

# D-R-A-F-T

## DURHAM ZONING BOARD OF ADJUSTMENT MINUTES TUESDAY, AUGUST 12, 2003 TOWN COUNCIL CHAMBERS - DURHAM TOWN HALL 7:00 P.M.

**MEMBERS PRESENT:** Henry Smith, Chair; Ted McNitt, Vice Chair;  
Jay Gooze; Robin Rousseau; John de Campi;

**MEMBERS ABSENT:** Linn Bogle, Alternate

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

**MINUTES PREPARED BY:** Victoria Parmele

Chair Henry Smith called the meeting to order at 7:00 PM. He welcomed members of the public, and explained the procedures to be followed at the meeting. He then introduced the members of the Board.

### I. **Approval of Agenda**

Chair Smith recommended a slight modification of the agenda, to reverse Items 3 and 4 regarding the Kitfield family trust. No objections from Board on this.

? \_\_\_\_\_ ***MOVED to approve the agenda as amended .*** \_\_\_? \_\_\_\_\_ ***SECONDED the motion and it PASSED unanimously.***

### II. **PUBLIC HEARING** on a petition submitted by Paul F. Mackin, Bedford, New Hampshire for an **APPEAL OF ADMINISTRATIVE DECISION** from a June 16, 2003, decision of Zoning Administrator, Thomas Johnson, that the *dwelling is in violation of Article I, Section 175-6 relating to occupancy*. The property involved is shown on Tax Map 1, Lot 13-22, is located at 96 Madbury Road, and is in the RA, Residence A Zoning District.

Ted McNitt explained that negotiations were underway between the applicant, Mr. Mackin and the Town, and felt that hearing the item that evening would either be inappropriate or moot. He suggested that the Item be opened and continued until the next meeting. Chair Smith noted that there was no one present at the meeting to speak on this Item.

Robin Rousseau asked for clarification on why it would be moot for the Board to hear this item. She said the applicant was appealing an administrative decision and asked if administrative decisions were negotiable.

Zoning Officer Tom Johnson replied that the administrative decisions could be negotiable if the Board agreed on an enforcement procedure. He explained that at present the town attorney was drafting an agreement.

Ms. Rousseau asked if the applicant was withdrawing his appeal. Mr. Johnson said he might be depending upon the negotiations. Ms. Rousseau asked if there was a request from the applicant to move this Item out to a different date. Mr. Johnson said the applicant called and realized that because of negotiations the Item would not be heard tonight.

Ms. Rousseau summarized that the Town had agreed with the applicant to continue the case.

***Ted McNitt MOVED that Item #2, the public hearing on the APPEAL OF ADMINISTRATIVE DECISION from a June 16, 2003, decision of Zoning Administrator, Thomas Johnson, that the dwelling is in violation of Article I, Section 175-6 relating to occupancy, be opened and continued to the next meeting. John de Campi SECONDED the motion.***

Jay Gooze said that if anyone had come to speak on this Item, they should have the opportunity to do so, and the Board could then continue the hearing to the next meeting.

Robin Rousseau questioned again if an administrative decision was negotiable. She said if it was, the public should have the opportunity to speak as part of the negotiations.

Chair Smith asked members of the public if they would rather speak that night, and they said they would. He reminded them that the parties they had come to speak to would not be present. Mr. Smith also asked if they would be willing to come to the next meeting as well.

*Chair Smith OPENED the public hearing.*

Larry Zise, 44 Edgewood Road, said that since the administrative decision had been made, the parking situation had settled down, and there was not the same abuse of the property that had previously occurred. He said he saw no reason to do anything other than continue negotiations with the applicant.

Donna Brown, 34 Edgewood Rd said that she lives kitty-corner to the property. She said she understood why the Item was postponed, but was concerned that students might be renting by the time the Board reached its final decision. She said she had lived in the

neighborhood since 1982, and knew the property and its uses very well. She said she had talked to a number of neighbors and they were equally concerned about the use of the property over the last two years. Ms. Brown said she was aware that at some point an accessory apartment was added, which has created the problem and that after Mr. Mackin purchased the property it was rented exclusively to students, which is when the problems arose. Ms. Brown suggested that the property be returned to its traditional use, a single family dwelling with an accessory apartment.

Annmarie Harris said she had observed the property over many years, and described it as a blight on the neighborhood. She said the owner wanted to occupy the building with 8 people, a disproportionate number. She said she believed the situation should be thought of as a test case concerning student housing, recognizing the possible legal costs for the Town. Ms. Harris said she wondered about the fact that the applicant had not appeared that evening. She said time was of the essence, and that the applicant's non-presence was using up the whole summer. She said that perhaps these were stalling tactics, and recommended the Board should go forward with deliberations on the Item that evening.

*Chair Smith CLOSED the public hearing.*

Robin Rousseau again questioned why the Board wasn't hearing this Item now. She said there was no reason to delay hearing it. She said there was no written agreement between the applicant and the Town, and also noted that the applicant made no formal request in writing to continue the hearing. She also said the Item had been continued already.

John de Campi said a continuation to the next meeting seemed reasonable, especially because there were several Items on the Agenda, but agreed there was some urgency to this matter, and it should be resolved as soon as possible.

Robin Rousseau said the number of Items on the Agenda was irrelevant, and that each case should stand alone.

Ted McNitt said that anything the Board did that evening would be non-constructive. Jay Gooze agreed with Mr. McNitt, that as long as negotiations were underway, the Board should trust its Code Enforcement Officer to continue the process.

***The motion to continue this item to the next meeting PASSED on a vote of 4-1 (Robin Rousseau voting against the motion).***

- III. **PUBLIC HEARING** on a petition submitted by The Nature Conservancy, Concord, New Hampshire on behalf of the Kitfield Family Trust, Durham, New Hampshire for an **APPLICATION FOR VARIANCE** from Article IV, Section 175-28(B & C) to change the lot size for an existing single family dwelling with accessory apartment, accessory structure with two accessory apartments, detached garage, chicken coop and barn to 3.5 acres after

subdivision. The property involved is shown on Tax Map 16, Lot 5-0, is located at 125 Longmarsh Road, and is in the R, Rural Zoning District.

*Chair Smith OPENED the public hearing.*

Duane Hyde spoke on behalf of the Nature Conservancy and the applicants. He supplied the Board members with an amended site plan. Mr. Hyde explained that the Kitfields own 67 acres of land, and the Nature Conservancy, as the lead acquisition agent for the Great Bay Resource Protection Partnership, is working to conserve the tract.

Mr. Hyde said the Partnership was working around the Great Bay area to protect critical wildlife habitat, and one of those critical areas is the Crommet Creek Watershed, which the Kitfields property lies within. He explained the role of the Nature Conservancy in protecting properties. Mr. Hyde said the Kitfield tract is directly across from town conservation land and links with other conservation land in the area.

Noting the Nature Conservancy was in the business of conserving land, but not owning houses, Mr. Hyde said the property has a house on it, along with a detached garage, accessory apartment, and a barn, and the Kitfields have been living on the property for about 60 years. He said the Nature Conservancy had successfully negotiated an option to acquire the entire tract of land, but would like to subdivide out the houses from the rest of the tract, and sell them to a private individual who would like to live there.

Mr. Hyde said that when he approached the Town about this, he was informed that the lot would be required to be about 12 acres in size. He said that in order to do a large lot of 12 acres, one would have to get into the wetlands area, which the Conservancy was trying to protect. Therefore, the Conservancy tried to minimize the lot size but still make it a reasonable size that would meet the Town's requirements, with a 3.5 acre lot.

Mr. Hyde said he was requesting a variance from the Zoning Ordinance to allow the Nature Conservancy to move forward to Planning Board with an application for a subdivision to create an at least 3.5 acre lot and conserve the remainder of the land. Mr. Hyde said the request is fully consistent with the Durham Zoning Ordinance and Master Plan.

Robin Rousseau asked how much of the acreage in the tract was wetlands. Mr. Hyde said that, based on National Wetland Inventory data, the tract contained approximately 20-25% wetlands.

Jay Gooze asked how much acreage was required for a minimum lot size in 1970. He noted there were a number of structures on the property, and wondered if they were allowed based on the 67 acres, or based on the 3.5 acres allowed them at that time.

Zoning and Code Enforcement Officer Tom Johnson said the property was probably a working farm in 1970, and said that probably less acreage was required then than the

120,000 sq. ft required now, since acreage requirements in the districts have increased in size over the years. He said that because the proposed subdivision is for 2003, he applied the 1999 standards.

Mr. Hyde said the Nature Conservancy would be willing to remove the accessory apartment on the property if necessary.

Robin Rousseau asked about the nature of the option the Nature Conservancy had with the Kitfields. She said it did not sound like a purchase and sale agreement, and asked what assurance the Board had that the Nature Conservancy would exercise the option. She asked what would prevent the current owner from selling this property, especially with only 20% wetlands, to a local developer.

Mr. Hyde said it was an option and that the Nature Conservancy would be happy to accept conditions the Planning Board or Zoning Board wanted to place on the transaction, but that he had wanted to come before the Board first to see if the process would work.

Robin Rousseau explained that the reason she was asking if the property was tied up yet was that the owners could change their mind, and whatever the Board granted would go with the property.

Mr. Hyde said the application spoke for itself as to its public purpose and consistency with the goals of the Zoning Ordinance and Master Plan, and suggested that a private individual before the Board probably would not be making those kinds of assurances.

John de Campi said the Board had previously granted variances conditional upon the sale of the bulk of the land for conservation purposes. He said the Town had a history of granting variances with that condition on it.

*Chair Smith CLOSED the public hearing.*

Ted McNitt asked Tom Johnson that assuming the accessory apartment is removed leaving 2 accessory apartments, and assuming there was no possibility of building student housing in the chicken coop, how many square feet would the operation require to be a conforming lot.

Zoning Administrator Johnson said 11.9 acres, which if you subdivided something that large, someone could get rid of the apartments in the future, reduce to single family home, and then come in for subdivision and put on 120,000 sq. ft. lot, and subdivide that into possibly 4 separate lots.

Ted McNitt asked if it would be possible to take the extra area and put it into a conservation easement, separate from what the Nature Conservancy was working on, which would mean

a non-conforming lot would not be created. He said he had a lot of concerns about creating non-conforming lots unnecessarily.

Mr. Johnson said it was possible to do that but noted that the Board did not use that procedure with the cow farm on Route 108. He said that property represented a bigger potential impact since it was a multi-unit building

Jay Gooze said that based on the history of the property described by Mr. Johnson, it probably would have been allowed at that time on 3.5 acres, so he did not think a non-conforming lot was now being created. He also said the application for the variance met all of the criteria. Mr. Gooze said he was therefore in favor of it, but with the conditions as stated in the letter of application with the requested action by the ZBA.

John de Campi said he was in favor of granting the variance. He noted there was always the possibility with large lots that they might be subdivided, and said that this one, 168,000 sq. ft with a requirement of 120,000 sq. ft., is not subdividable.

Chair Smith said Mr. McNitt had a good point about creating a nonconforming lot, but said the big tradeoff was a large tract of wonderful land which would be in conservation forever, something which fit well with the Master Plan. He said he was therefore in favor of granting the variance.

Mr. Johnson discussed the conditions placed on the variance granted to the cow farm on 108. He said the variance was granted with the stipulation that the Planning Board would place conditions of approval on it regarding septic design, floor plan, etc. Mr. Johnson said the Board could do something similar here and ask the Planning Board to include in its conditions of approval the removal of the chicken coop.

Robin Rousseau said she was in favor of granting the variance, and was in agreement with Mr. Johnson concerning the need for conditions of approval. But she added that the Zoning Board needed its own air-tight conditions of approval. She said that if the Planning Board wanted to add more conditions, it could do so.

***Robin Rousseau MOVED to grant the application for variance on Agenda Item #4, dated Tuesday, August 12, 2003, submitted by the Nature Conservancy of Concord, with the following conditions of approval: Conditional upon the purchase and conservation of the remaining land (approximately 63 acres) by the Nature Conservancy, which is in compliance with the intent of the Master Plan to conserve large tracts of open space. If the property does not pass to the Nature Conservancy, this variance is null and void, and would not meet the spirit of the ordinance. Further conditions on the granting of the variance would be the following: 1) removal of the chicken coop/shed; 2) removal of the accessory apartment located in the main house, to the satisfaction of the code enforcement officer; 3) that the applicant provide the code enforcement officer with documents signed and stamped by a licensed soil scientist certifying that the lot with the house and accessory***

***structures has adequate soils within its boundaries to support the loading of a septic system for the six bedrooms on the property (four in the main house, and two in the accessory structure). Jay Gooze SECONDED the motion.***

Ted McNitt said it was not unusual for the Nature Conservancy to turn over land to another group, and wondered if that should have any bearing on the motion. He asked Mr. Hyde if the Nature Conservancy did in fact plan on turning over the property to another entity.

Mr. Hyde said the Nature Conservancy was planning on turning over the property to New Hampshire Department of Fish and Game, which would hold it as quasi-conservation easement which prohibits subdividing and developing the property. He said the property would remain in perpetuity as open space. Mr. Hyde said the deed restrictions are enforceable under the RSA covering conservation easements, and in that way, land was further protected from the State deciding to do something with it.

Robin Rousseau asked Mr. Hyde if the Nature Conservancy would be taking title. He said it would. Ms. Rousseau said that as long as the Conservancy was going to take title, that would satisfy the conditions.

***The motion PASSED unanimously.***

- IV. **PUBLIC HEARING** on a petition submitted by The Nature Conservancy, Concord, New Hampshire on behalf of the Kitfield Family Trust, Durham, New Hampshire for an **APPEAL OF ADMINISTRATIVE DECISION** from a July 23, 2003, decision of Zoning Administrator, Thomas Johnson, regarding the minimum lot size required for the dwelling and accessory structures at 125 Longmarsh Road. The property involved is shown on Tax Map 16, Lot 5-0, is located at 125 Longmarsh Road, and is in the R, Rural Zoning District.

*Chair Smith OPENED the public hearing.*

Duane Hyde withdrew the request for appeal of the administrative decision.

- V. **PUBLIC HEARING** on a petition submitted by Carrie Garland, Durham, New Hampshire on behalf of Joyce Schow & Martha Garland, Durham, New Hampshire, for an **APPLICATION FOR VARIANCES** from Article IV, Section 175-26(B&C) and Article III, Section 175-16(A) to convert a garage to a stable for horses. The property involved is shown on Tax Map 13, Lot 15-1, is located at 110 Mill Road, and is in the RB, Residence B Zoning District.

*Chair Smith OPENED the public hearing.*

Carrie Garland told the Board she wanted to convert an existing large garage at her farm into horse stalls, and keep her horses there until she could build an equestrian facility on another portion of the 45 acre property. She said the construction would be on the existing footprint

of the garage. She said that before she went any further with plans, she wanted to find out if she could have horses on the property.

Jay Gooze asked how far the garage/barn was from the Road. Ms. Garland replied 75-100 feet.

John de Campi asked how many horses Ms. Garland wanted to board in the garage, and she replied five. Mr. de Campi said the rule was one horse per four acres. Ms. Garland said that one horse for one to one and one-half acres was about right.

Ted McNitt asked what the property, including the house and 45 acres, had been used for in the past and Ms. Garland said it had been in the family since 1901, and had been a farm. She said she would like to see the property used as a farm again.

Robin Rousseau noted that boarding horses was not a permitted use in the RB zone, and could not even be permitted with a conditional use permit. She said that in the RB zone, the bar is higher.

The applicant presented the Board with a copy of a variance granted for an equestrian facility to be built on a 35 acre parcel in 2001.

Jay Gooze repeated that this was not a permitted use in the RB zone, and said he was uncomfortable about putting horses in the garage, because the garage was close to the road and it was not clear how long they would be there.

Ted McNitt asked Ms. Garland if there had been stock on the farm in the past, She said there had been stock on the property, until her grandfather could not maintain the farm anymore. Mr. McNitt said he therefore did not think boarding the horses was a change of use but rather a continuation of a use that had been in existence for the last 100 years.

Martha Garland, 2/3 owner of the property, described the history of the property, saying it was a working farm until the early 1960's. She said they were self-sufficient farmers who had hayed the property and did have horses and cows. She said there had been no other use of the property since that time, but that urban sprawl had encroached around them since then.

Duane Hyde spoke before the Board as a Durham resident. He said he did not know the family but that their request seemed like a good one for the Town, because it would mean that the land would be kept as farmland.

Paul Fisher, 2 Meserve Road, spoke against the application for a variance. He said the issue was really about converting a garage to a stable, not about protecting open space. He said the property, near the road was a very visible part of the area, and said he was



concerned about possible problems with manure and flies and felt the usage was totally out of character with the neighborhood.

Bruce Davies, 4 Bartlett Road, said he lives directly across from the property in question. He asked if boarding horses was a permitted use, what would prevent neighbors from having other animals such as chickens and pigs. Mr. Davies said he liked horses, and was not concerned about the smell, but he was concerned about the neighborhood as a whole.

*Chair Smith CLOSED the public hearing.*

Jay Gooze said he had problems with the Item. He acknowledged that some people do not want livestock in an area, and that the zoning did not allow it in this zone. He said he also had problems with the conversion of the garage because it was so close to the road. Mr. Gooze said he did not believe the application met the criteria for a variance and did not believe it was a grandfathered use. He also believed the proposed use was contrary to the intent of the RB zoning district.

John de Campi said that he was uncomfortable with the idea of the garage becoming a stable. But he said if the Town wanted to keep open space in private hands, landowners have to be able to use their land. He said the tax structure makes owning land in Durham expensive, and said he would like to see the Board find a middle ground whereby the applicant could get what they want and still protect the neighborhood. He said the garage was too visible to the road to be desirable, and that shielding was important. He said it was unreasonable to deny a use as relatively harmless as horse boarding to a property of this size.

Robin Rousseau said this was a classic sprawl case, one the Board hated to see, but said she did not think the purpose of the Board was to make policy. She said the use was not permitted in the RB zone, which is a densely populated zone. She repeated that not even conditional uses were permitted here, and said the Board should not be in the practice of arbitrarily allowing nonconforming uses.

Jay Gooze agreed with Robin Rousseau and said the people who made the Zoning map decided they did not want this use here.

Ted McNitt said he was no less uncomfortable with the proposed use than Mr. Gooze was, but did not feel the Board should deny the variance. He said the working area of the property was pretty well shielded. He also said it was a clearly stated policy in the town to protect open space and farmland, and that this was an opportunity to further those goals.

Chair Smith said he feared the proposed use would decrease surrounding property values, and felt the use was contrary to the spirit of the Zoning Ordinance. He said he would probably not be in favor of granting the variance.

Robin Rousseau said the Zoning Ordinance had not caught up with the Master Plan, She said the ZBA had to make decisions based on the law. She encouraged further work on the Zoning Ordinance to better reflect the goals of the Master Plan and noted that the ordinance is now in the process of being revised, so now would be the time to provide input.

John de Campi said he still thought that a few horses did not seem to be an unreasonable use, but would like to place conditions on the use. He said the Board should find a way to grant the variance.

***Robin Rousseau MOVED to deny the application submitted by Cary Garland, Durham, New Hampshire, on behalf of Joyce Schow & Martha Garland, Durham, New Hampshire for variances from Article IV, Section 175-26(B&C) and Article III, Section 175-16(A) to convert a garage to a stable for horses The motion was SECONDED by Jay Gooze. The motion PASSED on a vote of 3–2 (Henry Smith, Robin Rousseau, and Jay Gooze voted in favor; John de Campi and Ted McNitt voted against).***

Chair Smith informed the applicants they could appeal the decision, or could come back to the Board with another proposal.

Chair Smith declared a 5-minute recess.

Chair Smith reconvened the meeting.

- VI. **PUBLIC HEARING** on a petition submitted by Townsend & Anne Zwart, Durham, New Hampshire for an **APPLICATION FOR VARIANCES** from Article IV, Section 175-27(B) and Article III, Section 175-16(A) to build an addition on a single family dwelling on a nonconforming lot. The property involved is shown on Tax Map 12, Lot 16-6, is located at 5 Edgerly Garrison Road, and is in the RC, Residence C Zoning District.

***Chair Smith OPENED the public hearing***

Townsend Zwart said he would like to put an addition on the east side of his house. He said the lot is about 80,000 sq ft, which is considered a non-conforming lot, but that the addition easily satisfies the setback requirements. He said the issues with the lot have to do with the outbuildings that were there when he moved there in 1997, which caused too much square footage of structure on the lot.

In response to questions from the Board, Mr. Zwart said the addition would be on a full foundation, and is for living area, not bedrooms. He said that as part of the addition, they proposed to continue the deck to wrap around where the existing deck used to be, and that this deck would be well under the height limit. He also said the addition was likely to increase the value of surrounding properties.

John de Campi asked for clarification that the only reason the applicant was there was because the lot was non-conforming, and that in all other ways the requirements had been met. Mr. Zwart said that was his understanding.

Zoning Administrator Johnson confirmed Mr. De Campi's statement.

Irene Bragdon, 7 Colony Cove Road, said the proposed addition was a good use of the building.

*Chair Smith CLOSED the public hearing.*

***Ted McNitt MOVED to approve the variance. Robin Rousseau SECONDED the motion, and it PASSED unanimously.***

- VII. **PUBLIC HEARING** on a petition submitted by Charles B. Forcey, Durham, New Hampshire for an **APPLICATION FOR VARIANCES** from Article IV, Section 175-25(B) and Article III, Section 175-16(A) to extend two decks on a single family dwelling on a nonconforming lot. The property involved is shown on Tax Map 6, Lot 6-24, is located at 12 Thompson Lane, and is in the RA, Residence A Zoning District.

*Chair Smith OPENED the public hearing.*

David Davidson spoke on behalf of the applicant. He said the building permit application included deck extensions that were denied because of the non-conforming lot size. He said he thought the addition of the decks would not be detrimental to any of the property values or the neighborhood, and would in fact add to the values. He explained that one deck would replace an existing one of smaller size, which had fallen into disrepair and has been removed. He said they wanted to put in something a bit bigger that would be in better shape than the previous one.

Jay Gooze asked if all the setback requirements had been met. Zoning Administrator Johnson replied that they had, according to the survey.

*Chair Smith CLOSED the hearing*

***John de Campi MOVED to grant the Application For Variances from Article IV, Section 175-25(B) and Article III, Section 175-16(A) to extend two decks on a single family dwelling on a nonconforming lot. Ted McNitt SECONDED the motion, and it PASSED unanimously.***

Robin Rousseau had to leave the meeting at this time.

- VIII. **PUBLIC HEARING** on a petition submitted by Gregry & Ann Lynch, Durham, New Hampshire for an **APPLICATION FOR VARIANCES** from Article IV, Section 175-27(B)

and Article III, Section 175-16(A) to build an addition on a single family dwelling on a nonconforming lot. The property involved is shown on Tax Map 11, Lot 39-3, is located at 131 Durham Point Road, and is in the RC, Residence C Zoning District.

*Chair Smith OPENED the public hearing.*

He noted that the applicant could not be present and there was no one present to speak on behalf of the request. He asked if anyone was present to speak in opposition to the request.

*Chair Smith CLOSED the public hearing*

Ted McNitt asked Zoning Administrator Tom Johnson to bring the Board up-to-date on the situation for this item.

Mr. Johnson said the applicant's property lacked sufficient frontage; the requirement is 300 ft. and they have 50 ft.

Ted McNitt said he went out and looked at the property, and saw no reason not to grant the variance.

John de Campi said the property more than met the setback and all the other requirements except the road frontage requirement.

Jay Gooze agreed with the other Board members.

***Ted McNitt MOVED to grant the variances from Article IV, Section 175-27(B) and Article III, Section 175-16(A) to build an addition on a single family dwelling on a nonconforming lot. The motion was SECONDED by John de Campi and PASSED unanimously.***

- IX. **PUBLIC HEARING** on a petition submitted by Chris and Wendy Brooks, Durham, New Hampshire for an **APPLICATION FOR VARIANCES** from Article IV, Section 175-25(B) and Article III, Section 175-16(A) to build an addition on a single family dwelling on a nonconforming lot. The property involved is shown on Tax Map 1, Lot 20-12, is located at 78 Madbury Road, and is in the RA, Residence A Zoning District.

*Chair Smith OPENED the public hearing.*

William Schoonmaker, Schoonmaker Architects, represented the applicants. Mr. Schoonmaker said the applicants had previously come before the Board asking permission for a couple of accessory apartments. He said that at this point, they were simply asking for an addition on the house. He said the Brooks have talked to neighbors, and wish to convert a portion of a basement to an apartment for Wendy Brooks' mother. He said no second accessory apartment was being requested. He also noted they were asking for relief

from the 7 foot setback on the garage side so that issue would be clear once and for all. He said the addition would be 240 sq. ft. and would comprise less than 25% of the total area for the house

Ted McNitt asked what the height of the extension was, which Mr. Schoonmaker described. Mr. McNitt said the addition was essentially an extension of the basement and not the house as a whole. Mr. Schoonmaker said that was correct, and noted the footprint increase would not be 240 ft.

Jay Gooze said he was not sure what the applicant wanted from the Board in terms of the 7 foot setback issue. Mr. Schoonmaker said he simply wanted to point out the non-conformity issues, and was asking for a variance.

Mr. Johnson said the applicant was not proposing a change to the garage footprint, so it was not an issue.

*Chair Smith CLOSED the public hearing.*

Jay Gooze said the application met all the criteria for a variance. He noted that one side of the house did not meet the setback requirements, but the side they were concerned with did.

John de Campi said he saw no troublesome aspects in the application.

Ted McNitt noted that for the area it was in, the property was relatively well screened, and said he doubted the addition would be objectionable to the neighbors.

***Jay Gooze MOVED to accept the request for an APPLICATION FOR VARIANCES from Article IV, Section 175-25(B) and Article III, Section 175-16(A) to build an addition on a single family dwelling on a nonconforming lot for Chris and Wendy Brooks, at 78 Madbury Rd. The motion was SECONDED by John de Campi and PASSED unanimously.***

- X. **PUBLIC HEARING** on a petition submitted by Chester Dunn, Durham, New Hampshire for an **APPLICATION FOR VARIANCES** from Article IV, Section 175-27(B), Article X, Section 175-86(A), Article V, Section 175-41(A) and from Article III, Section 175-16(A) of the Zoning Ordinance to build an addition on a nonconforming lot within the shoreland and wetland setbacks. The property involved is shown on Tax Map 12, Lot 9-8, is located at 30 Mathes Cove Road, and is in the RC, Residence Coastal Zoning District.

*Chair Smith OPENED the public hearing.*

Bill Schoonmaker spoke on behalf of the applicants. He said the Duns proposed to add an addition in the space of an existing deck and also encompass an existing family room on the end of the house. He said the total addition would 350 sq. ft.

He said the Dunns had come before the Board some months ago with a similar request, and said that at that time, the addition was about 100 sq ft larger. He said the present addition design has been made smaller, and said the height of the addition would not exceed the height of the existing garage. Mr. Schoonmaker said there had been concern that the addition was in a flood zone, and said there was a note from Wells Fargo saying this was not the case. He also said a neighbor had been concerned that the addition would block their view. Mr. Schoonmaker said he had included a drawing, which showed the degree to which the addition would affect the view of the neighbor. He said it would truncate their view by about 1 degree, 16 minutes of line of sight, and also said he had included sketches that showed the addition as seen both from the roadside, from the driveway side and from the water side, to indicate there is a fairly minimal impact.

Mr. Schoonmaker said there was a letter from Mr. Smith, one of the individuals who had been concerned that the addition would obstruct his view, which indicated he no longer had any problems with the addition.

Chester Dunn spoke briefly about the proposed changes concerning the addition. He said they had tried to conform to suggestions given to them.

In response to a question from Jay Gooze, Mr. Schoonmaker said the entire property fell within the shoreland protection zone, and the property was constructed prior to the shoreland ordinance.

Jay Gooze and Chair Smith looked at provisions of the shoreland as they related to the addition and determined that the proposed addition did not violate the provisions.

Ted McNitt said the expansion was parallel to the tidal waters, so it would not be going deeper into the shoreland zone. He said that compared to a recent decision where they traded expansion in return for getting rid of a septic tank and shed in the shoreland area, this was a much more reasonable request. Jay Gooze agreed.

Paul Stacy, an abutter by means of a common lot, said he had no problems with the proposed addition.

John Simeon 4 Mathes Cove Road said he had no problems with the addition.

Barbara Yates, 29 Mathes Cove Road said she had no problems with the proposed addition.

*Chair Smith CLOSED the public hearing.*

Ted McNitt said he had voted against the applicant the previous time they had come before the Board. He said that at that time, he felt the addition was incursion into the shoreland, and also felt that in its present form, it was a modest obstruction to Mr. Smith's property

in terms of height and width, not substantial, but enough to affect his judgment in combination with other factors. Mr. McNitt said that since that time, he had visited the property again and saw that for 6 months of the year, the whole thing was not visible to the Smiths. He also noted that Dr. Sobels concerns about flood heights had been removed. Mr. McNitt said he was withdrawing any objections he had from the previous hearing.

John de Campi said the problems with the previous application appeared to be mostly the concerns of the neighbors, and that they now seem fine with it. He noted that the project is now reduced in scope, which lessened its impact, and said he was satisfied with the proposed addition.

Jay Gooze said the only question he had was how hardship was defined, and how wanting a bigger family room constituted a hardship. He said someone could certainly live with a smaller family room. But he said that because the house was there before the shoreland ordinance was passed, that could be considered a hardship.

Chair Smith said that the applicant came back to the Board with a different proposal, for a project that was reduced in scope, having made a serious effort to make it more acceptable. He noted that the neighbors now appeared to be comfortable with it, and said that although he still had concerns about the shoreland aspects of it, his concerns were not serious enough to object to the proposal.

***John de Campi MOVED to grant the APPLICATION FOR VARIANCES from Article IV, Section 175-27(B), Article X, Section 175-86(A), Article V, Section 175-41(A) and from Article III, Section 175-16(A) of the Zoning Ordinance submitted by Chet and Wendy Dunn, 30 Mathes Cove Rd., to build an addition on a nonconforming lot within the shoreland and wetland setbacks. The motion was SECONDED by Jay Gooze and PASSED unanimously.***

- XI. **PUBLIC HEARING** on a petition submitted by J.P. Nadeau, Portsmouth, New Hampshire on behalf of Epsilon Holding Corporation, Durham, New Hampshire for an **APPEAL OF ADMINISTRATIVE DECISION** from a May 27, 2003, decision of Zoning Administrator, Thomas Johnson, regarding the *defined use of the dwelling at 17 Garrison Avenue*. The property involved is shown on Tax Map 2, Lot 9-4, is located at 17 Garrison Avenue, and is in the RA, Residence A Zoning District.

*Chair Smith OPENED the public hearing.*

Mr. Nadeau provided background on the existence of the Epsilon Holding Corporation. He said the key issue with this property is that it has never lost its grandfathered status as housing for non-recognized members of fraternities. He emphasized that the nonconforming use had not been abandoned, and therefore was still allowed. Mr. Nadeau said the fact that UNH does not recognize the Epsilon Holding Corporation, or other fraternal organizations housing members at the property at 17 Garrison Avenue should not affect ability to rent the

property. He said that right was grandfathered, regardless of whether Epsilon, or the other fraternal organizations renting housing at Epsilon property, is recognized by UNH.

Mr. Nadeau said that regardless of what UNH says, Phi Kappa Theta and Pi Kappa Theta are fraternal organizations and that Epsilon has never lost its non-recognized fraternity status, and that this was grandfathered. He said that perhaps the zoning officer had acted on faulty information from UNH. Mr. Nadeau said that any action by the University should not be interpreted as a legal action against Epsilon Holding Co.

John de Campi asked how many members lived at the Epsilon Holding Company fraternity house. Mr. Nadeau explained that there were 3 different fraternities – Epsilon Holding Company, Phi Kappa Theta, and Pi Kappa Theta.

Chair Smith asked Mr. Nadeau what status Phi Kappa Theta lost on April 22, 2002. Mr. Nadeau replied they had lost their recognized status as a fraternity from UNH, which was a permanent revocation.

Jay Gooze asked how one would know if they were renting to non-fraternity members. Mr. Nadeau said this was a question for all fraternities in town. He said Epsilon Holding Co. had provided the information required to show that the proper people were living at the property.

Jay Gooze said he had trouble understanding that, when recognition of Phi Kappa Theta was taken away, and there was never official recognition for Epsilon, the use of the property by Epsilon Holding Co. should still continue.

Mr. Nadeau said was not Epsilon's cross to carry just because Phi Kappa Theta recognition was abandoned.

John de Campi said the only way the Town can recognize what a fraternity is by what UNH says.

Ted McNitt said the question for the Board was whether they supported the Zoning Administrator's administrative decision.

Jay Gooze asked if the Town was ever told that Phi Kappa Theta was a non-recognized fraternity. Mr. Nadeau said UNH had a lot of records on these things, and perhaps UNH did tell the Town.

Zoning Administrator Johnson said he had not had a chance to read over new documents that had been provided, that he needed more time to do so, and asked that the Item be continued to a future meeting. He also asked if he could do an inspection of the building.

Chair Smith and Mr. Gooze also said they needed more time to digest the information.



Mr. Nadeau asked what the parameters would be for continuing the discussion to a future meeting.

Mr. Johnson said that this action suspends any other enforcement until the case is resolved by the Zoning Board or through court action.

Chair Smith and John De Campi said that a request to continue the Item made sense.

***Jay Gooze MOVED to continue the request for appeal either to Aug 26<sup>th</sup> or Sept 9<sup>th</sup>, at the convenience of Mr. Nadeau and Mr. Johnson. The motion was SECONDED by John de Campi and PASSED unanimously.***

Ted McNitt said the Board was conscious of the fact that time was of the essence in this matter.

- XII. **PUBLIC HEARING** on a petition submitted by J.P. Nadeau, Portsmouth, New Hampshire on behalf of Epsilon Holding Corporation, Durham, New Hampshire for an **APPLICATION FOR VARIANCES** from Article IV, Section 175-25(C) and Article I, Section 175-6 to permit the change in use of the property to a multi-use, multi-unit residential rental building. The property involved is shown on Tax Map 2, Lot 9-4, is located at 17 Garrison Avenue, and is in the RA, Residence A Zoning District.

This item was continued to the August 26, 2003 meeting.

- XIII. **PUBLIC HEARING** on a petition submitted by Karyn P. Forbes, Durham, New Hampshire on behalf of Steven & Elene Petrovitsis, Durham, New Hampshire for an **APPLICATION FOR VARIANCE** from Article III, Section 175-16(A) to add a second floor proposed for residential use to a nonconforming building. The property involved is shown on Tax Map 4, Lot 3-0, is located at 36 Main Street, and is in the CBD, Central Business District.

Chair Smith informed the Board there was a request for continuance for Item XIII. to the next meeting on August 26, 2003.

***Ted McNitt MOVED to continue Item XIII to the next ZBA meeting on August 26, 2003. Jay Gooze SECONDED the motion, and it PASSED unanimously.***

- XIV. **PUBLIC HEARING** on a petition submitted by Aaron Brown, Greenland, New Hampshire on behalf of Ann Zerbinopoulos, Rollinsford, New Hampshire for an **APPEAL OF ADMINISTRATIVE DECISION** from a March 25, 2003, decision of Zoning Administrator, Thomas Johnson, regarding the status of the dwelling at 60 Edgewood Road. The property involved is shown on Tax Map 1, Lot 14-1, is located at 60 Edgewood Road, and is in the RA, Residence A Zoning District.

This item was continued to the August 26, 2003 meeting.

XVI. Approval of Minutes – July 8, 2003  
July 15, 2003

This item was continued to the August 26, 2003 meeting.

XVI. Other Business

Ted McNitt said he was pressing the rewrite committee to remove the language “three unrelated persons” from the Zoning Ordinance and put it into the town code. He said it was not really a land use matter, and was rather a health and police matter. John de Campi said the advantage of having it come to the ZBA was that there was a fairly well organized appeal process available, and felt it wasn’t an overarching burden to handle it through the ZBA. He said he was inclined to want to leave it with the ZBA, but said he understood what Mr. McNitt was saying about in not being strictly a land use issue matter.

Mr. McNitt said it wasn’t really a use. He noted that in the new rewrite, the way it is stated, the ZBA can act on variances of uses in the use table, and this is not in the use table.

Mr. Johnson noted that the Court case for Slania Enterprises for September 11<sup>th</sup> is being rescheduled because Walter Mitchell has a Supreme Court case that day, which takes precedence over Superior Court.

XVII. Adjournment

***Ted McNitt MOVED to adjourn the meeting at \_?\_\_\_\_\_ PM. The motion was SECONDED by John de Campi and PASSED unanimously.***

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Jay Gooze, Secretary