

**ZONING BOARD OF ADJUSTMENT  
TUESDAY, NOVEMBER 25, 2003  
TOWN COUNCIL CHAMBERS - DURHAM TOWN HALL  
7:00 P.M.**

**MEMBERS PRESENT:** Chair Henry Smith, Jay Gooze, Robin Rousseau, Myleta Eng, John DeCampi, Ted McNitt, Linn Bogle

**MEMBERS ABSENT:** None

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

**MINUTES PREPARED BY:** Victoria Parmele

**I. Approval of Agenda**

Chair Smith noted that all members were present, and said he had clarified with the NH Office of State Planning that it was appropriate for alternates to participate in discussions. He also said that the agenda would be amended, because Item VI, the Public Hearing on a petition for variances submitted by Andrew & Kecia Hartmann, was being postponed until the December meeting.

Jay Gooze questioned whether Item VII should be on the agenda, and Chair Smith said the Board would discuss this.

***Ted McNitt MOVED to approve the agenda as amended. The motion was SECONDED by John deCampi, and PASSED unanimously.***

**II. REQUEST FOR REHEARING** on an August 26, 2003, decision of the Zoning Board of Adjustment to deny an **APPEAL OF ADMINISTRATIVE DECISION** from a March 25, 2003, decision of the 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.

Chair Smith recused himself from the Item, and said that Ted McNitt would serve as Chair in his place. Robin Rousseau also recused herself.

Mr. McNitt appointed alternates Linn Bogle and Myleta Eng as voting members for the Item.

Mr. Sheehan spoke before the Board, noting he had appeared before the Board before, and said that this time he had provided additional information to show that he clearly had a duplex building. He said this additional information included materials from the Town office, including letters, etc of

people who previously lived in the building, and asked for the opportunity to present this information.

He also said that when he bought this building, there was a trampoline outside, and he knew right away that the neighbors were upset. He said he had assured them there would be no further problems. But he noted that the fact that there had been problems at the building didn't change the fact that the building was a duplex. He welcomed Board members to come out and look at the place for themselves.

Jay Gooze said the previous time the applicant came before the Board, he had voted that the building was a duplex. He said he did this for a number of reasons, including the fact that there were specific references made to the word duplex on some of the older zoning cards. He said his feeling at the time was that it was a duplex, but was limited to the upper floor. He said the discussion about how good a landlord one was was not relevant to this discussion. Finally, Mr. Gooze said that nothing presented that evening provided sufficient reason to grant a rehearing.

Linn Bogle said he agreed with Mr. Gooze, and noted that the building was at some point expanded without permission. He said that when he visited the property, it did not meet the code requirements for a duplex, structurally, as currently enforced. He said he did not know what had been done to the building since that time. Mr. Bogle also said he didn't see that the Board had been presented with new evidence. He said he was concerned that if the building was declared a duplex, and changed hands, it could wind up in the hands of someone who would not supervise it properly. He noted the units would be very small, in the middle of a single-family home neighborhood, and might go bad again.

John deCampi said he had not been present at the previous hearing on this property, and said he would like Code Administrator Johnson's input on it.

Myleta Eng asked what the building was used for now. Mr. Sheehan said it was being remodeled. He described the work being done, and said his daughter would be moving in soon.

Mr. Johnson said the original ruling came out of a real estate agent contacting him as to the legal status of the building. He said he was not able to enter the property, but researched it and didn't see any renovations that had been made to convert it to a duplex. He said he therefore wrote a letter that it was a single family home with an accessory apartment, with possibly some illegal conversion work done in the basement. He said that after the most recent ZBA hearing that upheld his decision, he visited the property, and his opinion stayed the same. He noted that in the 1950's-1970's accessory apartments were allowed to be larger than 25%. He said the upstairs level was mirror images units, as stated, and said the basement was a part of one of the units.

He said there was no code-required separation between the two units, so the accessory apartment was an integral part of the single-family home. He also said there were not separate utilities, and the fire, electric, etc, did not meet the codes for a duplex, so he stood by his original letter. He said the owner had done a lot of work, new windows, etc. but it was still a single-family house with an accessory apartment.

Mr. Sheehan said he didn't see how they could consider what might happen in the future, and how they felt about students. He said this use was grandfathered, so they should look at what had happened in the past. He restated that the building was a duplex, and said he was sure the prior owner would have put two heating systems in if she had known he would be sitting there that evening. He said he had agreed to put the fire separation in, and meet other current codes. He said it had been lived in as a duplex, and said he had substantial information to indicate this. He asked whether, as the new owner, he should be allowed to present his own information.

Mr. McNitt explained that the Board was considering whether they should reopen the hearing to rehear the Item. He said if they decided to do so, then the merits became pertinent.

Mr. Gooze said he didn't see anything new that warranted a rehearing.

Mr. deCampi said it was clear last time that the two sides of the building were mirror images. He said that didn't necessarily make the building a duplex, but tended to push it in that direction. But he said that if that had already been considered, he agreed with Mr. Gooze that there was nothing new to warrant reopening the hearing.

***Jay Gooze MOVED to deny the request for rehearing on an August 26, 2003, decision of the Zoning Board of Adjustment to deny an APPEAL OF ADMINISTRATIVE DECISION from a March 25, 2003, decision of the 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. The motion was SECONDED by Linn Bogle, and PASSED 5-0.***

Mr. McNitt said he was appreciative of the improvements Mr. Sheehan had made to the property.

Chair Smith noted that he and Ms. Rousseau had returned to the table, and that Mr. Gooze was leaving the meeting.

- III. **PUBLIC REHEARING** on an August 26, 2003, decision of the Zoning Board of Adjustment to deny an **APPEAL OF ADMINISTRATIVE DECISION** from a March 25, 2003, decision of the 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 not heard because the Request For Rehearing was denied.

- IV. **PUBLIC HEARING** on a petition submitted by the Paquette Family Rev Trust, Durham, New Hampshire for an **APPLICATION FOR VARIANCES** from Article IV, Section 175-28(B), Article III, Section 175-16(A) and Article V, Section 175-41(A) to build an addition on a single family dwelling on a nonconforming lot. The property involved is shown on Tax Map 18, Lot 18-50, is located at 41 Ross Road, and is in the R, Rural Zoning District.

Chair Smith opened the public hearing.

Mike Todd represented the Paquette Trust before the Board, and explained that they were requesting to build a rear addition – a one-story family room addition, on a single family dwelling on a nonconforming structure located in Stagecoach Farms, a subdivision that included undersized lots. He said the applicant's property did not meet the requirements of 120,000 ft of lot area and 300 ft. of frontage. He also noted the addition would be more than 50 ft. from poorly drained soils, and more than 75 ft. from very poorly drained soils. He said they had a growing family and wanted to increase the size of their living space, and that this would not be detrimental to the neighborhood or impact public safety.

John deCampi asked if the addition would meet the setback requirements for the zone, and was told it did. Robin Rousseau asked what the acreage was and was told it was 1.2 acres. It was clarified that there was no basement

Chair Smith closed the public hearing.

Mr. deCampi said he did not see any reason not to grant the variance.

Chair Smith asked why Mr. Johnson's letter said it did not meet the setback requirements.

Mr. Johnson explained that the original building permit didn't have an adequate plot plan, and noted that his letter asked that this be indicated on the approve plot plan. It was noted that the side setbacks were still not indicated.

Linn Bogle asked if there was a Stagecoach Farms homeowners association and if they were aware of this application. Mr. Todd said they had approved it.

Chair Smith said that with 1.2 acres, they would have less than 50% of the required lot area for the Rural Zone.

Mr. McNitt said it was part of a cluster subdivision, which was done legally at the time. Ms. Rousseau said that was questionable.

Ms. Eng asked what was behind the property, and was told it was a wooded area.

Ms. Rousseau said she would not vote to approve the application, noting she was consistent in the way she voted about additions to subdivision properties that already had extreme variances in terms of the amount of acreage they had. She said the Zoning Ordinance was clear that the spirit and intent was to limit density in the Rural Zone, and not increase nonconformance in an extreme way.

Ted McNitt said the house was put on the property legally, and granting the variance would not be increasing the density or any setback encroachments in any way. He said he felt this addition did not contravene the spirit of the zoning ordinance, and would be in favor of granting the variances.

***Robin Rousseau MOVED to deny the petition submitted by the Paquette Family Rev. Trust as outlined in Agenda Item IV on an APPLICATION FOR VARIANCES from Article IV, Section 175-28(B), Article III, Section 175-16(A) and Article V, Section 175-41(A) to build an addition on a single family dwelling on a nonconforming lot. The property involved is shown on Tax Map 18, Lot 18-50, is located at 41 Ross Road, and is in the R, Rural Zoning District. The motion was SECONDED by Chair Smith.***

Mr. Todd explained that this family had built a home in an existing subdivision, and said most people buying a home in a subdivision didn't verify zoning for something they wanted to do some years later. He said this growing family simply wanted to add less than a 1,000 sq. ft. of living space. He said he didn't think this was against the spirit and intent of the ordinance. He noted that all the lots in the subdivision were undersized, but behind them was a large area of open common space. He said the addition wouldn't impact the neighbors or the Town.

Ms. Rousseau said she respectfully disagreed, because when the Planning Board approved a subdivision, they essentially granted a large variance based on the information presented. She said then, a few years later, people wanted to expand on what were already very small lots. She said there was strong language in the Master Plan that the Town did not want an overbuilt rural area, and said she agreed with this. She said perhaps the applicant should have bought a larger house or a larger lot.

Mr. deCampi said he agreed with Ms. Rousseau in some respects, and that it was unfortunate that 1.2-acre lots had been permitted, but here was a family living on one of these lots. He said it would be unfortunate not to allow the addition, which would not be visible from the road, and he said that turning the application down would serve no real purpose in maintaining the Rural Zone.

Chair Smith said he believed the use would be contrary to the spirit of the Zoning Ordinance, because they would be putting on an addition which was almost 1,000 sq. ft. on a lot that contained less than 50% of the minimum lot size required by the ordinance. He said he felt this was too great a leap for the Board to take.

Mr. McNitt said that this lot was part of a cluster subdivision, which contained a large open area that compensated for the smaller house lots. He said this was much like the conservation subdivision concept presently being proposed in Durham. He said nothing was being done to change the size of the lot. He also quoted from a Section of the Zoning Ordinance, and said the addition would not increase the deviation from this Section.

Ms. Rousseau quoted from the Master Plan, and also from the Zoning Ordinance concerning non-conforming buildings, to justify her position, and also said she believed the applicant had reasonable use of their property as it was.

***The motion FAILED 2-4, with Mr. McNitt, Mr. deCampi, Mr. Bogle and Ms. Eng voting against the motion.***

***Mr. McNitt MOVED to approve the APPLICATION FOR VARIANCES from Article IV, Section 175-28(B), Article III, Section 175-16(A) and Article V, Section 175-41(A) to build an addition on***

***a single family dwelling on a nonconforming lot. The property involved is shown on Tax Map 18, Lot 18-50, is located at 41 Ross Road, and is in the R, Rural Zoning District. He said the application should be granted on the basis that it was not increasing in any way the deviation that exists at the present time, and existed at the time the subdivision was approved by the Planning Board. The motion was SECONDED by John deCampi.***

It was noted that two alternates members voted on the motion to deny the application. Chair Smith appointed Ms. Eng to be the official voting member on this Item, and it was decided to re-do the motions.

Mr. McNitt withdrew his motion to grant the application for variances, and Mr. deCampi did as well.

***Robin Rousseau MOVED to deny the petition submitted by the Paquette Family Rev. Trust as outlined in Agenda Item IV on an APPLICATION FOR VARIANCES from Article IV, Section 175-28(B), Article III, Section 175-16(A) and Article V, Section 175-41(A) to build an addition on a single family dwelling on a nonconforming lot. The property involved is shown on Tax Map 18, Lot 18-50, is located at 41 Ross Road, and is in the R, Rural Zoning District. The motion was SECONDED by Chair Smith.***

***The motion FAILED, 2-3, with Mr. McNitt, Mr. deCampi, and Ms. Eng voting against the motion.***

***Ted McNitt MOVED to approve the APPLICATION FOR VARIANCES from Article IV, Section 175-28(B), Article III, Section 175-16(A) and Article V, Section 175-41(A) to build an addition on a single family dwelling on a nonconforming lot. The property involved is shown on Tax Map 18, Lot 18-50, is located at 41 Ross Road, and is in the R, Rural Zoning District. He said the application should be granted on the basis that it was not increasing in any way the deviation that exists at the present time, and existed at the time the subdivision was approved by the Planning Board. The motion was SECONDED by John deCampi, and PASSED 3-2, with Chair Smith and Robin Rousseau voting against the motion.***

- V. **PUBLIC HEARING** on a petition submitted by John Cerullo, Durham, New Hampshire for an **APPLICATION FOR VARIANCES** from Article IV, Section 175-28(B) and Article III, Section 175-16(A) to build a mudroom addition, to renovate a bathroom, to renovate the front walk and steps, to build a carport and to build a second floor extension on a single family dwelling on a nonconforming lot. The property involved is shown on Tax Map 18, Lot 11-11, is located at 7 Simon's Lane, and is in the R, Rural Zoning District.

Chair Smith designated Linn Bogle as a voting member on this Item, and opened the public hearing.

Mark Randlett, of James P. D'Alessio Inc. spoke before the Board for Mr. Cerullo. He described the planned renovations, which were for the purpose of improving the living conditions: a first floor 8 ft. x 12 ft. mud room entry and an 8 ft. x 9 ft. entry deck; a 4.8 ft. x 7 ft. first floor half bath; a 2.5 ft. x 9 ft extension of a second floor bath; re-working of existing front walks and steps; and a

covered car port at the rear of the building. There was clarification of the wording of these renovations. Mr. Randlett said the property contained 2.07 acres.

Robin Rousseau asked if the house was part of a subdivision, and also if there was a subdivision association.

Code Administrator Johnson said the property appeared to be part of a subdivision, but said he didn't have the history on when it was built. He said there was no formal association that he was aware of.

Ted McNitt asked about abutters, and was told there was an animal hospital on one side, another house lot on the other side, with a wooded area behind the property.

Chair Smith noted the applicant had roughly 91,000 sq. ft. when 120,000 sq. ft. was required. He clarified all the dimensions of the proposed renovations except the carport dimensions, which were not available. It was clarified that it would be a one-car carport, and would basically comprise a roof on posts, on a concrete base.

Chair Smith closed the public hearing.

Linn Bogle said he had looked at the property, and had no problems with the request.

John deCampi said this application was similar to the previous application, but involved a larger lot and a smaller overall addition.

Ted McNitt said they didn't know why the Planning Board originally approved this subdivision, but said the planned renovations would not increase the nonconformity, and he saw no reason to turn it down.

Ms. Rousseau said she could not see how it could be said the nonconformity was not increasing.

Tom Johnson said it was a 2,000 sq. ft. building, and adding a 500 sq. ft. addition, increased the percentage of coverage.

There was discussion about coverage requirements in the Rural Zone. Mr. Johnson said a maximum of 20% coverage was allowed, and Mr. McNitt said the proposed renovations didn't come near 20%.

Ms. Rousseau said it was not clear why the property was considered a nonconforming building. There was additional discussion about this. It was agreed that there was no question that it was a nonconforming lot.

***Ted McNitt MOVED that the ZBA approve the request of John Cerullo for an APPLICATION FOR VARIANCES from Article IV, Section 175-28(B) and Article III, Section 175-16(A) to build a mudroom addition, to renovate a bathroom, to renovate the front walk and steps, to build a carport and to build a second floor extension on a single family dwelling on a nonconforming lot.***

***The property involved is shown on Tax Map 18, Lot 11-11, is located at 7 Simon's Lane, and is in the R, Rural Zoning District. The motion was SECONDED by John deCampi.***

Mr. McNitt said the renovations would not increase nonconformity in any way.

Mr. Bogle said these seemed like reasonable alterations, and noted that if the code was set in concrete, every house in the development would be locked into its footprint the day the code changed. He said he didn't think that was fair to homeowners.

Chair Smith said the alterations appeared to be minor, and he was therefore in favor of granting the variance.

Robin Rousseau said she agreed with Mr. Bogle, and it was a judgment call as to whether the Board considered this request in violation of the spirit of the ordinance, because the bar was not set in the ordinance.

***The motion PASSED 5-0.***

- VI. **PUBLIC HEARING** on a petition submitted by Andrew & Kecia Hartmann, Durham, New Hampshire for an **APPLICATION FOR VARIANCES** from Article IV, Section 175-27(B), Article III, Section 175-16(A), Article V, Section 175-41(A) and Article X, Section 175-83(A) to build a roof over an existing, unapproved addition on a single family dwelling on a nonconforming lot. The property involved is shown on Tax Map 12, Lot 1-21, is located at 18-20 Cedar Point Road, and is in the RC, Residence C Zoning District.

This Item was not heard, and was postponed until the December meeting.

- VII. **PUBLIC HEARING** on a petition submitted by Carrie Ann 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 owner's horses and to build a equestrian center for the boarding and caring of 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 said he felt the Board should not hear this case, because it was a request for a variance, although nothing had been denied that would warrant applying for a variance.

He said the applicant was essentially asking for the same thing previously denied them in August, without ever appealing the ZBA's decision. He quoted from *Fischer v. Dover* that the early denial of an application that was materially the same as a new one, precluded the ZBA from reaching the merits of that new application....."

He also said the facts supporting the request were based on the newly proposed zoning ordinances that had not yet been adopted. He noted the new ordinance was more permissive than the current



one, and NH State law said that the more restrictive ordinance took precedence over the more permissive one.

Robin Rousseau said she would like to hear how the applicant wished to address these concerns, and said perhaps they could explain why they felt the situation was different than the previous application. She said she saw no harm in listening to their position before making a decision as to whether to open the public hearing.

John deCampi asked if the ZBA had the right to not hear a case that had come before them, and Chair Smith said he believed they did.

It was agreed that the applicant should be allowed to address the concerns raised by the Board, and why this application was different from the previous application.

Attorney Tanguay represented the applicant, and agreed it was improper for an applicant to bring back a prior proposal, but said it was proper to bring back a similar but different application. He noted he was not present when the first application was heard in August, but in reading the minutes he saw that the main concern had been that the property and paddock were visible from the road, and it were all too close to the road. He said comments from the Board indicated some willingness to consider a new proposal where all of the paddocks would be behind the wood line. He said in this new proposal, the paddocks would not be visible from road.

Attorney Tanguay also said this new proposal had two parts, the first which converted the garage to a stable, and the second which in the longer term involved building an equestrian facility out of sight, away from the road. He said coming back with a different proposal, developed in response to concerns raised by the Board and the public, was very appropriate.

He also noted concerns regarding changes in the zoning ordinance, and said he was not raising this to say it was his job to comply with the new ordinance, but rather had raised the issue in the context of meeting the spirit and intent of the master plan, as reflected in the proposed ordinance coming forward, which related to variance criteria.

Robin Rousseau asked if that was his argument for the non-permitted use issue, noting that what they were proposing was a non-permitted use, even with a conditional use permit, in the current ordinance.

Attorney Tanguay said he understood this, but what was being proposed was in a format that was different than the previous application.

Ms. Rousseau noted the garage being used as a stable was a big sticking point for the neighbors and Board members, and asked why they were seeing this again.

There was discussion about the location of the garage and concerns that had previously been expressed about using it as a stable. Attorney Tanguay said the concerns had to do with the visibility of the paddocks.

Chair Smith said a major concern was the closeness of the stable to the road and all that that would entail.

There was discussion as to how the Board should proceed, based on the explanation given by Mr. Tanguay.

Mr. Bogle was appointed as a voting member for this Item.

Attorney Tanguay said an issue last time was that Carrie Garland spoke about the equestrian facility she wanted to put in, but this wasn't part of the application. He said it was important to make the application complete this time and meet the concerns the Board had expressed.

***John deCampi MOVED to hear the case. The motion was SECONDED by Ted McNitt, and PASSED 4-1, with Chair Smith voting against the motion.***

Attorney Tanguay said the applicant had listened to Board and public comments to get the horses and paddocks out of the public' site, and said he believed this application had done this. He described a 2-phased approach that was being taken. He said the first phase was to convert the existing garage into a stable so Carrie could house her own horses. He said this was not permitted in the current RB zone, but would be permitted under the revised zoning ordinance, which would allow one to have accessory animal husbandry in the RB zone.

He said it was proposed that the existing garage would be restructured so it would not appear to be a horse stable from the road. He said all of the paddocks would be behind the wood line and out of site from the road, and would be more than 100 ft. from the road.

Attorney Tanguay said they believed the proposal was consistent with some of the concerns addressed in the Master Plan. He quoted from Chapter 9, on Land Development Regulations, which said that the residents of Durham valued small town flavor, want to maintain these qualities in the face of increasing pressures for residential and commercial growth. He said this application was in part an effort to save what was the applicant's family farm. He said that pressure from development would gobble up the property if it was not used in this fashion.

He referred to Chapter 4 of the Master Plan, dealing with environmental and cultural resources. He demonstrated with tax maps that preservation of the property, and connecting with surrounding protected properties would allow a large area to remain undeveloped, and would promote the greenways concept discussed in the Master Plan. He also said the purpose for the RB zone was to promote development in such a way as to not disturb existing residential areas, and this application would do just that.

Attorney Tanguay also spoke about the Rancourt v Manchester case, and said it was a horse case, where the owner owned 3 acres in a residential zone where horses were not permitted, and asked to be able to house two horses. He said the Court went through an analysis of what was a hardship, and ruled in favor of the owner, determining that the use he sought was a reasonable use, considering the property's unique setting in its environment.

He said the current application met all of the hardship tests set forth in the Rancourt case: location in a country setting; the lot was larger than most of surrounding lots; the lot was uniquely configured in the rear portion of the lot, which was considerably larger than the front; and there was a thick wooded buffer around the proposed paddock area. He said the area proposed to keep the horses in Rancourt was 1.5 acres, while the current application had 47 acres. He also noted the property abutted the OR zone, which related to the Master Plan's greenway concept.

He went through the variance criteria in detail, and said the use being considered was more than reasonable given its size and location. He said by granting the variance, the character of the northerly side of Mill Road would be preserved, a large tract of land would be preserved, a family farm would be preserved, and a horse rescue facility would ultimately be developed.

Mr. Bogle said the application asked for three things: conversion of the garage to a stable for the owner's horses, building of an equestrian center, and developing a rescue facility for horses. He asked how many horses Ms. Garland would be taking in as boarding horses.

Ms. Garland said it would be approximately 25 horse, but also said she hadn't determined exactly how big the facility was going to be. She said she didn't want to be limited to an exact number of horses.

Mr. Bogle asked about the rescue facility, and Ms. Garland explained that she was already a licensed agent for equine rescue.

Attorney Tanguay noted Ms. Garland's work in this field, and said what she did not have was the capacity to bring the rescued horses to her own facility. He said the plan was to have a boarding facility that would allow her to take in rescued horses when needed.

Mr. Bogle said the location in question was a blind curve. He said he didn't see information on access and egress from the property, and said he would prefer to see a better-developed proposal, considering the fact that it would be a fair-sized commercial development.

Attorney Tanguay said Ms. Garland wanted to do this project in stages, and that when it came time to do the equestrian facility, that proposal would go before the Planning Board for site plan approval, and access and other issues would then be addressed. He said they were now asking for ZBA authority to permit that use on that property in that zone.

Chair Smith said the Board was asking to approve something when the information being presented was very general and vague. He asked if the paddocks would all be in the interior of the barn.

Attorney Tanguay said the paddocks were not indicated on the plan, but these would be fenced in, small areas where horses would be rotated. He also said they were trying to show on the plan where in general the future barn would be located.

Mr. McNitt asked if the Board was being asked to approve the use of the barn as an accessory use for the house at this stage, with the intention of developing an equestrian facility in the future behind the tree line, assuming a satisfactory way could be found to do it.

Attorney Tanguay said that was correct, it was an accessory use at present that was being asked for. He said if the first phase was allowed, but the second phase was not accepted, Ms. Garland wouldn't move forward because the work involve to convert the garage wouldn't make sense unless phase two was also approved.

Ms. Rousseau said that in the Rancourt case, the applicant wanted to have horses, but not for commercial use, and a facility was not being proposed, as in the current application. She noted Attorney Tanguay had quoted from the proposed ordinance regarding animal husbandry. She said to her, animal husbandry would not necessarily mean a facility, and said the proposed use sounded like a busy situation.

There was discussion about what animal husbandry meant, and what scale of use it implied in general and within the proposed revised zoning ordinance.

Attorney Tanguay said the Rancourt case couldn't be seen as being limited to the particular facts, but instead the particular facts should be used to draw the principles from it, which in that case concerned the stabling of horses, regardless of the number, if the property on which it was proposed, in that environment, resulted in a reasonable use.

Ms. Rousseau noted Mr. Tanguay had used the case to support the reasonable use argument, and had also used the particulars of the property and the use. She said the use was substantially different in this situation than in the Rancourt case, because it was more for business purposes

Attorney Tanguay said the principles were still the same, and were not limited to residential use versus non-residential. He also noted that animal husbandry in the new zoning ordinance said accessory animal husbandry included the breeding or raising of livestock. Ms. Rousseau said raising was different than boarding animals. Mr. Tanguay acknowledged the commercial was not allowed in the RB zone, which was why they were seeking a variance.

Ms. Rousseau said the Rancourt case didn't necessarily fit, although she respected the fact that he was using it to argue reasonable use.

Linn Bogle asked Ms. Garland to discuss what was involved in boarding horses, noting owners would be coming in and out. It was clarified that there would be riding trails on the property.

Ted McNitt asked whether it would be reasonable to limit the presence of horses in the front setback area, for both phases of the project, other than bringing them in or removing them from the property.

Attorney Tanguay said they would be agreeable to this, which would involve moving horses coming in immediately to the paddock area, which would be behind the wood line. He also said they would agree that there would not be paddocks within an agreed distance from any property lines.

Chair Smith said in the original proposal, he recalled the horses would be exiting the garage from the back door. Ms. Garland said they did have this second exit, for safety reasons, but the back door was smaller, and would be very difficult to enlarge because it was part of a stone structure.

Concerning the fact that the horses would be visible walking from the front of the building to the paddock area, Attorney Tanguay said the applicant would be glad to put up screening for this if requested.

John deCampi asked how many horses could fit comfortably into the existing garage, and Ms. Garland said five.

Chair Smith asked if members of the public would like to speak for or against the request.

Bonnie McDermitt, 89 Dover Rd. said she was in favor of the request, and said it was the type of business and development that she would like to see in Durham instead of housing developments.

Paul Fischer, an abutter, said it was in the interest of the neighborhood for Ms. Garland to be able to keep her property as open land. He said it would be fine to have a professionally run equine center at this location, where she could get the income she needed and wouldn't have to develop it. He said he would rather see it as farmland than as condos, and could see it contributing to the community. He said that the best compromise would be one that allowed her to meet that goal without negatively impacting on the neighborhood, in terms of smell, safety, flies.

He said the properties their had risen considerably in value, and homeowners were investing significantly in them. He said this was probably the most dangerous corner along Mill Road. He said the equine center, better defined this time, would be something that he could support, although issues related to this would have to be sorted out, concerning parking, manure management, etc.

He said he remembered that the last time the application was presented, it was said that the paddocks would be behind the tree line. He said the stable option was already discussed and the issues with this hadn't really changed, and said any changes that happened there would really be a change in the neighborhood.

He said it was being presented that phase I would be a bridge to phase II, but asked if this was temporary, how long would phase I last. He asked how it would be enforced if a time limit was placed on the use of the garage as a stable. He said if the garage/stable was intended as an interim stage before the equine center was developed, he didn't see the stable as an accessory animal husbandry use, and was really part of a developing business plan. He said that if for some reason the equine center was not developed, the stable became a permanent use, when it was decided previously that this use should not be allowed.

He said the acreage up front with the garage, didn't appear to be part of the rest of the acreage, and asked if there was a way for the Board to come up with a compromise decision.

Bruce Davies, Bartlett Rd said he lived across from the applicant's property, and said the prospect of having a commercial business there on that corner concerned him. He said he had lived at this

location for a year, and so far had had two cars drive into his yard. He said he agreed that horses in the back would be a great use of the property, but did not think having 4-5 horses stabled basically on the street in that neighborhood was good for his property value, and would not serve the public in terms of safety.

Attorney Tanguay said Ms. Garland was very familiar with good management practices, and would practice these. She said manure would be carried out beyond the tree line and would be covered, and at appropriate times would be spread to unused paddocks to keep the grass growing so they could rotate the horses in these areas. She said there would be no clear-cut property, only selective cutting, and that trees would be in all the paddocks to give shade to the horses.

Chair Smith asked if the garage conversion to a stable was planned as a temporary use, and phased out at a certain point.

Ms. Garland said that was correct, but didn't have a timeline for this. She said at present she would like to get her four horses home.

Mr. Fischer said there was no such thing as a temporary use unless there was a timeline placed on it.

Ted McNitt noted Mr. Davies said the key to his objection was that the garage was 78 ft. from the road, and was part of his neighborhood.

Mr. Davies said when he stood on his front porch, he looked directly at their front porch.

Mr. McNitt asked if it would be reasonable, and would in some way reduce his problem with the garage/stable if Ms. Garland put a line of trees in front of the it so it was hidden completely from the neighborhood.

Mr. Davies said it would reduce the problem in some way, but said he was not sure if the trees would obstruct the noise, the flies, the smell, traffic. He said he had trees in his own yard that during the summer blocked the view. He said he was concerned about property values, safety, the changing of the neighborhood, and putting in livestock in a residential area. He said he didn't think trees would address all of this.

Chair Smith closed the public hearing.

John deCampi said the last time the request was turned down largely because the current zoning had no provision for any use such as this, but said the new ordinance did have such a provision, for accessory animal husbandry. He said he wasn't sure it permitted the equine center. He said he didn't have a problem with the concept itself, but the plans were too vague. He said he had no problem with allowing 4-5 horses into the garage building, and said he thought Mr. McNitt's idea about screening was a good idea, and would mitigate impacts on the neighborhood.

Ted McNitt asked if Mr. deCampi's concerns about the equine center were really site review questions for the Planning Board. Mr. deCampi said that perhaps they were.

Linn Bogle said he was ill at ease with the lack of specificity, even in terms of the use of the garage as a stable. He said he would like to know more about access and egress to the property, in terms of the garage. He said he imagined substantial fencing would be needed for animals along the road to prevent their getting onto the roadway, with a very dangerous curve. He also said he was concerned about manure management and water issues, even with only 4-5 horses, noting surrounding properties were on wells. He said water issues would be even more significant if 25 horses were brought in and manure was spread on the backlands, when the Board did not know what the water table situation was there.

He said another concern was bringing horses in and out with trailers on a road where people tended to drive too fast. He said he was not comfortable with putting horses into the garage, and said Mr. McNitt's idea of putting a tree line in front would be good if they were out by the road, but they couldn't be in front of the garage because that would possibly conflict with access. He said to the rear of the garage, the land dropped off immediately behind the garage, so was not really a flat area for horses. He also said the idea of the equine center would have to be looked at with extreme care.

Myleta Eng said she drove that road every day, and that corner was very dangerous. She said she would have a problem with traffic going in and out from the facility, and also said the neighbors' concerns about smell and flies were something the Board should think about. She said she would not be in favor of allowing the garage conversion.

Robin Rousseau said she would really like to see the applicant be able to use that property. But she said she had not heard a good legal argument to convince her why it was not going against the spirit and intent of the ordinance. She said they could only look at the current ordinance, and the proposed use was not a permitted use, even with a conditional use permit. She said the spirit and intent of the ordinance was to eliminate uses such as this as neighborhoods went up in density. She said she couldn't get past this, and if she had heard legal arguments that could get her over it, she would have been more in favor of it. She said the applicant did have reasonable use of the property.

Chair Smith said he had problems with the application because of: the lack of dimensions for a barn and lack of specificity in general; the fact that it was not a permitted use under the current ordinance; and the fact that the Board had dealt with the issue before, it was denied and was not challenged. He said although he dearly hoped this property would be preserved for some kind of use that would keep it in agriculture and open space, he had problems with this use because it flew in the face of the spirit and intent of the ordinance.

Mr. McNitt said he did not think the use was counter to the spirit and intent of the ordinance. He said at the present time the applicant was looking for an accessory use, which was permitted. He said this property had 47 acres, and said that if this were a 20,000 sq. ft. lot in the middle of the subdivision across the street, no one would want to see it there. He said the proposed stable would be separated by a line of trees, and the first phase could be managed in a way that was not in any way objectionable. He said the use would meet the Town goal of protecting open land and using it for rural purposes. He asked if the Town chose not to do this, what the future of this land would be.

Mr. McNitt said there were strong arguments in favor of this, and said the use could be managed without any damage to the neighborhood, noting Town nuisance ordinances certainly would control

it. He noted he had experience owning livestock, and also noted that a buffalo farm had been put next to some of the highest priced real estate in Durham, and the property values had not been impacted. He also said important questions of site review should come into play for the second phase –the equine center, where the concept and proper conditions and controls would have to be applied during site review. He said the first phase was legal today, and said he saw no reason not to agree with it.

Robin Rousseau said she disagreed with Mr. McNitt's position. She said she worked hard to preserve the rural character of that zone, but liked to do it within the confines of the law. She said that if she believed this request fell within those confines, she would be the first one to advocate for the applicant's position. She said she felt strongly that the uses proposed did not fall within the confines of the law, and said in her opinion were not accessory uses.

It was clarified that Linn Bogle would be a voting member on this issue.

***Linn Bogle MOVED to deny the APPLICATION submitted by Carrie Ann 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 owner's horses and to build a equestrian center for the boarding and caring of 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. The motion was SECONDED by Robin Rousseau.***

John deCampi said he still thought that granting the use of the garage with screening would be reasonable at this point in time, and would not have a problem granting an equestrian center if he had more details on how it would be developed.

***The motion PASSED 3-2 , with Ted McNitt and John deCampi voting against the motion.***

- VIII. **PUBLIC HEARING** on a petition submitted by Matthew W. Embrey, Plaistow, New Hampshire for an **APPEAL OF ADMINISTRATIVE DECISION** from an October 9, 2003, letter of the Zoning Administrator, Thomas Johnson, regarding the occupancy of a dwelling. The property involved is shown on Tax Map 6, Lot 4-22, is located at 36 Garden Lane, and is in the RA, Residence A Zoning District. (The applicant has requested that this application be postponed.)

POSTPONED

October 14<sup>th</sup> Minutes

Page 1, 2<sup>nd</sup> paragraph – The word recuse should be changed to recusal.

Also, under Approval of Agenda, the motion should read "...because the applicant cannot be present..."

Page 4, the Item description should read "to alter and reconstruct the present dormers" instead of "renovate the dormers"



Page 5, 2<sup>nd</sup> paragraph from bottom, should read “farmer’s porch with a roof on it” instead of “farmer’s deck with a cover on it”

Page 6, 1<sup>st</sup> paragraph should read “farmer’s porch with a roof on it” instead of “farmer’s deck with a cover on it”

Page 7, 3<sup>rd</sup> paragraph from bottom, should read “which he did not see in the application:

Page 8, 2<sup>nd</sup> paragraph from bottom paragraph should read “yet it could totally restrict his ability..”

Bottom paragraph should read “..explained that the owners of the present building, a business one story office building, want to ...”

Page 10, under Item VIII, should read “Chair Smith OPENED the public hearing.

Also, 4<sup>th</sup> paragraph should read “”..would allow improved maintenance which would enhance..”

Also, 5<sup>th</sup> paragraph from bottom should read “Mr. LaChance said the existing shed was on concrete...”

Page 15, bottom paragraph should read “He said he didn’t think it was reasonable..”

Page 16, 4<sup>th</sup> paragraph - take out question marks.

Page 17, 3<sup>rd</sup> paragraph should read “..represented the applicant and noted she had submitted..”

***Ted McNitt MOVED to approve the minutes as amended. The motion was SECONDED by Linn Bogle, and PASSED 4-0, with Robin Rousseau abstaining.***

***John deCampi MOVED to adjourn the meeting. The motion was SECONDED by Linn Bogle and PASSED unanimously.***

Meeting adjourned at 10:00 pm.