

D R A F T

**DURHAM ZONING BOARD OF ADJUSTMENT MINUTES
TUESDAY, JULY 8, 2003
TOWN COUNCIL CHAMBERS - DURHAM TOWN HALL
7:00 P.M.**

MEMBERS PRESENT: Ted McNitt, Vice Chair; John de Campi, Jay Gooze, Secretary;
Linn Bogle, alternate

MEMBERS ABSENT: Henry Smith, Chair; Robin Rousseau

OTHERS PRESENT: Tom Johnson, Code Enforcement Officer, Barbara Stoddard, Note
Taker; and Interested Members of Public

Vice Chair McNitt called the meeting to order at 7pm. Vice Chair McNitt announced that Linn Bogle will be a voting member for the meeting and that new cases will not start after 10:00 p.m.

I. Approval of Agenda

John de Campi MOVED to adjust the agenda to move Item XIII to number II and other items will be moved successively down. The motion was SECONDED by Jay Gooze and PASSED unanimously.

- II. REQUEST FOR REHEARING** by Richard Gallant, Durham, New Hampshire, on a June 10, 2003, decision by the Zoning Board to approve the petition submitted by David E. & Ireen 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 TaxMap 20, Lot 1-0, is located at 595 Bay Road, and is in the RC, Residence C Zoning District.

Vice Chair McNitt stated that on the strength of evidence presented tonight, the Board has to decide if there is sufficient new information to justify a rehearing.

Vice Chair McNitt opened the public hearing at 7:05 p.m.

Richard Gallant 595 Bay Road, Durham stated that he has owned the abutting property since 1975 and has lived there since 1984. He gave some background on the Vallery

property. Originally the property was used as a summer camp and human pressure on the land was small. The property has been fully occupied since 1994. Mr. Gallant stated that he believes that the area is clay or ledge and that much of the ground underneath the building has silted into the bay. Mr. Gallant stated that clay perks poorly; it silts and erodes easily. The code recognizing the long-term effects on the shoreland and the bay restricts tree removal. Mr. Vallery wishes to place a larger house on the upper part of the elevations of the lot, which is where the clay exists. Mr. Gallant believes that the run-off from that house will cause additional silting into the bay. He further stated that removal of trees will begin significant erosion from the house and the lot to the bay and that the leach field planned on the new septic system will increase hydraulic pressure on the land.

Mr. Gallant also stated that the setback from the road is another point of contention as the curve on the road is extremely dangerous. Mr. Gallant has spoken with the State and with the Durham Department of Public Works and some improvements have been made. He is concerned for the town's liability if a fatality occurs again on the spot where the Board has granted a setback variance.

Mr. Gallant stated concern for the number of variances permitted on the Vallery property and the environmental impact for generations to come. He asked the Board to respect the code.

There was no one else to speak in favor of the request for rehearing.

Speaking against the request was David Vallery, 595 Bay Road, Durham. Mr. Vallery stated that the environmental impact, the road issues, and hazards have been discussed extensively over the last several months. Concessions have been made to address the environmental impact. The house has been moved from 24 ft. to back over a 100 ft. away from the water. The State has approved the relocation of the septic system, perk testing was done and it is not all clay and ledge. Construction on the house will be moved away from the water. In addition he has agreed with the Board to remove the boathouse. He feels what was done was very positive and hopes that the Board will uphold its decision.

As there was no one else to speak against the request for rehearing, Vice Chair McNitt closed the public hearing at 7:23 p.m.

John de Campi stated that he respects Mr. Gallant's view but that the environment was the Board's primary concern from the beginning. He stated that the points Mr. Gallant raised had all been considered and saw nothing new to call for a rehearing.

Linn Bogle stated he sympathized with what Mr. Gallant said. He further stated that the Board is confronted with many cases of people buying seasonal camps and making them year round homes with additional structures. He has been uncomfortable with the cases but the applicant's come to the meetings with their attorney's who say in light of recent legal

agreements such as Simplex, that the owner's have the right to enjoy property. The Board put a lot of thought into what was granted, but tried to be as reasonable as possible. He stated that perhaps the Board could have been more restrictive in the square footage it allowed for the building, but at this point would not want to go back and undo what it has already done. The Board has to find the balance between what the court cases allow the owners to do and what the ordinances allow.

Jay Gooze stated that he agreed with both Mr. De Campi and Mr. Bogle.

Ted McNitt stated that the decision for granting a new hearing is that sufficient new material was presented to justify redoing what the Board did previously. This Board sought to draw a balance between the needs of the environment, including getting the boathouse off the water, to avoiding unnecessary and severe hardship to the owner of the land.

Jay Gooze MOVED to not grant a rehearing. The motion was SECONDED by John de Campi and PASSED unanimously.

- III. **PUBLIC HEARING** on a petition submitted by Scott Goelzer, Durham, New Hampshire for an **APPLICATION FOR VARIANCES** from Article IV, Section 175-25(B) and from Article III, Section 175-16(A) of the Zoning Ordinance to build an addition to a sunroom on a nonconforming lot. The property involved is shown on TaxMap 6, Lot 5-33, is located at 6 Croghan Lane, and is in the RA, Residence A Zoning District.

Mr. Bogle recused himself from the deliberations. Tom Johnson stated that the State requires 3 voting members for a quorum and that all 3 members would need to vote in the affirmative for the application to pass. The applicant stated he did not object.

Vice Chair McNitt opened the public hearing at 7:32 p.m.

Scott Goelzer stated that he was proposing to build a deck on the back of the sunroom addition. The addition was approved and installed by the previous owner. The deck does not cross any setbacks and is a customary addition in the neighborhood. The only issue is that the lot is 15,000-sq. ft., which is substandard to the town's 20,000-sq. ft. normal allowance. The area would not exceed the maximum allowance. There is currently a 5-ft. drop from the sunroom. Mr. Goelzer stated that he believed the original owners had intended to add a deck to the property.

In response to a question from Mr. McNitt, Mr. Goelzer stated that the deck follows the original line of the house and does not change the amount of setback.

Charles McLean stated that he was speaking for himself and his wife. He stated that he lives across the street from the Goelzer and that they are in favor of building the addition.

Deborah Mayer, 19 Garden Lane, stated she was also speaking for Diane Woods, 21 Garden Lane. They are not really speaking against the proposal but that they have a concern about noise of young children and dogs.

Vice Chair McNitt closed the public hearing.

Jay Gooze stated that since the deck is within the setbacks he has no objection.

In response to a question from Ted McNitt, Mr. Goelzer stated that there is a line of vegetation on all four sides of the property. He cannot see the neighbors during the summer.

John de Campi stated that he was in favor of the application.

John de Campi MOVED to grant the applicant the relief he seeks. The motion was SECONDED by Jay Gooze and PASSED unanimously.

Mr. Bogle returned to the table at 7:39 pm.

- IV. **PUBLIC HEARING** on a petition submitted by Karen W. Mullaney, Durham, New Hampshire for an **APPLICATION FOR VARIANCE** from Article IV, Section 175-25(B) to build an addition within the 10-foot sideyard setback. The property involved is shown on Tax Map 1, Lot 5-17, is located at 8 Davis Avenue, and is in the RA, Residence A Zoning District.

Vice Chair McNitt opened the public hearing at 7:40 p.m.

Stanley Mullaney speaking for the applicant stated that they would like to add a 20-ft. wide double car garage. They have 28 ft. of clearance and would be invading the 10-ft. sideline setback by 2 ft. The sideline would front on the new Adams Circle (built a few years ago) and would not be next to any house lot. The building would have no impact on any of the abutters. The applicant has discussed the matter with all the abutters.

In response to a question from Mr. McNitt, Mr. Mullaney stated that the lot is a corner lot and that the road Adams Circle was built after the Mullaney's purchased the house. He further stated that the available space would be 8 ft. instead of the 10 ft. required for the side.

In response to a question from John de Campi, Mr. Mullaney stated that there is a steep embankment with heavy vegetation and there is a marginal view between driveway and Adams Circle.

In response to questions from Jay Gooze, Mr. Mullaney stated that they will be changing the galley kitchen into a laundry room, expanding a half bathroom, and converting the old garage into a kitchen and then add the double car garage. Mr. Mullaney further stated that

the minimum size of a double garage would be 20 ft., which is 2 ft. more than they have. They cannot reduce the size of the kitchen by 2 ft., as an entire exterior wall would have to be removed.

Mr. De Campi asked if Mr. Mullaney had considered a Tandem garage. Mr. Mullaney responded that would require a new driveway cut and would require filling in an old driveway and a stone wall, which would increase the magnitude of the project.

In response to questions from Mr. McNitt and Mr. Bogle, Mr. Mullaney stated that the building in back is a hobby shop, which is heated in the winter and has a window airconditioner.

In response to a question from Mr. Bogle, Tom Johnson stated that a variance was not needed for the interior work unless they were enlarging the footprint. In response to Mr. Bogle's question regarding plans for the garage, Mr. Mullaney stated that he does not intend to have any living space in the garage. The exterior of the garage is a step down image of the house, so that there is a consistent design.

Mr. Bogle stated that he had looked at the property and extending the garage 20-ft. will push it very close to Adams Circle and that he would prefer to see it at 18 ft.

There was no one else to speak in favor of the application and no one to speak in opposition.

The public hearing was closed at 7:50 p.m.

Jay Gooze stated he would like some help from the Board as to why the setback is set at 10 ft. as opposed to 8 ft.

Mr. De Campi stated this was a side yard setback.

Mr. McNitt stated that since the road was built after the house that what was originally a side yard setback has become a front yard setback.

Mr. De Campi stated he was conflicted, as there may be options to locate the garage behind the house but with the 8ft. Setback and the 12 ft. wooded embankment, then it will still be 20 ft. off the road and there should not be a snow plow issue.

Mr. Mullaney stated that it was very important that they maintain the design integrity of the house.

Jay Gooze stated that it does seem to be a unique situation.

Mr. Bogle stated that it does not encroach on any one else's property.

Vice Chair McNitt stated that the design of the house was important and the road was built after the house.

Jay Gooze MOVED to accept the application for variance. The motion was SECONDED by John de Campi and PASSED unanimously.

- V. **PUBLIC HEARING** on a petition submitted by Markus & Monika Schreyer, Durham, New Hampshire for an **APPLICATION FOR VARIANCES** from Article V, Section 175-41(A) and from Article III, Section 175-16(A) of the Zoning Ordinance to build a deck on a nonconforming lot. The property involved is shown on Tax Map 8, Lot 1-78, is located at 17 Frost Dr., and is in the RB, Residence B Zoning District.

Vice Chair McNitt opened the public hearing at 8:01 p.m.

Markus Schreyer, 17 Frost Dr. Durham, stated that he wished to add a deck extension to an existing porch. The extension is conflicting with the setbacks to wetlands. He stated that the deck would be 56 feet in distance from the wetlands and that the deck would not cross over existing setbacks. The deck will be for private use.

In response to a question from John de Campi, Mr. Schreyer stated that the deck would be constructed with open Boards and not impervious to water. In addition it will be the same height of the porch.

In response to a question from Ted McNitt, Mr. Schreyer stated that his house is well removed from the poorly drained area.

There was no one else to speak in favor or opposition to the application.

Vice Chair McNitt closed the public hearing 8:05 pm

Jay Gooze stated he felt a condition that the deck be built with open Boards be included in the motion to approve. John de Campi stated that he agrees with Mr. Gooze as long as the impervious area is not increased. Mr. Bogle stated that the ground is about 5 ft. above a poorly drained area and that it is high and dry.

Richard Johnson, contractor for the applicant stated that he will be building the stairs beyond the deck rather than into the deck and they would be about 3 ft. wide.

Jay Gooze stated that he felt that denying this application would create a hardship for the applicant and that he agrees that no public rights will be injured.

Linn Bogle MOVED to approve the application. The motion was SECONDED by John de Campi and PASSED unanimously.

Vice Chair McNitt called for a 5-minute break at 8:13 p.m.

Vice Chair McNitt called the meeting back to order at 8:21 p.m.

- VI. **PUBLIC HEARING** on a petition submitted by Cheryl A. Lamoureux, Durham, New Hampshire for an **APPEAL OF ADMINISTRATIVE DECISION** from a May 20, 2003, decision of Zoning Administrator, Thomas Johnson, that the dwelling is in violation of Article I, Section 175-6 relating to occupancy and Article VIII, Section 175-65(F)(3) relating to parking in the front yard setback. The property involved is shown on Tax Map 6, Lot 7-5, is located at 54 Oyster River Road, and is in the RA, Residence A Zoning District.

Vice Chair McNitt opened the public hearing at 8:22 p.m.

Cheryl A. Lamoureux stated that she purchased the property in 1999. When she purchased the house there were tenants in the downstairs apartment. It was her understanding that the apartment existed when the house was built. The house is owner occupied with an accessory apartment.

In response to questions from Jay Gooze and John de Campi there are only 2 people in the apartment (which is vacant at the moment) and that there are no other unrelated people in the house. She further stated that the home was advertised as a single family home with an apartment, and that she had bought the home for that reason. In regards to parking the original driveway was put in and then the original owner received a variance for the upper parking. She stated that she had a copy of the variance for the upper driveway at home. Nothing has changed in relation to the use of the house and that the Town taxes her knowing there is an apartment. Ms. Lamoureux stated that the previous tenants did not know how to park and that they were very social but that they are now gone.

John de Campi asked Ms. Lamoureux which decision by the Code Enforcement Officer she was appealing. Ms. Lamoureux replied that she was confused herself that all of sudden she has a house that was constructed 30 years ago with an accessory apartment and for some reason it is now an illegal occupancy.

Mr. de Campi stated that it appears she has a house with an accessory apartment and that she can rent the apartment to 2 unrelated plus the owner-occupier for a total of 3 unrelated. Mr. de Campi asked Ms. Lamoureux if the decision she was appealing was one of parking. Ms. Lamoureux stated she agrees with the accessory apartment, 2 unrelated code but that she is confused as to what she is appealing. She was told she had no building permit for the apartment.

In response to a question from Jay Gooze, Ms. Lamoureux responded that all she had was the permit she presented to the Board, which does not show an accessory apartment. She further stated that she bought the house in good faith that what she was buying was a house with an accessory apartment.

In response to a question from Mr. De Campi, Tom Johnson replied that there are other issues besides whether or not the accessory apartment is legal or not. Mr. Johnson stated

that the Town received correspondence from the Red Tower Neighborhood Association that questions the legality of the apartment.

In response to questions from Mr. De Campi, Ms. Lamoureux stated that her family has 2 cars and that 2 tenants would make a total of 4 cars parked. She stated there were often more cars than 4 for social reasons. She is confused as to what she is in violation of as she is using the house as it was intended.

Jay Gooze stated that there is no actual piece of paper that says an accessory apartment was approved to be in the house. He further stated that the Town of Durham is checking which apartments are approved and which ones the owners add illegally. He stated that the burden of proof is on Ms. Lamoureux to show the Board that this was an accessory apartment legally constructed. If that proof does not exist then Ms. Lamoureux needs to come to the town and request a building permit to have the accessory apartment. He further stated in response to a comment from Ms. Lamoureux, that the tax records are a separate issue from zoning regulations.

In response to a question from Mr. De Campi, Mr. Johnson stated if Ms. Lamoureux wanted to get the house documented and legal as of 2003, she would want to ask for a building permit to create an accessory apartment, comply with the 25% rule and also comply with building codes.

Mr. Bogle stated that the property should be reviewed to determine what permits are on hand, what bedrooms and space is in existence in this building and bring the building into conformity with the town ordinances. He further stated that a lot has happened at the property that should not have happened and he would like to see a correction and have the entire building surveyed by the town and a determination be made as to what is legal and not legal.

Mr. de Campi agreed with Mr. Bogle and stated that he thought Ms. Lamoureux should continue the appeal and that she continues to work with Mr. Johnson and see if the issues can be resolved amicably.

In response to a question from Mr. Gooze, Ms. Lamoureux stated there were 3 bedrooms and a kitchen in the bottom floor and that she has had a family in the apartment as well as 2 brothers and 1 other student.

Speaking in favor of the appeal was David Meyer who stated that it was unreasonable to expect owners to get old records on a house they buy as he believes the Town keeps poor records.

The following people spoke in opposition to the appeal:

Hans Heilbronner, Durham stated that he was present at the time the home was built. It was built as a single family home and that at no time was there an accessory apartment. He further stated that the basement was converted illegally and that nothing has been done about it until Mr. Johnson came into office. He does not know of any permit.

Martin Gorham, 11 Burnham Avenue, Durham stated that there are 61 properties that form the Red Tower Neighborhood Development Association. He stated it is not the Board's job to enforce the Associations covenants but rather help enforce the covenants. The Red Tower group requires all properties in the neighborhood to be single family residents with no more than 2 unrelated in an accessory apartment. There have been complaints about the number of cars parked at 54 Oyster Road and the behavior of the college students at that address.

Ted McNitt stated that the Board cannot enforce the covenant but can consider their comments.

Martha Burton, 9 Burnham Ave., Durham stated that she is part of the Red Tower Association. She stated that the Red Tower Association covenant specifies single family homes and no more than 2 unrelated people in addition. The concern of neighbors is with the number of students that stay in the apartments. They want to make sure that there are no more than 2 extra people in the apartment.

Gail Carey, 49 Oyster River Road, stated that she has two concerns. One is the noise level over the past year with the 3 college students living in the apartment. The second concern is the speed of the cars that travel to and from the residence. She is concerned with the safety of her children.

Ms. Lamoureaux stated that she has spoken with her neighbors, including Bill Annis who told her that Red Tower let the house be constructed with an accessory apartment. She further stated that she does live at a horrible curve and that it is a bad thoroughfare.

Vice Chair McNitt stated that the Red Tower Association does have that right to notify the Town of problems and ask for some action.

In response to a question from Jay Gooze, Ms. Lamoureaux stated that she lived in the house when the "social" students were there. She also stated that she has a lot of company as well.

Discussion continued about the parking issue and what is allowed. Ms. Lamoureaux stated there was a downward sloped driveway and an upper driveway. She felt one driveway could hold 4 cars.

Mr. Gooze referred to Tom Johnson's letter of May 20 and the parking arrangements. Mr. Johnson stated there were problems in the winter when there is no parking on the road. He also stated he had questions about the legality of the extra curve cut that the selectmen granted in 1974. The parking issues will need to be studied if the case is continued.

In response to a question from Jay Gooze, Mr. Johnson stated that Ms. Lamoureux is limited to only 3 cars parked within the curve and that if there were more then she would receive a violation notice.

Vice Chair McNitt stated that this was an appeal of an administrative decision and was Mr. Johnson correct regarding the parking and unrelated persons rule.

Mr. de Campi stated he had no problem with the administrative decision and if Ms. Lamoureux does not ask to withdraw or continue then there are no grounds to question Mr. Johnson's judgment.

Jay Gooze clarified that Ms. Lamoureux needs a building permit for the accessory apartment and that she is only allowed 3 cars parked at the top of the driveway within 30 ft. of the curve.

Vice Chair McNitt closed the public hearing at 9:03 p.m.

Mr. Bogle stated there was so much unclear that he could not overturn Mr. Johnson's decision.

Mr. Gooze stated Ms. Lamoureux needs a building permit to make the accessory apartment legal and that the parking should be limited and on record that it is limited.

John de Campi MOVED to deny the appeal of the zoning officer's decision. The motion was SECONDED by Jay Gooze and PASSED unanimously.

- VII. **PUBLIC HEARING** on a petition submitted by David Meyer, Newmarket, New Hampshire for an **APPEAL OF ADMINISTRATIVE DECISION** from a June 6, 2003, decision of Zoning Administrator, Thomas Johnson, that the dwelling is not a legal duplex. The property involved is shown on TaxMap 2, Lot 8-2, is located at 8 Madbury Court, and is in the RA, Residence A Zoning District.

Vice Chair McNitt opened the public hearing at 9:07 p.m.

David Meyer stated that he purchased the property in 1996 as a duplex. He further stated that he is selling the property and has buyers interested in the property as a duplex. The buyer came to the town to find out the legal status of the property and was told by Tom Johnson that it was not a legal duplex. Mr. Meyer stated that the property was listed as a duplex when he purchased the property. He stated that both he and his real estate agent came to the town in 1996 and were told it was a duplex. He stated that he was later shown a

“grandfather” letter showing history of how the town grandfathered in multi-family properties. Mr. Meyer stated that he does not have any of these documents.

Mr. Meyer stated that when he purchased the property it was used as a duplex and it has been taxed as a duplex since he has owned it. He received a building permit soon after purchasing the property to add 2 additional bedrooms. The building inspector at the time was aware of how he intended to use the property. Mr. Meyer stated that the unit has separate utilities, cable, telephone, 2 full kitchens and bathrooms and parking for several cars. He stated that it is currently classified as a single-family with accessory apartment but that the unit exceeds the 25% rule. Mr. Meyer stated that the use of the property as a duplex is consistent with other properties in the neighborhood. He stated that the Board had approved the building of a duplex directly in front of his property and that there is a large apartment complex in the other direction in front of his property. He stated that if the property were to be rezoned as a single-family property it would significantly reduce the property value. He stated there were two sets of records. The tax records have listed it as a two family property for many years. The Town went with the zoning office records and rezoned the property as a single family with an accessory apartment. In response to a question, it was stated that the house was built in 1955.

Linn Bogle commented that Mr. Johnson’s letter indicates that after Mr. Meyer acquired the house in 1996, that he applied for a building permit to build an addition to connect the house to the garage and to convert the garage to living space. Mr. Bogle said there is nothing that substantiates converting the garage to rental space. Mr. Meyer replied that at the time he did not feel it was an issue and that he believed it was a duplex. He further stated that the wording he used came from the zoning administrator at the time. He stated that the property was a duplex and that he saw no need to mention in the building permit that it was a duplex.

Jay Gooze asked Mr. Meyer if he had any records of the letters he received. Mr. Meyer stated that he saw one letter at the time of purchase. He also stated that at one time there was a letter from the town regarding zoning regulations. He does not remember if he was given a copy of the letter. He can not find the letter.

Mr. Meyer stated that he believes it seems unreasonable to place the burden on him to prove it is a duplex when it is clear to him that the Town has inconsistent records.

There was no one else to speak in favor of this appeal.

Speaking in opposition to the appeal was Arthur Dimambro, 49 Madbury Road. Mr. Dimambro stated that all the houses in the area were single family homes but that they have now become student housing. He does not know when this property was classified as a duplex.

Vice Chair McNitt closed the public hearing at 9:23 p.m.

Vice Chair McNitt stated that the question on this appeal was whether Mr. Meyer provided enough information to justify the Board overruling the Zoning Administrator.

Jay Gooze stated that he saw no written proof that this property is legally a duplex even though it may have been used as such. He further stated that the duplex that was approved across the street was allowed due to a glitch in the zoning laws that allowed a duplex to be put on a vacant lot with less than required amount of acreage. The Board would not have approved it otherwise. Mr. Gooze read a letter into the record from a town resident that stated there were two apartments on the property at 6 Madbury Court for years. The property before the Board tonight is at 8 Madbury Court. Mr. Gooze further stated that he believes there needs to be some burden of proof from the owner. It seems reasonable to assume that anyone using a property for rental would keep records for that property including town letters. There was nothing presented tonight that would make him overrule Mr. Johnson's decision.

Mr. Johnson stated that the original building permit was issued in 1960, which shows a detached garage and single-family house. For clarification of the Board, Mr. Johnson stated that in 1996 when Mr. Meyer submitted the building permit application, the description of the permit was to connect house to garage, convert garage to living space. The permit does not say anything about two-family, or single-family with accessory apartment. The previous Code Enforcement Officer, Richard Hunsburger, signed the permit in August 1996 but there was no signature by the building official. The electrician filled out his application using the term duplex. The building official does not typically look at these documents. The floor plan provided, with the building permit application by Mr. Meyer, does not match the floor plan that was provided with the ZBA application. Mr. Johnson stated that he suspects that between 1960 and 1996 that one owner along the way converted the second floor to an accessory apartment and that in those days the 25% rule did not apply. The floor plan provided for the Realtor now shows additional work that was not clarified by an amended construction plan. Mr. Johnson stated that it is his contention that this is a single-family home with an old accessory apartment that exceeded the 25% rule.

Jay Gooze MOVED that the Board uphold Mr. Johnson's decision that the structure is not a duplex. The motion was SECONDED by John de Campi and PASSED unanimously.

- VIII. **PUBLIC HEARING** on a petition submitted by David Meyer, Newmarket, New Hampshire for an **APPLICATION FOR VARIANCE** from Article IV, Section 175-25(B) to change a dwelling from a single family home to a duplex. The property involved is shown on Tax Map 2, Lot 8-2, is located at 8 Madbury Court, and is in the RA, Residence A Zoning District.

Vice Chair McNitt opened the public hearing at 9:33 p.m.

Mr. Meyer stated that he has nothing new to add but would like to address any questions the Board has regarding the 5 points that need to be met.

There was no one speaking in favor of the application.

The following people spoke in opposition to the application.

Mr. Dimambro, Durham stated that the house is rented but does not know if rented as house with accessory apartment or a duplex. In response to a question from Mr. Dimambro, Mr. Meyer stated that he rents it as a duplex with 6 people. Mr. Dimambro stated that he is an unhappy homeowner in the vicinity of houses sold and rented to students with absentee landlords.

Annmarie Harris, 56 Oyster River Rd., stated that she is part of the zoning rewrite committee that intends to limit duplexes in pocket neighborhoods by no longer allowing them in the RA Zone at all.

With the exception of the Strafford Apartments and the acceptance of the last duplex in the RA Zone, the neighbors in this area are longtime residents. If this property does not have a legal duplex designation, Ms. Harris stated that she would encourage that the property remains a single-family house with an accessory apartment. She further stated that the Town would be lucky if Mr. Meyer sold the house to someone who would be an owner occupied single-family and rent the other section to 2 additional students, which would be a blessing to the neighbors.

Mr. Meyer stated that the neighborhood that his property is in is already a multi-family neighborhood and will never go back to a single-family neighborhood. He stated that all the abutters rent to students. Mr. Meyer further stated that this is a college town and people keep talking about the rowdy behavior of students. He feels that if you don't want to be around students, then don't live in this town.

In response to a question from Mr. McNitt, Mr. Meyer stated that he does not currently live in the town. Mr. Meyer further stated that denying this request would not bring this neighborhood back to a nice single-family neighborhood.

In response to a question from Mr. McNitt, Annmarie Harris stated that there are no proposals from the zoning rewrite committee to permit additional duplexes in this area.

Larry Zeis, 44 Edgewood, Durham stated that he walks down Madbury Road and has seen two houses change from student housing to single family housing.

Karen Mullaney, 8 Davis Ave., Durham stated that Mr. Meyer's comment showed why the Town of Durham must do something about non-owner occupied apartments and duplexes.

She further stated that the Town of Durham does not have an obligation to find housing for all the UNH students.

Vice Chair McNitt closed the public hearing at 9:44 p.m.

Vice Chair McNitt stated that the Board needs to understand what variances would need to be giving to allow a duplex on this property.

Tom Johnson stated that the zoning rewrite committee has posted the new residential districts and as such both the present ordinance and the new-posted ordinance have the effect of law and that he has to enforce both of them. The property is still in the new RA district the Board cannot grant a variance because it does not have the authority to grant a variance to the new-posted ordinance. The applicant has to wait until the new posted ordinance is adopted by the Town to ask relief from the Zoning Board to let him have a duplex in an area that is not permitted to have a duplex.

Mr. Johnson further stated that currently this property is a single-family home with an accessory apartment so the Board cannot give him a duplex due to new-posted ordinance. In addition, there would be 3 dimensional variances required which include: (1) 20,000 sq. ft for the first dwelling and 15,000 for the second dwelling. Currently the lot as about 6,000 sq. ft. (2) The lot would need 100 ft. frontage on the roadway. It currently has 20 ft. on Madbury Court and (3) the lot would need 20 ft. rear setback requirements and it currently has approximately 10 ft.

Mr. Johnson stated that legally the Board could not grant a duplex.

Mr. de Campi stated that he would not be in favor of the application even if the Board could legally grant it. He further stated that it is better to have owner occupied housing with student rentals.

Vice Chair McNitt stated that there are many variances and that with the current writing of the ordinance then this is beyond the authority of this Board.

Linn Bogle MOVED to deny the request for variance, as of the Zoning Board of Adjustment does not have the authority due to the recent posting of a new zoning ordinance that does not include duplexes in the RA Zone. Jay Gooze SECONDED the motion.

Mr. Gooze stated that if the Board were going to vote on the variance, he does not believe it meets any of the criteria except for surrounding property values. It does not create a hardship as the property can be rented as a single family with an accessory apartment. He believes that the Town would be better off if the homes were owner occupied.

The motion to deny PASSED unanimously.

IX. **PUBLIC HEARING** on a petition submitted by Scott Picard & Julie Batchelder, Durham, New Hampshire for an **APPEAL OF ADMINISTRATIVE DECISION** from a June 19, 2003, decision of Zoning Administrator, Thomas Johnson, that the building of a second floor addition would violate Article IV, Section 175-27(B) and Article III, Section 175-16(A) and Section 175-15(C)(2) of the current Zoning Ordinance and Sections 175-30(C), 175-32(A) and 175-53 of the proposed Zoning Ordinance. The property involved is shown on Tax Map 12, Lot 4-6, is located at 15 Watson Road, and is in the RC, Residence C Zoning District.

Vice Chair McNitt opened the public hearing at 10:00 p.m.

Attorney Bernie Peters, representing the applicants, stated that they are appealing the administrative decision because they believe that the sections of the zoning ordinance cited by the Code Enforcement Officer do not apply.

Attorney Peters stated that the first reason for the appeal is that he could not find a requirement for 360,000 sq. ft. in the ordinance. The second reason for the appeal is that the building is conforming, it meets setback, heights, and lot requirement. He stated that the use is non-conforming but the building is conforming and the ordinance states “non-conforming building.” The third reason for the appealing is that the applicant is not expanding the use of the dwelling. This is a 3-unit dwelling and it will continue to exist as a 3-unit dwelling. The purpose for the expansion is to add an extra bedroom for the applicants’ two children.

Attorney Peters presented the Board with a letter showing support for the expansion from all the abutters.

Jay Gooze stated that there are 3 dwelling units, which is normally not permitted making it a non-conforming building.

Scott Picard, 15 Watson Road stated that he purchased the property 2 months ago. He feels this is his pride and joy and that his family plans to live here for the rest of their lives. They want to keep the property owner occupied.

In response to a question from Ted McNitt, Tom Johnson stated that the rewrites address this zone. Mr. Johnson’s opinion is that this is a non-conforming building and use. 3 family and duplex is not permitted in the area.

Vice Chair McNitt closed the public hearing at 10:19 p.m.

John de Campi stated that he was opposed to the relief of administrative decision. He is not opposed to the variances.

Vice Chair McNitt asked if there had been sufficient evidence to grant the appeal?

Jay Gooze stated that the first point about 360,000-sq. ft. was debatable, but that he feels comfortable that the last two points should be upheld.

John de Campi MOVED to deny the appeal of administrative decision. The motion was SECONDED by Linn Bogle and PASSED unanimously.

- X. **PUBLIC HEARING** on a petition submitted by Scott Picard & Julie Batchelder, Durham, New Hampshire for an **APPLICATION FOR VARIANCES** from Article IV, Section 175-27(B) and Article III, Section 175-16(A) and Section 175-15(C)(2) of the current Zoning Ordinance and Sections 175-30(C), 175-32(A) and 175-53 of the proposed Zoning Ordinance to build a second floor addition on a nonconforming lot. The property involved is shown on TaxMap 12, Lot 4-6, is located at 15 Watson Road, and is in the RC, Residence C Zoning District.

Vice Chair McNitt opened the public hearing at 10:25 p.m.

Attorney Peters, speaking for the applicants, stated that the information was the same as presented in the previous application. He stated that the application meets the 5 criteria, which are attached to the application. He presented a letter from all abutters showing support for the project.

In response to a question from Ted McNitt, Attorney Peters stated that the applicant is converting one unit to a 4-bedroom house.

Linn Bogle asked why the applicant does not convert one of the other units. The applicants stated that the former owners have a lease of an undetermined length and that they would not have bought the property originally if the rental property had been denied. They were not aware that they would have to come before the Board for variances to expand the number of bedrooms.

The plans were reviewed with the Board. The bedrooms will be on the same floor. The kitchen remains the same; a closet is being removed from the study, which will become a media room. In addition the applicant has to receive septic approval.

Vice Chair McNitt closed the public hearing at 10:41 p.m.

Jay Gooze stated that he is against the use of the financial argument and that the rental property is needed in order to afford to live there. In addition the applicant is increasing the size.

Linn Bogle stated that they could use part of the space that already exists. The original building was built as a 2-story duplex and he has trouble with further enlargement.

John de Campi stated that he is in favor of the application. The design is aesthetically better and that the size guarantees the property would remain owner occupied. The applicant shows a strong commitment to the property.

Vice Chair McNitt stated that the applicant has done an effective job describing hardship to the extent of his personal use. On balance he feels this is a marginal case but that he supports it. It will improve the neighborhood and the use of the building.

Tom Johnson suggested that the wording of the motion be that this is a three family owner occupied, non-condo, single owner building.

John de Campi stated he wouldn't be concerned if this did become 3 condos.

Jay Gooze stated that it would help his misgivings if it were stated that one unit be owner occupied.

Jay Gooze MOVED to approve the application for variances on the condition that the owner resides on the property. The motion was SECONDED by John de Campi and PASSED unanimously. 4-0-0.

Ted McNitt MOVED to continue the meeting to July 15, 2003 at 7:00 p.m. The motion was SECONDED BY John de Campi and PASSED unanimously.

Jay Gooze, Secretary