi-unit building.

Mr. Berton asked to speak again in favor of the application. Chair Smith denied the request due to the lateness of the hour. Mr. Berton requested an exception to the record for not being heard.

*Chair Smith CLOSED the Public hearing at 11:00 P.M.*

John de Campi stated that the plans for a hotel are great but that this is not the issue the Board is facing. One issue of reverse subdivision on this lot means that Nicks Bricks and 6 Main Street use is jeopardized. He stated he has a problem with moving three duplexes when they continue to be used as totally residential properties.

Jay Gooze agreed with John de Campi. The change would not conform to the regulations.

Linn Bogle stated he has reservations about moving the duplexes and combining them into multi-units. He wondered if duplexes can be sacrificed for the good of the hotel.

Ted McNitt stated that he could understand why the applicant would want to maintain income duplex.

***John de Campi MOVED to deny the APPLICATION FOR VARANCES from Article***

***III, Section 175-15 (C)(2) of the Zoning Ordinance to allow for the relocation of three non-conforming, duplex buildings to create a single multi-family building location. The motion was SECONDED by Jay Gooze.***

The Board reviewed the following criteria, which must be met before the Board can deny a variance.

1. No decrease in the value of surrounding properties would be suffered. **AGREED 4-1-0. (Linn Bogle disagreed.)**
2. Granting the variance must not be contrary to the public interest. **DISAGREED 3-2-0. (John de Campi and Ted McNitt agreed.)**
3. Denial of the variance would result in an unnecessary hardship to the owner seeking it. **DISAGREED 4-1-0. (Ted McNitt agreed.)**
4. By granting the variance substantial justice would be granted. **AGREED 3-2-0. (Ted McNitt and John de Campi agreed.)**
5. The use must not be contrary to the spirit and intent of the ordinance. **DISAGREED 4-0-1. (Ted McNitt abstained.)**

***Chair Smith called the question and the motion was DENIED. 5-0.***

Chair Smith stated that the applicant has a period of 30 days to appeal the decision.

***John de Campi MOVED to grant the variance to continue the non-conforming use of Nicks Bricks and 6 Main Street even if he reverse subdivides and removes the lot lines. The motion was SECONDED by Jay Gooze and PASSED unanimously.***

**I. REQUEST FOR REHEARING** on a February 11, 2003, decision by the Zoning Board of Adjustment to deny a petition submitted by Slania Enterprises, inc., 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. **(11:25 P.M.)**

After discussion that determined the rehearing is on the parking issue, expansion of the project that was turned down originally and that there is nothing new to add to the application.

Linn Bogle requested a chronological history of the variance granted on this property. This request is for information for the Board and apart from the vote.

***John de Campi MOVED to DENY the request for rehearing. The motion was SECONDED by Linn Bogle and was PASSED unanimously.***

I. Approval of Minutes – January 21, 2003

Continued to the next meeting.

I. Other Business

- A. Tom Johnson stated that he received a request for rehearing today for the 36 Main Street property.

***Ted McNitt MOVED to open discussion of consideration of the request for rehearing on behalf of Steven and Elene Petrovitsis. and continue to the next meeting with a provision made in the agenda for the Rehearing. The motion was SECONDED by John de Campi and PASSED unanimously.***

***Linn Bogle MOVED to adjourn. The motion was SECONDED by Ted McNitt and PASSED unanimously.***

Chair Smith adjourned the meeting at 11:40 P.M.

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Jay Gooze, Secretary