

These minutes were approved at the July 15, 2003 Meeting.

**ZONING BOARD OF ADJUSTMENT
TUESDAY, MAY 20, 2003
TOWN COUNCIL CHAMBERS - DURHAM TOWN HALL
7:00 P.M.**

MEMBERS PRESENT: Henry Smith, Chair; Ted McNitt, Jay Gooze, John De Campi, Linn Bogle, Alternate

MEMBERS ABSENT: Robin Rousseau

OTHERS PRESENT: Tom Johnson, Code Enforcement Officer; Barbara Stoddard, Recording Secretary; Interested Members of the Public

Chair Smith made introductory comments and stated that Linn Bogle is designated as a voting member this meeting due to Robin Rousseau's absence.

I. Approval of Agenda

It was requested that Item IV be withdrawn from the agenda and that Item V. be moved and heard as Item II on the agenda.

Jay Gooze MOVED to accept the agenda as amended. The motion was SECONDED by Linn Bogle and APPROVED unanimously.

II. **CONTINUED PUBLIC HEARING** on a petition submitted by Ben Adams, Complete Graphix, Inc., Dover New Hampshire, on behalf of Wentworth-Douglass Hospital, Dover, New Hampshire, for an **APPLICATION FOR VARIANCES** from Article XII, Section 175-95 and Section 175-102(G) to permit a free-standing sign in a residential zoning district which exceeds the maximum height and square footage allowed. The property involved is shown on Tax Map 2, Lot 10-1, is located at 36 Madbury Road, and is in the RA, Residence A Zoning District.

Chair Smith opened the public hearing at 7:06 pm.

The board received a letter to certify that Ben Adams is authorized to speak for Wentworth-Douglass Hospital and the Durham Health Center for the application for variance.

Speaking in favor of the application was Ben Adams.

Mr. Adams stated that the proposed sign was designed to be an improvement over the existing sign. Lowering and increasing the size of the sign will make it easier for patients to find the Health Center.

There was no one to speak in opposition to the variance.

Chair Smith closed the public hearing at 7:08 p.m.

Jay Gooze stated that he believed the request to be a unique and reasonable request.

Chair Smith, Ted McNitt and John de Campi felt that height would be a problem with the new design and that the size of the proposed sign would violate the spirit of the ordinance. There was a suggestion to use lights that may make the present sign more visible. Mr. Adams stated that he has authorization to make any changes that will make the sign more visible to the public.

Linn Bogle MOVED to approve the application for variance. Jay Gooze SECONDED the motion.

The motion was DENIED by a vote of 3-2-0. Ted McNitt, John de Campi, and Henry Smith voted against the motion.

Chair Smith stated that the applicant has 30 days to appeal the decision or apply for a new variance.

- III. **PUBLIC HEARING** on a petition submitted by Katharine D. Paine, Durham, New Hampshire for an **APPEAL OF ADMINISTRATIVE DECISION** from the decision of Zoning Administrator, Thomas Johnson, to deny a building permit to demolish a waterfront camp and build a two-bedroom dwelling with a two-bedroom septic system on a nonconforming lot. The property involved is shown on Tax Map 11, Lot 35-1, is located at 51-53 Durham Point Road, and is in the RC, Residence C Zoning District.

Ted McNitt was recused from the hearing at 7:25 p.m.

Chair Smith opened the public hearing at 7:25 p.m.

Attorney John Ahlgren and Arnie Taylor, contractor, spoke on behalf of the applicant Katie Paine.

Attorney Ahlgren stated that this was a 50-acre lot on Durham Point Road. The applicant wishes to replace the cabin, guesthouse and studio. There will be no expansion of the footprint and no encroachment. A new septic system will not be far from the footprint. Attorney Ahlgren distributed local flood map to the Board and stated that the elevation of the land may be an issue. He stated that the land is high and steep and plateaus off where the cabin would be located but that it is not in a flood zone. He also stated that there would be no increase in traffic and that the applicant does not rent to students. In addition, the Durham Conservation Commission, the Department of Public Works and the Soil and Water Department have all reviewed and signed off on the plans. Attorney Ahlgren stated that there are no negative impacts on the shoreland zone.

In response to a question from Jay Gooze regarding the setbacks for the septic system, Arnie Taylor stated that the State has some flexibility. Tom Johnson stated that local zoning needs to be met and that could be more restrictive.

In response to questions raised by abutters concerning parking issues, Attorney Ahlgren stated that 10 cars can park in the designated area and that there are no plans to surface the area.

Linn Bogle stated concern about environmental impact from cars. Mr. Taylor stated that there is currently no environmental impact and that the area has not been maintained as a driveway. In response to comments from Linn Bogle and John de Campi, Mr. Taylor stated that he would cut back on areas that caused an expansion of the footprint.

There was no one to speak in opposition to the petition.

Chair Smith closed the public hearing at 8:02 p.m.

Jay Gooze MOVED to uphold the decision of the Code Enforcement Officer and to deny the petition. The motion was seconded by John de Campi and PASSED unanimously.

- IV. **PUBLIC HEARING** on a petition submitted by Katharine D. Paine, Durham, New Hampshire for an **APPLICATION FOR VARIANCES** from Article III, Section 175-16(A), Article V, Section 175-39(A), Article V, Section 175-41(A), Article VII, Section 175-58(A-D), Article X, Section 175-83(A), Article X, Section 175-84(D-E), Article X, Section 175-85(B), and Article X, Section 175-86(A-C) of the Zoning Ordinance to demolish a waterfront camp and build a two-bedroom dwelling with a two-bedroom septic system on a nonconforming lot. The property involved is shown on Tax Map 11, Lot 35-1, is located at 51-53 Durham Point Road, and is in the RC, Residence C Zoning District.

Chair Smith opened the public hearing at 8:05 p.m.

Attorney Ahlgren stated that much of his presentation was the same as mentioned in the previous petition. He stated that Katie Paine was seeking a variance to build a two-bedroom dwelling on a non-conforming lot.

Linn Bogle stated that he felt the presentation should be continued pending a site walk.

Attorney Ahlgren asked that the Board hear from the witnesses that were present at the meeting.

The supporting witnesses spoke as follows:

Valerie Shelton, Realtor, stated that she is an expert in waterfront property. She stated that a site walk would be helpful for the Board in reaching its decision. In

addition, she stated that there would be no diminution of abutting property values; in fact the converse would happen. If the variance were not granted, the abutters' property values would decrease.

Dudley Dudley, Durham, testified that she supports the application for variance, as the property has been a special gathering place all her life.

Pam Weeks Worthen, Durham, spoke in favor of the application saying that visitors have been gathering at the site for years and that parking has never been an environmental issue.

Eadie McCann Bower, Durham stated that she has grown up with Katie Paine and that this is a wonderful gathering spot and that there have never been any environmental concerns.

Chair Smith closed the public hearing at 8:21 p.m.

Tom Johnson stated that the Chair should make sure the Board has all the statements from the abutters. Chair Smith stated that he had statements from 2 abutters, Mark Morong and Ann Lemmon of Durham.

John de Campi MOVED to continue the public hearing until the June 10, 2003 ZBA meeting pending a site walk. The motion was SECONDED by Jay Gooze and PASSED unanimously.

The site walk was scheduled for June 3, 2003 at 3:00 p.m.

Ted McNitt returned to the table at 8:25 p.m.

Chair Smith called for a recess at 8:25 p.m.

Chair Smith reconvened the meeting at 8:32 p.m.

- V. **PUBLIC HEARING** on a petition submitted by England Family Limited Partnership, Ipswich, Massachusetts for an **APPLICATION FOR VARIANCES** from Article X, Section 175-83(A), Article V, Section 175-41(A), Article X, Section 175-86(A) and from Article III, Section 175-16(A) of the Zoning Ordinance to allow further construction on a nonconforming lot and within the shoreland and wetland setbacks. The property involved is shown on Tax Map 20, Lot 3-2(2B), is located at 573 Bay Road, and is in the RC, Residence C Zoning District.

Attorney Chris Boldt spoke on behalf of the applicant. Mr. Boldt stated that the applicant wishes to make their former vacation home a retirement home. After speaking with Mr. Johnson, the applicants realized they needed to scale back their original designs to keep in compliance with shoreland protection. He further stated that the existing footprint is all within the 150-ft. shoreline protection zone, which makes this a non-conforming structure. The applicant wishes to add another bedroom, which will require a variance. The plan also includes a music room,

inverse bay window, and a 1-car garage and is outside of wetland and shoreline protection zone. Mr. Boldt stated that the changes are a reasonable and minor modification.

In addition, wildlife will not be affected. Water quality and sedimentation are dealt with in construction techniques and views of the Great Bay are not affected.

In response to a question from Ted McNitt regarding habitable space and the percentage being expanded into the shoreland conservation zone, Mr. Boldt stated after calculations, 75% which adds 236 sq. ft of impervious cover.

Speaking in opposition to the petition were the following:

Stephanie Cheney, Durham, felt there is an issue with the roof and possibility of more runoff. She stated the area is congested and that there would be more traffic. She was also concerned with the board making exceptions.

In response to a question from a neighbor, Angela Hiley, Mr. Boldt stated that there would be limited access by construction vehicles to the area.

Sarah Riley, Durham, stated concern with run off excavation.

Chair Smith closed the public hearing at 9:08 p.m.

John de Campi stated that he saw no problem with the small amount of impervious cover with walkway.

Ted McNitt stated he felt there was significant incursion to the shoreland but that other properties in the neighborhood make this incursion insignificant.

Henry Smith stated that he felt the granting the variance would be contrary to the public interest.

Jay Gooze MOVED to approve the application for variance. The motion was SECONDED by John de Campi and PASSED on a vote of 3-2-0 with Linn Bogle and Henry Smith voting against.

- VI. **PUBLIC HEARING** on a petition submitted by David E. & Irene S. Vallery, Durham, New Hampshire, for an **APPLICATION FOR VARIANCES** from Article X, Section 175-83(A), Article V, Section 175-41(A), Article X, Section 175-86(A) and from Article III, Section 175-16(A) of the Zoning Ordinance to allow further construction on a nonconforming lot and within the shoreland and wetland setbacks. The property involved is shown on Tax Map 20, Lot 1-0, is located at 595 Bay Road, and is in the RC, Residence C Zoning District.

Chair Smith opened the public hearing at 9:18 p.m.

Attorney Chris Boldt, representing the applicant, stated that the intention is to erect a solid foundation and reconstructing the existing house as a two-story dwelling using the same footprint as the current one-story house. The existing building requires repair, which the variance would allow.

Valerie England, Durham stated that she has been conscious of the existing house for many years, that it has been an eyesore and that the proposed changes would be an improvement to the neighborhood and Durham.

There was no one speaking in opposition to the application.

Chair Smith closed the public hearing at 9:34 p.m.

Jay Gooze stated that he felt there would be expansion of the footprint with the addition of the garage but that would get cars off the ground.

Several members of the Board expressed concern that this was a large expansion with the proposed garage. There was discussion regarding another location for the garage and possible removal of a shed. The members of the board felt they needed more information and that they needed to see the property.

Ted McNitt MOVED to continue the hearing on June 10, 2003 to allow the applicant to examine the question of other locations. The motion was SECONDED by John de Campi and PASSED unanimously.

A site walk was scheduled on June 3, 2003 at 3:30 p.m. following site walk at 53 Durham Point Road.

VII. Approval of Minutes – April 8, 2003

April 8, 2003

Entire document - do a word search to change located at to read located on.

Page 1

Section 3, 1st paragraph should read "...is located at 42 Coe Drive..." not on
Last paragraph 1st sentence, add the word an to read "...for a separate dwelling with an 812-sq. ft. home..."

Last sentence; add the word structure to read "... somewhat from the rectangular structure but would not..."

Page 2

4th full paragraph, end of 2nd line add "... beyond the 500-ft. limit required for a first class home occupation."

6th paragraph, 2nd sentence, "...an apartment in the basement of the current house and Mr. Yager..."

7th paragraph, last sentence "...driveway back to the new building for delivers and this would require..."

9th paragraph, 1st sentence "... from Linn Bogle, Mr. Yager said he would be using a gas..."

Page 3

4th paragraph, strike the entire sentence.

Paragraph 10, 1st sentence "...stated there is a problem with a first-class home occupation because..."

Paragraph 10, 2nd sentence "...said the second-class home occupation would allow for more square footage, but Mr. Yager would comply..."

Paragraph 10, 2nd sentence "...no noise or traffic produced, no employees..."

Paragraph 11, beginning Pat Tifft –shift paragraph after the line stating "Members of the public speaking against the application included the following:

Page 4

Criterion one, change vote to read ...4-0-1. (**Ted McNitt abstained.**)

Last line on page – "Mandates would be in place which would prohibit living arrangements that would be inconsistent with the local community standards.

Page 5

3rd paragraph, 1st sentence "...entering into a lease agreement with an organization ..."

Paragraph 9, 1st sentence "...graduating but feels that the team members' performance would improve..."

Paragraph 10, last sentence, "They are good team members..."

Page 6

1st sentence on page "...town's more than 3 unrelated persons rule."

2nd paragraph, 1st line "...contradictory to the town's ordinance by going..."

2nd paragraph, 2nd line "He believes this would set a bad precedent."

8th paragraph, strike the comma "...Smith CLOSED the public..."

Chair Smith closed public hearings – strike comma

5th paragraph 2nd sentence, "...no guarantees that the number of tenants..."

6th paragraph, change to read "Paul Berton, Durham property owner..."

Page 7

1st sentence change to read "The Board reviewed the following criteria."

Page 8

8th paragraph, "...Mr. Eaton stated that the owner is marketing it as a single..."

Paragraph 12, "...stated that the petition contrary to the intent of town ordinances."

Add period to end of last sentence on the page. "...favors."

Page 10

Last sentence "...the goal is to meet..."

Page 11

1st full paragraph, 1st sentence "...three existing non-conforming duplexes, thus enabling..."

1st paragraph, 3rd sentence change "co-compliant" to read "code compliant"

2nd full paragraph, "Bernard Pelech, attorney for the applicant..."

3rd paragraph, 2nd sentence, correct spelling of Pelach to Pelech

3rd paragraph, last sentence, "In addition, a marketing analysis..."

7th paragraph, "...was speaking against the variance..."

Last paragraph 4th line, change word particular to specific

Page 12

Last paragraph, "...would want to maintain income from the duplexes."

Page 13

5 criteria # 4 change John de Campi and Ted McNitt disagreed.

Change the second motion to read "...even if the property owner reverse subdivides..."

Item X, second paragraph, "After discussion it was determined that this rehearing..."

Item X, third paragraph, "...history of the variances granted..."

Page 14

First motion, erase period after Elaine Petrovitsis and

Ted McNitt MOVED to approve the minutes of April 8, 2003 as amended. The motion was SECONDED by John de Campi and PASSED unanimously.

VIII. Other

A. Chair Smith announced the next meeting of the Board is a special meeting for two site walks commencing at 3:00 p.m. at 53 Durham Point Road to be followed by a site walk at 595 Bay Road.

B. Next Regular Meeting of the Board: June 10, 2003

IX. Adjournment

John de Campi MOVED to adjourn. The motion was SECONDED by Jay Gooze and PASSED unanimously.

Chair Smith adjourned the meeting at 10:40 p.m.